

COMMENTS on a **PROPOSED RULE TO
CLARIFY APPLICABILITY OF THE CLEAN AIR
ACT'S NEW SOURCE REVIEW PROGRAM
THROUGH DEBOTTLENECKING, AGGREGATION
AND PROJECT NETTING**

(Docket Number OAR-2003-0064)

By the National Association of Manufacturers

Submitted to the Environmental Protection Agency on
November 13, 2006

**COMMENTS OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS
to the
ENVIRONMENTAL PROTECTION AGENCY
regarding
DOCKET NUMBER OAR-2003-0064**

**PROPOSED RULE TO CLARIFY THE CLEAN AIR ACT'S NEW SOURCE REVIEW
APPLICABILITY THROUGH DEBOTTLENECKING, AGGREGATION AND
PROJECT NETTING**

The National Association of Manufacturers (NAM) submits these comments in response to the Environmental Protection Agency's (EPA) Proposed Rule to clarify applicability of the New Source Review (NSR) program, as published in the September 14, 2006 issue of the Federal Register, *71 Fed. Reg. 54235*. The NAM is the nation's largest industrial trade association representing small and large manufacturers in every industrial sector and in all 50 states. Any changes to the NSR program will impact the operation of our members' power plants and manufacturing facilities (*71 Fed. Reg. 54235*, September 14, 2006).

The NAM's mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth. As a general matter, the NAM is supportive of EPA regulations that are designed to provide real net benefits to environmental quality and the public health, including the health of manufacturing workers and their families. Conversely, the NAM opposes regulations that would impose overly burdensome compliance costs on the manufacturing sector, especially with no clear goal for achieving improved environmental quality. Simplifying compliance requirements helps create an environment of business certainty, enhances economic growth, and allows the EPA to fulfill its statutory mandate to protect environmental quality and public health.

I. Background

The NAM supports any effort by the Administration to reform the NSR program in a meaningful manner. The majority of NAM members are impacted by the NSR permitting process either directly or indirectly. NSR permits involve a great deal of input from environmental engineers, lawyers, and other specialists, which add significantly to the manufacturing sector's overhead costs. Even those manufacturers who do not apply for NSR permits buy their electricity from power providers that must comply with the program.

The NAM appreciates the opportunity to submit comments on the EPA's proposal to adopt federal NSR provisions relating to debottlenecking, aggregation, and project netting. We support the EPA's recognition that these three aspects of the program need clarification. However, we have concerns relating to language in the preamble outlining how regulators would ultimately interpret and apply the proposed changes to debottlenecking and aggregation. The NAM believes that the proposed regulatory language addressing debottlenecking and aggregation, if interpreted in a reasonable manner, should accomplish appropriate policy

objectives in these areas. We would also like to acknowledge guidance from the American Chemistry Council, the American Petroleum Institute and the Clean Air Implementation Group in clarifying how the EPA could align aspects of the preamble and proposed rule to increase business certainty and improve the nation's air quality. While supporting the general policy thrust of streamlining NSR, the NAM urges the EPA to revise the preamble and, to the extent necessary, certain language within the proposed rule as follows:

II. Debottlenecking

- The EPA should expand application of the proposed "legal causation" test, so that emissions from unmodified, debottlenecked units will only be taken into account if a proposed change would necessitate a revision to an applicable emissions or operational limit and, in that event, only to the extent of the increase in authorized emissions.
- If the EPA decides to require that debottlenecked units must be subject to emissions or operational limits, the Agency should revise the preamble to provide that any federal, state, or local limit applicable to such units will be sufficient and that such limits are not required to meet the "practicably enforceable" criteria.
- The EPA should provide that emissions increases at debottlenecked units not excluded from consideration under the "legal causation" test will be excluded from consideration if they meet the criteria of the "physical causation" approach. Although the EPA may choose between two different tests, the NAM supports the "legal causation" test as the one that will establish a stronger climate of regulatory certainty, in the event regulators decide that only one test will apply.

The NAM believes that the Agency's preference to apply the legal causation test is the fairest and most unambiguous approach for implementing the proposed rules. We also agree that the legal causation approach is a reasonable interpretation and construction of statutory requirements to which the Agency is entitled deference in carrying out legislative intent.

III. Aggregation

- The EPA should provide that separate projects will only be subject to an aggregation determination when each of the projects under consideration would not have been undertaken unless the other was undertaken. As stated within the proposed rule, the projects are *mutually dependent on each other*.
- The EPA should significantly revise the preamble's aggregation discussion to be consistent with the rule language requiring mutual dependence of projects.
- There should be a rebuttable presumption that projects are separate and will not be aggregated if the date of construction of the projects is more than one year apart, and a conclusive presumption if the date of construction is more than three years apart.

IV. Project Netting

Project netting constitutes another logical step toward reducing delays and redundancy often associated with NSR. Specifically, the EPA should take the opportunity to make meaningful reforms to this aspect of NSR by doing the following:

- The EPA should adopt rule language providing for project netting in Step 1 of the emissions increase analysis where emission increases by themselves exceed relevant significance thresholds.
- If the net emissions increase determined in the first step is significant, the increases and decreases from the stationary source during the contemporaneous period would, as in the past, be considered to determine whether there is a facility-wide emissions increase during that period.
- The EPA should revise the proposed rule language so that the already authorized project netting for projects involving only existing emissions units is not changed and the rule language only addresses project netting when the hybrid emissions increase test is applicable.

Ultimately, the project netting aspect of the proposal should simplify the process of calculating emissions used to determine whether NSR applies when emissions increases and decreases are combined. By simplifying the method for determining what constitutes the actual net emissions increase associated with the upgrade of a facility and equipment, regulators will reduce the amount of time and cost necessary to complete the NSR permitting process.

V. Conclusion

The NAM urges the EPA to use the current rulemaking to further clarify and streamline the applicability of NSR requirements in a manner that will expedite installation of more modern and energy efficient upgrades and equipment on regulated facilities. The frequency with which federal regulators attempt to revise NSR and then have their proposals litigated in court, however, underscores the need to reform the program through legislative means. The manufacturing sector and its workers urge you to move forward with a reformed and streamlined NSR program. For more information, contact Bryan Brendle at bbrendle@nam.org or (202) 637-3176.