

NSR: An Unworkable Tool for Reducing Existing Source Emissions

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- Pre-construction permitting program
- Applies to “new” sources, which means new and “modified” sources
- “Modification” means “any physical change in, or change in the method of operation of, a stationary source which increases the amount of air pollution emitted by such source or which results in the emission of any air pollutant not previously emitted.” CAA § 111(a)(4).

- Prevention of Significant Deterioration in attainment areas
 - Lengthy and expensive permitting process
 - Install Best Available Control Technology (BACT)
 - Ensure that NAAQS and “increments” are not exceeded
 - Ensure protection of “Class I” areas (e.g., National Parks)

- Nonattainment NSR
 - More lengthy and expensive permitting process
 - Install Lowest Achievable Emission Rate (LAER)
 - Emissions Offsets

- NSR generally works well for new sources:
 - New construction
 - Expansion of existing capacity

- NSR does not (and cannot) work well as a program for reducing emissions from existing capacity:
 - Ad hoc, entirely dependent on source behavior
 - It regulates conduct: If the rules clearly delineate what activity is subject to NSR, industry will avoid that activity as much as possible
 - If efficiency improvement projects trigger NSR, industry will not do them
 - If repairing components that caused outages in the past triggers NSR, industry will avoid them, taking a band-aid approach to maintenance or doing the projects at a less efficient time than before

- There is no reasonable way to define the conduct that you want to regulate in a rational way:
 - If the definition is reasonably narrow and precise, no one does the type of work subject to NSR.
 - If the definition is such that NSR is easily triggered, it becomes unworkable
- What type of conduct do you want to regulate?

- NSR should regulate the conduct it was intended to regulate in the first place: new and expanded sources of pollution
- Otherwise, NSR is unworkable and it becomes the ultimate command-and-control program
- If you want to impose particular controls on particular sources or group of sources (e.g., all sources after 30 years of operation):
 - Pass a law that does that (but didn't Congress reject a "birthday provision" in the 1990 Amendments?)
 - Do you want cap-and-trade or command-and-control?