

Legislation Addressing New Source Review Permitting Reform: May 16th U.S. House of Representatives Committee on Energy and Commerce Hearing



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The Subcommittee on Environment of the United States House of Representatives Committee on Energy and Commerce (“Subcommittee”) is holding hearing today titled:

Legislation Addressing New Source Review Permitting Reform

A May 14th Committee Majority Staff background memorandum to Members of the Subcommittee on Environment focuses on potential changes to the Clean Air Act New Source Review (“NSR”) program.

The aspect of the program that will be addressed at the hearing involves when a project at an existing facility is considered to be a “modification” therefore subjecting it to NSR.

The memorandum notes:

Within the CAA, this statutory definition applies to both the New Source Performance Standards (NSPS) program and the New Source Review (NSR) program. However, the Environmental Protection Agency (EPA) has interpreted and applied the definition differently for each of these programs. Under the NSPS program, the EPA determines whether a project at an existing facility “increases the amount of any air pollutant emitted,” resulting in the project being a modification, by using an hourly emissions rate test. In contrast, under the NSR program, the EPA uses an annual emissions projection approach to make this same determination.

The difference between the “hourly emissions rate test” and the “annual emissions projection” approaches are discussed in the memorandum. In addition, the memorandum references prior Subcommittee testimony by Stuart Spencer, Associate Director of the Arkansas Department of Environmental Quality:

Revising the emissions increase test under the NSR program to match the hourly emissions rate test used by the NSPS program may provide a more efficient, less controversial approach to determining whether projects should be subject to NSR permitting. For example, Mr. Stuart Spencer, the Associate Director at the Arkansas Department of Environmental Quality and the President of the Association of Air Pollution Control Agencies, testified that using the hourly emissions rate test for the NSR program would eliminate many of the issues associated with NSR and would streamline the program. Other testimony noted that

reforming the NSR program to use an hourly rate test is more meaningful for protecting human health because the most stringent EPA standards are based on maximum concentrations of a pollutant averaged over one hour, eight hours, and 24 hours. The discussion draft under consideration at this hearing would revise the NSR program to adopt an hourly emissions rate test for purposes of determining whether a project at an existing facility is considered a modification, thereby triggering the need for an NSR permit.

The memorandum summarizes a “discussion draft” of legislation addressing NSR which includes a revision of the definition of “modification.”

Witnesses scheduled to testify include:

- William Wehrum, Assistant Administrator for the Office of Air and Radiation, U.S. Environmental Protection Agency
- Sean Alteri, Director for Air Quality, Kentucky Department of Environmental Protection
- Ross E. Eisenberg, Vice President, Energy and Resources Policy, National Association of Manufacturers
- Kirk Johnson, Senior Vice President, Government Relations, National Rural electric Cooperative Association
- Jeffery R. Holmstead, Partner, Bracewell LLP
- Bruce Buckheit, Analyst and Consultant
- Paul Baldauf, P.E., Assistant commissioner, Air Quality, Energy and Sustainability, New Jersey Department of Environmental Protection

By way of their written statements, the witnesses vary in terms of the issues they will address and their views on the “discussion draft” legislation. For example, Assistant Administrator Wehrum states that the agency does not have an official position on the draft. However, he states support for efforts to improve the NSR permitting program. He also references guidance and memoranda the agency has recently issued to address related issues.

The Kentucky Air official’s written statement is supportive of the potential NSR revisions while the New Jersey official states:

Maintaining the current NSR program and its associated requirements to reduce emissions for plant upgrades would not only improve the ability of states to attain or maintain NAAQS, but will result in greater air toxics reductions.

A [copy of the memorandum](#) and a [link](#) to the witnesses’ prepared statements can be found here.