

SPECIAL REPORT

All the King's men

Congress requires the Environmental Protection Agency to look after the environment; the Bush administration wants it to be pro-business. **Emma Marris** steps through the looking glass to profile the result.

In 2006, a federal appeals court was called on to examine the way that the US Environmental Protection Agency (EPA) was proposing to regulate power-plant emissions. Congress had decreed that regulations should be revisited after “any physical change” that increases emissions. The EPA and counsel for various industries argued that if the word “any” was construed properly, old power plants could have their equipment significantly revamped without “any physical change” taking place, and that if Congress had wanted to address such cases it would have spelled things out more clearly.

The court was having none of it: “Only in a Humpty-Dumpty world would Congress be required to use superfluous words while an agency could ignore an expansive word that Congress did use. We decline to adopt such a world-view.” The ruling resonated with a great deal of the criticism of the EPA under the George W. Bush administration; many environmentalists hold that if the agency could indeed, like Humpty Dumpty in Lewis Carroll’s *Through the Looking Glass*, make words mean what it wanted them to mean, then an awful lot of words would end up meaning “OK, pollute a bit if you must.”

Outweighing benefits

The EPA’s remit means it will never be a stranger to criticism. A draft report by the White House Office of Management and Budget (OMB) put the annual costs of government regulation over the past ten years at between \$39 billion and \$46 billion in 2001 dollars, around 60% of which was attributable to EPA regulations. As a result, the agency regularly gets flak from those facing those costs, mainly industries. The same report, though, calculates the benefits of regulation at \$98 billion to \$480 billion, with about 85% attributable to the EPA. If the EPA is already doing that much good, environmentalists argue that it could do even better by regulating more stringently.

The agency has been attacked from both sides since it was founded in 1970. But things have been particularly tough and one-sided over the past six years, during which time

the agency has endured a constant, low-level rumbling of scandal. Standards for smog were called deadly and rules for mercury too lenient; enforcement changes a gift to the coal industry before the 2004 elections; and much more.

All this comes as the EPA faces what is arguably the biggest challenge in its history: regulating the main gases that cause climate change. The agency had until recently claimed that, when words meant what it wanted them to mean, carbon dioxide did not count as pollution, and thus did not come under its remit.

This April, the Supreme Court told the agency that that wasn’t going to wash. Carbon dioxide now needs to be assessed as a factor in regulating car emissions. The case marked a victory for California governor Arnold Schwarzenegger, among others, who have been keen to regulate along these lines but was stymied by the EPA’s stance.

Most of the climate-change bills currently swirling around Washington lay out a cap-and-trade system to restrict greenhouse-gas emissions. And nearly all of them specify the EPA as the lead agency. This is in part because the sulphur-trading scheme that the EPA set up in the 1990s as a market-based approach to controlling acid rain is widely admired.

Under the current administration, though, the emphasis has not been on innovative regulation but on less regulation, with a reliance on voluntary approaches and a close, trusting relationship with the regulated industries. The

EPA head Stephen Johnson (right) has been on the opposite side of arguments from California’s Governor Arnold Schwarzenegger on controlling greenhouse gas emissions.



Bush administration has a record of pushing its legal authority as far as it can to influence its agencies in their interpretation of statutes, and it has done so vigorously at the EPA; hence the overturns in the courts.

President Bush has been served by three EPA administrators. The first, former governor of New Jersey Christine Todd Whitman, had the highest profile. She resigned in 2003, apparently frustrated with meddling from the White House, where Vice-President Dick Cheney’s work on energy policy was hard to square with her environmental agenda. The most recent

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Rules set by the EPA's air office show greater benefits than those from other federal agencies.

administrator, Stephen Johnson, an agency veteran and the first career scientist to rise to the level of administrator, has kept a lower profile. Russell Train, who served as agency head under the Republican presidents Richard Nixon and Gerald Ford, says he feels that the EPA has "lost its way" under Bush. Train, now at the conservation group WWF in Washington DC, says that in his day the EPA was on a longer leash. "Never ever once was I ever told by anybody — either in the White House or purporting to speak for the White House — how to make a decision or how to reach a decision."

Balanced interests

The White House seems to exert considerable influence over the EPA's decisions. It has, for example, expanded the power of the OMB, which must approve all new regulations and standards. Another White House office, the Council for Environmental Quality (CEQ), coordinates federal environmental policy and can put the kibosh on any agency plans that run foul of other departments' priorities or the president's agenda. James Connaughton, head of the CEQ, says that people not involved in the interagency process don't realize that interests

have to be balanced across the government. "From the pure environmental perspective I would have recommended one approach, but from the economics another approach would be indicated. And that is rational," he says.

One long-term career employee, who asked not to be named because she is still with the agency, describes the growing clout of the White House: "We used to have knock-down fights with [the OMB], but it is not that way anymore," she says. "Our leaders do not fight back. We basically take our marching orders." Insiders point to the Office of Air and Radiation — one of the largest departments in the agency — as a case study of Bush appointees doing as the White House says.

In 2001, Jeff Holmstead was recruited to run the 'air office', as it is known. He previously represented came from Latham & Watkins, a Los Angeles-based law firm that represents chemical and electronics manufacturers, among others. Holmstead and his deputy Bill Wehrum (who had worked for the same firm) were responsible for the Clean Air Interstate Rule, which caps some pollutants from power plants in eastern states, and for the non-road diesel rule, which limits nitrous oxide and soot emissions from construction equipment and the like. Johnson has described these regulations as "two of the five most health-protective clean-air rules in EPA's history". And they have significantly cut down on emissions. The OMB calculates that the air office produces benefits of \$60 billion to \$410 billion for costs of between \$19 billion and \$22 billion.

But Holmstead and Wehrum angered many of the staff when in 2003 they proposed changes that would keep many older power plants from having to adopt modern pollution standards when they remodel. These were the changes eventually over-ruled on the basis of their Humpty-Dumpty approach to language. Bruce Buckheit, head of air enforcement under Holmstead, resigned in protest at the way the rules forestalled planned action against polluters. Now an environmental consultant and sailing instructor in Virginia, he says that the White House was running the show. "Basically Jeff Holmstead and Bill Wehrum would go and meet with Jim Connaughton and come back with their orders," he says.

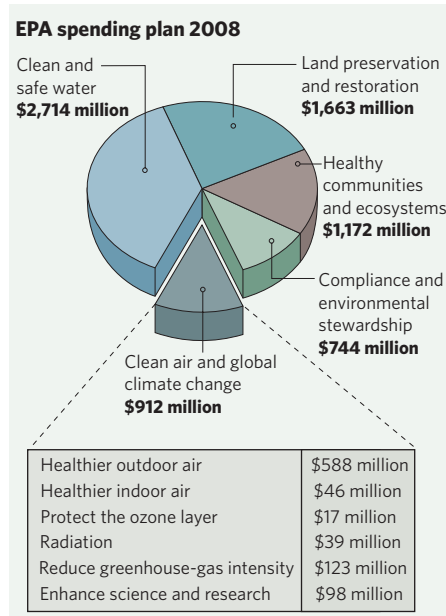
Independent thinking

Holmstead, who has worked at the law firm Bracewell & Giuliani in Houston since leaving the agency in 2005, denies the charge: "I never had direction from the vice-president's office or the CEQ about what line to take." He adds that he cared more about getting things



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T. T. HOYE
SOURCE: SEPA



done than pleasing environmentalists. "Some people say that industry got more of what they wanted under [this administration] than under the Clinton administration — but just because industry promotes something doesn't mean it is wrong."

On Holmstead's departure, Wehrum took over as acting director of the air office and was nominated to take the job on permanently. But in April the White House withdrew the nomination, as the Democrats began sharpening their knives for the hearing at which they could question him before confirming or rejecting his nomination. Wehrum resigned on 1 June.

Speaking to *Nature* in his last week on the job, he said that his goal while in office was to hit that "sweet spot" where industry and environmentalists can both be happy. "What we have tried to do is to be as smart as we possibly can and get the most bang for the buck," says Wehrum.

"We have tried to be as smart as we possibly can."

In January 2009, it seems fairly certain that a new president, even if a Republican, will appoint a new EPA administrator — someone who will probably have to take on the daunting task of regulating carbon dioxide, and will have a demoralized agency staff with which to do so. But the challenge may well help that morale. When the Supreme Court made its decision this April, champagne corks were heard to pop discreetly in some parts of the agency's Pennsylvania-Avenue headquarters. "It has been a real morale booster," says the career employee, looking to the future. "My immediate supervisor says I have got to stay so we can put it all back together."

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