

New Source Review

In late August, 2003 the Environmental Protection Agency issued new rules clarifying the difference between routine maintenance and major upgrades at coal-fired power plants. Under the ruling, utilities can maintain their facilities without installing pollution control equipment if the associated costs do not exceed 20 percent of the cost of replacing the plant's entire production system.

The New Source Review (NSR) program, a provision of the Clean Air Act since 1970, was designed to be triggered when a new facility is being built or an existing one is undergoing a major modification that could significantly increase emissions. It was never designed to require facilities to reduce existing levels of emissions.

Under this provision, utilities can perform routine maintenance on existing facilities, such as repair and replacement of equipment, but not a major upgrade that would allow the facility to produce substantially more electricity.

The National Ambient Air Quality Standards and the Acid Rain Program under the Clean Air Act are the basis for air quality improvements in the U. S. These standards have led to significant improvements in air quality in Georgia and will continue to do so as they become even more stringent. All Georgia Power plants have emission limits under these programs.

Georgia Power has invested more than *one billion dollars* in the past several years on measures and controls to reduce emissions. These efforts have lowered our emissions of sulfur dioxides by 42 percent and nitrogen oxide emissions by as much as 85 percent at key facilities. These reductions have actually placed Georgia ahead of other states, including southern states like North Carolina, on sulfur dioxide and nitrogen oxide reductions.

Southern Company expects to invest more than \$4 billion in additional emissions control technologies over the next decade, including \$2 billion on Georgia Power facilities. These technologies will include scrubbers to further reduce sulfur dioxide emissions and additional controls to further reduce nitrogen oxide emissions.

Obviously, these billions of dollars represent a lot of money. The Clean Air Act was designed to require these investments – and improvements – over a period of time, allowing the American economy to absorb these enormous costs.

On November 22, 2002, EPA announced improvements to its New Source Review program. Ironically, some of the proposed changes include finalizing rules initially proposed by the Clinton Administration.

The controversial portion of New Source Review relates to the limitation on how much an operator can modify an existing facility before it, in effect, becomes a “new source” of pollution. EPA issued the new rule to provide a regulatory definition of “routine maintenance, repair and replacement” because this definition had never been fully set out in regulations.

Without regulatory certainty, the government is free to act arbitrarily as was demonstrated when, after 25 years of one interpretation by EPA, the Clinton Administration changed the interpretation of what constitutes “routine maintenance” without going through any kind of regulatory process. EPA then sued utilities retroactively for not complying with this new and never announced interpretation.

Critics say that EPA's latest NSR ruling will essentially exempt facilities from fundamental pollution controls. This simply is not true.

EPA's rule will require new facilities to have the best available pollution controls, and, for the first time in the history of the Clean Air Act, establishes in regulations a clear definition of "routine maintenance, repair and replacement" for existing facilities.

The bottom line is that both new and existing power plants and industrial facilities will continue to be governed under New Source Review rules and regulations, as well as the National Ambient Air Quality Standards and acid rain provisions of the Clean Air Act that require them to continue to reduce emissions.