



January 7, 2003

The Honorable Greg Abbott
Attorney General, State of Texas
209 W. 14th Street, 8th Floor
Austin, TX 78701

Dear Attorney General Abbott:

We are writing to ask you to protect the health of Texas children and our economy. In particular, we are asking you to join the lawsuit that was filed on December 31st by nine Attorneys General challenging the Bush Administration's rulemaking to gut the New Source Review (NSR) provisions of the Clean Air Act (CAA).

During the recent campaign, you stated in writing that you opposed these proposed changes. Enclosed is a copy of your responses to a questionnaire from Public Citizen, Sierra Club, and Clean Water Action. If that position is not to become an empty campaign promise, you must join the lawsuit.

New Source Review is an important part of the Clean Air Act (CAA). It is an essential part of the regulatory bargain made by the industrial sector at the time the law was enacted in the 1970s. These companies promised that in return for having their existing plants "grandfathered" from new modern pollution standards in 1970, they would upgrade to meet modern pollution standards if those existing facilities ever underwent major modifications that caused an increase in pollution.

Unfortunately, many companies violated their word and the law, and spent millions on modifications at their plants without making the necessary investment in pollution control. This resulted in large amounts of increased pollution across the nation and in Texas. Too often the federal and state governments failed to enforce the NSR provisions on these companies.

Our two organization have recently sued one such company, Alcoa, for violations of the NSR provisions at its plant in Milam, Texas. The illegal pollution caused by Alcoa's modifications has contributed significantly to the unhealthy air quality in the Dallas-Fort Worth, Austin, and San Antonio areas.

After we filed our lawsuit, the U.S. EPA and the Texas Commission on Environmental Quality (formerly the TNRCC), filed notices of violation for violations of the NSR provisions at the Alcoa plant. The value of the NSR provisions has been demonstrated by these legal proceedings against Alcoa. We are in settlement talks that, as Alcoa has stated publicly, will result in reductions of more than 90% of NO_x and SO_x emissions by 2007.

The quantity and timing of these reductions demonstrate how weak the Bush Administration's so-called "Clear Skies Initiative" is in comparison to NSR (CSI, if implemented, will result in much fewer emission reductions and not require them to be completed until 2018).

If NSR is gutted, other companies in Texas, but also companies upwind of Texas whose pollution is transported to our cities, will increase their pollution just like Alcoa. Loosening NSR protections in the CAA threatens the effectiveness of the State Implementation Plans recently filed for Dallas-Ft. Worth, Houston-Galveston, and Beaumont-Port Arthur. It will also require that the pending air plans for Austin, San Antonio, and Longview-Tyler -Marshall have more onerous provisions for the businesses and citizens of those regions. Most importantly, loosening the CAA standards will mean more asthma attacks for children and more hospitalizations of the elderly with pulmonary problems.

We ask you to make good on your commitment and join with Attorneys General from Maine to Maryland. The legal basis for their suit is strong. In essence, the Bush proposal on New Source Review is illegal because it is contrary to the Clean Air Act requirement that only major modifications that do not result in more than "de minimus" increases in air emissions are exempt from the requirement to install best available control technology. Attached is New York Attorney General Elliot Spitzer's testimony before the Senate Committee on the Environment and Public Works and Committee on Judiciary explaining the illegality of the Bush proposal and the adverse public health impacts of the plan on children.

We would be happy to talk with you further about the health impacts of loosening the CAA standards, the Alcoa lawsuit, and the status of the AGs' lawsuit, if you so desire.

Sincerely,

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