

**STAPPA/ALAPCO Testimony on EPA's Proposal to Revise
the New Source Review Program Under the Clean Air Act.**
September 16, 1996

Testimony of John A. Paul on behalf of the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials on the U.S. Environmental Protection Agency's Proposal to Revise the New Source Review Program Under the Clean Air Act.

Good morning. My name is John Paul and I am the Supervisor of the Regional Air Pollution Control Agency, a six-county local agency, centered in Dayton, Ohio. I am here today representing the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO). STAPPA and ALAPCO are the two national associations of air pollution control agencies in the 54 states and territories and more than 165 major metropolitan areas across the United States. I am pleased to have this opportunity to present STAPPA and ALAPCO's initial views on EPA's comprehensive proposal to revise the federal New Source Review (NSR) program under the Clean Air Act.

STAPPA and ALAPCO commend EPA for tackling the daunting task of revising this critical national air program, and in working with all interested parties to develop the best possible NSR rule.

We all recognize the complexity of the NSR rules, especially given their history of litigation and legislative detail. As the primary implementers of NSR programs throughout the nation, state and local agencies take a special interest in this rule and its ability to provide one of the critical tools we need to protect air quality for the future. It is crucial that this rule, in as simple a form as possible, provide for the review of new and modified stationary sources, with assurance that they install the best control technology available to minimize their impacts on ambient air quality.

State and local representatives have worked with EPA on a continuing basis for the past 20 years exploring ways to maximize the effectiveness of this program. We have served on various ad hoc committees addressing issues such as PSD for Set II pollutants, offsets in nonattainment areas without approved state implementation plans, the BACT/LAER clearinghouse, emissions bubbles, preconstruction monitoring, and other issues.

I mention this history to remind us all that state and local agencies are partners with EPA in the structure and implementation of the NSR program. We have shared many common interests, responsibilities, and concerns with the evolution of the program over the years.

This brings us to the issue before us today and the subject of this hearing--the proposed revisions to the NSR program. Let me repeat our appreciation for EPA 's willingness to address this task. We recognize the hard work and long hours that have gone into the preparation of the proposal. However, let me also state clearly that state and local program administrators, along with their staff that will be the primary implementers of this program, have serious concerns with its complexity. The current proposal is a maze which contains so many turns, twists, and previously unmarked exit points that we are not confident in our ability to understand and, thus, implement its requirements.

It appears that EPA and other stakeholders in this process have recognized the complexity of the NSR process and attempted to address it in this rule. Unfortunately, the proposal's primary means of addressing this complexity is through providing exemptions to NSR--the ultimate simplification. STAPPA and ALAPCO have evaluated this approach against basic principles that our members believe are basic to the NSR process.

STAPPA and ALAPCO believe the cornerstone of the national NSR program is the principle that the best and most cost-effective time to control a source is at the time of its installation or modification, and that the Best Available Control Technology (BACT) and Lowest Achievable Emissions Rate (LAER) should be applied in attainment and nonattainment areas, respectively. Consistent with this principle, the associations believe that a source's selection of BACT should be "top down" to ensure that sources apply the best controls, unless they can demonstrate that another control technology is more appropriate.

The associations further believe that sources should not be allowed to net out of control requirements (BACT or LAER), since this will undermine the benefits obtained by applying controls to new or modifying facilities. In addition, STAPPA and ALAPCO believe that the national NSR program must require new or modified sources to have legally enforceable limits on their future emissions that are compatible with applicable SIPs and analyzed at their future allowable rate.

These two principles, that BACT/LAER be applied to all new or modified major source units and that the impact of future emissions be analyzed and minimized, are basic to the NSR process. STAPPA and ALAPCO members oppose any exemption which allows either of these principles to be violated.

While the associations believe that several elements of the proposed NSR rule are improvements to the federal NSR program, we are extremely concerned that the proposal is flawed in many important ways, leading to major loopholes, undue complexity and considerable uncertainty both for regulators and the regulated community.

First, let me mention what we believe to be some improvements in the NSR proposal. STAPPA and ALAPCO are pleased that the proposal uses a "top down" approach for determining BACT, while allowing flexibility for state and local agencies to present alternative, but equivalent, methods for determining BACT. The top-down process has proven to be a very effective tool for state and local regulators. Additionally, when

followed, we believe the top-down approach has provided industry with a timely and certain process for identifying source controls. We also support EPA's actions to strengthen the BACT/LAER Clearinghouse. STAPPA and ALAPCO have supported the Clearinghouse since its creation and believe that this data base, which regulators, industry, and the public can go to find the most recent BACT/LAER decisions, is vital to the NSR process. We urge EPA to increase substantially the resources for this important data base.

The associations also commend EPA for its efforts to address the issues regarding Class I areas. The Clean Air Act requires the involvement of the Federal Land Managers (FLMs) in Class I decisionmaking under the PSD program, and clearly the FLMs can play a useful role in this process. However, we believe it is important that the NSR proposal not result in undue delays and uncertainty when FLMs review and act on Class I area permits. The associations encourage EPA to review existing state and local air agency efforts to work with their FLMs, such as those in Oregon and the South Coast Air Quality Management District in California, as potential models for crafting the NSR rule to avoid delay and uncertainty in this critical area.

Now with regard to what we feel are deficiencies in the proposal. Unfortunately, we feel the rule falls significantly short in several key respects. First, the proposed NSR rule provides sources with numerous loopholes and exemptions to escape important NSR requirements altogether. Let me offer two examples.

The "Clean Unit" Exclusion in the NSR proposal, which would allow permitting authorities to exclude from major NSR any proposed changes to existing emissions units that have installed major BACT or LAER within the last 10 years, provides too great a loophole for sources to escape NSR review. In many instances, BACT/LAER determinations during the past 10 years may not have been made using the top-down approach for determining BACT. Additionally, we believe the 10-year time frame is too long. Because of this and other problems, STAPPA and ALAPCO believe that the "Clean Unit" exemption is inappropriate and recommend that it be dropped from the proposed NSR Reform Package.

Another example of a loophole is EPA's proposal to revise the actual-emissions baseline used to determine whether sources are allowed to "net" out, or avoid the technology review and ambient impact review requirements, of the NSR program. As proposed, sources would be allowed to use the highest activity level in a consecutive 12-month period within the last 10 years for attainment/unclassified areas, and since 1990 for nonattainment areas and ozone transport regions, as its netting baseline. Because many sources currently operate at less than their highest activity level over the past 10 years, it would be possible under the NSR proposal for a source to increase operations using existing equipment without any approval from the permitting agency and without triggering NSR review, while increasing emissions. The ambient air will receive these emissions and we will be held accountable for the real impacts. To exempt sources which are responsible for these impacts is not acceptable.

Finally, while we support EPA's proposals regarding the use of innovative control technology waivers and the use of pollution prevention techniques when considering BACT/LAER decisions, EPA and state and local air agencies must protect against abuse of these programs to the detriment of national air quality by requiring that approval of such proposals be based on a showing that the project will result in a net air quality benefit. Pollution prevention is a notable goal that we should pursue, but proposals for its implementation on new or modified sources should be reviewed in the BACT/LAER context. A source should not be exempted from the process, simply because it chose a method of "control" that fits the definition of pollution prevention.

We strongly believe that the loopholes and exclusions contained in the proposed NSR rule will undermine the integrity of the program and hinder our efforts to reduce emissions in the most cost-effective and optimal manner. Moreover, state and local air agencies could end up spending more time and resources determining whether sources are covered than in activities that result in improved air quality. We also believe that many of the proposed exemptions impose a very heavy burden on both sources and regulating agencies in the form of considerable record keeping and monitoring requirements, which may be necessary to document the reasons for the original exemption. We fear the use of the exemptions proposed in the rule may cause more work and complexity than the original NSR process.

This brings us back to our primary concern with the proposal before us today-- the rule's incredible complexity. The rule overly complicates the process by which state and local air agencies, as well as the regulated community, determine if NSR applies to a source. A prime example is EPA's proposal to allow a source, which has an emissions limit on a unit determined to be comparable to BACT or LAER when considering costs and benefits of additional or modified controls, to qualify for the "Clean Unit" exclusion on a case-by-case basis. Under this proposal, state and local air agency staffs will undoubtedly be unsure, or unable, to consistently apply the rule, not to mention the staff resources needed for such a case-by-case approach. In addition, the proposed revisions to the "netting" baseline ensure that state and local agencies will be required to commit significant time and resources, two commodities already in short supply, to reviewing and acting on netting determinations that will not benefit national air quality. Moreover, the complexity of these provisions will also ensure that state and local agencies will be uncertain about undertaking enforcement activities related to the NSR program. Overall, the complexity added by EPA's latest proposal is in conflict with the agency's original intent to revise and simplify the federal NSR program.

The NSR program as it exists today, even with its current complexity, is an essential program. Unfortunately, we feel the proposed rule increases the complexity. Additionally, we feel the proposal sets forth exemptions that would allow new source installations or modifications without the application of BACT/LAER and the analysis and minimization of the resultant ambient air quality impact. Thus, we oppose many of the rule's provisions.

STAPPA and ALAPCO are currently developing a more detailed set of formal written comments for submission by the comment deadline in October. We support EPA's efforts to simplify the NSR program, consistent with the general principles highlighted earlier, and wish to continue to work with, and be of assistance to, EPA to produce the best NSR regulation possible.

On behalf of STAPPA and ALAPCO, thank you again for this opportunity to present our views. I am happy to answer any questions you might have.