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3 Top Enforcement Officials Say They Will Leave E.P.A.

By JENNIFER 8. LEE

WASHINGTON, Jan. 5 — Three top enforcement officials at the Environmental Protection Agency have resigned or retired in the last two weeks, including two lawyers who were architects of the agency's litigation strategy against coal-burning power plants.

The timing of the departures and comments by at least one of the officials who is leaving suggest that some have left out of frustration with the Bush administration's policy toward enforcement of the Clean Air Act.

"The rug was pulled out from under us," said Rich Biondi, who is retiring as associate director of the air enforcement division of the agency. "You look around and say, 'What contribution can I continue to make here?' and it was limited."

Cynthia Bergman, a spokeswoman for the agency, said of the departures, "This is an office of several hundred employees — and to have one political appointee and two career employees leave is not indicative of unrest or departmentwide frustration."

In August, the administration changed air pollution rules to give utility companies more leeway to modernize their power plants without having to upgrade their pollution control equipment. That change prompted the agency's enforcement division to drop investigations into about 50 power plants for suspected violations of the Clean Air Act. Last month, however, a federal appeals court temporarily blocked the administration from enforcing the new air pollution rules.

The head of the agency's enforcement division, J. P. Suarez, announced his resignation on Monday to take a job as general counsel at a division of Wal-Mart, Sam's Club, in Arkansas. Mr. Suarez has been at the agency for 18 months. The E.P.A. announced in November that it was going to suspend investigations into utilities after the administration loosened the sections of the Clean Air Act that govern aging coal-burning power plants.

In the last two weeks, Bruce Buckheit, the head of air enforcement division, and Mr. Biondi, his deputy, who had worked at the agency since 1971, retired.

The two, who took a buyout offered to senior agency employees, join other top enforcement lawyers who have resigned or retired. Eric Schaeffer, the former head of civil enforcement, resigned in spring 2002 with a scathing letter criticizing the administration's enforcement of the Clean Air Act. Sylvia K. Lowrance, the acting assistant administrator for enforcement and a career enforcement official, retired in August 2002.

"We will see more resignations in the future as the administration fails to enforce environmental laws," Ms. Lowrance said.

Mr. Suarez said on Monday in an interview, "While Bruce and Rich bring tremendous experience to their job, we are blessed with talent that will pick up where they left off."

Mr. Buckheit is considered a driving force behind the agency's pursuit of utilities that started in the Clinton administration.

"It is a huge loss for clean air enforcement as Bruce was one of the most energetic and passionate Clean Air lawyers in the country," said Peter Lehner, the head of environmental litigation for the New York attorney general's office, which has joined in several of the lawsuits against power plants.

The suits used a once-obscure provision of the Clean Air Act, known as new source review, which says that power plants, refineries and other industrial boilers had to install pollution controls if they modernized in ways that increased emissions generally. But "routine maintenance was exempt." The power companies protested the suits, saying the Clinton administration was misinterpreting the law.

Nonetheless, Mr. Buckheit had reached agreements with some electric companies, including Virginia Electric Power and Cinergy, by 2000. Many other negotiations stalled, however, after the Bush administration came into office.

Vice President Dick Cheney's energy task force urged the administration to study industry complaints about federal enforcement actions. Last summer, Virginia Electric Power, now known as Dominion Power, completed an agreement to install \$1.2 billion in pollution controls.

Mr. Suarez joined the E.P.A. in 2002. Before, he had been director of the New Jersey Division of Gaming Enforcement.