

## **Fact Sheet - NEW SOURCE REVIEW (NSR) REPORT AND IMPROVEMENTS**

[June 13, 2002] Acting on the broad-based, bipartisan call for improving the New Source Review (NSR) program, the U.S. Environmental Protection Agency (EPA) announced steps to increase energy efficiency and encourage emissions reductions. EPA today submitted a report on NSR and recommendations for reform to President Bush. As recommended by the 2001 National Energy Policy, EPA reviewed the potential impact of the NSR program on investment in new utility and refinery capacity, energy efficiency and environmental protection.

EPA's review found that the NSR program has impeded or resulted in the cancellation of projects that would maintain or improve reliability, efficiency or safety of existing power plants and refineries. Reforms to NSR will remove barriers to pollution prevention projects, energy efficiency improvements, and investments in new technologies and modernization of facilities.

For more than 10 years and through three administrations, EPA has worked closely with a large and diverse group of stakeholders to find ways to improve the NSR program. During this period, EPA implemented pilot studies and received thousands of comments from state and local governments, environmental groups, industry representatives and private citizens. Over the past year, EPA met with more than 100 environmental and consumer groups and public officials from across the political spectrum, held public meetings around the country, and evaluated more than 130,000 written comments to assess the effect of NSR on the energy sector. Just last summer, the nation's Governors and state environmental commissioners - on a bipartisan basis - both reiterated the call for reform of the NSR program. After a decade of discussion, it is time to act.

Therefore, in addition to the Report to the President, EPA is issuing a document summarizing improvements the Agency intends to make to the NSR program. EPA will be taking these actions to reduce the complexity of the NSR program, promote energy efficiency and pollution prevention, and enhance energy security while encouraging emissions reductions.

These improvements include moving forward to finalize NSR rule changes that were recommended in 1996 and proposing some new changes to the rules. The 1996 recommendations were subject to extraordinarily extensive technical review and public comment over the past six years. EPA will fully involve the public and other stakeholders before finalizing the new proposals.

The actions being taken today will not take away the strong public health protection provided by the Clean Air Act through the National Ambient Air Quality Standards and the programs that ensure their compliance. The key provisions of the Clean Air Act include other programs designed to protect human health and the environment from the harmful effects of air pollution and all those remain in place.

## SUMMARY OF IMPROVEMENTS

When Congress established the New Source Review Program, it did so with a goal of providing for economic growth while maintaining or improving air quality. Today's announced reforms improve the program to ensure that it is meeting these goals. These reforms will:

- Provide greater certainty about which activities are covered by the NSR program;
- Remove barriers to environmentally beneficial projects;
- Provide incentives for industries to improve environmental performance at the same time they make changes to their facilities; and
- Maintain provisions of NSR and other Clean Air Act programs that protect air quality.

EPA has spent 10 years looking for ways to improve the NSR program. As a follow-up to that work and the previous Administration's proposals to reform NSR, EPA recommends finalizing the following NSR reforms, all of which were originally proposed in 1996:

- **Pollution Control and Prevention Projects:** To encourage pollution control and prevention, EPA will create a simplified process for companies that undertake environmentally beneficial projects. NSR currently discourages investments in certain pollution control and prevention projects, even if they reduce overall emissions.
- **Plantwide Applicability Limits (PALs):** To provide facilities with greater flexibility to modernize their operations without increasing air pollution, a facility would agree to operate within strict sitenwide emissions caps called PALs. PALs provide clarity, certainty and superior environmental protection.
- **Clean Unit Provision:** To encourage the installation of state-of-the-art air pollution controls, EPA will give plants that install "clean units" operational flexibility if they continue to operate within permitted limits. Clean units must have an NSR permit or other regulatory limit that requires the use of the best air pollution control technologies.
- **Calculating Emissions Increases and Establishing Actual Emissions Baseline:** Currently, the NSR program estimates emissions increases based upon what a plant would emit if operated 24 hours a day, year-round. This makes it impossible to make certain modest changes in a facility without triggering NSR, even if those changes will not actually increase emissions. This common-sense reform will require EPA to evaluate how much a facility will actually emit after the proposed change. Also, to more accurately measure actual emissions, account for variations in business cycles, and clarify what may be a "more

representative” period, facilities will be allowed to use any consecutive 24-month period in the previous decade as a baseline, as long as all current control requirements are taken into account.

EPA is also proposing three new reforms that will go through new rulemaking and public comment processes before they are finalized. These include:

- **Routine Maintenance, Repair and Replacement:** To increase environmental protection and promote the implementation of necessary repair and replacement projects, EPA will clarify the definition of “routine” repairs. NSR excludes repairs and maintenance activities that are “routine,” but a complex analysis must currently be used to determine what repairs meet that standard. This has deterred companies from conducting needed repairs, resulting in unnecessary emissions of pollution and hazardous conditions at these plants. EPA is proposing guidelines for particular industries to clearly establish what activities meet this standard.
- **Debottlenecking:** EPA is proposing a rule to clarify how NSR applies when a company modifies one part of a facility in such a way that throughput in other parts of the facility increases (i.e., implements a “debottlenecking” project). Under the current rules, determining whether NSR applies to such complex projects is difficult and can be time consuming.
- **Aggregation:** Currently, when multiple projects are implemented in a short period of time, a difficult and complex analysis must be performed to determine if the projects should be treated separately or together (i.e., “aggregated”) under NSR. EPA’s proposal will establish two criteria that will guide this determination.

## **BACKGROUND**

Congress established the New Source Review program as part of the 1977 Clean Air Act Amendments and slightly modified it in the 1990 Amendments. NSR was designed to help clean up air in areas with air quality problems, and protect air quality in areas where it is good.

Over time, the NSR program has become continually more complex and complicated, due to the evolving nature of industrial practices and changes in the regulations and EPA's interpretation of them. In response to concerns about this, EPA has worked for nearly 10 years to simplify the NSR program.

In 1992, EPA issued a regulation addressing issues regarding NSR at electric utility steam generating units making major modifications. This is referred to as the "WEPCO" rule.

In 1996, EPA proposed to make changes to the existing NSR program that would significantly streamline and simplify the program.

Following the 1996 proposals, EPA held two public hearings and more than 50 stakeholder meetings. Environmental groups, industry, and state, local and federal agency representatives participated in these many discussions. Despite widespread acknowledgment of the need for reforms, EPA did not finalize these proposed regulations in 1996.

In May 2001, the National Energy Policy Development Group issued its National Energy Policy Report. This document included numerous recommendations for action, including a recommendation that the EPA Administrator, in consultation with the Secretary of Energy and other relevant agencies, review New Source Review regulations, including administrative interpretation and implementation. The recommendation requested EPA to issue a report to the President on the impact of the regulations on investment in new utility and refinery generation capacity, energy efficiency, and environmental protection.

In June 2001, EPA issued a background paper giving an overview of the NSR program. EPA solicited public comments on the background paper and other information relevant to New Source Review. EPA met with more than 100 environmental and consumer groups and public officials, held public meetings around the country, and evaluated more than 130,000 written comments EPA evaluated those comments in formulating its report to the President.

EPA's in-depth study of the NSR program has shown that it has an adverse impact on investment in expanding and preserving capacity, as well as in energy efficiency. It found that investment is hindered by (1) regulatory uncertainty and lack of flexibility resulting from the program's complexity, and (2) the added costs and delays imposed by the NSR process – the NSR permit process can add a year or more to the time needed to review proposed plant modifications, and cost over \$1 million. As a result, many companies delay or abandon plans to modernize their facilities in ways that would benefit the environment. These reforms will facilitate improvements in these facilities that will be good for the environment, such as energy efficiency and pollution prevention projects, while retaining the elements of NSR that protect our air quality.