



## MYTHS AND FACTS ABOUT NEW SOURCE REVIEW REFORM

The New Source Review (NSR) program covers (1) the construction of new major emitting industrial facilities and (2) existing facilities that make major modifications that significantly increase pollution emissions. The program requires that new plants and major modifications of existing plants obtain a permit before construction, which will be issued only if the new plant or major modification includes pollution control measures that reflect best technology available.

Responding to a longstanding, bipartisan call for reform, EPA is making a number of regulatory improvements in the way the program works for existing facilities. These improvements will not change the NSR program as it applies to new facilities and will not change which facilities are subject to the NSR rules.

EPA is promulgating one set of final rules and is issuing one set of proposed rules. The final rules already have been through the full notice-and-comment rulemaking process. In 1996, EPA proposed several changes to the NSR program, and accepted extensive public comments on this proposal, several elements of which are now being finalized. These improvements will:

- 1) Remove needless regulatory barriers to pollution control and prevention projects;
- 2) Encourage modernization of plants and provide operating flexibility by establishing stringent pollution caps known as “Plantwide Applicability Limits” (PALs);
- 3) Create incentives for facilities to install state-of-the-art pollution controls by providing operational flexibility for facilities that install “clean units,” and
- 4) Calculate actual emissions increases and establish actual emissions baselines.

In addition, EPA is seeking public comment on a proposed rule concerning the definition of “routine maintenance, repair, and replacement” under the NSR program. The proposed rules would amend that exemption, which is currently contained in EPA’s regulations, to make clear that two categories of activities constitute routine maintenance, repair and replacement.

EPA proposes to establish an annual routine maintenance, repair and replacement allowance, so that activities undertaken to promote the safe, reliable and efficient operation of a plant whose costs fall within the allowance would automatically constitute routine maintenance. EPA also proposes to establish an equipment replacement approach, whereby most replacements of existing equipment with functionally equivalent new equipment to allow plants to run more safely, efficiently and reliably – for example,

a utility's replacement of turbine rotor shafts or turbine blades with upgraded shafts or blades - would constitute routine maintenance, repair and replacement. EPA is asking for public comment on these proposals and will not take final action on them until after the public has had an opportunity to comment on the proposed rules and the agency has considered those comments.

(1) MYTH: EPA is finalizing changes to the NSR program without analyzing the impact of those changes on public health and the environment.

FACT: EPA has evaluated the impact of the changes to the NSR program and found that these improvements will reduce overall emissions by (1) eliminating unintentional regulatory barriers that stand in the way of environmentally beneficial projects at existing plants, (2) removing counterproductive incentives that encourage facilities to maintain their emissions as high as legally allowed, and (3) establishing regulatory incentives for sources to decrease emissions. The final rules are based on an enormous amount of public comment that EPA has gathered and evaluated over the last 10 years, and on EPA's own legal, technical and policy review. In addition to reducing emissions, the changes will provide regulatory certainty, administrative flexibility and permit streamlining.

(2) MYTH: EPA is making major changes to the NSR program without providing an opportunity for full public notice and comment.

FACT: The matters addressed in the final rule have already been through the full notice-and-comment process and have been the subject of extensive public hearings and comment. There has been a broad, bipartisan consensus for many years that the NSR program needs improvement. The nation's governors, state environmental commissioners, environmental groups, industry, academia and other groups have acknowledged problems with the current NSR program. The Democratic Leadership Council's think tank, the Progressive Policy Institute, has also called for NSR reform, recognizing that the existing regulations are inefficient and counterproductive.

The final rule changes to NSR are the result of a 10-year multi-stakeholder process that has included numerous opportunities for interested parties and individuals to provide input. State regulators, environmental groups, industry and the public commented extensively on the provisions in the final rule – which were proposed in 1996 – and we have considered these comments fully in developing the final rule.

The routine maintenance proposal will be subject to a full public comment process.

(3) MYTH: EPA is making major changes to the NSR program that will undercut the NSR enforcement cases it brought against utilities.

FACT: Governor Whitman has stated numerous times that she strongly supports enforcement of the law and is moving forward with these cases. None of the changes, either in the final rule or the proposed rule, will apply to the existing enforcement cases. The final rule will apply only prospectively. EPA will not make any final decisions with

respect to the proposed rule until after the completion of public notice and comment, and in any event, EPA is proposing to apply the proposed rule only prospectively as well.

(4) MYTH: EPA is making regulatory changes that effectively rewrite the Clean Air Act.

FACT: The changes that we are making to the NSR rules do not change the Clean Air Act at all. All the changes are fully authorized under and are consistent with the Act.

(5) MYTH: Because EPA estimated in 1996 that, with these improvements, 50% fewer sources would go through NSR, the improvements will have an adverse impact on air quality.

FACT: The number of times sources have to go through the permitting process is not a good measure of NSR benefits. EPA's analysis of the NSR reforms is that they will benefit the environment by reducing emissions and improving energy efficiency.

Even though a source may make a change without obtaining a new NSR permit, it does not mean that source is not covered by NSR or that NSR is reducing air emissions from the source. For example, a source that takes an emissions cap known as a Plantwide Applicability Limit (PAL) may avoid some future NSR permitting, but only in exchange for an agreement to cap its overall emissions under the NSR program. By so doing, it would reduce its emissions and also reduce the frequency of its NSR permit reviews.

Conversely, requiring an NSR permit for some types of projects (e.g., those at clean units) can result in no or only trivial environmental benefits. The NSR rule being finalized today is designed to streamline review in such cases. Likewise, requiring an NSR permit for some environmentally beneficial projects may deter some projects from going forward. In such instances, no permit is now recorded, but real environmental benefits are lost. Our rules are designed to remove NSR barriers and promote these beneficial projects.

(6) MYTH: Because some of the final rule changes allow facilities to freeze their emission levels for 10 years, EPA's changes to the NSR program will not lead to air quality improvements.

FACT: This claim is simply untrue. As noted above, EPA's review shows that the changes made by the final rule will provide a net benefit to air quality by removing current NSR barriers to environmentally beneficial projects and by removing incentives in the current NSR rules to keep pollution at high levels.

It is important to understand that the NSR program was never designed to require facilities to reduce existing levels of pollution – that is not its purpose. NSR review is designed to be triggered when a new facility is being built or when one is undergoing a major modification that could significantly increase emissions. NSR is a permitting process to review and control emissions increases, not a tool to require reductions. The best way to require reductions in emissions is through legislative action such as the President's Clear Skies proposal.

In practice, sources' emissions fluctuate as part of the business cycle, as well as for other reasons. The current rule often results in lengthy discussions over what time period is truly representative of normal operations. EPA's rule would resolve this by allowing industrial sources to select any two-year period in the last 10 years – consistent with the business cycle. However, importantly, the baseline would have to be adjusted to reflect all current emissions limits. This allows a facility to operate at maximum capacity during peak periods of the business cycle, while still maintaining strict air quality controls.

(7) MYTH: EPA's changes to the NSR program will allow new sources to be built without installing pollution controls.

FACT: EPA's changes to the NSR program would not affect new sources at all, and new sources account for a large majority of NSR permits issued every year. Neither the final rule nor the proposed rule being announced by EPA would change NSR requirements for new sources.

(8) MYTH: EPA's changes to the NSR program will pre-empt state programs.

FACT: The changes do not pre-empt any state program more stringent than the federal program. Rather, under the Clean Air Act, states are specifically authorized to establish their own programs that may be more stringent than federal law. This continues to be the case.

EPA believes that the changes will significantly improve the NSR program. Thus, EPA will include the changes in the base NSR program as has been EPA's consistent practice and will encourage states to adopt these changes in their own programs.

(9) MYTH: The final rule has not been subject to enough public comment and is a complete departure from the Clinton Administration's 1996 proposal.

FACT: These proposals have been subject to an extraordinary amount of public input. The history of the final rule goes back to 1992 when EPA formed a federal advisory committee to determine how NSR could be improved. The committee included representatives from environmental groups, state and local governments, federal agencies and industry. The work of this committee ultimately led to the publication of two Federal Register notices (in 1996 and in 1998), each followed by an opportunity for public comment. EPA also held two public hearings and hosted more than 50 stakeholder meetings. Over 600 detailed comments have been submitted during the decade EPA has spent working on these rule improvements.

These final rules address the same issues as those originally proposed in 1996. EPA has made improvements based on the public comments and analysis, and, as is required by law, these changes are consistent with the scope of the 1996 proposal.