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E.P.A. Rule Change Could Let Dirtiest Coal Plants Keep Running (and Stay Dirty)

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WASHINGTON — One of the main advancements of the past half-century at coal-burning power plants has been the "scrubber," a clean-air device that played a major role in ending the acid-rain crisis of the 1970s and that removes millions of tons a year of a pollutant blamed for respiratory disease.

However, the Trump administration's proposed rewrite of climate-change regulations could enable some of America's dirtiest remaining coal plants to be refurbished and keep running for years without adding scrubbers or other modern pollution controls.

Industry lawyers and former federal officials say the policy shift is one of the most consequential pieces of the Environmental Protection Agency's proposal, made public this week, to replace the Obama-era Clean Power Plan, which was designed to slow the pace of climate change in part by encouraging the retirement of older coal plants and a shift toward greener energy sources.

"This is a power plant life-extension rule masquerading as a climate rule," said Kate Konschnik, a Bush-era Department of Justice lawyer who handled lawsuits against coal-burning power plants, which she said would now become much harder to file.

An E.P.A. spokesman, Michael Abboud, defended the policy change, saying in a statement it was designed to benefit the environment and intended "to further encourage efficiency improvements at existing power plants."

Currently, about 30 percent of the nation's coal-burning power plant units do not have scrubbers, devices that use a cloud of fine water droplets, along with crushed limestone, to pull sulfur out of the plant's exhaust before it reaches the atmosphere. Another 22 percent of plants do not have advanced nitrogen oxide controls that limit smog.

Many of these older plants benefited from a grandfathering provision in federal law that didn't require them to add advanced pollution controls unless they underwent major renovations.

Under current rules, such major retrofits of old plants often come with a big demand: The owners must also spend hundreds of millions of dollars to upgrade the air-pollution equipment to the best available technology, including scrubbers.

The proposed rule change would let older plants be updated with newer and more efficient working components like boiler feed pumps and steam turbine upgrades, potentially extending their operating lives for years, while allowing them to avoid the requirement for the updated pollution controls, which can cost hundreds of millions of dollars.

The rules could benefit plants like the Gerald Gentleman Station in Sutherland, Neb., the state's largest power generating plant, which started operating in 1979. The plant lacks both scrubbers for sulfur oxides and what is known as selective catalytic reduction for nitrogen oxides. As of 2017, its two power units were emitting more than 21,000 tons of sulfur dioxide per year, according to E.P.A. data.

The company intends to keep the plant operating by upgrading various critical pieces of its electricity generation equipment, but has estimated that installing the most modern pollution control devices would cost an

estimated $1.5 billion. The new rule could create a clear path for the plant to upgrade without facing a giant air-pollution cleanup order.

“This really should help clear up some of that uncertainty on the ability to do efficiency projects,” said Joe Citta, environmental manager at Nebraska Public Power District, which runs the plant. “That should be helpful.”

The Gerald Gentleman Station in Sutherland, Neb., built in 1979, lacks both scrubbers for sulfur oxide and equipment to reduce nitrogen oxides.
Nebraska Public Power District

Sulfur oxides are harmful to the human respiratory system, particularly for children, older people and people with asthma. They can also react with other contaminants to create so-called particulate matter, which can penetrate deeply into the lungs and cause additional health problems.

The E.P.A. program at the center of this debate, called the New Source Review, is not well known to the public but it has had an enormous impact over the past two decades on air quality in the United States.

The basic premise is that anytime a plant expands or becomes a "new source" of emissions, restrictions kick in.

Since 1999, utility companies nationwide have been ordered to pay more than $100 million in fines and make more than $18.5 billion of improvements in air-pollution-control systems at about 112 power plants because of alleged violations of the New Source rule, according to an analysis of E.P.A. enforcement data by Ms. Konschnik, who now directs the Climate & Energy Program at Duke University.

That enforcement effort has resulted in 2.8 million tons per year of combined reductions in sulfur oxides and nitrogen oxides. That reduction is greater than the combined remaining total, totaling 2.4 million tons, in emissions from the still-operating coal-burning power plants in the United States, many of which have modern emissions control systems after being forced by New Source Review or other E.P.A. or state rules to upgrade their systems.

The E.P.A.'s proposed changes to the program are complicated. But in short, they would allow power plants that are installing more energy-efficient equipment, such as new boiler feed pumps, to skip the New Source Review process.

It would achieve that by changing the way the plant's pollution is measured under the rule: Instead of considering a refurbished plant's annual emissions to decide whether it was polluting more, the rule would switch to hourly emissions. Typically, a refurbished plant does run more efficiently, meaning it pollutes less on a per-hour basis. But overhauls also enable plants to operate for more hours per year, meaning overall pollution on an annual basis may go up.

The E.P.A. itself, in a legal notice filed this week as it announced its rewrite of the clean-air rules, said the changes meant that some power plants "may experience an increase in annual emissions due to

increases in operation." That increase, it said, would be as a result of "the source ultimately not being subject to major NSR," or New Source Review.

The new policy will almost certainly be challenged by environmental groups in court. They, along with some state-government officials, call the change a step backward for the Clean Air Act.

"This is going to mean dirtier air and hurt Americans through a loophole built on a lie that pollution from these plants will not get worse," said John Walke, clean air director at the Natural Resources Defense Council.

The coal and power plant industries have long been lobbying for changes like this. They argue the current rules discourage them from spending money to make older power plants operate more efficiently because it would also trigger hundreds of millions of dollars in demands for new pollution controls.

"From a business perspective, this will be the most helpful to industry," said Brian H. Potts, a partner at Perkins Coie, a global law firm, who has defended more than a dozen utilities against E.P.A. New Source Review enforcement actions. "If this goes through, older plants that do not have advanced emission controls will more easily be able to extend their lives without putting on scrubbers," he said.

Of course, there are owners who might still decide to retire some older coal plants, partly because natural gas prices are currently low enough that switching to a newer gas-fired plant makes economic sense. "This would be a much bigger deal if natural gas prices went up," Mr. Potts said.

The change was advocated by William L. Wehrum, a former power-plant industry lawyer who is now in charge of air pollution policy at the E.P.A. and had unsuccessfully sought to make a similar change during the Bush administration, when he also worked at the agency. The

agency this week said that its new approach would result in “cleaner, more efficient” power production and “tend to displace dirtier, less efficient units.”

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