



# NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

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September 11, 2003

Lee Wasserman  
Executive Director  
Rockefeller Family Fund  
437 Madison Avenue, 37th Floor  
New York, NY 10022

Dear Mr. Wasserman:

You have requested that the National Academy of Public Administration (the Academy) provide technical assistance to the Rockefeller Family Fund by reviewing the recent study of the Environmental Integrity Project (EIP) and the Council of State Governments/Eastern Regional Conference (CSG/ERP), entitled Reform or Rollback? How EPA's Changes to New Source Review Affect Air Pollution in 12 States. The EIP-CSG/ERC study evaluates the potential for increased air emissions due to a provision of the EPA's revised New Source Review (NSR) rule, as announced on December 31, 2002. Specifically, you have asked the Academy's NSR Panel to evaluate the EIP-CSG/ERC's methodology and conclusions about the environmental impacts that may arise due to EPA's change from a 2-year lookback to a 10-year lookback for calculating a significant increase in emissions and determining the applicability of NSR requirements.

The Academy's NSR Panel recently completed a thorough evaluation of the NSR program at the request of Congress and published A Breath of Fresh Air: Reviving the New Source Review Program in April 2003. The Panel concluded that the NSR program is an essential tool for the states and EPA to reduce air pollution from major stationary sources and that Congress intended for NSR to reduce emissions through development and application of cleaner technologies as older, more polluting equipment wears out and is replaced or modernized over time (Panel Report, p. 109).

While the Panel found that EPA's prior NSR rules work fairly well for newly built sources (ibid.), it identified several administrative difficulties with the structure and implementation of the program as applied to existing sources, thus preventing NSR from working as Congress intended. The Panel particularly noted that effective administration of NSR is greatly hampered by pervasive data gaps, inadequate monitoring and reporting of emissions data, difficulty in obtaining permit information, and undue reliance on industry self-determinations (id. at pp. 117 and 120, Findings 10 and 13). The Panel then found that these inadequacies have handicapped the ability of air agencies to monitor compliance by industry

and have provided broad regulatory loopholes enabling existing sources to avoid NSR's requirements (id. at pp. 116 - 119, Finding 9 and 11).

As you requested, the Panel has now examined the EIP-CSG/ERC's report dated July 28, 2003, along with additional results and data corrections supplied by EIP-CSG/ERC that will be included when its final report is sent to EPA. The Panel concludes that EIP-CSG/ERC's study presents an appropriate, reasonable, and fair methodology for determining the environmental impacts of the new 10-year lookback rule. The Panel also finds that EIP-CSG/ERC's methodology and analysis support the report's conclusion that the new rule "could allow significant increases in emissions," which "will often not be limited by other federal programs absent NSR" (EIP-CSG/ERC's Executive Summary, p.1-1).

To determine whether emissions would increase if sources are allowed to use a 10-year lookback for their baselines -- rather than the prior rule's lookback, which allowed only the most recent two years -- EIP-CSG/ERC obtained emission inventories from 12 states. EIP-CSG/ERC then sorted these emission data by pollutant to eliminate facilities that would not be subject to NSR because they are not "major." EIP-CSG/ERC also did not include data on power plant emissions because they are not covered by the 10-year lookback provision.

For each major source, EIP-CSG/ERC approximated the calculations that facilities would use for the 10-year lookback to determine whether physical or operational changes would trigger NSR. For each of these facilities, EIP-CSG/ERC selected the highest average levels of emissions during a consecutive 24-month period over the last ten years. EIP-CSG/ERC then compared those figures with the emission baselines that facilities would have used under EPA's prior 2-year lookback. EIP-CSG/ERC's comparison revealed that the 10-year lookback could allow facilities to increase emissions by several million tons per year without triggering NSR's requirement to reduce emissions and upgrade their technologies.

The Panel notes that EIP-CSG/ERC's choice of the 12 states to be included in the study was limited by time and resource constraints, as well as by availability of accurate emission inventory data. Consequently, no western states are represented, and eastern states predominate. As a result, the 12 states included in EIP-CSG/ERC's calculations may not be a true cross-section of the nation's emission levels, and EIP-CSG/ERC's results cannot properly be extrapolated to the rest of the country. It is clear, however, that EIP-CSG/ERC's calculations for just these 12 states accurately predict that the new 10-year lookback rule could produce significant increases in emissions.

The Panel believes that EIP-CSG/ERC's methodology for determining whether the 10-year lookback could lead to significant emission increases is a straightforward, appropriate, and relatively simple way to evaluate the potential environmental effects of EPA's new rule. This analysis certainly could be useful for quantifying the environmental impacts of the 10-year lookback if EPA would agree to replicate it using the emission inventories of all 50 states.

The Panel also notes that, in several respects, EIP-CSG/ERC's study is conservative in its analysis and in deciding what emission data to include. First, in determining what constitutes "major" sources, EIP-CSG/ERC mostly used emissions from sources emitting more

than 250 tons per year (unless a unit was clearly in a specific category that is major when it emits more than 100 tpy), rather than the larger number of sources emitting 100 tpy that could have been included in the states with nonattainment areas. If EIP-CSG/ERC had included even more major sources, its calculations likely would predict even greater emission increases. Second, many of the 12 states did not have data for all of the past ten years, but EIP-CSG/ERC was able to obtain at least six years of past data from the states that did not have ten years of data. EIP-CSG/ERC then used the highest two years for as far back as state emission data were available, but never less than six years in the past.

Consequently, the Panel believes that actual emission increases in the 12 states due to the 10-year lookback could be even higher than EIP-CSG/ERC has calculated. These greater increases could occur if facilities seeking to avoid NSR could each generate a full ten years of data and then use as their baselines any higher emission levels from another two-year period during the entire ten years. As the Panel noted in its April 2003 report, it has been very difficult for the states and EPA to collect accurate or complete information on the universe of facilities covered by NSR, their compliance, and their past emission levels (Panel report, pp. 120-121, Finding 13). Due to this lack of data, states may have a difficult burden to rebut facilities' baseline calculations for the 10-year lookback unless emissions have previously been reported to the states over the last ten years.

EIP-CSG/ERC next looked at the Title V operating permits for six individual major facilities to determine whether their permit limits or other federal air programs would serve as a "backstop" and thus limit any potential increases that would otherwise be allowed by the 10-year lookback, but not by the 2-year lookback. This analysis is admittedly difficult and complicated because hypothetical situations are being applied to real facilities, and it is unclear how some of the other air rules might be interpreted and implemented by states or facilities. Moreover, EIP-CSG/ERC's analysis had to be limited to only six facilities due to resource constraints, so the results cannot be extrapolated to all other major sources.

Despite these limitations, however, the Panel believes that these six facilities are appropriate proxies for the major facilities and industry sectors affected by NSR. Thus, EIP-CSG/ERC's review of these actual permits provides a reasonable, representative, and generally thorough demonstration of whether other air programs might limit emission increases even if NSR is not triggered because of the 10-year lookback. The Panel notes that the EIP-CSG/ERC identified a broad range of current air standards and restrictions that might apply to each of the six facilities. In some cases, EIP-CSG/ERC found there would be no other air programs that would prevent emission increases and, in others, there would be only a partial reduction of emissions or it was not clear whether a facility would be subject to any limits. The Panel believes these six examples demonstrate that there is no easy way for current air programs to prevent emission increases and replace the limits required by the current NSR program, especially if those requirements are properly enforced by the state air agencies and EPA.

The Panel notes, however, that EIP-CSG/ERC's analysis did not take into account two other authorities that states could potentially use to limit future emissions if, or when, the 10-year lookback produces significant emission increases. First, states could revise emission levels in their State Implementation Plans (SIPs) and ratchet down allowable emissions from mobile

sources, area sources, or smaller stationary sources. Second, states could petition EPA under section 126 to reduce interstate air pollution transported from other states.

However, the Panel is doubtful that these authorities are realistic ways for states to curb emission increases because they are not designed to protect against backsliding. Indeed, any potential emission reductions using these options would be speculative, often politically unpalatable, and time-consuming. These two options would also require investing significant state resources, and will only take effect long after significant delays. Meanwhile, any excess pollution will already have been emitted. Additionally, the Panel notes that current Clear Skies bills (H.R. 999 and S. 485) propose significant revisions to the petition process of section 126, providing that, if any petitions are granted by EPA, the timeframe for compliance and implementation could not begin until 2012.

In its April 2003 report, the Panel noted that extending the time period for determining emission baselines would enable existing major facilities to continue avoiding NSR and would aggravate the problems identified by the Panel that have enabled many older, more polluting facilities to avoid reducing their emissions or installing modern technologies (Panel report, p. 118, Finding 11). EIP-CSG/ERC's study builds on the Panel's findings and further shows that the 10-year lookback will rarely, if ever, subject more sources to NSR's requirements, as compared to the 2-year lookback. Instead, it will allow more major sources to escape NSR and to continue releasing excess emissions for the indefinite future.

EPA justifies the 10-year lookback by saying it will allow facilities more flexibility in their operations. However, under the prior NSR rule, a facility could use a two-year period other than the most recent one if it could demonstrate to its permitting agency that this earlier period was more representative of normal operations. While EIP-CSG/ERC's survey of the states indicates that this alternative lookback period has been rarely used, the Panel believes that this provision still would provide the needed flexibility for industry without granting a 10-year lookback to all major facilities.

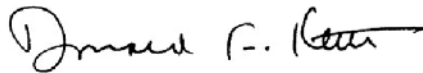
In August 2003, the General Accounting Office (GAO) found that EPA lacked reliable data for the NSR program, thus creating uncertainty about the impacts of EPA's rule changes on December 31, 2002. GAO then recommended that EPA determine what data could be used to monitor and measure the effects of the revised NSR rules and use those data to calculate whether the rules would create adverse environmental impacts. Clean Air Act: EPA Should Use Available Data to Monitor the Effects of Its Revisions to the New Source Review Program (GAO-03-947). EPA's reopening and reconsideration of the revised NSR rules has now offered an opportunity for the agency to evaluate the environmental effects of the rules before any adverse impacts will occur. Given the potential risks to public health that could result from increased air pollution under the 10-year lookback, the Panel agrees with the EIP-CSG/ERC and GAO recommendations that EPA should prepare a thorough analysis of the potential environmental impacts from the revised rules.

Indeed, EIP-CSG/ERC's study shows that a careful quantitative analysis can be done. Using the six permits as a sample, the EIP-CSG/ERC has demonstrated how EPA could analyze the impacts of the revised rules. It has also revealed that, if EPA finally adopts the 10-year

lookback, existing facilities will very likely be able to extend the lives of their old equipment and avoid upgrading with new technologies that will reduce emissions.

In conclusion, the Panel's review of EIP-CSG/ERC's study shows that the methodology and conclusions are a reasonable and fair assessment of the environmental impacts of the 10-year lookback provision of EPA's revised NSR rules. As in its April report (Panel Report, pp. 133-137), the Panel strongly recommends that, rather than broadening NSR's loopholes, EPA should reduce the inequities in the current NSR program and promote installation of modern, cleaner technologies that will reduce air pollution and protect public health.

Sincerely yours,



Don Kettl, NSR Panel Chair  
Professor of Public Affairs and Political Science  
University of Wisconsin - Madison

Submitted and signed on behalf the other members of the Academy's NSR Panel:

Peter Harkness, Editor and Publisher, Governing Magazine

Lisa Heinzerling, Professor of Law, Georgetown University Law Center

DeWitt John, Director of Environmental Studies, Bowdoin College

Howard Messner, President of the National Academy of Public Administration

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Christophe Tulou, President, The Center for Seachange

Alfred M. Zuck, Distinguished Adjunct Professor in Residence, American University