

The federal and state governments should also hammer out an agreement with the Mexican government to limit emissions from two new copper smelters located just across the Arizona-Mexican border and the Phelps smelter in Douglas, Arizona. Emissions from the three plants would affect the Rockies. The report says that if the plants comply with the current rules under the U.S. Clean Air Act, man-made sulfur dioxide emissions would plunge 30 percent by 1988. Negotiations are now under way between the two countries and, as things stand now, the Douglas plant is likely to close because of economic reasons cited by the company.

But if the U.S. can persuade the Mexicans to comply, it may then have to answer to Canada, which has pressed the U.S. to tighten controls and prevent acid rain from crossing over its borders. "It is an interesting and ironic situation," El-Ashry says. Last month, President Reagan named former transportation secretary Drew Lewis to represent the U.S. in negotiations with Canada on acid rain issues, but several advocates for acid rain controls doubt that the appointment will lead to significant changes.

Robert Yuhnke, an attorney for the Environmental Defense Fund, speculates that the problem of acid rain in the West may increase the willingness of states in the region to join forces with its Northeastern siblings and put the issue on the national agenda. But he adds, "It's hard to say." In any case, he and El-Ashry both say that the West will probably still resist any proposal that requires them to foot higher electric bills to alleviate the acid rain problem in the East. (Electric utilities in the Midwest are the main source of sulfur dioxide, which leads to acid rain damage in the Northeast. Legislation considered last year by Congress would have required all states to pay for a control program.)

El-Ashry says that "We have a choice in the West to avoid the damage that has occurred in the East because of acid rain. We have to do more research and take some actions now too." The Reagan Administration is unlikely to be moved, some observers say. Robert Friedman, an authority on acid rain at the Office of Technology Assessment, points out that the Administration—despite strong evidence of acid rain damage in the Northeast—has held fast to its position that more research is needed before any regulatory action can be taken. With little evidence of actual damage by acid rain in the West, the Administration will probably continue just to hold its present course.—MARJORIE SUN

NIH Gaining in Grants Battle

In the ongoing battle over the number of grants the National Institutes of Health (NIH) will be able to fund in 1985, things are taking a turn for the better as far as NIH is concerned. In a decision that has surprised many people on Capitol Hill and within the Administration, the U.S. Comptroller General has stated that the Administration's attempt to cut NIH grants from 6500 to 5000 is illegal. Whether the Administration will challenge that opinion has not yet been decided.

Last year, Congress appropriated enough money for NIH to fund 6500 new and competing grants in fiscal 1985, up from approximately 5200 in 1984. But just before Christmas, the Office of Management and Budget (OMB) came up with a unique scheme for cutting the budget by reducing the number of new grants. OMB ordered NIH officials to "forward-fund" 646 grants in 1985, which technically means that grant money from the 1985 budget would be legally committed for 1986 and 1987—the life of a 3-year grant. The OMB's action was frequently described in Washington as being "fiendishly clever," as a way to cut the budget without illegally "impounding" funds.

Senator Lowell Weicker, Jr. (R-Conn.), chairman of the NIH appropriations subcommittee in the Senate, took umbrage. "There is perhaps no legislative success of which I am prouder than my bill to increase research grants by 30 percent to 6500 awards annually," he declared in a speech at Yale. On 4 February, Weicker wrote to Comptroller General Charles A. Bowsher asking for an opinion on OMB's order to NIH. In a letter dated 18 March, Bowsher replied.

Noting that Congress's commitment to 6500 grants was clear from the language in the conference report but not explicit in the actual NIH legislation, Bowsher said "... we find that the executive branch is not legally bound to comply with the level of program activity set forth in congressional committee reports for new and competing NIH grants." However, he said when Administration officials choose to ignore congressional intent, "They do so at the peril of strained relations with the Congress. Thus, the executive branch has a practical, though not a legal, duty to abide by such expressions of intent."

Where the Comptroller General may have caught the Administration is in its assumption that the forward-funding order is legal. "The legislation authorizing research grants to the various NIH units does not provide for multiyear grant funding," he wrote. "Without express statutory authority, no agency may obligate an appropriation made for the needs of a limited period of time (usually 1 year . . .) for the needs of subsequent years. In reaching the view that the forward-funding directive violates the law, Bowsher relied on a provision in statute known as the "Bona Fide Need Rule," which says, in effect, that if money is not spent in the year for which it was appropriated, it must be returned to the treasury.

According to Bowsher, Administration officials are well aware of the Bona Fide Need Rule but dispute the opinion that it precludes multiyear or forward-funding in this case. Bowsher construes bona fide need to apply to continuing service contracts, such as those with the Department of Defense and General Services Administration, which leases buildings. It does not look at NIH grants as a service contract. OMB takes the view that because a grant is continuous over three or more years, it can be construed as an obligation under the rule that permits multiyear funding.

At this point, the Administration can accept the Comptroller's opinion and fund 6500 grants. It can argue the case in court. For its part, Congress can try to pressure the Administration into a reversal (as Weicker is trying to do) or it can pass new legislation. In the House, Representative Henry A. Waxman (D-Calif.) introduced a joint resolution requiring that the NIH appropriations money be spent as Congress intended. He now has more than 100 cosponsors. A similar joint resolution will soon be introduced in the Senate by Edward M. Kennedy (D-Mass.). If passed, the resolution would have the force of law. Said one congressional aide, "My guess is that NIH is going to fund 6500 grants this year."—BARBARA J. CULLITON