



EPA Poised to Abandon NSR Enforcement Initiative

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On November 1, 1999, EPA Administrator Carol Browner and Attorney General Janet Reno jointly announced “an unprecedented action” to kick off their New Source Review (“NSR”) enforcement initiative. On that day, EPA and DOJ filed civil enforcement actions against seven electric utilities alleging violations of EPA’s NSR regulations. An administrative compliance order also was issued to fellow federal agency Tennessee Valley Authority.

Some 20 years later, EPA and DOJ filed NSR cases against dozens of utilities and industry sources, costing utilities and industry billions of dollars. With a few exceptions, the NSR enforcement initiative yielded limited litigation wins. In almost all cases, utility litigation ended in either settlement or an adverse result for the government. Settlements largely required compliance with the utilities’ existing Clean Air Act (CAA) compliance plans. Actions against industry sources also generally ended with very favorable settlements for industry. As a result, NSR enforcement cases are now primarily filed by environmental groups.

EPA and DOJ’s NSR enforcement initiative seems to be at an end. EPA’s proposed new National Compliance Initiatives (“NCIs”) for Fiscal Years 2020-2023 indicate that EPA intends to move the NSR enforcement initiative from the high priority NCIs to its “core” or standard enforcement program. As justification for this action, EPA claims that these enforcement efforts against utility sources “have largely achieved their goals” and resulted in a 90% reduction in sulfur dioxide emissions and an 83% reduction in nitrogen oxide emissions since 1997. For industry sources, EPA states that it required controls or commenced investigations at 91%, 96% and 90% of facilities, respectively, in the glass, cement and acid manufacturing sectors. Again, any emissions reductions from the initiative, were almost all a result of compliance with other CAA programs. Capitalizing on reductions from other compliance obligations, EPA plans to de-emphasize the initiative and monitor settlement compliance.

Given the de-emphasis of NSR enforcement, should companies still perform NSR analyses of planned projects? The answer is yes, since EPA’s proposed action can be reversed at any time in the future.

[84 Fed. Reg. 2848 \(February 8, 2019\).](#)

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