



NEW SOURCE REVIEW

THE LIES INDUSTRY TELLS

CLEAN AIR ACT

Myth: New Source Review enforcement is incorrectly being applied to routine maintenance, repair, and replacement activities.

Fact: Routine maintenance, repair, and replacement activities are exempt from NSR under EPA regulations. EPA's NSR enforcement activities pertain to major capital improvement projects costing tens of millions of dollars. For decades industry has been building capacity into refineries rather than building entirely new refineries. Industry then calls these major modifications that significantly increase pollution "routine maintenance and repair" in an effort to evade NSR and pollute unabated. This practice has kept pollution high and provided a disincentive to building newer, cleaner facilities.

Myth: The rules have been changed. EPA's NSR enforcement activities reflect a new interpretation of the law and this is unfair.

Fact: EPA has been consistent in its application of the rules and the law. Requirements for modern pollution control technology were included in the original Clean Air Act. In 1977 Congress strengthened these requirements and named the program New Source Review. In the 1980s EPA began enforcement activities under the NSR provisions. In 1990, in order to reflect current science, Congress reduced the threshold for applicability of NSR in badly polluted areas. These standards and their interpretation, including the narrowness of the "routine maintenance, repair and replacement" exemption, have been defended consistently and successfully in court, by both Republican and Democratic administrations.

Myth: The confusion and uncertainty as to whether NSR will or will not apply prevents industry from making much needed investments in refinery capacity.

Fact: Since the inception of the NSR program, industry has been able to determine whether or not NSR will apply, well before any investment decisions or financial commitments are finalized, simply by asking EPA to make an applicability determination. EPA then analyzes whether the proposed modification is major, and whether it will result in a substantial increase in either the amount or kind of pollution. Only if the answer is yes to both of these inquiries is NSR triggered.

Further, EPA's own research demonstrates NSR does not block investments. Instead, capacity building is greatly steered by market forces, consumer choice, and economic regulations. Far from being an investment deterrent, the NSR program deters the illnesses, deaths, and suffering that result from excessive and unnecessary pollution.

Myth: NSR prevents industry from making needed repairs and modifications, increasing energy efficiency, improving capacity, and reducing emissions.

Fact: There is no merit to this argument. All of the above activities can take place without NSR if they do not constitute major modifications that substantially increase pollution. Further, EPA's formulas for determining "baseline" emissions, the emissions level above which NSR is triggered, are quite generous. A facility that commits not to exceed these limits does not trigger NSR; to avoid NSR, a facility need only commit not to exceed its baseline emissions. A facility that refuses to commit to its emission limitations can seek an applicability determination from EPA. If a facility significantly increases its emissions, NSR is triggered and it is required to install modern pollution control equipment.

Myth: NSR is expendable because it is duplicative of other laws that cover the same air quality issues and provide the same public health and environmental benefits.

Fact: This argument has no merit. The Clean Air Act is vital to protecting public health and the environment from air pollution and providing a necessary backstop against increased pollution. The act is designed to allow for standards to be updated as we receive new information on public health and environmental effects and technology. The act protects against local toxic hot spots and provides states and localities with necessary tools to clean up their air. The variations within the act reflect the realizations that: different standards should apply in areas with acceptable air quality (attainment) versus areas with poor air quality (non-attainment); different controls are possible on stationary sources from those practical for mobile sources; more stringent regulation of the emissions of the most hazardous air pollutants is critical to protecting public health; and different states will have different interests, resources, and challenges.