

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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March 9, 2018

Mr. Stuart Spencer
Associate Director
ADEQ, Office of Air Quality
5301 Northshore Drive
Little Rock, AR 72118

Dear Mr. Spencer:

Thank you for appearing before the Subcommittee on Environment on February 14, 2018, to testify at the hearing entitled "New Source Review Permitting Challenges for Manufacturing and Infrastructure."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Friday, March 23, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to kelly.collins@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus
Chairman
Subcommittee on Environment

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment

Attachment

Attachment—Additional Questions for the Record

The Honorable John Shimkus

1. You say in your testimony that the NSR program “is a haphazardly-stitched quilt of rules, manuals, memos, guidance documents, and disparate applicability determinations.”
 - a. What challenges does this complexity cause and how could the EPA make the NSR rules more clear?
2. You mention in your testimony that “the NSR rules and regulations often times demonstrably discourage rather than encourage pollution control and efficiency projects.” Will you explain how this is the case?
3. State regulators and the EPA both play an important role in administering the NSR permitting program.
 - a. In what ways could this Federal-State interaction be improved?
4. In your testimony you state that greater clarity needs to be provided for whether a project is considered a routine maintenance, repair, or replacement activity. Will you explain why this is the case?
5. 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.
6. From your judgement as a state air regulator, has the maximum hourly emission test used under NSPS been successful?
 - a. Would revising the NSR program to match the hourly test under NSPS allow State air regulators to administer a more certain and effective NSR preconstruction program? Please explain.
7. Do you have concerns that revising the NSR program to match the maximum hourly test under NSPS could create a scenario where a modification carried out at an existing facility could result in higher levels of annual pollution which air regulators would not have the ability to regulate or address? Please explain.

The Honorable David B. McKinley

One of the more frustrating aspects of EPA’s NSR program is uncertainty surrounding the exemption for “Routine Maintenance, Repair and Replacement” – or RMRR – at existing sources. What falls under the RMRR exemption has been left up to case-by-case interpretations by the EPA and various states, leaving utilities constantly second-guessing whether or not a change at a facility

will open themselves up to lawsuit or EPA enforcement action. Mr. Spencer – you note the need for clarity on RMRR exemptions in your suggested reforms to the NSR program.

1. If there was greater certainty surrounding the RMRR exemption, do you believe that utilities and other manufacturers would be more likely to take actions at their facilities to improve efficiency and to reduce pollution?
2. What actions could the EPA take to clarify and standardize what qualifies as RMRR to encourage these common-sense actions?

The Honorable H. Morgan Griffith

The goal of the NSR program is to regulate emissions at new sources and at existing sources undertaking major physical or operational changes, rather than regulating projects that simply maintain or improve upon existing plant operations. And the Clean Air Act attempts to make that distinction by defining an NSR modification as any physical change which “increases the amount of any air pollutant emitted by such source...”.

However, EPA’s current interpretation of this language – which looks at emissions on an annual basis – could, for example, trigger NSR for a power plant simply because it can operate more often or reliably after the changes.

1. Wouldn’t it make more sense, and still advance the goals of the Clean Air Act, for EPA to instead measure a change in emissions on an hourly basis – to actually capture those modifications that should be considered new sources of emissions?
2. Would making this change to an hourly emission test provide greater certainty to power plants and manufacturers, while still ensuring that modifications that actually do increase emissions go through the NSR permitting process?
3. Do you believe that EPA has the ability to address this issue through regulation?
4. Would statutory direction from Congress provide greater, long-term certainty?

The Honorable Frank Pallone, Jr.

1. Please identify all instances that you are aware of, during your tenure with the Arkansas Department of Environmental Quality, in which a facility in Arkansas 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.
2. 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?

- a. Would you consider this to be an increase in air pollution?
3. Do you consider an increase in annual pollution emissions even, if hourly potential emissions do not increase, to be “an increase in air pollution”?
4. 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”?