



**American
Forest & Paper
Association**



AMERICAN WOOD COUNCIL

March 23, 2018

Representative John Shimkus
House Energy & Commerce Committee
Chairman Subcommittee on Environment
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Shimkus:

Attached please find the response from the American Forest & Paper Association and the American Wood Council to the additional questions for the record from the February 14, 2018, Subcommittee on Environment's hearing entitled "New Source Review Permitting Challenges for Manufacturing Infrastructure".

Please let us know if there is any additional information we can provide. We greatly appreciate the opportunity to testify before the Committee on this important matter.

Sincerely,

Paul Noe
Vice President, Public Policy

Response from the American Forest & Paper Association and the American Wood Council to the additional questions for the record from the February 14, 2018, Subcommittee on Environment’s hearing entitled “New Source Review Permitting Challenges for Manufacturing Infrastructure”.

Shimkus

Q1: Will you explain the various costs that an owner experiences when complying with the NSR program?

A1: There are many different costs that an owner can and does encounter when complying with the NSR program. The magnitude of these costs varies based on the complexity of the facility and the project. Because the requirements of the NSR program are so complex, it is common for owners to engage a consultant to conduct emissions calculations and the PSD applicability analysis, conduct the modeling analysis, prepare the permit application, and perform emissions testing. Whether a consultant is engaged or not, the major cost components associated with complying with the program are carrying out these pre-application studies, preparing the permit application itself, and responding to agency comments on the submittal. Additionally, there are costs involved with complying with new or revised emission limits, which typically involve capital and operational costs for new emissions controls and emissions monitoring equipment.

Owners sometimes incur costs associated with having to reconfigure or modify existing or planned equipment if the dispersion modeling or BACT analysis indicates that the project as originally designed may not be able to comply with emission standards. Reconfiguration costs are also incurred if the permit review agency will not accept flexible approaches or reasonable interpretations of guidance. Owners also incur costs associated with delays (e.g., market share impacts or energy/operational costs) while waiting for a PSD permit to be issued. Finally, there can be many lost opportunity costs if a project cannot be permitted on time or at all. These opportunity costs can include lost business opportunities for the company, lost job opportunities for workers, lost products for customers, lost tax revenue for the community, and diminished competitiveness of the facility, which can place its future viability at risk.

Q2: I am told that the complexity of the NSR program makes it difficult for facility owners to understand and comply with NSR requirements. Can you provide a few examples of how the NSR program is unnecessarily complex or unclear?

A2: There are 695 documents that span 40 years and multiple administrations on EPA’s NSR policy and guidance website¹. These many documents reflect changes in

¹ <https://www.epa.gov/nsr/new-source-review-policy-and-guidance-document-index>

EPA policy interpretations and guidance over time. This large and cumbersome body of guidance is challenging to navigate even for state and local regulatory agencies. Accordingly, there are differences in policies/interpretations between states and regions, creating an uneven playing field across the United States for sources trying to get NSR permits in a timely manner for strategic projects. The policies pertaining to what constitutes “ambient air” constitute one example of the complexity of the program. A very simple definition of what “ambient air” means has over time evolved into a very stringent set of policy documents pertaining to how computer-based air dispersion modeling is to be conducted under NSR. The same project can have a different permitting path from state to state, so there is little certainty in how to permit most projects prior to having a detailed pre-application meeting with the permitting agency, and even after the application is submitted. Particularly for larger projects, the permitting agency will often ask for additional information or analyses during their review because they want to see additional detail that was not contemplated in the facility’s original permitting plan.

Q3: Currently, pollution control projects are considered exempt from the NSPS but are not exempt from the NSR program, meaning that an owner must receive an NSR permit to carry out a pollution control project. Can you explain why it would be beneficial to exempt pollution control projects from having to obtain an NSR preconstruction permit?

A3: The purpose of a pollution control project (PCP) is to reduce air emissions. Exempting PCPs from NSR review allows such environmentally beneficial projects to proceed quickly and efficiently. Because PCPs are not currently exempt from NSR, however, facilities that want to install more efficient pollution controls, switch to cleaner fuels, and make modifications to improve energy efficiency must go through the NSR permitting process. In many cases, the inflexible and overly conservative nature of the NSR process forces such beneficial projects to trigger PSD review. In this way, the current NSR permitting program creates a disincentive for companies to pursue PCP and/or energy efficiency improvement projects because the process results in delay and increased costs in implementing the project and could result in an environmentally beneficial project not moving forward at all. Particularly at times when capital resources are limited, companies often choose investment options with greater capital returns than PCPs because the permitting process would impose additional onerous requirements beyond the original goal of the project or could eliminate or significantly diminish any return on investment. Providing an exemption for PCP and energy efficiency projects from NSR would benefit the environment because it would encourage facilities to implement such environmentally and otherwise beneficial projects.

Q4: Do current NSR program regulations make it more difficult for owners to carry out maintenance, repair, or replacement activities aimed at maintaining or improving safety or reliability? Please explain.

A4: There is conflicting guidance on what constitutes routine maintenance, repair or replacement (RMRR) projects, so typically owners must obtain concurrence beforehand from permitting agency that a particular project is RMRR. If the agency does not agree, or if carrying out the maintenance activity could result in a small increase in a facility's utilization due to improved reliability, a permit application must be prepared and a revised permit obtained. Concerns about triggering NSR review can lead to major maintenance being deferred in favor of small "band-aids" that do not trigger NSR but also may not result in as effective reliability or safety improvements as more comprehensive maintenance would.

As a result of technological advances to process equipment, many times routine repair projects implement improved, more efficient technology that does not technically qualify as a "like kind" replacement and may not increase emissions, but nonetheless is required to be evaluated as a modification under the NSR program requirements. Routine repair projects that improve reliability are beneficial because they reduce the occurrence of excess emissions related to malfunctions and improve reliability or safety, and the NSR program should encourage facilities to make these improvements.

Q5: Would reforming the NSR program to use a maximum hourly emission rate test clear some of the confusion and uncertainty surrounding the NSR program? Please explain.

A5: Yes, reforming the NSR program to use a maximum hourly emission rate test would make PSD applicability calculations much easier and more straightforward. For a complex facility, NSR applicability assessments typically involve very complex annual emissions calculations using Microsoft Excel workbooks. Permitting agencies often question the post-project emissions projections and frequently require the facility to track its annual emissions against the projection following the project, creating an additional annual recordkeeping and reporting exercise. A maximum hourly emission rate test applied to just the modified emission unit(s) would be much easier to understand in concept and practical to implement, resulting in quicker preparation and review of permit applications or applicability determination requests.

Hudson

Q1: Do you agree that NSR may actually hinder a company that wants to reduce emissions? What should be the federal response to encourage investment in these new technologies while making sure they are adequately scrutinized?

A1: Yes, the complicated and overly cumbersome NSR process currently serves as a disincentive for the regulated community to undertake projects that have a primary purpose of reducing emissions or improving the energy efficiency of their processes. Production efficiency improvements (“debottlenecking”) changes are also discouraged. The permitting system should reward technology-advancing improvements, particularly those that reduce reliance on energy and raw materials and provide innovative products and new markets. Projections of a particular project’s environmental impacts should use realistic, easily verified metrics (actual to future actual or current potential to future potential emissions comparisons).

Pallone

Q1: Please identify all instances that you are aware of, during your tenure with the AF&PA and the AWC, in which a member company’s facility or facilities undertook a “modification” as defined under EPA’s NSPS regulations, and triggered the obligation to comply with the applicable standards of an NSPS. Please be specific concerning the facility or facilities, locations and date ranges to allow the Committee to examine those instances.

A1: AF&PA and AWC advocate on broad policy issues and are not involved in individual member NSPS permitting actions. Our members are potentially subject to several NSPS, including regulations addressing emissions from Kraft pulp mills, industrial boilers, storage of volatile organic liquids, and reciprocating and spark ignition engines. Projects that trigger NSPS include installation of new equipment and production capacity increase modifications to existing covered equipment within the individual source categories. Many of the larger individual facilities of our member companies are subject to NSPS requirements for several categories of their production equipment. Specific examples of potential projects that might trigger NSPS applicability could be replacement of a smelt dissolving tank, a physical modification to a recovery furnace that allows an increase in throughput, installation of a new pulping line, or a replacement of an older boiler with a new, more efficient boiler.

Q2: Do you agree that under today’s PSD and nonattainment NSR regulations, a non-exempt physical change at a stationary source could increase its actual annual emissions and be considered a “modification,” and not increase its hourly potential to emit and therefore not be considered an NSPS modification? Would you consider this to be an increase in air pollution?

A2: There are many examples of situations where a source is required by the NSR provisions to assess the emission impacts associated with increased annual utilization even when its maximum hourly emission rates will not increase. As an NSPS modification only occurs when an affected source’s hourly emission rate increases, an

annual increase without an hourly increase from an existing source would not constitute a modification under the NSPS program. Whether the change constitutes a modification under the NSR program would depend on the magnitude of the net emissions increase.

An example is where the non-exempt physical change occurs to non-emitting equipment such as steam turbines, pumps, or heat exchangers. Under the NSR program, the impact of such changes on a stationary source's annual emissions are required to be evaluated even if the changes have no impact on the maximum hourly emission rates of individual emission units. Sources subject to NSR typically must make a demonstration through computer-based air dispersion modeling that a project's significant emissions increases will not cause or contribute to a violation of the NAAQS. However, as noted in the answer to your next question, if a source is increasing actual emissions but not potential emissions, the facility may have already demonstrated compliance with the NAAQS based on its potential emissions.

The NSPS program is a set of technology-based standards that apply to specific categories of stationary sources that EPA has concluded may cause air pollution that could endanger public health or welfare. By requiring new or modified sources in these categories to employ the latest pollution control technologies, the NSPS program ensures that new and modified sources are less polluting than older ones. And when the market demand for specific products is met by these more efficient facilities, the emissions to produce those products goes down. In doing so, the NSPS program also reduces impacts to the environment.

Q3: Do you consider an increase in annual pollution emissions even, if hourly potential emissions do not increase, to be “an increase in air pollution?”

Q4: Do you consider an increase in annual pollution emissions, even if a maximum hourly emission rate does not increase, to be “an increase in air pollution?”

A3 & A4: We agree that annual pollutant emission increases constitute “increases in air pollution,” as that term is used in the context of the NSR program, even if a source's hourly potential or maximum hourly emission rates do not increase. The most common example of an annual emission increase occurring without a corresponding increase in hourly emissions is when a source's annual utilization rate increases due to higher demand for the source's products as a result of overall expansion of the economy.

However, such annual increases do not automatically translate to a violation of an air quality standard or requirement, or otherwise endanger public health. While the NSR regulations were designed to allow for economic expansion to occur, the reality is that economic expansion can cause concurrent increases in air emissions from industrial

and electric utility sources. NSR is intended to ensure that economic growth and prosperity can occur while protecting air quality.

Outside of the federal NSR program, there are additional regulatory safeguards. For example, individual state regulatory agencies have the ability to consider the impact of a particular source or group of sources on ambient air quality by requiring that dispersion modeling be conducted to demonstrate NAAQS compliance as part of the Title V operating permit renewal process.

Finally, there are many instances where annual increases in emissions are projected to occur in the context of the NSR program at sources where the equipment has already been permitted and the projected increases will not exceed existing permit conditions. Often in these situations, the impact to the environment of operating this equipment at its current maximum capacity has already been assessed through computer-based air dispersion modeling.