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Relaxed EPA rules don’t do industry any favors

By VICTOR FLATT

MANY of the nation's largest air polluters breathed a sigh of relief recently when the Bush administration finalized regulations making it easier for them to upgrade their facilities without installing required state-of-the-art pollution-control equipment. In announcing its new routine repair and maintenance rule, the Environmental Protection Agency stated its now stock phrase that this new rule will benefit both the public and business alike.

Neither is true.

Although disputed by the Bush administration, evidence suggests that at best this new rule will slow our nation's march toward cleaner air and thus prolong the deadly health effects we all face from air pollution. What wasn't clear until the rule was finalized is that it will ultimately offer no regulatory relief to the affected industry. Why? Because as a blatant violation of the Clean Air Act, it will surely be overturned by our courts within a few years.

Businesses have lobbied hard for relief and clarity in the Clean Air Act's new source review program for years. Under the act, any upgrades or expansions to a facility that is a major air pollution source require simultaneous upgrading of pollution-control devices. But what has been in dispute is what actually triggers the definition of an upgrade, as opposed to routine repair and maintenance. In the aggregate, the answer to this question can mean a difference of millions of dollars in pollution-control expenditures. This has been particularly important to businesses since many were targets in a 1999 lawsuit claiming violations of the act. This is a legitimate concern, and we should be trying to make this provision as clear and predictable as possible.

However, instead of responding with a careful consideration of these issues, the Bush administration put forward a proposal so plainly in violation of the clear provisions of the Clean Air Act that it is virtually guaranteed to be overturned in court. Many of us who testified against the proposed rule based solely on its illegality had hoped that the administration would recognize the problems with the proposal, thoughtfully address the legitimate concerns of industry regarding this issue and save the taxpayers the cost of a court battle. Unfortunately, what we got from the EPA was a final rule even more extreme than the draft rule, and because of changes made without a comment period, more legally flawed as well.

What is hard to fathom is just whom the administration thinks this benefits.

The public is certainly not served, since it slows down any march toward cleaner, healthier air and wastes taxpayer money in a drawn out court battle. And the administration's friends in electric power and energy companies who pushed for relief have been played for chumps. While it appears that they are getting regulatory relief and certainty going forward, after the litigation dust settles, they will be left with nothing more than unfulfilled promises from the current administration and the same problems they had before.

This should remind us again how environmental issues should not be played as an us versus them mentality. In such cases, the only winners are political demagogues playing for votes or campaign contributions. This illegal proposal will eventually be overturned, and unless industry fosters a mature skepticism, the pattern will continue to repeat itself. I just hope that the next time industry goes looking for regulatory relief from environmental rules, it will turn a more discerning eye toward its supposed friends in the current administration. If not, they will have only themselves to blame. Fool me once, shame on you. Fool me twice, shame on me.

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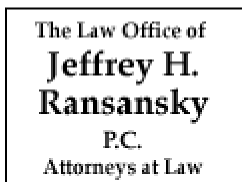

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