Testimony of

The Honorable Jeffrey Holmstead

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Good morning Chairmen and members of the committees. Thank you for the opportunity to talk with you about the New Source Review (NSR) program under the Clean Air Act and the proposed improvements we have announced.

There has been longstanding agreement among virtually all interested parties that the NSR program can and should be improved. For well over ten years, representatives of industry, state and local agencies, and environmental groups have worked closely with EPA to find ways to make the program work better. In 1996, EPA proposed rules to amend several key elements of the program. In 1998, EPA sought additional public input on related issues. Since 1996, EPA has had countless discussions with stakeholders and has invested substantial resources in an effort to develop final revisions to the program. Between the 1996 proposal and January 2001, EPA held two public hearings and more than 50 stakeholder meetings. Environmental groups, industry, and state, local and federal agency representatives participated in these many discussions. Over 600 detailed comments were submitted to EPA between 1992 and 2001.

In 2001, the National Energy Policy Development Group asked EPA to investigate the impact of NSR on investment in new utility and refinery generation capacity, energy efficiency and environmental protection. During this review, the Agency met with more than 100 groups, held four public meetings around the country, and received more than 130,000 written comments. EPA issued a report to President Bush on June 13 in which we concluded that the NSR program does, in fact, adversely affect or discourage some projects at existing facilities that would maintain or improve reliability, efficiency, and safety of existing energy capacity. This report lends strong support to the decade-long effort to improve the NSR program.

We now believe that it is time to finish the task of improving and reforming the NSR program. At the same time that we submitted our report to the President, we published a set of recommended reforms that we intend to make to the NSR program. These reforms are designed to remove barriers to environmentally beneficial projects, provide incentives for companies to install good controls and reduce actual emissions, specify when NSR applies, and streamline and simplify several key NSR provisions. We plan to move ahead with this rulemaking effort in the very near future. We look forward to working with you during this important effort.

Background

The NSR program is by no means the primary regulatory tool to address air pollution from existing sources. The Clean Air Act provides authority for several other public health-driven and visibility-related control efforts: for example, the National Ambient Air Quality Standards (NAAQS) Program implemented through enforceable State Implementation Plans, the NOx SIP Call, the Acid Rain Program, the Regional Haze Program, the National Emissions Standards for Hazardous Air Pollutants (NESHAP) program, etc. Thus, while NSR was designed by Congress to focus particularly on sources that are newly constructed or that make major modifications, Congress provided numerous other tools for assuring that emissions from existing sources are adequately controlled.

The NSR provisions of the Clean Air Act combine air quality planning, air pollution technology requirements, and stakeholder participation. NSR is a preconstruction permitting program. If new construction or making a modification will increase emissions by an amount large enough to trigger NSR requirements, then the source must obtain a permit before it can begin construction. To obtain the permit, the owners must meet several requirements, including applying state-of-the-art control technology. States are key partners in the program. Under the Act, States have the primary responsibility for issuing permits, and they can customize their NSR programs within the limits of EPA regulations. EPA=s role has been approving State programs and assuring consistency with EPA rules, the State=s implementation plan, and the Clean Air Act. EPA also issues permits where there is no approved NSR program, such as on some Tribal lands.

The NSR permit program for major sources has two different components -- one for areas with air quality problems, and the other for areas where the air is cleaner. Under the Clean Air Act, geographic areas, such as counties or metropolitan statistical areas, are designated as Aattainment@ or Anonattainment@ for the NAAQS, which are the air quality standards used to protect human health and the environment. Preconstruction permits for sources located in attainment or unclassifiable areas are called Prevention of Significant Deterioration (PSD) permits and those for sources located in nonattainment areas are called nonattainment NSR permits.

A major difference in the two programs is that the control technology requirement is more stringent in nonattainment areas and is called the Lowest Achievable Emission Rate (LAER). In attainment areas, a source must apply Best Available Control Technology (BACT). The statute allows consideration of cost in determining BACT.

Also, in keeping with the goal of progress toward attaining the NAAQS, sources in nonattainment areas must always provide or purchase Aoffsets@ B decreases in emissions which compensate for the increases from the new source or modification. In attainment areas, PSD sources typically do not need to obtain offsets. However, under the PSD provisions, facilities are required to undertake an air quality modeling analysis of the impact of the construction project. If the analysis finds that the project contributes to ambient air pollution that exceeds allowable levels, the facility must take steps to reduce emissions and mitigate this impact. In addition to ensuring compliance with the NAAQS, States track and control emissions of air pollution by calculating the maximum increase in concentration allowed to occur above an established background level B that change in concentration is known as a PSD increment.

Another key requirement is the provision in the PSD program to protect pristine areas like national parks or wilderness areas, also referred to as Class I areas. If a source constructs or modifies in a way that could affect a Class I area, the law allows a federal land manager, for example, a National Park Service superintendent, an opportunity to review the permit and the air quality analysis to assure that relevant factors associated with the protection of national parks and wilderness areas are taken into consideration, and, if necessary, that harmful effects are mitigated.

Current Status of the NSR Program

Let me give you a few statistics about the NSR program to put things in perspective. Estimates based on our most recent data indicate that typically more than 250 facilities apply for a PSD or nonattainment NSR permit annually. The nonattainment NSR and PSD programs are designed to focus on changes to facilities that have a major impact on air quality.

EPA has worked for over 10 years to make changes to the NSR program to provide more

flexibility and certainty for industry while ensuring environmental protection. In 1992, EPA issued a regulation addressing issues regarding NSR at electric utility steam generating units making major modifications. This is referred to as the AWEPCO@ rule. And in 1996, EPA proposed to make changes to the existing NSR program that would significantly streamline and simplify the program. In 1998, EPA issued a notice of availability where we asked for additional public comment on several issues.

EPA held public hearings and more than 50 stakeholder meetings on the 1996 proposed rules and related issues. Environmental groups, industry, and State, local and Federal agency representatives variously participated in these discussions. Despite widespread acknowledgment of the need for reforms, EPA has not yet finalized these proposed regulations.

In May 2001, the President issued the National Energy Policy. The Policy included numerous recommendations for action, including a recommendation that the EPA Administrator, in consultation with the Secretary of Energy and other relevant agencies, review New Source Review regulations, including administrative interpretation and implementation. The recommendation requested EPA to issue a report to the President on the impact of the regulations on investment in new utility and refinery generation capacity, energy efficiency, and environmental protection.

In June 2001, EPA issued a background paper giving an overview of the NSR program. EPA solicited public comments on the background paper and other information relevant to New Source Review. In developing the final report responding to the National Energy Policy recommendation, EPA met with more than 100 industry, environmental, and consumer groups, and public officials, held public meetings around the country, and evaluated more than 130,000 written comments.

On June 13, 2002, EPA submitted the final report on NSR to President Bush. At that time, EPA also released a set of recommended reforms to the program. With regard to the energy sector, EPA found that the NSR program has not significantly impeded investment in new power plants or refineries. For the utility industry, this is evidenced by significant recent and future planned investment in new power plants. Lack of construction of new greenfield refineries is generally attributed to economic reasons and environmental or other permitting restrictions unrelated to NSR.

With respect to the maintenance and operation of existing utility generation capacity, there is more evidence of adverse impacts from NSR. EPA=s review found that uncertainty about the exemption for routine activities has resulted in the delay or cancellation of some projects that would maintain or improve reliability, efficiency and safety of existing energy capacity. Reforms to NSR will remove barriers to pollution prevention projects, energy efficiency improvements, and investments in new technologies and modernization of facilities.

EPA announced that it intends to take a series of actions to improve the NSR program, promote energy efficiency and pollution prevention, and enhance energy security while encouraging emissions reductions.

These improvements include finalizing NSR rule changes that were proposed in 1996 and recommending some new changes to the rules. The 1996 recommendations and subsequent notice of availability were subject to extensive technical review and public comment over the past six years. EPA will conduct notice-and-comment rulemaking for changes not proposed in 1996.

Our actions are completely consistent with the strong public health protection provided by the Clean Air Act. The key provisions of the Clean Air Act include several programs designed to

protect human health and the environment from the harmful effects of air pollution and all of them remain in place. Moreover, the changes that we make to the NSR program will be prospective in nature, and EPA will continue to vigorously pursue its current enforcement actions. Accordingly, EPA does not intend for its future rulemaking or proposed changes to be used in, or have any impact on, current litigation.

SUMMARY OF IMPROVEMENTS

Congress established the New Source Review Program in order to maintain or improve air quality while still providing for economic growth. The reforms announced last month will improve the program to ensure that it is meeting these goals. These reforms will:

$ Provide greater assurance about which activities are covered by the NSR program;
$ Remove barriers to environmentally beneficial projects;
$ Provide incentives for industries to improve environmental performance when they make changes to their facilities; and
$ Maintain provisions of NSR and other Clean Air Act programs that protect air quality.

The following NSR reforms, all of which were originally proposed in 1996, have been subject to extensive technical review and public comment:

? Pollution Control and Prevention Projects: To encourage pollution control and prevention, EPA will create a simplified process for companies that undertake environmentally beneficial projects. NSR can discourage investments in certain pollution control and prevention projects, even if they are environmentally beneficial.

? Plantwide Applicability Limits (PALs): To provide facilities with greater flexibility to modernize their operations without increasing air pollution, a facility would agree to operate within strict sitenwide emissions caps called PALs. PALs provide clarity, certainty and superior environmental protection.

? Clean Unit Provision: To encourage the installation of statenofnthenart air pollution controls, EPA will give plants that install Aclean units@ operational flexibility if they continue to operate within permitted limits. Clean units must have an NSR permit or other regulatory limit that requires the use of the best air pollution control technologies.

? Calculating Emissions Increases and Establishing Actual Emissions Baseline: Currently, the NSR program estimates emissions increases based upon what a plant would emit if operated 24 hours a day, year-round. This can make it difficult to make certain modest changes in a facility without triggering NSR, even if those changes will not actually increase emissions. This common-sense reform will require an evaluation of how much a facility will actually emit after the proposed change. Also, to more accurately measure actual emissions, account for variations in business cycles, and clarify what may be a Amore representative@ period, facilities will be allowed to use any consecutive 24-month period in the previous decade as a baseline, as long as all current control requirements are taken into account.

EPA also intends to propose three new reforms that will go through the full rulemaking process, including public comment, before they are finalized. These include:

· Routine Maintenance, Repair and Replacement: To increase environmental protection and promote the implementation of routine repair and replacement projects, EPA will propose a new definition of Aroutine@ repairs. NSR excludes repairs and maintenance activities that are Aroutine", but a multi-factored case-by-case determination must currently be made regarding what repairs meet that standard. This has deterred some companies from conducting certain repairs because they are not sure whether they would need to go through NSR. EPA is proposing guidelines for particular industries to more clearly establish what activities meet this standard.

· Debottlenecking: EPA is proposing a rule to specify how NSR will apply when a company modifies one part of a facility in such a way that throughput in other parts of the facility increases (i.e., implements a Adebottlenecking@ project). Under the current rules, determining whether NSR applies to such complex projects is difficult and can be time consuming.

· Aggregation: Currently, when multiple projects are implemented in a short period of time, a detailed analysis must be performed to determine whether the projects should be treated separately or together (i.e., Aaggregated@) under NSR. EPA=s proposal will establish two criteria that will guide this determination.

It is important to note that we are undertaking changes in the NSR program at the same time as we are moving forward on the President's historic Clear Skies Initiative. The Clear Skies Initiative is the most important new clean air initiative in a generation, and will cut power plant emissions of three of the worst air pollutants - nitrogen oxides, sulfur dioxide, and mercury - by 70 percent. The initiative will improve air quality and public health, protect wildlife, habitats and ecosystems. By using a proven, market-based approach, Clear Skies will make these reductions further, faster, cheaper, and with more certainty than the current Clear Air Act. In the next decade alone, Clear Skies will remove 35 million more tons of air pollution than the current Clean Air Act.

In summary, the NSR reforms will remove the obstacles to environmentally beneficial projects, simplify NSR requirements, encourage emissions reductions, promote pollution prevention, provide incentives for energy efficient improvements, and help assure worker and plant safety. Overall, our reforms will improve the program so that industry will be able to make improvements to their plants that will result in greater environmental protection without needing to go through a lengthy permitting process. Our actions are completely consistent with key provisions of the Clean Air Act designed to protect human health and the environment from the harmful effects of air pollution.