New Source Review Reform
EPA’s Final Rule and Recent Proposal

A Briefing Before the National Governors’ Association

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What I Will Cover

- What is New Source Review?
- What was the Problem?
- History of EPA’s NSR Reform Efforts
- EPA’s Final Actions
- Restrictions on State Authority
- Routine Maintenance and Repair Proposal
- Schedule for Rulemaking Activities
What is New Source Review?

- Federal preconstruction permitting program implemented by States
- Applies to attainment (PSD) and nonattainment areas
- Requires emission controls for new and modified sources of pollution
- Requires analysis of air quality impacts from proposed emission increases
New Source Review Requirements

- Review applies to new major sources and major modifications at existing major sources
- Controls required
  - PSD (attainment) review requires BACT – considers cost and energy impacts
  - Nonattainment review requires LAER – does not consider cost
- Offsets of emission increases
  - In nonattainment areas only
What was the problem?

Major elements of debate

- Modifications of existing sources
  - “Routine” changes excluded
  - Change must create a “significant net emissions increase” to be major

- Measurement of the emissions increase
  - Determining pre-change (baseline) emissions
  - Estimating future emissions

- Netting out
  - “Netting” allows new and modified sources to avoid controls
History of EPA’s NSR Reform Efforts

- 1993 – EPA convened stakeholder meetings to simplify NSR program
- 1996 – EPA proposed major rule revisions
- 1998 – EPA identified additional revisions
- 2001 – EPA stopped stakeholder process
STAPPA/ALAPCO’s Comments
July 2001

- NSR is essential and critical to protect air quality and public health
- NSR process could be improved
- STAPPA/ALAPCO Principles
  - Best time to control source is at installation
  - Support “top-down” BACT
  - Eliminate netting out of NSR
  - Require enforceable limits; analyze impacts
EPA’s Final Action
NSR Reform – Nov., 2002

- Baseline actual emissions
- Actual to Future Actual test for emission increases
- Clean Unit exemption
- Plantwide Applicability Limits (PALs)
- Pollution Control Project exclusion (PCPs)
Restrictions on State Authority

- 1996 proposal made NSR reforms optional for states
- EPA’s final rule makes reforms mandatory for states
- To deviate from EPA rules, states required to make demonstration
- For delegated programs, rules take effect within 60 days
- For others, SIPs due within 3 years
Baseline Actual Emissions

- S/A position – no change from current rule
  - Source’s baseline emissions are generally the average of the two years before the change
  - Can substitute period more representative of normal operation
- EPA final rule
  - Source may select any consecutive two year period in ten years before the change
Plantwide Applicability Limits: S/A Position

- Support concept of PALs
- Set emissions cap at contemporaneous levels
- Cap should decline over time reflecting BACT on all significant units
- All significant new units added under a PAL should meet BACT
Plantwide Applicability Limits: EPA Final Rule

- Cap set at levels reflecting 10-year “look-back”

- Cap does not decline over time

- No minimum controls (e.g., BACT) for new units
Clean Unit Exemption: S/A Position

- Support concept – achieves control and provides sources certainty
- Exemption should be provided for prospective installation of stringent controls
- Exemption provided for limited time
- Continue to require air quality analysis
Clean Unit Exemption: EPA Final Rule

- Sources applying BACT/LAER in past 10 years escape controls for up to 10 (and possibly 15) years in future

- Allows extended “look back” up to ten years
Routine Maintenance, Repair and Replacement Proposal

- EPA proposed 2 Categories of exclusion
- Activities within each category would be excluded without regard to other considerations
- Not a rebuttable presumption
- Changes not fitting either category could still be excluded as RMRR using the existing case-by-case approach
RMRR Category 1 Exclusions

Facility Annual MRR Allowance

- Activities performed to maintain, facilitate, restore or improve the efficiency, reliability, availability or safety of the source
- Exemption provided if total costs, when added together with other such activities in the same year, does not exceed the facility’s annual allowance
RMRR Category 1 Exclusions

Calculating the Annual Allowance

- For each Industry Sector, a factor that is a percentage of the replacement cost of the stationary source would be established by rule
  - Percentages have not been proposed (up to 15% discussed)
- The industry sector percentage times the facility’s documented replacement cost establishes the annual MRR allowance
  - EPA seeking comment on appropriate accounting procedures to determine replacement cost
RMRR Category 2 Exclusions

Equipment Replacement

- Replacement of components of a process unit with identical or functionally equivalent components is exempt from review, if
  - Fixed capital cost of components does not exceed “x” percentage of new process unit cost
  - Does not change “the maximum fuel or material input specifications to the process unit”
EPA Schedule for Rulemaking

- Anticipate publication in Federal Register in January 2003
- EPA has so far committed to one public hearing
  - Coalition of groups has requested 10 hearings
- EPA has committed to provide a 60 day comment period from date of FRN
  - Coalition of groups has requested a 180 day extension of comment period (240 days)