

FREQUENTLY ASKED QUESTIONS (FAQ) ABOUT ENVIRONMENTALISTS' NEW SOURCE REVIEW RULES CHALLENGE

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- **What environmental groups are filing briefs in federal court today?**

Alabama Environmental Council, Clean Air Council, Group Against Smog and Pollution (GASP), Michigan Environmental Council, Ohio Environmental Council, Scenic Hudson, and the Southern Alliance for Clean Energy join with national groups American Lung Association, Natural Resources Defense Council, Environmental Defense, and Sierra Club in challenging the Bush Administration's changes to the rules governing New Source Review. The groups are in federal appellate court in Washington D.C.

- **Why are the groups challenging the rules?**

The challenged rules are illegal and result in significant amounts of additional health-threatening pollution emitted each year in the communities in which the groups' members live and work. The 2002 rules changed important Clean Air Act rules about when highly polluting facilities like power plants, and other industrial sources of air pollution must control the air pollution they emit.

- **How did the rules changes effect public health?**

The rule changes allow large industrial facilities – power plants, chemical companies, refineries, for example – to emit much more pollution than they do at present but still avoid the legal requirement in the Clean Air Act that they add pollution controls. The net effect of the rules is that air pollution from these facilities is not reduced over time. The pollutants in question are those that form ozone smog, add particulate matter to the air, and cause acid rain, among other adverse effects. Members of the groups filing briefs today are forced to breathe increased amounts of these pollutants as a result of the rules changes, thereby facing heightened risk of asthma attacks, heart attacks, lost work days, birth defects, increased hospital costs, and even premature death.

- **Why are the rules illegal?**

The U.S. Congress, in the Clean Air Act, required that “any” physical or operational change at an industrial source, which increases the amount of “any” air pollutant, must undergo review. Previous rules required that if on review it was found that the increase in pollution is significant, the source would be required to control the increase. The new rules allow certain kinds of changes completely to escape review in the first instance, even where the actual pollution increases resulting from the physical changes at a facility will be significant.

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- **Didn't EPA study the effects of the rule before finalizing it?**

The groups' brief demonstrates that the EPA in many instances failed to provide adequate support for the rules changes. Indeed, some of EPA's justifications for the rules changes have been determined by the U.S. General Accounting Office to be based on unsubstantiated anecdotes submitted by the regulated industry, rather than on reliable data.

- **What is an example of a project that will increase pollution under the challenged rules?**

A refinery seeks to renovate and expand a processing unit at its 40-year-old facility. The unit is quite decrepit, and over the last five years has barely been used at all, which means it has emitted very little air pollution. Without the changes the unit would continue to be used only infrequently or shut down. The new rules would allow the unit to emit as much as it did up to ten years ago, when the unit was operating much more often and emitting much more pollution than it has most recently, and would not require the changes to undergo review, nor would pollution controls be required. The previous rules allowed a "lookback" of only two years for this purpose.

Furthermore, the new rules allow the owner of the source to "lock-in" a *source-wide* cap over the whole facility, so that subsequent changes to the source, made up to 30 years later can escape review if the cap is not exceeded.

This means that pollution levels from this facility will effectively be frozen, and not reduced, even up to 30 years from now. This directly contradicts the Clean Air Act's goals of protecting and enhancing the nation's air quality, so as to promote public health, by ensuring careful review and by reducing pollution from such sources over time.

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