Recent developments in the Clean Air Act

• In Sept. 2003 the EPA modified an important provision of the Clean Air Act:
  – The New Source Review (NSR) provision
    • Required facilities built before 1970 to install modern air pollution controls when making equipment changes that increase pollution.
      – But provided an exemption for “routine maintenance” without an emissions increase.

• The new EPA ruling defined replacing up to 20% of the entire unit as routine maintenance.

• Within hours of this announcement the states of New York, Connecticut, Massachusetts, California and several environmental groups announced they would sue.
• Early in 2004 a federal court blocked the implementation of the new regulation until a final decision could be reached.
• The court action directly affected 100 old coal-fired power plants that are the U.S.’s largest air polluters and who were facing federal legal action before the new regulation was issued.
• The court said the regulations opponents “have demonstrated the irreparable harm” from the rule “and likelihood of success” of their legal case.
The politics of environmental legislation and enforcement.

The Jan. 12, 2004 edition of Chemical and Engineering News ran an article with the following headline:

**EPA’s TOP COPS RESIGN**

The article documented the resignation of the head of EPA’s enforcement division, John P. Suarez, and its top two air pollution attorneys, Bruce Buckheit and Richard Biondi.

These resignations were preceded by the resignation of two other top enforcement officials who left in 2003, blaming the Bush administration’s “reluctance to enforce environmental laws”.
• Despite winning key cases and negotiating several settlements under the Clean Air Act, in 2003 the Bush administration rewrote the New Source Review (NSR) regulations that had required coal fired power plants, refineries, and wood-processing facilities to renovate their air pollution controls when major plant overhauls occurred.

• Buckheit is quoted as saying “We were able to put together packages where companies reduced their emissions . . . We were cruising along and then the White House entered and it all came to a grinding halt.”

• Sylvia Lowrance, an EPA enforcement career employee who retired in 2003 stated, “This Administration has pulled cases and put investigations on ice. They sent every signal they can to staff to back off”.
• If no one believes the EPA is going to enforce, compliance with environmental laws is expected to go down.

• Lowrance commented, “The saddest thing is not these individual instances on non-enforcement, but what has happened to the reputation of the program itself. I fear that with lax EPA enforcement, corporate leaders are not going to spend scarce resources to expand compliance programs.”