

HENRY A. WAXMAN

When a law isn't a law



QUESTION: WHEN is law not a law?
 Answer: Never. Under our Constitution, a law passed by the House and Senate, and signed by the president, must be "faithfully executed" by the president.

But the Bush administration seems to have a different view, especially where the law is the Clean Air Act — a landmark environmental measure that the president used to say he supported. The president appears to believe that, having signed the new clean air law in 1990, he is now free to rewrite the legislation to accommodate whatever concerns big polluters might raise.

The president has traveled around the country giving out clean air loopholes to politically important industries as if they were party favors. First he went to Texas and announced a special package of loopholes for the electric utility industry. Then, on the eve of the Michigan primary, he ignored the mandates of the law, and told auto companies they need not install inexpensive devices on new cars to protect Americans from exposure to dangerous benzene emissions when they refill their gas tanks.

Unfortunately, these examples are more the rule than the exception. Again and again, the White House Council on Competitiveness has intervened in secret to stall or weaken EPA's efforts to carry out the clean air law.

Especially disconcerting is the likelihood that the president and his appointees know that these

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changes are illegal but are not disavowed by that fact. The most important and most brazen example is the new program requiring big pollution sources to get permits under the Clean Air Act. It is through the permit process that all of the pollution programs in the new law — for smog, air toxics, acid rain and ozone depletion — are to be carried out. A big loophole in the permit rule will make these programs unenforceable.

This is a point that has not escaped the White House or the industry lobbyists who make a second home at the White House Council on Competitiveness. When the White House reviewed EPA's proposed permit regulations last spring, they inserted a highly controversial provision allowing pollution sources to increase emissions at will and in secret, regardless of the limits in their clean air permits.

One problem with this provision is that it turns the whole process of getting a permit — which involves public notice, public comment, an opportunity for a public hearing, and a chance for judicial challenge — into a charade.

More important, this loophole is clearly illegal. EPA's own chief lawyer concluded in writing that the White House loophole would be

"highly unlikely to survive judicial review," because it does not provide for public participation in revisions to allow emission increases.

The comptroller general of the United States reached the same conclusion, and in an April 1991 memo addressing the issue, the Justice Department concluded that public participation is a required element for permit revisions. This view was reinforced by the head of the Justice Department's Division of Lands and Natural Resources, Richard Stewart, who asserted at a White House meeting that the process of granting permit revisions to allow increased emissions must provide for "retail public participation."

The formidable array of legal opinions against the permit loophole does not appear to have swayed the Council on Competitiveness. Last November, the executive director of the council, Alan Hubbard, began looking for someone in an official capacity willing to conclude that what the council wants to do is not illegal. Hubbard wrote a memo to the Justice Department's Office of Legal Council seeking such a legal view. Surprisingly, in six months, despite all the pressure that the White House can bring to bear, no response has been forthcoming.

Apparently no one is anxious to risk a professional reputation by subscribing to a legal view that is so clearly at odds with statute.

It would not be surprising if some presidential appointees at the Justice Department breaks down sometime soon and gives the White House the legal cover it is seeking, despite the wealth of contrary opinions.

With legal support or not, the council has continued to fight for inclusion of the permits loophole in the final rule. EPA Administrator William Reilly has, to his credit, so far been unwilling to include the permits loophole because of con-

Publicly secured permits will mean little if polluters can secretly raise emission levels

cerns surrounding its legality. The issue remains at loggerheads after an Earth Day confrontation where the vice president tried once more to get Reilly to accept the council's view, but was unsuccessful.

As a result, this issue is now slated to be decided by the president himself, and there is reason to fear that he will side with his vice president.

Such a decision would not only undermine the Clean Air Act, and be at odds with the public interest, it would also be at odds with the law. Eventually, the loophole would be overturned in court. But that would take years.

MOST DISTURBING about this likely scenario is that the president is apparently unbothered by knowingly violating the law he proudly signed only two years ago. This is a different matter than flip-flopping on campaign promises, which is shameful. Flip-flopping on an enacted law is illegal.

The notion that the president cannot change the law, regardless of what he wants, is basic to our democratic process.

After all, a law is a law.

STORER H. ROWLEY

World pillories U.S. for racism

FROM PARIS to Moscow, Tripoli to Beijing, Tokyo to Toronto, foreign nations believe the Rodney King verdict and the Los Angeles riots undercut the United States' moral authority as the world's last superpower.

French President Francois Mitterrand attributed the uprising to a conservative society lacking adequate social legislation. Libyan media called it America's "infatid of the blacks." South Korea's parliament speaker, Park Jyun-kyu, said the damage amounted to "the collapse of the American dream."

Not long after President Bush declared the United States the winner of the Cold War, the international community witnessed scenes in North America.

own problems," said Chowdhury, 36, a native of Bangladesh who moved to Canada 16 years ago.

The vandalism at his store occurred during two days of rioting here by marauding, multiracial bands of youths who clashed with police and plundered stores along fashionable Yonge Street after a demonstration at the U.S. Consulate to protest the King verdict.

Canadians expressed shock and dismay that such disturbances, which many have come to expect from the United States could happen in tranquil Canada, where racial tolerance and social-welfare programs are generally more expansive.

Reaction from world leaders,

Had the King

"Had the Rodney King video been taped in Lagos rather than Los Angeles, the United States would almost certainly have cut off aid to Nigeria." Noting America's self-assumed role of "world policeman," the Thai newspaper said the United States must be seen "to adhere at home to the principles of freedom and justice that the United States so champions internationally."

Iraq called for an emergency meeting of the U.N. Security Council to discuss U.S. urban rioting and policies of "racial segregation and racial oppression." The council spurned the request.

While denying that Israel took any satisfaction in TV cameras recording America's darker side, Yediot Ahronot, Israel's largest daily, pointed out "The rioting in