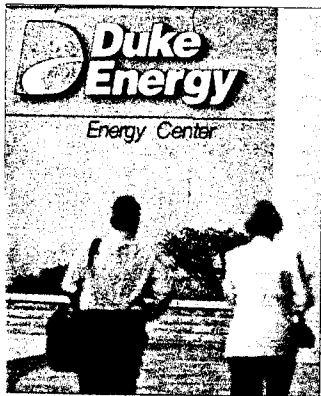


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# Business

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NELL REDMOND / Associated Press  
North Carolina-based Duke Energy is among the power companies affected, as is Atlanta-based Southern Co.

## High court rules for EPA

### Clean air suit vs. utilities reinstated

By **JEFF NESMITH** in Washington and **STACY SHELTON** in Atlanta

The Supreme Court ruled Monday that lower courts misread the Clean Air Act when they threw out an Environmental Protection Agency lawsuit charging Duke Energy

Corp. with skirting provisions governing coal-burning power plants.

The unanimous decision was one of a pair of rulings that cheered environmentalists. In the other, the court held that the EPA is required under the federal air pollution law to

regulate carbon dioxide in automobile exhaust because of its effect on global warming.

The power plant ruling likely will affect other cases out of Alabama and Ohio, which have been on hold pending Supreme Court action.

"The decision is going to

reverberate throughout the electric utility industry and have a major impact on the air quality in dozens of states," said John Walke, a Washington lawyer with the Natural Resources Defense Council.

However, it could still take years before the controls are in place, said Blan Holman of Chapel Hill, N.C., senior attorney with the Southern Environmental Law Center.

"It's a very frustrating experience," said Holman. "The litigation is complex and very costly. Utilities could decide tomorrow to clean their plants up, but if what's going to happen is more litigation, more delay, it could take awhile."

SELC is one of several organizations that have intervened in the lawsuits, which EPA

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# Pollution: Court ruling cheers activists

► Continued from C1

has continued to press even though the Bush administration called on Congress to repeal the language under which they were filed.

The cases have been meandering through the federal courts in several states since the Clinton administration in 1999 charged owners of coal-burning power plants with cheating on air pollution laws.

The suits accused Duke Energy, Atlanta-based Southern Co. and eight other power companies, along with the Tennessee Valley Authority, of skirting provisions that required them to install new pollution controls on old, coal-burning power plants. Among plants cited in the lawsuits were Georgia Power Co.'s Plant Bowen near Cartersville and Plant Scherer in Monroe County. The case against those plants was effectively closed, but the decision activates an 11th U.S. Circuit Court of Appeals case against four plants in Alabama.

The old plants were exempt from Clean Air Act provisions requiring that the best available equipment to control pollutants like oxides of nitrogen, sulfur dioxide and soot be installed when new sources of these pollutants are built. However, the old-plant exemption is supposed to end if owners of the plants make significant improvements and renovations that increase emissions.

In that event, the facilities were to be treated as "new sources" of pollution under a provision called "new source review."

"It is our hope that new source review ultimately will not be applicable to facts like those in [the Duke case]," said Scott Segal, director of the Electric Reliability Coordinating Council, a lobbying group that represents Southern Co. and other owners of coal-burning power plants.

"Both the environment

"If what's going to happen is more litigation, more delay, it could take awhile."

**BLAN HOLMAN**  
environmental attorney

gram is interpreted in a flexible and pragmatic fashion," he added.

In the Duke case, the North Carolina-based utility admitted that its plant renovations increased the overall amount of pollution. However, lower courts ruled that changes the company made did not increase the pollution per hour at each plant, and therefore did not trigger the new source review language.

In a decision written by Justice David Souter, the Supreme Court held that the lower court decisions had stretched the legal language too far. Souter said the law governing the new source review provisions make no mention of the hourly rate of pollution, just the overall amount generated.

Jason Cuevas, a spokesman for Southern Co., which owns Alabama Power, said details in the Duke Energy case are different enough that it should not have an impact on the outcome of the Alabama Power case. But he does expect the case will now move forward in the appellate court.

"We are essentially preparing for that trial now," he said.

Last year, Alabama Power settled out of court on one of its plants, paying the EPA a \$100,000 fine.

Since the 1970s, Alabama Power has spent more than \$1.3 billion on environmental improvements, technology and research. Since 1990, the utility says it has reduced emission rates of nitrogen oxide by 57 percent and sulfur dioxide by 41 percent and that it is spending \$2 billion on further reductions.

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