



April 10, 2024

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Clarifying the Scope of “Applicable Requirements” Under State Operating Permit Programs and the Federal Operating Permit Program, Docket ID No. EPA-HQ-OAR-2023-0401

Dear Administrator Regan:

The undersigned national health, medical and nursing organizations appreciate the opportunity to provide comments on this proposed rule. Our organizations oppose EPA’s proposal and urges the agency to withdraw it. The proposed rule would entrench a practice put in place by the previous administration that makes it harder for the public to seek redress when a polluting source in their community emits more dangerous pollution than it should. This practice puts health at risk and runs counter to the administration’s stated environmental justice goals.

The New Source Review (NSR) process is a critical part of the Clean Air Act and fundamental to ensuring that environmental injustices are not made worse. This process is designed to ensure that new or modified sources of pollution do not add to the burden of unhealthy air in an area. Requirements differ greatly between whether a new or modified source is subject to major New Source Review or minor New Source Review. The former comes with important, health-protective requirements, including that facilities use the best available pollution controls; the latter’s requirements are far less stringent.

The proper application of NSR, including whether a source goes through the major or minor NSR process, is critical for ensuring the public is protected from widespread criteria pollutants like ozone and particulate matter and their precursor pollutants. Ozone and particulate matter cause a host of health harms, including asthma attacks and emergency room visits in the short-term, permanent damage to the lungs and other organs in the long-term, and – in the case of particulate matter – lung cancer.

These pollutants can harm anyone’s lungs, but the risk is not shared equally. Decades of siting and permitting decisions have caused many communities of color to shoulder a greater burden of air pollution from nearby polluting sources. The American Lung Association’s 2023 “State of the Air” report showed that people of color are disproportionately likely to live in a community with unhealthy air pollution, and three times as likely to live in a place where the air earned failing grades for all three measures of air pollution in the report.

Our organizations are committed to advancing environmental justice and reducing health disparities. We are similarly committed to protecting the public’s right to know when the air

they breathe is unhealthy and the right to seek redress for those harms, including through citizen suits and other legal avenues. The ability of community members to seek remedies under the Clean Air Act for pollution in the air they breathe is at the core of the law and critical for its continued success.

The Title V permitting program provides the operating permit for large polluting sources that compiles their pollution control, monitoring, reporting and other obligations in one place.

EPA had a two-decades-long practice, from 1997 to 2017, of ensuring that the Title V permitting process was available for cases when NSR for a source was improperly applied. This longstanding practice was an important part of the Clean Air Act's track record of success in reducing emissions from polluting sources. Under this practice, a member of the public could object to a facility's Title V operating permit if they could demonstrate that there were errors in the application of NSR. EPA could also use this process if a state issued a Title V permit that incorrectly applied pollution control requirements. Because Title V permits aim to compile obligations for facilities' operation in one permit, it made sense to have it serve as a backstop if the NSR requirements were improperly applied.

This is not merely a theoretical concern; environmental and legal organizations have raised numerous examples of times when the Title V process served as a vital avenue to correct mistakes with NSR with dire public health consequences. For example, a polluting source could go through minor NSR but later be shown to pollute in excess of the threshold that should have required it to undergo major NSR. In that case, the ability of an individual to object to the continued operation of that polluting source with inadequate pollution control, monitoring and reporting requirements is essential to avoiding harms to health in that community that the law should have prevented in the first place.

What's more, this process not only guaranteed community members an avenue to seek redress, it also allowed EPA a crucial line of oversight if states improperly applied NSR. Fundamental to the inception of the Clean Air Act is the fact that state action alone was insufficient to address air pollution and its many health harms. EPA must not remove a tool from its own toolbox to ensure that the federal-level protections of the Clean Air Act are enforced during one of the times when it matters most – when a new polluting source is putting communities at risk.

The proposal claims that formally removing the pathway of a Title V petition for the public to address instances where NSR was improperly applied or enforced, somehow results in an improvement for public engagement. The slew of comments from community members and their representatives decrying this proposal at EPA's public hearing makes clear that the public strongly disagrees with EPA's assertion. Removing an avenue to participate in ensuring air pollution cleanup under the law is a loss for the public, even if alternatives exist.

Put simply: this proposal codifies a rollback. The previous administration took numerous actions that undermined air pollution protections and public health. Some were formal rulemakings, and many others were changes in practice that chipped away at environmental protections. President Biden pledged from the beginning of his administration to review and revisit many of these harmful decisions, and we have urged the agency at every opportunity to reverse the rollbacks and advance new public health protections. However, far from reversing a harmful rollback, the proposal at issue here would make one of these harmful changes permanent.

We urge you to withdraw this proposal and to return to the practice that for two decades helped ensure that individuals living in the shadow of polluting sources had a pathway to fight for the protection of their health. Anything less is a failure for environmental justice.

Thank you.

Allergy & Asthma Network

Alliance of Nurses for Healthy Environments

American Lung Association

American Thoracic Society

Asthma and Allergy Foundation of America

Children's Environmental Health Network

National Association of Pediatric Nurse Practitioners

National League for Nursing

National Medical Association

Physicians for Social Responsibility

The Medical Society Consortium on Climate and Health