

**A CRITIQUE OF THE REGULATIONS REVISING THE U.S CLEAN  
AIR ACT'S NEW SOURCE REVIEW PROGRAM**

**J.B. Eisen**

*School of Law, University of Richmond, Richmond, USA*

The U.S. Environmental Protection Agency's (EPA) recent rules revising the Clean Air Act's New Source Review (NSR) program have been touted as a model for a new approach to environmental management and regulation that focuses less on traditional command-and-control regulation and more on regulatory flexibility. They have also been a source of controversy, election year attention, and high-profile court challenges, particularly in the electric utility industry. Utilities believe the new rules allow them to pursue energy efficiency projects without incurring burdensome regulatory review. Others counter that the new rules roll back the Clean Air Act by allowing modifications at power plants that increase emissions and subject the public to increased health risks. The new rules have also impacted the EPA's NSR enforcement policy, putting pending enforcement actions against utilities for alleged NSR violations in doubt. Case studies will be presented of types of utility industry projects that would be permissible under the new rules without regulatory review. Evaluation of adverse impacts of these cases will show the extent to which the NSR rules allow increased air pollution. This analysis will show that the new rules represent a revolutionary step backward in environmental protection, notwithstanding the claim that they implement a fresh new perspective on environmental problems.