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**NEWLY UNCOVERED MEMO FROM FORMER EPA ADMINISTRATOR  
WHITMAN TO VICE PRESIDENT CHENEY WARNED THAT  
PROPOSED RULE CHANGES WOULD UNDERCUT CLEAN AIR ACT  
ENFORCEMENT CASES**

*White House was advised that revised New Source Review rules would hamper enforcement, cause settlements to “slow down or stop”*

**Washington, DC** – Eric Schaeffer, former EPA chief of civil enforcement and current director of EIP, today released a May 4, 2001, memorandum from former Environmental Protection Agency (EPA) Administrator Christine Todd Whitman to Vice President Dick Cheney on the Vice President’s Energy Task Force Report. In the memo, Ms. Whitman warned that should the Bush Administration “undercut or walk away” from Clean Air Act enforcement cases, the Bush White House would be hard-pressed to avoid the charge that it is not enforcing the Clean Air Act.

In the enforcement cases, EPA and the Justice Department have alleged that power companies and refineries violated “New Source Review” provisions of the Clean Air Act by increasing their emissions without obtaining the required permits and installing pollution controls. The Whitman memo crystallizes the Bush Administration’s understanding of how the defendants in the NSR cases wanted to undermine the government’s enforcement actions by “reforming” NSR so that the requirements would no longer apply to their actions.

**Whitman’s Recommendations to Vice President Cheney:** “As we discussed, the real issue for industry is the enforcement cases. We will pay a terrible political price if we undercut or walk away from the enforcement cases; it will be hard to refute the charge that we are deciding not to enforce the Clean Air Act... We will be subject to unnecessary political damage if we make specific commitments on things like ‘routine maintenance’... Settlements will likely slow down or stop.”

**Whitman’s Predictions Realized:** As the following list illustrates, Ms. Whitman’s memorandum accurately forecast what in fact has occurred:

- Despite Whitman’s warning and intense public opposition to changes to NSR proposed on December 31, 2002, EPA finalized an “equipment replacement” rule on August 27, 2003, that allows companies to replace up to 20% of an existing plant in a single project without installing pollution controls, even if emissions increase substantially as a result. Every project the Government has alleged to be illegal in the Tennessee Valley Authority, Ohio Edison, and Illinois Power cases would be considered exempt from NSR requirements under the new rule.

- EPA officials have said that the enforcement cases would not be undermined because the new rule is prospective in nature. The Justice Department, however, recently was forced to argue in the Illinois Power case that the Clean Air Act did not mandate a narrow interpretation of exemptions to NSR, which directly contradicts the position the Justice Department has taken in the enforcement cases, as well as EPA policy and caselaw, prior to the new rule's promulgation.
- Cinergy, a major Midwestern power company, had agreed to clean up its plants prior to President Bush taking office, but has refused to honor that settlement nearly three years later. Meanwhile, the Bush administration has filed no new NSR cases despite numerous notices of violations outstanding against many companies.
- Ms. Whitman advised the White House to delay rule changes until the release of a National Academy of Public Administration in a Senate-commissioned report which concluded that "efforts to reform the NSR program ... should carefully avoid creating even broader loopholes or more exemptions from NSR's requirements." The administration, however, went forward with regulations despite the Panel's recommendations.

"The Whitman memo plainly shows that the White House all along intended to torpedo the enforcement cases," said Eric Schaeffer. "EPA's own analysis has determined that power plant emissions contribute to 20,000 premature deaths per year," he added. "How can the Bush administration be trusted to enforce laws that protect the public's health if it is so determined to gut them from within?"

**Misleading Statements by EPA Officials:** On July 16, 2002, Assistant EPA Administrator for Air and Radiation Jeffrey Holmstead testified before Congress that "we do not believe these changes will have a negative impact on the enforcement cases." In light of the Whitman memo and information recently released by the group Public Citizen, Schaeffer calls on Congress to investigate the remarks of EPA Assistant Administrator Jeffrey Holmstead and other officials' misleading statements regarding administration environmental policy.

A copy of the Whitman memo is available at [www.rffund.org](http://www.rffund.org). The National Academy of Public Administration's report April 2003 report, entitled "A Breath of Fresh Air: Reviving the New Source Review Program" is available at [www.napawash.org](http://www.napawash.org). Public Citizen's October 2003 report, "EPA's Smoke Screen: How Congress Was Given False Information While Campaign Contributions and Political Connections Gutted a Key Clean Air Rule," is available at [www.citizen.org](http://www.citizen.org).