

Polluters pay at auction

Washington

THE US Environmental Protection Agency (EPA) announced plans last week for setting up an official market in pollution rights for sulphur dioxide emissions. The increased efficiency in reducing emissions that would result from such a market system, says one economist who has studied such systems, could save US companies as much as \$3,000 million a year as they work to meet the provisions of the 1990 Clean Air Act.

Under the act, by the year 2000, US industry must cut total sulphur dioxide emissions to 10 million tons less than the 1980 level. Sulphur dioxide, produced mostly by coal- and oil-fired electrical generation plants, is a major cause of acid rain.

Because, for the purposes of clearing up acid rain, it does not matter which sulphur dioxide producers cut emissions, the EPA plans to let a free market govern that choice. Each current producer will receive a certain number of sulphur dioxide "allowances", where one allowance gives the right to emit one ton of sulphur dioxide a year. The number of allowances given to a source will depend on a variety of factors, including their existing emission rates.

Sulphur dioxide emitters can then trade their allowances. If, for instance, one plant can cut its emissions by one ton for \$1,000 while it would cost a second plant \$2,000, the second plant might offer \$1,500 for an allowance from the first plant.

The first would cut its emissions by a ton, sell an allowance to the second, and make \$500 on the deal; the second would save \$500 over the cost of cutting emissions itself. The effect of such a scheme is to make sure that the emission reduction is achieved at the lowest possible cost, notes Robert Hahn, an economist at the American Enterprise Institute in Washington.

In addition to the trading of allowances between companies, the EPA will offer some allowances at auction and a smaller number for direct sale at the fixed price of \$1,500 per allowance. The direct sales will be open to anyone, utility or private speculator, on a first-come, first-served basis, except that the EPA will allow independent power producers that are just starting up to get the first chance to buy the allowances.

These independent producers are smaller electricity-generating companies that normally sell power wholesale to utilities; the direct sale provisions are designed to give them the emission rights they need to begin operation.

When EPA phased out lead in gasoline, a market in lead allowances saved refiners about \$200 million a year, Hahn says, and the savings for sulphur dioxide emissions could be 10 to 15 times as great.

Robert Pool

NIH lose a legal shield

Washington

THE fate of handful of research primates removed from a Maryland laboratory — a case that began a decade ago as a minor irritation for the National Institutes of Health (NIH) — has snowballed into a Supreme Court loss for the agency that may have reverberations for decades. The high court ruled last week that NIH had wrongly derailed a lawsuit by animal rights group People for the Ethical Treatment of Animals (PETA), by having the case moved to a friendly federal court where it was dismissed.

In the decision, the court ruled that NIH had unfairly taken advantage of a pre-Civil-War law designed to protect federal tax collectors from irate local officials. The law stipulates that any suit against "any officer of the United States . . . or person acting under him" can be removed from potentially partisan local courts to the comparatively reliable federal courts. In the instance of the PETA suit, which sought to force NIH to turn over the last of the "Silver Spring monkeys" to activists, NIH lawyers, citing the law, had the suit moved from a New Orleans district court to the federal court for Louisiana. The federal court, citing "sovereign immunity" statutes that make it difficult to sue the government, threw the case out.

In its unanimous decision, the Supreme Court ruled that the law was meant specifically to protect individuals, not agencies. NIH had argued that as the director of NIH is a federal officer, the entire agency is a "person working under him" [actually "her" at this moment], and should not be sued in local

court. The Supreme Court described this as "a rather tortured reading of the language" and dismissed it.

PETA, which claimed a "tremendous victory" in the case, will now return to the New Orleans court to try again. This time it may sue Tulane University, which now holds the animals, rather than NIH. If the court decides to hear the case, it will be the first time that a judge will consider the merits of PETA's argument that the animals are being held in violation of cruelty laws. "Historically, we've been locked out of State and Federal courts," says PETA cofounder Alex Pacheco. "Now we have a crack in that wall."

NIH officials fear that the implications may go even further than the Silver Spring monkeys. The ruling appears to allow any suit against NIH to be heard in a local court, where it may not be automatically dismissed for "lack of standing", the argument usually used in federal court to halt such cases.

Although the government can always appeal against decisions to higher courts, it may now be forced to expend its resources defending itself in lower courts where it can no longer simply request a removal.

With the nationwide precedent of a Supreme Court ruling, such protracted hearings "could happen in any state", says Louis Sibal, head of NIH's animal research office. "This could engender a lot of frivolous lawsuits." One NIH lawyer, speaking on the condition of anonymity, warns that "this case is much more important for other issues than it is for the Silver Spring monkeys."

Christopher Anderson

UNIVERSITY FACULTIES

NRC proposes end to forced retirement

Washington

MOST faculty members would retire of their own accord before they reach the age of 70, even if the current mandatory retirement laws were repealed, according to a new study by the National Research Council (NRC). Professors who decide to stay past the age of 70 are generally still productive and should not be forced to leave, NRC said last week in calling for an end to special legislation that allows universities to retire tenured professors over 70.

Congress passed legislation in 1986 that outlawed age discrimination and mandatory retirement, but included an exemption for university professors. University officials had argued that the combination of tenure and no mandatory retirement would essentially guarantee professors lifetime employment, regardless of their competence. Congress asked NRC to examine the issue, to advise it on whether to extend the exemption when it automatically expires in 1994. NRC recommended that Congress drop the exemption, and for-

bid mandatory retirement on campuses. It produced data from more than 3,200 institutions indicating that the majority of tenured faculty now choose to retire before 70 and would continue to do so if current rules were lifted.

In place of retirement regulations, NRC recommended special retirement incentive programmes beginning at the age of 50 to increase the number of faculty positions open to young professors.

The cover of the NRC report was itself the object of some comment. It shows five branches of ivy on a brick wall, with four of them obviously dead and the fifth carrying a few meagre leaves in fall colours. After seeing the cover, one of the NRC committee members asked "if it was a Rorschach test," recalls Harriet Morgan, one of the editors of the report. No, Morgan says, "We just looked at a lot of generic university photos and this one seemed very colourful."

Christopher Anderson

Ending Mandatory Retirement for Tenured Faculty, National Academy Press, 1991.