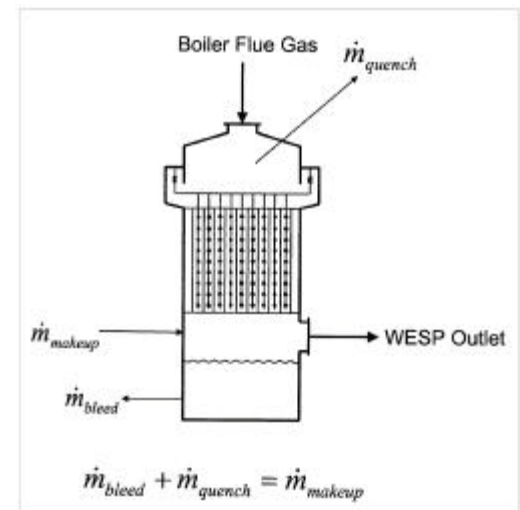


## Regulations: Inhibiting Progress or Spawning Innovation?

The Environmental Protection Agency (EPA) recently attempted to promulgate new rules that are designed to protect downwind states from smog and fine particulates emanating from upwind coal burning power plants ([it has been temporarily stymied by the U.S. Court of Appeals, District of Columbia Circuit](#)). The arguments for and against the new rules focus largely on the cost to implement the regulations on the one hand and the cost of polluting to society on the other. At bottom, the two parties have decidedly different interests and weigh the benefits and costs of their activities differently.



VS.



In this case, the power plants argue that the external costs (i.e., the costs of polluting) are justified because of the overall benefit to society and that increased costs to decrease pollution would reduce the benefit to society. On the other side, states and environmental advocates argue that the plant and the consumers of its power are pollution free-riders, benefiting significantly without paying the full cost of the pollution which impinges upon more than just the customers of the utility.

Now, where does intellectual property law fit in to this discussion? Well, regardless of who has the stronger argument above, the question that sticks out in my mind is why did this become such an issue in the first place? Regulation, contrary to the view of some pols, has the ability to [drive innovation](#), especially when the regulation is focused on an issue that requires a [technical solution](#). In our power plant case, the [Clean Air Act](#) and similar [state laws](#) have steadily applied pressure to power plants to improve their performance. In response to these changes in public policy, the power plants have at least four options: 1) do nothing and likely be forced to go out of business, 2) lobby against the crafting of new regulations in order to maintain the status quo, 3) purchase technology developed by others to comply with the regulation or 4) innovate to comply. Of the possible choices, the second is [frequently](#) used in established industries, ([including our present case study industry](#)), but the last is a viable, and possibly, an extremely profitable solution. Innovation would give the power plants the ability to avoid purchasing or taking a license from someone else. It may also give

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the power plant the choice to license the technology when patented (and make money), keep the information private as a [trade secret](#) (and watch competitors languish in attempting to comply), and/or argue for stricter regulations that necessitate the use of the technology developed by the company. Moreover, the power plant would have a public relations team that would love their job!

The lesson here is: if your business is to prosper, it needs to have a *continued focus* on innovation. Distant, probable or soon-to-be regulations (or industry standards) can set goals for your organization that spawn creative thinking and the potential to thrive in your business sector.