

## Environmental Integrity Project A Rockefeller Family Fund Project

### SEPARATING EPA AND THE ENERGY LOBBY'S MYTHS ABOUT CLEAN AIR ACT "REFORMS" FROM FACT

1. **MYTH:** EPA and the Energy Lobby claim that Clean Air Act laws prohibiting old "grandfathered" power plants and refineries from expanding have blocked needed electric generating and power plant capacity.

**FACT:** According to the Department of Energy (DOE), 48,000 megawatts of new power plant capacity were announced last year, setting the record for the addition of new capacity. The same DOE report found that some plants were being canceled due to oversupply.<sup>1</sup> Similarly, DOE data shows significant increases in refinery capacity of 1,000,000 barrels per day over the last fifteen years.<sup>2</sup> This trend demonstrates that the greatest periods of growth in US electricity and refinery capacity have occurred during and despite enforcement of New Source Review requirements.

2. **MYTH:** EPA and the Energy Lobby claim that the Clean Air Act keeps plants from investing in energy efficiency and innovative technology.

**FACT:** The Clean Air Act allows any plant to invest in energy efficient and innovative technology without being subject to New Source Review *so long as emissions do not increase*. Moreover, it makes economic sense to invest in clean technology because only 20,000 megawatts of energy capacity can even theoretically be recovered from old grandfathered plants – compared to the 48,000 megawatts of energy added in just 2001 from clean energy sources. According to the Department of Energy (DOE), requiring all plants to meet modern pollution control standards would force the development of cleaner – and much more efficient – coal-fired plants.

3. **MYTH:** EPA and the Energy Lobby want to replace the Clean Air Act's site-specific limits on old, grandfather power plants and refineries with emission trading programs that allow the market to determine where emission controls will be installed. They insist that market trading does not increase pollution hotspots.

**FACT:** The US General Accounting Office, relying on DOE data and a panel of experts, predicts that pollution will *increase* in some parts of the country by 2020, because market trading will allow companies to shift credits and hence concentrate pollution at specific plants.<sup>3</sup> A recent study by Abt Associates, a technical consulting firm often used by EPA, found that under the Clean Air Act's current sulfur dioxide trading program, more than 40% of power plants have *increased* their pollution since 1990. The worst of these plants contribute to more than 5,000 premature deaths a year.<sup>4</sup>

4. **MYTH:** EPA and the Energy Lobby have argued that New Source Review keeps companies from maintenance activities needed to preserve existing capacity.

**FACT:** A review of corporate data indicates no significant loss of capacity at any of the plants that are subject to EPA's lawsuits.

5. **MYTH:** EPA and the Energy Lobby insist that "Clear Skies" will take care of any pollution problems created by eliminating New Source Review.

**FACT:** While Clear Skies applies only to utilities, today's rollbacks of New Source Review requirements will affect refiners, cement kilns, smelters, paper mills, and other major sources of pollution. These industrial, nonutility sources emit at least as much smog-forming nitrogen oxides as power plants, according to EPA, as well as more particulate matter and volatile organic pollution.

## **Environmental Integrity Project**

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6. **MYTH:** EPA and the Energy Lobby have agreed to change the current rules to allow refiners, cement kilns, and other polluters to avoid pollution controls so long as emissions don't increase above their highest level in the last 10 years. EPA has insisted this will not increase pollution above today's level.

**FACT:** A recent analysis of just two permits showed that plants in Illinois and Indiana would have been able to increase their emissions of smog-forming nitrogen oxides by 124.6 tons and sulfur dioxide by 200 tons at just one of the plants had the Administration's rule change been in effect.<sup>5</sup> This information was relayed to Office of Information and Regulatory Affairs Administrator Dr. John Graham in the Office of Management and Budget on October 23, 2002.<sup>6</sup> Dr. Graham has not responded.

7. **MYTH:** EPA has pretended that it can continue to enforce Clean Air Act "anti-grandfathering" provisions while gutting the laws on which such enforcement is based.

**FACT:** EPA has filed no new complaints against power companies since the Bush Administration took office. The Justice Department sent letters to Cinergy and Virginia Electric Power, a subsidiary of Dominion Resources, in May 2002 threatening to file suit, but has taken no action. Administrator Whitman, in March of this year, publicly advised power companies not to settle lawsuits with the Agency until courts handed down their decisions.<sup>7</sup> Moreover, the White House, in recent public correspondence, explained that it considers the New Source Review provisions confusing and virtually unenforceable.

8. **MYTH:** EPA has tried to claim that states support the Agency's elimination of the New Source Review program, and that it is impossible to determine the environmental benefits from the program.

**FACT:** The State and Territorial Pollution Program Administrators (representing state environmental agencies) have said, "the NSR requirements under the Clean Air Act are an essential tool, critical to state and local air pollution control agencies' ability to attain and maintain the health and welfare standards mandated in the Act...NSR has resulted in millions of tons of reductions of nitrogen oxides and sulfur dioxides that would not otherwise have occurred."<sup>8</sup>

9. **MYTH:** EPA and the Energy Lobby claim they just want a "bright line" rule that protects ordinary maintenance activities at old power plants from enforcement scrutiny.

**FACT:** At one such "maintenance" project, the Tennessee Valley Authority shut a boiler down for 9 months, cut a 25-foot hole in a boiler wall, built a monorail inside the boiler and a railroad track outside to move large parts, used a small army of welders and cutters to remove and replace parts, and spent more than \$50 million on the project. Under the Administration's proposed rules, this kind of project would be exempt so long as other utilities did the same thing, or if the project could be shown to improve energy efficiency or reliability of the unit (and why else would such a project be undertaken).<sup>9</sup>

10. **MYTH:** EPA and the Energy Lobby want to rely on plantwide limits that will give industry flexibility but requires more monitoring, thus making enforcement much harder.

**FACT:** The Administration has cut EPA's enforcement staff by 270 positions. Moreover, since the Bush Administration took office, the number of penalties recovered from polluters through settlements declined by half compared to the previous 3-year average.<sup>10</sup>

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<sup>1</sup> Energy Information Administration, *Capacity Additions, Delays, and Cancellations*, <http://www.eia.doe.gov/cneaf/electricity/page/capacity/capacity.html>.

<sup>2</sup> Energy Information Administration, *Operational Crude Oil and Downstream Charge Capacity of Petroleum Refineries, January 1, 1981 to January 1, 2002 (Thousand Barrels per Stream Day)*, [http://www.eia.doe.gov/pub/oil\\_gas/petroleum/data\\_publications/petroleum\\_supply\\_annual/psa](http://www.eia.doe.gov/pub/oil_gas/petroleum/data_publications/petroleum_supply_annual/psa).

<sup>3</sup> US General Accounting Office, *Air Pollution: Meeting Future Electricity Demand Will Increase Emissions of Some Harmful Substances*, GAO-03-49, October 2002.

<sup>4</sup> Abt Associates Inc., *Particulate-Related Health Impacts of Emissions in 2001 from 41 Major US Power Plants*, Nov. 2002.

<sup>5</sup> Abt Associates Inc., *Analysis of the Effect of Alternative Baselines for Clean Air Act New Source Review: Nucor Steel/Crawfordsville, Indiana*, Oct. 2002; *Analysis of the Effect of Alternative Baselines for CAA Prevention of Significant Deterioration New Source Review: Mobil-Joliet, Illinois*, Oct. 2002.

<sup>6</sup> Environmental Integrity Project, *Turning the Clock Back on the Clean Air Act: Accepting EPA's Challenge: Comparing the Bush Administration's New Source Review Loophole to Reality*, October 2002.

<sup>7</sup> *Public Health and Natural Resources: A Review of the Implementation of Our Environmental Laws*, Hearing Before the Senate Committee on Governmental Affairs, 107<sup>th</sup> Cong., Mar. 7, 2002 (testimony of the Honorable Christine Todd Whitman, Administrator, US Environmental Protection Agency), available at [http://www.senate.gov/~gov\\_affairs/030702witness.html](http://www.senate.gov/~gov_affairs/030702witness.html).

<sup>8</sup> Testimony of John A. Paul on Behalf of the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials on the US EPA's 90-Day NSR Review Process, July 10, 2001, available at <http://www.4cleanair.org/Testimony-july2001.PDF>.

<sup>9</sup> In re: Tennessee Valley Authority, Final Order on Reconsideration, Environmental Appeals Board, US EPA, slip op. (Dec. 15, 2000).

<sup>10</sup> Environmental Integrity Project, *Paying Less to Pollute: The Decline of Environmental Enforcement at EPA under the Bush Administration*, Nov. 2002.