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## E.P.A. and Energy Department War Over Clean Air Rules

By KATHARINE Q. SEELYE

**W**ASHINGTON, Feb. 18 — The Environmental Protection Agency has strenuously objected to the Energy Department's recommendations to the White House to revise air pollution regulations, saying the proposals would "vitiate" the nation's clean air policy.

The dispute, detailed in recent internal E.P.A. documents, is indicative of a fierce battle between the two agencies as the Bush administration prepares to announce final plans for revisions to a program that requires factories to modernize their pollution controls when they upgrade their plants.

On one side are the E.P.A. and its administrator, Christie Whitman, who, as governor of New Jersey, supported strict enforcement of the so-called new source review program to make plants restrict emissions.

On the other are Spencer Abraham, the secretary of energy, and several high-powered energy lobbyists, including Marc Racicot, chairman of the Republican National Committee, and Haley Barbour, former chairman of the Committee, who are close to the Bush administration. Mr. Racicot has said he will no longer be an energy industry lobbyist, but he has acknowledged meeting with Vice President Dick Cheney on energy policy.

The energy industry argues that the new source review program imposes billions of dollars in extra costs that unfairly block utilities from modernizing their plants to make them use energy more efficiently. The rules cover more than 17,000 power plants, refineries, pulp and paper mills, smelters and steel mills.

Spokesmen for both the environmental agency and the Energy Department acknowledged today that the discussions between the agencies had been intense and cautioned that no final decisions had been reached.

The most recent thinking of Mrs. Whitman, who has been at odds with some of the more pro-industry voices in the administration, is not clear.

But internal documents from the environmental agency outline the anguish of career staff members as recently as January over what they see as efforts by the Energy Department to weaken the new source review program.

The officials criticized the department for recommending changes in how regulators decide what level of emissions from plants or factories would trigger controls and for



allowing plants to avoid stricter controls for 15 years under some circumstances.

"The current draft report is highly biased and loaded with emotionally charged code words," the environmental agency says of the department's recommendations. The environmental agency again and again questions the legality of many department proposals, saying they lack "a solid legal rationale" and "are hard to justify from a legal perspective."

Referring to the proposals on the new source review program, the environmental agency said they amount to "a prelude to recommendations to vitiate the N.S.R. program."

If the White House adopts these rules, environmental agency officials warn, it will have to write them in "fuzzy rather than clear language" to cover up the change of policy.

The documents were provided to The New York Times by an environmental organization that has opposed a weakening of the clean air rules.

The group asked not to be identified to protect the people who provided the internal documents.

The review of the existing rules was ordered in May 2001 by Vice President Dick Cheney's energy task force. It was to be completed in August, but the fierce internal disputes have delayed the final report.

Typically, the environmental agency, as the lead agency on air pollution matters and the agency that would sign the rules, would conduct the review.

But the White House ordered the environmental agency to conduct the review "in consultation with" the Energy Department, whose mission includes fostering the industries that produce coal and electricity. When the White House makes its final decisions, all signs point to the department's views prevailing.

One proposal that is not in current law, for example, would allow a "clean unit exemption," exempting plants from new pollution controls for 15 years if they had installed controls in the past. It would be retroactive.

The E.P.A.'s documents said, "There was concern over using a 15- year time frame as a reasonable period to recoup capital investment, given the I.R.S. only allows 8 years."

The environmental agency's internal documents reflected a concern that the industry's positions dominated the Energy Department's draft report.

The report "contains only comments by industry and ignores the comments of all other stakeholders," the E.P.A. papers said. They added, "Significant work needs to be done to achieve a reasonable balance."

Jeanne Lopatto, a spokeswoman for the Energy Department, said she had no comment on the substance of the agency's complaints.

"There's been a lot of negotiation," Ms. Lopatto said. "We've been working very

closely with E.P.A. over the last several months on this issue, and we continue to do so."

Joe Martyak, a spokesman for the environmental agency, said some issues were closer to becoming final than others.

"We are close to conclusion on this," Mr. Martyak said. "The administrator really is interested in doing what is fair. She doesn't want to gut the Clean Air Act, and she wants to draw the line between those issues that are logical outgrowths of topics that are already out there and the other issues that have a lot of controversy around them that will have to go through a whole process for further public comment."

An example of a matter that has been under discussion since 1996 is that of setting a baseline level for acceptable emissions, Mr. Martyak said. Even if rules were promulgated on this issue, he said, they would not become effective for several months.

At the same time, Mr. Martyak said, the agency was likely to put out newer concepts for public comment, and thus there would be no action on them for a couple of years. This would include matters like defining the term "routine maintenance" to make clear when new pollution control rules would kick in.

The staff members at the environmental agency were not the only ones concerned about the recommendations, whenever they may occur.

Trade groups representing state and local air program administrators, who have supported some changes in the new source review program, wrote in a recent letter to Mrs. Whitman that they had serious reservations regarding both issues.

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