

Lethal Loophole:

Environment Colorado

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The Bush administration has touted its so-called "Clear Skies" bill as a way to clean up power

estimates that the rule will reduce emissions of SO₂ by 113,000 tons and fine particulate soot by 159,000 tons nationwide each year.⁸

Nationally, EPA estimates that the rule could prevent 2,270 premature deaths, 6,900 hospital visits for respiratory and cardiovascular problems, 173,500 asthma attacks, and 398,700 lost work days each year.⁹

Senators James Inhofe and George Voinovich, the leaders of the Environment and Public Works Committee, introduced the Clear Skies Act of 2005 (S.131) in mid-January 2005.¹⁰ As with previous versions, the bill would cap power plant emissions of sulfur dioxide, nitrogen oxides, and mercury but at levels weaker than required under current law. Among its most harmful provisions, the bill would delay until well after 2018 reductions in power plant sulfur dioxide and nitrogen oxide emissions called for in the Clean Air Act by the end of this decade; repeal the Clean Air Act's New Source Review program, which requires the oldest and dirtiest plants to meet modern pollution control standards; force residents of heavily-polluted areas to wait longer for clean air than under current law; and eliminate protections that would require every power plant to reduce mercury to the maximum extent (about 90 percent) by 2008.

Tucked away in S.131 is an additional loophole that would exempt non-utility industrial units from EPA rules to reduce toxic air pollution. As introduced, the loophole applied to four broad categories of industrial facilities – all with stringent MACT standards on the books.¹¹ On February 22, Senators Inhofe and Voinovich filed an amendment to their bill to limit the exemption to industrial boilers, commercial and institutional boilers, and process heaters, which is by far the largest of the four industrial categories.¹² The committee has not yet considered the amendment.

Industrial units that “opt in” to the bill’s trading system for sulfur dioxide, nitrogen oxides, or mercury pollution would be exempt from EPA’s rules to reduce their toxic emissions, as well as other major Clean Air Act requirements, including New Source Review and visibility protections for national parks and wilderness areas.¹³ This means that companies could, for instance, refurbish old plants without installing up-to-date pollution control technology.

EPA has performed no analyses to date on the effects of this loophole on public health or the environment. As a first step to understand its potential implications, this report uses EPA data to estimate the number of industrial facilities in Colorado that could take advantage of the four industrial

S.131 would exempt as many as 220 industrial facilities in Colorado from the Clean Air Act's mandate of deep reductions in toxic pollution.¹⁴ Specifically, the bill would exempt industrial units at these facilities from 2004 EPA rules that require each and every industrial boiler, commercial and institutional boiler, and process heater to reduce its toxic pollution to the maximum extent possible by 2007. The industries covered by the loophole emitted almost 1.6 million pounds^a of toxic air pollutants into Colorado's air in 2002 (see Table 1).¹⁵ The loophole

The "Clear Skies" bill has always been a bad deal for Americans and Coloradans who want to breathe clean air; the bill's hidden loophole for many different industries makes it even worse. The bill eliminates cornerstones of the Clean Air Act that have reduced air pollution from power plants, oil refineries, chemical plants, and other smokestack industries for decades, jeopardizing public health and the environment.

The national emission standards for hazardous air pollutants for industrial, commercial, and institutional boilers and process heaters applies to major facilities in the following industries: SIC 13 (extractors of crude petroleum and natural gas); SIC 24 (manufacturers of lumber and wood products); SIC 26 (pulp and paper mills); SIC 28 (chemical manufacturers); SIC 29 (petroleum refineries and manufacturers of c

Facility ID	Facility Name	City	State	Industry
807100094	EVERGREEN OPERATING CORP. - WET CANYON	COKEDALE, 12.7 MI W OF	CO	Extractors of crude petroleum and natural gas (SIC 13)
807100037	EVERGREEN OPERATING CORP BURRO CANYON	COKEDALE, 2.3 MI W OF	CO	Extractors of crude petroleum and natural gas (SIC 13)
807100077	EVERGREEN OPERATING CORP - TAMBURELLI	COKEDALE, 7.7 MI N OF	CO	Extractors of crude petroleum and natural gas (SIC 13)
804100686	AMERTECH SPRAY FINISHING	COLORADO SPRINGS	CO	Electroplating, plating, polish

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Facility ID	Facility Name	City	State	Industry
810300021	NORTHWEST PIPELINE CORP RANGELY STA	RANGELY AREA	CO	Extractors of crude petroleum and natural gas (SIC 13); Electric, gas and sanitary services (SIC 49)

¹ Clean Air Act § 112(b)(1).

² Clean Air Act § 112(d).

³ 69 Fed. Reg. 55217, 13 September 2004.

⁴ 69 Fed. Reg. 55217, 13 September 2004, 55218.

⁵ 69 Fed. Reg. 55217, 13 September 2004, 55220.

⁶ 69 Fed. Reg. 55217, 13 September 2004, 55220-55221.

⁷ 69 Fed. Reg. 55217, 13 September 2004.

⁸ EPA, "Regulatory Impact Analysis for the Industrial Boilers and Process Heaters NESHAP," February 2004, 9-2, downloaded from www.epa.gov/ttn/atw/boiler/boilerpg.html, 20 February 2005.

⁹ EPA, "Regulatory Impact Analysis for the Industrial Boilers and Process Heaters NESHAP," February 2004, 10-45, downloaded from www.epa.gov/ttn/atw/boiler/boilerpg.html, 20 February 2005.

¹⁰ Environment & Public Works Committee, "Inhofe, Voinovich Introduce Clear Skies Legislation" (press release), 24 January 2005.

¹¹ S.131 § 407(j)(1)(B).

¹² S.131, Inhofe-Voinovich-Bond Proposed Substitute Amendment (#1).

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