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# White House to End Power Plant Probes

Move Follows EPA Easing of Enforcement

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The Bush administration confirmed yesterday that it will close pending investigations of 70 power plants suspected of violating the Clean Air Act and will consider dropping 13 other cases against utilities that were referred to the Justice Department for action, following the Environmental Protection Agency's decision in August to ease enforcement rules.

J.P. Suarez, the EPA's assistant administrator for enforcement, first disclosed the decision during a speech to agency enforcement officers in Seattle late Tuesday, and a senior EPA official confirmed it. Since the EPA issued the final rule changes this summer, government lawyers have found it increasingly difficult to prosecute existing pollution cases.

The rules in question, part of the Clean Air Act, say that plants and refineries built before 1970 generally do not have to install modern "scrubbers" during routine maintenance, but must do so if they make extensive improvements that extend the facilities' lives and increase their emissions. The new rules, likely to begin to take effect late this year, expand the definition of routine maintenance.

The administration and industry advocates say the rules changes were needed to bring more clarity and certainty to the regulatory process, and to encourage facility upgrades.

EPA and Justice Department spokesmen insisted that the government would continue to prosecute existing cases that were brought against power plants in the late 1990s under the old rules. Justice Department lawyers filed a brief Sept. 5 at the end of a trial involving a Dynegy Midwest Generation Inc. power plant in Illinois disavowing their previous definition of "routine maintenance" in light of the newly adopted rule. "As the agency has consistently stated, we are vigorously pursuing all filed cases, and we will evaluate each pending investigation on a case-by-case basis to determine whether it will be pursued or set aside," the EPA said in a statement yesterday.

But environmentalists and congressional Democrats said the decision to drop dozens of ongoing investigations confirms their suspicions that the administration is retreating in its enforcement efforts as a favor to utilities and refineries that contributed heavily to the Republicans.

"First the administration weakens our clean-air law, and now it won't enforce it," said Sen. James M. Jeffords (I-Vt.), the ranking minority member of the Senate Environment and Public Works Committee. "Instead of fighting pollution, this administration is at war with the Clean Air Act. Innocent bystanders such as children, the elderly and the infirm will be the principal casualties."

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John D. Walke, a clean-air specialist with the Natural Resources Defense Council, said, "This is easily the most vile, radical and illegal enforcement stance ever taken by the EPA in its 30-plus-year history."

Eric Schaeffer, a former EPA enforcement officer who now heads the Environmental Integrity Project, said some of the investigations being dropped involve large power companies, such as Detroit Edison, which President Bush visited in September, and Reliant whose former executives are "Pioneers" who have raised hundreds of thousands of dollars for the president's reelection campaign.

Scott Segal, an industry spokesman with the Electric Reliability Coordinating Council, said that the preamble to the new rule states that it applies only to future cases, and that "all indications are that existing filed cases . . . are being aggressively pursued by the federal government."

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