EPA Announces Improvements to New Source Review Program

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Action Will Promote Pollution Prevention, Plant Modernization and Energy Efficiency By Eliminating Perverse Regulatory Barriers
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(11/22/2002) In a move to increase energy efficiency and encourage emissions reductions, the U.S. Environmental Protection Agency (EPA) announced today that it has finalized a rule to improve the New Source Review (NSR) program. EPA also announced a proposed rule to provide a regulatory definition of "routine maintenance, repair and replacement." These actions will offer facilities greater flexibility to improve and modernize their operations in ways that will reduce energy use and air pollution, provide incentives to install state-of-the-art pollution controls and more accurately calculate actual emissions of air pollution. These improvements will also remove perverse and unintended regulatory barriers to investments in energy efficiency and pollution control projects, while preserving the environmental benefits of the NSR program.

"EPA is taking actions now to improve NSR and thereby encourage emissions reductions," said EPA Administrator Christie Whitman. "NSR is a valuable program in many respects but the need for reform is clear and has broad-based support. The steps we are taking today recognize that some aspects of the NSR program have deterred companies from implementing projects that would increase energy efficiency and decrease air pollution."

After a comprehensive review of the program, EPA issued a Report to the President on NSR in June 2002. This report concluded that the program as currently administered has impeded or resulted in the cancellation of projects that would maintain or improve the reliability, efficiency or safety of existing power plants and refineries. EPA also concluded that, at existing industrial facilities outside the energy sector, NSR discourages projects that improve capacity or efficiency and do not increase emissions. Instead of being a tool to help improve air quality, the report indicated that NSR has stood in the way of making numerous environmental improvements at many facilities across the nation. Based on these findings, EPA recommended a series of improvements to help address these problems. The final and proposed rules implement these recommendations.

The final rule improvements are the culmination of a 10-year process. During this period, EPA implemented pilot studies and engaged state and local governments, environmental groups, private sector representatives, academia and concerned citizens in an open and far-reaching public rulemaking process. Last summer the nation's governors and environmental commissioners, on a bipartisan basis, called for NSR reform.

The final rule implements the following major improvements to the NSR program:

Plantwide Applicability Limits (PALs): To provide facilities with greater flexibility to modernize their operations without increasing air pollution, facilities that agree to operate within strict site-wide emissions caps called PALs will be given flexibility to modify their operations without undergoing NSR, so long as the modifications do not cause emissions to violate their plantwide cap.

Pollution Control and Prevention Projects: To maximize investments in pollution prevention, companies that undertake certain specified environmentally beneficial activities will be free to do so upon submission to their permitting authority of a notice, rather than having to wait for adjudication of a permit application. EPA is also creating a simplified process for approving other environmentally beneficial projects. Current elements of the NSR program can actually hinder pollution prevention projects.

Clean Unit Provision: To encourage the installation of state-of-the-art air pollution controls, EPA will give plants that attain “clean unit” status flexibility in the future if they continue to operate within permitted limits. This flexibility is an incentive for plants to voluntarily install the best available pollution controls. Clean units must have an NSR permit or other regulatory limit that requires the use of the best air pollution control technologies

Emissions Calculation Test Methodology: To provide facilities with a more accurate procedure for evaluating the effect of a project on future emissions, the final regulations improve how a facility calculates whether a particular change will result in a significant emissions increase and thereby trigger NSR permitting requirements. Also, to more accurately represent a facility’s actual emissions before a change, to account for variations in business cycles, and to provide a bright-line test for measuring pre-change emissions levels, industrial facilities will be allowed to use any consecutive 24-month period in the previous decade as a baseline, as long as all current emission limitations are taken into account. (This “baseline emissions” provision does not apply to power plants.)

Proposed Rule

The proposed rule would make improvements to the “routine maintenance, repair and replacement” exclusion currently contained in EPA’s regulations. These proposed improvements will be subject to a full and open public rulemaking process. Since 1980 EPA regulations have excluded from NSR review all repairs and maintenance activities that are “routine,” but a complex analysis must be used to determine what activities meet that standard. This has deterred companies from conducting repairs and replacements that are necessary for the safe, efficient and reliable operation of facilities, resulting in unnecessary emissions of pollution and less efficient, safe and reliable plant processes.

Routine Maintenance, Repair and Replacement: To increase environmental protection and promote the implementation of necessary maintenance, repair and

replacement projects, EPA proposes to revise the existing routine maintenance, repair and replacement exemption contained in EPA's regulations to make clear that two categories of activities automatically constitute routine maintenance, repair and replacement. The proposal sets out a range of options for particular features of each approach, and seeks public comment on these options:

Annual Maintenance, Repair and Replacement Allowance: would provide a facility-wide annual allowance for maintenance activities. Activities undertaken to promote the safe, reliable and efficient operation of a plant, whose costs fall within the allowance, would constitute routine maintenance, repair and replacement. The allowance would be set on an industry-specific basis so as to cover the capital and non-capital costs that an owner or operator of a stationary source in a particular industry would typically incur in maintaining, replacing and repairing equipment at the source in order to promote the safe, reliable and efficient operation of the source.

Equipment Replacement Approach: would provide that most projects involving the replacements of existing equipment with functionally equivalent new equipment would constitute routine maintenance, repair and replacement. That would be determined by comparing the cost of the components being replaced with the cost of replacing a production unit at the plant. If the cost of the replaced components is below a specified threshold, then the replacements would qualify as routine maintenance, repair and replacement. The threshold would be set so as to allow replacement of components that are typically replaced at sources in the relevant industrial category in order to promote the safe, efficient and reliable operation of such sources, but not to include major renovations or rehabilitations.

The Federal Register notice on the final and proposed rules will be published in the near future. Additional information and copies of both the final rule and the proposed rule are available on the Web at: www.epa.gov/nsr/ .

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