
High Court Upholds EPA's "Bubble" Concept

The U.S. Supreme Court on 25 June upheld an Environmental Protection Agency (EPA) policy that eases restrictions on new sources of air pollution at existing factories. The ruling means that companies will be subject to much less stringent regulations when they want to add a smokestack, boiler, or furnace. Whether improvements in air quality will be significantly hindered as a result of the decision is disputed.

The EPA policy was designed to encourage plants to modernize without high pollution control costs, but the Carter and Reagan administrations have implemented it differently. Under the plan, a state is permitted to regard an entire factory as a single source of air pollution—as if it were under a bubble—rather than counting each new smokestack, for example, as an individual source. For each new source of pollution, according to the "bubble" concept, the plant must reduce pollution elsewhere in the plant. Otherwise, the addition would be treated as a new source, subject to more stringent regulations.

The legal issue centered on whether EPA, under amendments to the Clean Air Act, could allow the "bubble" concept to be used in states that have failed to meet federal air quality standards. The amendments do not explicitly address the point. While the Carter Administration said the concept only applied to states in compliance with provisions to maintain the status quo of air quality in their areas, the Reagan Administration has applied the bubble concept to all states. The Supreme Court overturned a decision by the U.S. Court of Appeals and ruled 6 to 0 that EPA had made a reasonable interpretation of the Clean Air Act.

Under the Carter Administration, new air pollution sources built in states out of compliance were subject to permits, which required the company to use the best available pollution controls, to clean up other sources on the same site and at other plants in the state, and to make a net reduction in emission. David Doniger, an attorney at the Natural Resources Defense Council, which brought the suit in the

lower court, contends that under the high court's ruling, plants in major urban areas can now get around the definition of a new source and avoid the permit criteria. As a result, a plant can actually emit more air pollution without penalty, he says.

Michael Levin, chief of EPA's regulatory reform staff, says use of the bubble concept in all states will not significantly change air quality, for better or for worse. Levin says that the bubble concept, in combination with other state requirements, will lead to better reductions in air pollution.

The Senate Environment and Public Works Committee is trying to limit the use of the plan to states in compliance through a provision embodied in the Senate's version of the Clean Air Act reauthorization bill. The bill was voted out of committee but is not likely to go anywhere this session because the House version is stalled, according to a committee aide.

—MARJORIE SUN

Supreme Court Orders Pesticide Data Released

In another significant environmental decision, the U.S. Supreme Court recently upheld the government's unfettered right to release industry data on pesticide safety to the public. A long-time goal of environmentalists, the disclosure of such data was required by the federal pesticide act of 1978. Due to a series of legal maneuvers by the chemical industry, however, the requirement has never been fully implemented, and outsiders have been largely unable to scrutinize scientific studies used as a basis for pesticide registrations.

Ruling on 26 June in a case that pitted the Monsanto Chemical Corporation against the Environmental Protection Agency (EPA), the Supreme Court demolished the last of these legal obstacles, an injunction erected by the federal district court in Missouri, where Monsanto is headquartered. Monsanto's principal argument before the district court was that competitors can use the results of pesticide safety tests to register similar products, and that the requirement for public disclosure is therefore an unconstitutional seizure of valuable private property.

Justice Harry Blackmun, writing for the Supreme Court, agreed that use of the data by a competitor warranted financial compensation, but declared that this issue was settled reasonably by a compensation provision in the 1978 law. Consequently, Monsanto had no "reasonable, investment-backed expectation" that the information would forever remain inviolate, he said. Therefore, data submitted after the law took effect must be released immediately, he wrote.

Disclosure of scientific data submitted before 1978 is a bit trickier because an earlier pesticide law indicated that the data would be held in confidence. Blackmun resolved this problem by giving EPA approval to release it anyway, and the chemical industry approval to seek restitution from the government in the U.S. Claims Court. Robert McLaughlin, an EPA staff attorney, says that the agency will now endeavor to process swiftly an expected "flood" of information requests.—R. JEFFREY SMITH

Environmentalists Produce National Economic Agenda

A coalition of environmental groups has come out with a blueprint for restructuring the entire economy in a forceful bid to inject themselves into the industrial policy debate.

Now that many environmental gains have been nailed down, environmentalists think the time has come to bridge the gulf that remains between them and the business and labor communities. The report, initiated by the Natural Resources Defense Council, therefore purports to show how healthy economic growth is compatible with sustainable exploitation of resources, environmental preservation, and full employment.

The report is sharply critical of the current industrial policy debate for focusing almost entirely on industry. It maintains that little attention is paid to the effect of policies on human resources, and less on the natural resource base—namely, energy, water, and agriculture. It observes that the global dimensions of the issue are ignored except as they relate to "how to combat the foreign onslaught on U.S. markets."