



ENVIRONMENTAL ISSUE BRIEF

Federal Rule Changes Governing Industrial Pollution

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OVERVIEW

On November 22, the Environmental Protection Agency announced plans to relax air pollution standards governing emissions from some of the nation's oldest polluting power plants.

The changes will alter a program called New Source Review (NSR), contained in the 1977 amendments to the Clean Air Act. NSR was intended to close a loophole in the act that grandfathered older plants from pollution standards required of new facilities. To compensate for the omission, NSR treats grandfathered plants as new sources of smog when they expand operations beyond "routine" maintenance, causing emissions to rise. The provision requires the plants to offset any pollution increases by installing modern controls. The NSR program covers more than 17,000 sources. The agency said the changes will cut smog levels faster and cheaper than the current approach.

Many industry leaders favor the revised requirements because they will provide plant owners with the flexibility to find the cheapest way to clean up their operations without focusing on a facility's age. They claim the existing NSR regulations discourage power plants from expanding, for fear of triggering requirements to modernize and that as a result, energy output is curbed.

Some environmental officials in the Northeast warn that the new rules will undermine enforcement of the bipartisan Clean Air Act and increase pollution generated by utilities in the Midwest. The changes, which are mandatory, will prevent many states from meeting the requirements of their own state implementation plans (SIPs) for complying with the Clean Air Act – many of which are more stringent than federal requirements, officials say.

The Final Rule

The EPA made four principal changes to the existing rules, as follows:

- Plantwide Applicability Limits (PALS) will apply a single emissions cap to a plant. Facilities will be able to modernize their operations without undergoing NSR as long as the modifications do not cause emissions to exceed the cap. Under the rules, plants with more than one source of pollution will be able to clean up one source of emissions while allowing other ones to increase their pollution output, so long as total emissions at the plant decline. Currently, NSR applies to each emissions unit in a plant.
- A Clean Unit Provision will allow plants that install best available control technology, or its equivalent, to be exempt from NSR requirements for 10 years after receiving a permit.
- Under an emissions baseline change, plants will have the opportunity to avoid NSR by selecting any 24-month period over the last 10 years upon which to establish its emissions baseline, rather than the most current two-year period required under existing regulations.
- Pollution control projects that result in a net overall reduction in air pollutants will be exempt from NSR requirements.

The final rules apply to industrial plants, such as oil refineries and manufacturing plants. The changes will take effect shortly, when they are published in the Federal Register.

The Proposed Rule

As part of the changes, the EPA also announced the following:

- A proposed rule, which mainly affects power plants, to provide a regulatory definition of “routine maintenance, repair and replacement” in an effort to provide facilities with greater flexibility to modernize their operations in a way that will reduce energy use and air pollution. The EPA would revise the existing definition to make clear that two categories of activities automatically constitute routine maintenance: repair and replacement. It will seek public comment on the following options:
 - One proposal would allow plants to make more extensive changes to their equipment without being required to reduce their emissions, so long as the cost of the physical changes were kept below a certain allowance cap. The allowance would be set on an industry-specific basis.
 - Another proposal would allow a plant to replace existing equipment with “functionally equivalent” equipment without violating the law — so long as the cost of the replaced components is below a specified threshold.

Extensive Review

The rules have been widely anticipated for months. The EPA has spent over a year reviewing clean air enforcement rules in response to complaints by industry.

In the 1990s, the EPA launched a broad enforcement initiative after finding that many of the nation’s worst polluters had failed to comply with NSR regulations when upgrading their plants. The move led to several lawsuits. In 1999, the attorneys general from eight Northeastern states joined the federal government in a court case against 51 coal-fired electric generators in the Midwest whose emissions contribute to acid rain. They claimed that many of the plants had expanded and modernized without upgrading their emissions control equipment, by exploiting the “routine maintenance” loophole.

The new rules could effectively end the lawsuit. The EPA will consider a variety of possible changes to the enforcement initiative during public hearings.

Regional Challenges

Eastern states face federal deadlines to reduce smog. Some officials warn that the new rules will limit their ability to force states west of them to cut down on the pollution that makes its way eastward. They also claim that power plants in the Northeast that have already made mandated pollution-control upgrades will be at a competitive disadvantage if Midwestern facilities no longer must comply with those regulations.

For Northeastern states, the stakes are high. Winds carry pollution from Midwestern coal-burning plants and deposit it over New England lakes and forests in the form of acid rain and smog, which contaminate plant and animal life and can cause a host of respiratory problems in humans, according to the EPA. The agency estimates that sulfur dioxide and nitrogen oxide alone contribute to the premature deaths of 10,800 people annually.

The issue is likely to remain in the spotlight for many Northeastern states, which will be required to comply with stricter standards for ozone and particulate matter in the near future. The new standards will lower the allowable levels of ground-level ozone from a limit of 120 parts per billion in a one-hour time period to 80 parts per billion in an eight-hour period. This new standard is commonly referred to as the “eight-hour ozone standard.” A new standard on fine particles – known as particulate matter – will also go into effect. Some experts warn the NSR rule changes could increase the number of areas in “non-attainment” -- areas that do not meet those standards.