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NRDC Backgrounder

Gutting New Source Review: Letting Polluters Lie About Today's Pollution Levels So They Can Pollute More Later

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Changes at industrial facilities resulting in significant pollution increases (*e.g.*, 40 tons per year) trigger cleanup obligations under the Clean Air Act's "New Source Review" (NSR) program. To determine whether pollution increases, a company must compare its pollution before the change, known as its pollution "baseline," with pollution levels after the change. The administration's plan would allow a facility to pick a fictional pollution baseline that is worse than its actual pollution levels, essentially allowing the facility to pollute more and *pretend* it is not. This ruse would allow the facility to avoid cleaning up substantial pollution increases.

	Current Law For Non-Utilities (For Over 16,000 Facilities Nationwide)	Administration's Plan to Weaken Current Law (For Over 16,000 Facilities Nationwide)
Actual Pollution "Baseline"	Pollution baseline for equipment is calculated as the average of the last two years' pollution levels, unless another period is "more representative" of today's pollution levels.	EPA will allow the pollution baseline to be the highest polluting level for the equipment during any two consecutive years in the previous 10 years.
Example	A piece of equipment pollutes 1,000 tons per year today. But it has a pollution baseline of 1,100 tons, based upon the average pollution levels of the past 2 years (1,200 and 1,000 tons). A plant upgrade generally can increase pollution from 1,000 tons to 1,140 tons before it must be cleaned up. (NSR requires cleanup of "significant" pollution increases, and 40 tons per year is one common "significance" threshold.)	This same piece of equipment pollutes 1,000 tons per year today. But under EPA's weakening changes, it now has a pollution baseline of 1,600 tons, based upon its highest polluting level for the equipment during any two consecutive years in the previous 10 years (1,650 and 1,550 tons, eight and nine years ago). A plant upgrade can now increase pollution from 1,000 tons to 1,640 tons or more before it must be cleaned up.
Air Quality Impact	The pollution baseline is closely related to actual pollution levels so that significant pollution increases over today's pollution levels will be avoided as much as possible. Significant pollution increases from this baseline requires clean up to better protect air quality.	In the example above, 500 additional tons of harmful air pollution would escape cleanup. EPA would weaken current law to allow dirtier, inflated pollution levels from as long as 10 years ago to misrepresent today's pollution baseline. Facilities would be allowed to cherry pick dirtier operational levels from the past, pollute more in the future, and escape cleanup obligations.

<p>Internal EPA Criticism of Weakening Change</p>	<p>EPA’s enforcement office counts this issue among “proposals present[ing] a risk of significantly diminished program benefits.”</p> <p>“Based on our review of current case files, moving to a ‘high 2 in 5’ from a ‘last two years’ as the pre-change baseline will have some reduction (perhaps 20 per cent) on the scope of the NSR program as it impacts non-utility sources.... A 10 year baseline would substantially diminish the scope of the program. Our best estimate is that it would reduce the number of facilities subject to NSR by 50 per cent or more compared to a high 2 in 5 baseline.”</p>
<p>State Air Regulators’ Criticism of Weakening Change¹</p>	<p>“[T]he Administration is pursuing an approach that would allow a source to ‘look back’ and select any 24-month period over the past 10 years upon which to establish its emissions baseline and then to compare that arbitrary – and, most likely, inflated – baseline to a projection of future emissions that is not only far more speculative, but also unenforceable. Such a scenario would provide yet another opportunity for new emissions to avoid NSR.”</p>

¹ January 23, 2002 letter from State & Territorial Air Pollution Program Administrators and Association of Local Air Pollution Control Officials to U.S. EPA Administrator Christine Todd Whitman.