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White House, EPA Move To Ease Mercury Rules

More Flexible Enforcement System Sought

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Washington Post Staff Writer
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The Bush administration is working to undo regulations that would force power plants to sharply reduce mercury emissions and other toxic pollutants, according to a government document and interviews with officials.

The Nov. 26 document makes the case that the Environmental Protection Agency, under President Bill Clinton, misread the Clean Air Act's requirements and that there are less onerous ways to reduce the emissions.

Until recently, the EPA was on track to issue new rules this month requiring the nation's 1,100 coal- and oil-fired power plants to install equipment to achieve the maximum possible reductions in mercury and nickel emissions, which can cause severe neurological and developmental damage in humans. The plan has drawn fierce resistance from industry groups and their congressional allies, who say the new regulations would be excessively costly and should be softened or delayed beyond the 2007 target date.

Now, the White House and EPA Administrator Mike Leavitt are considering rescinding a December 2000 EPA ruling, which concluded that mercury emissions are a public health menace that requires power plants to meet a "maximum achievable control technology" (MACT) standard to sharply reduce toxic pollutants.

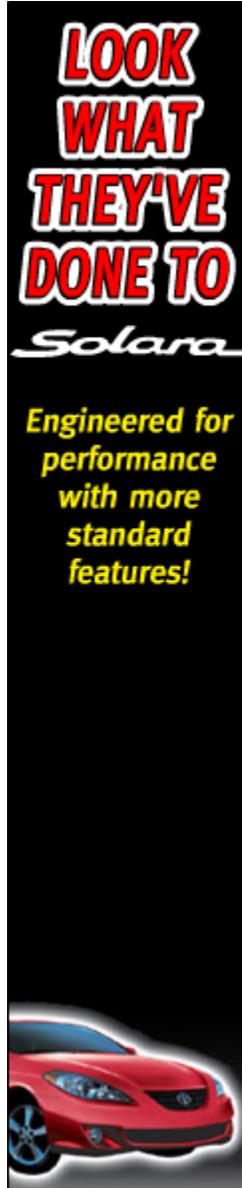
Last night Leavitt confirmed that the EPA is considering reversing the Clinton administration's finding in favor of a more flexible enforcement system.

The alternative, the document says, would be a mandatory "cap and trade" program, similar to the successful program to combat acid rain that was begun in 1990. It would allow utilities to buy emissions "credits" from cleaner-operating plants to meet an overall industry target.

Environmentalists say the approach would save the utility industry hundreds of millions of dollars while ensuring a relatively high level of mercury pollution for years to come. Most utility companies, they say, could achieve the reduction targets as a "co-benefit" or byproduct of reducing carbon dioxide and nitrogen oxide, without having to add special equipment to cut mercury emissions.

Coal-fired power plants are the nation's largest source of unregulated airborne mercury pollution, sending an estimated 48 tons into the atmosphere annually. The mercury can enter the food chain and threaten public health, especially for children and pregnant women who eat tainted fish. The Centers for Disease Control and Prevention recently found that 8 percent of women of childbearing age had mercury in their blood exceeding levels deemed safe by the EPA.

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A reporter was provided documents from opponents of the rollback that said the draft EPA proposal, under review by the Office of Management and Budget, would limit mercury emissions nationwide to 34 tons a year by 2010. That is about 30 percent below current levels, but far less than the 26-ton limit originally proposed by the Bush administration as part of its "Clear Skies" initiative. Administration officials say the alternative "cap and trade" approach would achieve 70 percent reductions by 2018.

Environmental leaders yesterday called the administration's efforts a huge favor to the utility industry. They predicted that courts will eventually overturn the decision but said the industry meanwhile could postpone for years significantly reducing mercury emissions.

"It looks as if the administration is going totally in the tank with the utility industry, in a flat-out violation of the law," said David Hawkins of the Natural Resources Defense Council. "We know this stuff is bad for kids, but they don't care."

S. William Becker, executive director of two bipartisan associations of state environmental officials, called the administration proposal "an insult to public health and the environment."

"At a time when 41 states have fish-consumption advisories due to mercury poisoning, it is unconscionable that EPA is proposing to postpone and weaken regulatory protection," Becker said.

In an interview last night, Leavitt defended the administration turnabout. The "cap and trade" approach, he said, would result in substantially greater mercury reductions in the long run than would the MACT standard requiring individual plants to meet specific targets. He said the EPA would announce both proposals this month and then conduct a series of public hearings to get reaction.

"Frankly, we're just not satisfied with the level of reduction you get from the mercury MACT, so we're making the dual proposal," Leavitt said. "This all fits into the construct of aggressively making the next decade the most productive period in U.S. history in terms of air-quality improvement."

The 1990 amendments to the Clean Air Act exempted the utilities from having to clean up hazardous air pollutants including mercury and nickel. But under legal pressure from the Natural Resources Defense Council and Earthjustice, the EPA conducted studies that led to its December 2000 decision to regulate mercury and toxic pollutants. The EPA must detail the new standards by Dec. 15.

According to the Nov. 26 draft EPA document, the agency instead plans to revise the December 2000 finding and cite a different section of the Clean Air Act to pursue a regulatory approach more acceptable to industry. The draft document says the EPA's original conclusion -- that imposing tough new MACT standards for mercury emissions was "appropriate and necessary -- amounted to an improper reading of the Clean Air Act, which offers other avenues for the states and federal government to regulate mercury.

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