

**American Lung Association of North Carolina · Appalachian Voices · Blue Ridge Environmental Defense League · Canary Coalition · Carolinas Clean Air Coalition · Clean Water For North Carolina · Environmental Defense · National Forest Protection Alliance · NC Public Interest Research Group · North Carolina Sustainable Energy Association · Save Our State · Sierra Club, North Carolina Chapter · Southern Appalachian Biodiversity Project · Southern Environmental Law Center · Western North Carolina Alliance**

January 27, 2003

The Honorable Michael F. Easley  
Office of the Governor  
Raleigh, NC

The Honorable Roy A. Cooper  
Office of the Attorney General  
Raleigh, NC

Dear Governor Easley and Attorney General Cooper:

We are writing to ask that the state of North Carolina join with nine other states in suing the Environmental Protection Agency to block recent regulatory changes that weaken the Clean Air Act. These changes threaten the health of North Carolinians, and should not go forward. New Source Review (NSR) is an integral tool in reducing regional pollution, but many very large pollution sources, including the power plants of the Tennessee Valley Authority, will not have to install additional controls as a result of these changes.

On December 31, 2002, the EPA published final rules in the Federal Register that weaken the New Source Review program, and proposed an additional set of rules that would effectively eliminate it for existing sources of pollution. Nine northeastern states announced within hours that they would litigate, claiming that the EPA has made changes that are illegal under the Clean Air Act.

This first round of changes to New Source Review includes a provision that allows companies to set a new pollution baseline. Rather than using the average of the previous two years' emissions levels, the changes allow companies to use the average of the highest emissions levels of any two consecutive years in the preceding 10-year period. A company can therefore choose a dirtier baseline that should no longer be applicable, increasing its capacity and emissions, and reverting to higher pollution levels.

An additional example of problems that may occur in North Carolina comes as a result of the "clean unit exemption," adopted by EPA as a final rule. This provision allows a facility that installs modern pollution controls an exemption from the need to install better pollution controls for 10 years or more. EPA's claim that this is intended as an incentive to install pollution controls is weakened by the retroactive application of the exemption. TVA facilities that have installed some pollution controls within the prior 10 years will not be required to install additional pollution controls, even if their actions would otherwise trigger NSR.

There are nearly 400 facilities in North Carolina that would be affected by these changes, as well as out of state polluters who would be able to further degrade our air quality under the new rules. The changes have already been formally opposed by over 130,000 individuals, more than 1000 medical doctors, 44 U.S. Senators, and more than 100 members of Congress. Moreover, EPA has so far ignored more than a dozen requests from Congress for detailed analysis of the rule changes' impacts on public health, along with requests for public hearings and the opportunity to comment on the rule changes.

According to the State and Territorial Air Pollution Program Administrators (STAPPA), which have gone on record supporting changes to the New Source Review (NSR) program: "the Administration has gone too far in

revamping the program. The revised requirements go beyond even what industry requested during an earlier stakeholder process and will be less protective of the environment than current regulations. Moreover, because the reforms are mandatory, they will impede, or even preclude, the ability of states and localities all across the country to retain or adopt programs that are more protective than the federal requirements.”

The EPA is currently in the midst of litigation with a number of electric utilities, many in the Southeast, over past violations of the NSR rules. Although the recently finalized rule change will not have an effect on whether the utilities’ actions are deemed violations, it could have a significant impact on the remedy. The EPA settled similar cases with Tampa Electric in Florida, and PSE&G in New Jersey by requiring substantial clean-up of affected facilities in addition to fines. The changed NSR rule will likely dampen the litigants’ enthusiasm for these types of settlements by eliminating clean-up as a prescribed remedy. If clean-up is not a part of future settlement agreements, sources upwind of North Carolina will not be forced to reduce their pollution.

The final NSR rules will likely be followed by even more roll-backs, if the Administration’s actions are left unchecked. Already, the Administration has proposed a second round of changes to the NSR program. The proposed changes are even more sweeping and damaging than the final rule.

On January 22, 2003, the US Senate narrowly defeated an amendment by Sen. John Edwards to delay implementation of the final NSR rule until the National Academy of Sciences examined the health impacts. The close vote signals the importance of an aggressive push now by the states to protect our existing protections under the Clean Air Act.

It is critical that North Carolina act immediately to stop this backwards slide before it becomes an avalanche. If North Carolina files to intervene in the Northeast lawsuit before January 30, it can reinforce the work already underway by your counterparts in other states. If this deadline passes, North Carolina should file its own lawsuit against the final NSR changes no later than February 28, 2003.

The current NSR rule acts as a cap on upwind sources, preventing them from increasing their pollution above current levels, and eventually leading to declining pollution. Our Clean Smokestacks law is meant to be a model for other states, further reducing deadly air pollution. Weakening of federal clean air standards will have a debilitating effect on all our efforts to clean up North Carolina’s air. We therefore request that the state of North Carolina join this important lawsuit to protect the health and welfare of her citizens.

Sincerely,

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Cc: William G. Ross, Secretary  
Department of Environment and Natural Resources