

## TESTIMONY

### Statement of Eric Schaeffer

March 5, 2002

Thank you, Senator Lieberman and members of the Committee, for inviting me to testify today. Last week I wrote to Administrator Whitman upon leaving the Environmental Protection Agency to share some concerns about an assault by the energy lobby on our efforts to enforce the Clean Air Act. I would like to summarize those concerns, and ask that my letter be included in the record.

Until last Thursday, I managed the EPA program responsible for civil enforcement of most environmental laws. Two years ago, we brought lawsuits against plants owned by nine electric power companies for violating the Clean Air Act. Together, these companies release 5 million tons of sulfur dioxide every year – that's one out of every four tons emitted nationwide – and 2 million tons of nitrogen oxide. The acid rain and choking smog from that kind of pollution is a killer, responsible for an estimated 10,600 premature deaths every year, 5,400 cases of chronic bronchitis, childhood asthma, and over 1.5 million lost workdays. These are EPA estimates approved already provided to the Senate, and they document a clear and present danger to the public health.

This outrage should be stopped, and it can be if we are willing to enforce the Clean Air Act. But EPA's efforts to do so are threatened by a political attack on the enforcement process that I have never seen in twelve years at the Agency. The energy lobbyists, working closely with their friends in the White House and the Department of Energy, are working furiously to weaken the laws we are trying to enforce. Not surprisingly, defendants have slipped away from the negotiating table one by one, and our momentum toward settling these cases has effectively stopped.

Many of the plants EPA sued date back to the forties and fifties; all were built before the Clean Air Act New Source Review program became law twenty-four years ago. None meet the modern pollution control standards we have required of new plants built since that time. The laws broken reflect a bargain made with these relics of the smokestack age in 1977. These so-called "grandfathered" plants were allowed to avoid tough new standards for pollution control, as long as they were not modified to increase their emissions above a certain threshold. If you had the money to rebuild or replace a major component, so the law assumed, you could afford modern pollution controls.

Our lawsuits allege that this bargain was not kept. These companies undertook a number of large projects – some costing over ten million dollars – that increased their pollution, and without installing state of the art pollution controls.

Just before the new Administration took office EPA, working with states like New York and Connecticut, were making real progress bringing these cases to a successful conclusion. Cinergy and Veeco publicly agreed to reduce these pollutants by a combined total of 750,000 tons, the Tampa Electric settlement took 190,000 tons out of the year, and we had begun productive talks with other companies.

But in the spring of 2001, it became obvious that the energy lobby was working inside the Administration to undermine our cases by changing the rules we were trying to enforce. And one by one, the companies we were negotiating with began slipping away from the table. Cinergy and Veeco still have not signed the agreements reached sixteen months ago. We did not receive any calls from the White House asking us to stop working on cases; this is not the movies. But attorneys representing the companies themselves asked why they should comply with a law the White House was trying to change, and we had no answer.

The energy policy announced by the White House last May calls for a review of the cases we filed and the New Source Review law we were trying to enforce. The Department of Justice eventually determined that our enforcement cases were, in fact, reasonable under the law. But the Administration's efforts to weaken the New Source Review laws continue.

The latest drafts in circulation – and defendants' lawyers always seem to have the latest copy – would widen narrow exemptions into gigantic loopholes that would swallow the law whole. One draft proposal would apparently allow the replacement of every part of a utility boiler, down to the concrete pad, without ever triggering the requirement for pollution controls. This kind of perpetual immunity from the law is exactly what courts have said is prohibited by the Clean Air Act. And now the Administration is advancing a new legislative proposal – the so called "Clear Skies" bill – that appears to cut pollution less than our enforcement actions would. Why chase a new bill through a long legislative process if we're not willing to enforce laws already on the books?

At a banquet accepting what amounts to the Academy Award for best lobbyist, the head of the Edison Electric Institute quoted from Machiavelli and summed up what appears to be the energy industry's guiding philosophy: "It is good to be feared." It was a revealing moment, but maybe that's business as usual for the utility industry.

But with more than 10,000 premature deaths a year, the stakes are too high for business as usual. We need a fair fight, in the open, and based on the facts, and then we need to choose. We need to choose between the law, and the lobbyists trying to undermine it. We need to choose between children with asthma, and influence peddlers who don't seem to care. If the Environmental Protection Agency makes the right choice, we'll all breathe easier.

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