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Lawyers at E.P.A. Say It Will Drop Pollution Cases

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WASHINGTON, Nov. 5 — A change in enforcement policy will lead the Environmental Protection Agency to drop investigations into 50 power plants for past violations of the Clean Air Act, lawyers at the agency who were briefed on the decision this week said.

The lawyers said in interviews on Wednesday that the decision meant the cases would be judged under new, less stringent rules set to take effect next month, rather than the stricter rules in effect at the time the investigations began.

The lawyers said the new rules include exemptions that would make it almost impossible to sustain the investigations into the plants, which are scattered around the country and owned by 10 utilities.

The lawyers said the change grew out of a recommendation by Vice President Dick Cheney's energy task force, which urged the government two years ago to study industry complaints about its enforcement actions. The Bush administration has said its goal is to ensure cost-effective improvements to air quality.

Congressional critics, environmental groups and officials in some Northeast states described the change as a major victory for the utility industry and a defeat for environmentalists, who had viewed the cases as the best way to require the companies to install billions of dollars of new pollution controls.

Representatives of the utility industry have been among President Bush's biggest campaign donors, and a change in the enforcement policies has been a top priority of the industry's lobbyists.

In a statement, the E.P.A. said that it had not made a formal decision to drop all the investigations and that it would review each "on a case-by-case basis to determine whether it will be pursued or set aside."

An E.P.A. spokeswoman, Lisa Harrison, said the agency would continue to pursue a handful of earlier cases that are already being litigated. She said some cases could still be filed in court under the old rules. "That possibility is more remote, but it's still possible," she said.

Under the old rules of the so-called New Source Review program, power plants, oil refineries and industrial boilers that were modernized in ways that increased harmful emissions generally had to install more pollution controls.

Under the new rules, any renovation project that costs less than 20 percent of the power-generating unit's value will be exempt, and no pollution controls will need to be added even if the project increases emissions. Critics say thresholds set at that level would exempt most of the power plants that have been under investigation.

One career E.P.A. enforcement lawyer said the decision, coupled with the changes in the underlying rules, could mean that the utility industry could avoid making as much as \$10 billion to \$20 billion in pollution-control upgrades.

The Bush administration and the utility industry say the old rules were too costly and ineffective.

The old rules "were based on a serious misinterpretation" of federal law, said Dan Riedinger, a spokesman for the Edison Electric Institute, the industry's main trade group. The new rules, Mr. Riedinger said, "are consistent with the companies' obligations to maintain reliability and safety," and will "keep emissions trending downward."

But critics expressed outrage on Wednesday, saying the decision would eliminate one of the most effective weapons government regulators had to curtail pollutants.

"This latest attack on the environment sends a clear message to the president's corporate polluting cronies — do whatever you want to improve the bottom line," said Senator Frank R. Lautenberg, Democrat of New Jersey. "Profits are more important than cleaning the air for children who suffer from asthma and seniors with respiratory diseases."

Other Democratic leaders, including three presidential candidates, also criticized the decision, suggesting that President Bush's record on air pollution could become an issue in next year's election.

In referring to the scope of the changes, the career E.P.A. enforcement lawyer, who spoke on condition of anonymity, said: "I don't know of anything like this in 30 years." He also questioned whether the administration had followed appropriate procedures in making the change.

"If you say, 'I'm not going to enforce the law at all,' that is doing rule-making without a rule-making process," he said.

The change was announced in an internal meeting of E.P.A. enforcement officials late on Tuesday in Seattle. The decision came as Michael O. Leavitt, the former Republican governor of Utah, was preparing to begin his new job as E.P.A. administrator on Thursday. His predecessor, Christie Whitman, who had resisted some proposals considered by Mr. Cheney's energy task force, resigned last summer.

The revised New Source Review rules were initially released in late August, while the agency was being run by the acting E.P.A. administrator, Marianne Horinko.

Those rules will take effect in December in 12 states that do not administer these rules themselves. The 38 other states will have up to three years to decide whether to adopt the new rules.

Last week, about a dozen states and cities filed suit in federal court to overturn the changes to the New Source Review program that the agency seeks to enact.

One E.P.A. official said that about half of the 50 power plants under investigation had already received notices of violations, meaning the agency believed that an environmental violation had occurred.

Under this week's change, the E.P.A. lawyers said they also would review investigations involving 30 to 40 oil refineries, though they said some of those investigations were still likely to proceed.

Officials said that the Justice Department would have to decide whether to file lawsuits in several other cases the E.P.A. has referred to it. Under the Clinton administration, filing these types of lawsuits had been a priority within the E.P.A. Lawsuits filed against six companies during the Clinton years are still pending.

Critics of the new policy are concerned it will undercut all those actions. "Those cases will still bumble along, seriously crippled by the administration's legal reversals," said John Walke, the director of the Natural Resources Defense Council's Clean Air Program.

Industry officials have argued in some of those cases that it would be unfair for the government to continue to enforce violations under standards that are now being revised. But judges have had mixed reactions to that argument.

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