

January 19, 2001

MEMORANDUM

SUBJECT: Status of the New Source Review Improvement Rulemaking

TO: New Source Review Stakeholders

FROM: Robert Perciasepe /s/
Assistant Administrator

Over the last two years we have all worked hard to develop improvements to the New Source Review (NSR) program. As I have discussed with you, I believe it is essential that this program have greater incentives for companies to employ the most effective emission reduction techniques voluntarily and give greater flexibility when companies take these voluntary actions. I am writing to share with you where we are on the NSR Improvement effort as I leave this office.

We have come a long way together in developing the conceptual framework for how EPA can improve the NSR program by providing greater certainty and flexibility for industry without sacrificing the level of environmental benefit provided by the current program or meaningful public participation. Due to the array of policy and legal issues that arose on the vast number of areas we attempted to tackle in one very large rulemaking, we were not able to complete the regulatory packages in this Administration. The concepts that we developed make both economic and environmental sense because in return for environmental performance, industry will receive greater flexibility and more certainty for business investment decisions. The concepts would not undercut the basic goals of the NSR program.

The concepts that we developed and which I support are listed below. I believe many of these could be taken as final actions because of the hard work we have done together.

- Voluntary Alternative NSR Program for the Electric Power Generating Industry– This voluntary program would allow owners of power plants to commit to specific, verifiable emissions reductions across all their electric generating units over a defined period of time and in most instances would avoid the need to get an NSR permit when making changes at their facilities.

- Plantwide Applicability Limits (PALs)– Source owners would be able to make changes to their facilities without obtaining a major NSR permit, provided their emissions do not exceed the plantwide cap. Also, facility owners that use PALs must commit to install best controls over time to gain this flexibility and certainty. PALs would be especially attractive to those industries (e.g., pharmaceuticals and electronics) who need to make changes quickly to respond to market demands in order to stay competitive in a global marketplace.
- Clarifications of Roles, Responsibilities and Time Frames for Class I Area Reviews– The process for review of permit applications by Federal Land Managers (FLMs) would be clarified to delineate the roles of the source owner, the permitting authority and the FLM, in conducting permit reviews for sources potentially affecting air quality near national wilderness areas and parks (Federal Class I areas). These changes would reduce delays and disputes associated with permitting applications for sources near Federal Class I areas because they would provide a time frame for the FLM to identify any concerns and analyses needed for the permit applications. Also, it would clarify that the FLM does not have the authority to veto permits, and ensure that the FLM obtains the necessary information to conduct their permit reviews in a timely manner.
- Clean Unit Exemption– This exemption would provide an incentive for source owners to install the best emission controls on new or modified emission units and provide flexibility and certainty so that most future changes at such units would not trigger NSR. An owner of an emissions unit that meets certain minimum criteria to be considered “clean” could make most changes to these units without triggering NSR for a specified period of time, such as ten years.
- Innovative Control Technology Waiver– This waiver would provide more flexibility for owners of sources who risk trying innovative technologies that have not yet been proven effective. Should the innovative technologies not perform up to expectations, we would provide the owners with time either to correct the deficiencies or alternatively apply a more standard control technology.
- Pollution Control Project Exclusion– This would codify our existing policy that owners of facilities making changes to their plants that primarily reduce one or more targeted air pollutants (but which collaterally increase other pollutants) are excluded from NSR provided certain conditions are met. We would provide a list of environmentally beneficial technologies that, absent other information that would indicate that the projects would not be environmentally beneficial, would be presumptively eligible for the exclusion.
- Control Technology Review Requirements– Because disputes arise over what control technologies are considered available, the permit review process can become lengthy. To improve the process for obtaining a permit, we would (1) add a definition of “demonstrated in practice,”(2) provide a “cut off” date for consideration of additional control technologies, (3)

add provisions that specify when applications are deemed “complete,” and (4) require that control technology determinations be entered into a clearinghouse before permits can become effective.

Nearly all parties in our discussions identified the need to have all of the data on the latest control technology determinations made by permitting authorities in the EPA clearinghouse. Improving the availability of this information to everyone will greatly assist the permitting process. To this end, I have committed significant resources to gather all of the existing data, input it into the database, and redesign the system to make it easier for all parties to put in new data to keep it up-to-date.

One of the lessons that we have learned through our ongoing efforts is that it would be difficult, if not impossible, to improve NSR in one large rulemaking. Instead, I believe it is best to make incremental changes that will provide flexibility and certainty without sacrificing the benefits of the current program. I hope the new Administration will consider finalizing the concepts described above that provide flexibility and certainty without compromising environmental protection to make near term progress. I realize there are other issues, such as applicability for the base program, that also need resolution. For these remaining issues, continued discussions in the context of the overall program are needed.

I appreciate and thank you for the time, effort and input that you have provided over the past years, and I believe that both industry and the environment will benefit from the approaches described above.