

interests that Congress has charged the Agency with reconciling.

In section 101 of the CAA, Congress stated that Title I of the CAA has a dual purpose: "to protect and enhance the quality of the Nation's air resources *so as to promote the public health and welfare and the productive capacity of its population*" (emphasis added). This duality is reiterated in the statement of purpose of the PSD provisions and in the House Report accompanying the 1977 Amendments in connection with the non-attainment provisions. See sec. 160(1) (purposes of the PSD program are, *inter alia*, "to protect public health and welfare from any actual or potential adverse effect" of air pollution and "to insure that economic growth will continue to occur consistent with the preservation of existing clean air resources"); H.R. Rep. No. 95-294, p. 211 (The "two main purposes" of the non-attainment permitting program are "(1) to allow reasonable economic growth to continue in an area while making reasonable further progress to assure attainment of the standards by a fixed date; and (2) to allow States greater flexibility for the former purpose than EPA's present interpretative regulations afford").

More specifically, with regard to the question at issue here, Congress directed EPA not to apply NSR preconstruction permitting requirements to existing plants as a general matter, but to apply them to "modifications." Both directives are entitled to receive appropriate weight.

In these circumstances, changes in an Agency's understanding informed by greater experience are not only not surprising, they are to be expected. Effectuating these underlying Congressional commands requires a careful weighing and accommodation of the competing considerations underlying them. Sensitivity to unintended consequences, and a willingness to adjust policies in a manner informed by a better understanding of those consequences, are a central element of the responsibilities of an Agency given such a charge. As the *Chevron* Court explained:

Our review of the EPA's varying interpretations of the word "source"—both before and after the 1977 Amendments—convinces us that the agency primarily responsible for administering this important legislation has consistently interpreted it flexibly—not in a sterile textual vacuum, but in the context of implementing policy decisions in a technical and complex arena. The fact that the agency has from time to time changed its interpretation of the term "source" does not, as respondents argue, lead

us to conclude that no deference should be accorded the agency's interpretation of the statute. An initial agency interpretation is not instantly carved in stone. On the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis. Moreover, the fact that the agency has adopted different definitions in different contexts adds force to the argument that the definition itself is flexible, particularly since Congress has never indicated any disapproval of a flexible reading of the statute.

467 U.S. at 863-64.

The Court went on to point out:

In these cases the Administrator's interpretation represents a reasonable accommodation of manifestly competing interests and is entitled to deference: the regulatory scheme is technical and complex, the agency considered the matter in a detailed and reasoned fashion, and the decision involves reconciling conflicting policies. Congress intended to accommodate both interests, but did not do so itself on the level of specificity presented by these cases.

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[A]n agency to which Congress has delegated policymaking responsibilities may, within the limits of that delegation, properly rely upon the incumbent administration's views of wise policy to inform its judgments. While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices—resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the agency charged with the administration of the statute in light of everyday realities.

We hold that the EPA's definition of the term "source" is a permissible construction of the statute which seeks to accommodate progress in reducing air pollution with economic growth. The Regulations which the Administrator has adopted provide what the agency could allowably view as * * * [an] effective reconciliation of these twofold ends.

Id. at 865-66 (citations and footnotes omitted). We believe the same reasoning applies here, and makes it entirely appropriate for us to adopt the equipment replacement provision today.

2. Why Today's Rule Appropriately Implements the Clean Air Act's Definition of Modification

As noted above, the modification provisions of the NSR program in parts C and D of title I of the CAA are based on the definition of modification in section 111(a)(4) of the CAA. The term "modification" means "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." As

we observed in the notice of proposed rulemaking for this rule, that definition contemplates that you will first determine whether a physical or operational change will occur. If so, then you proceed to determine whether the physical or operational change will result in an emissions increase over baseline levels.

Real-world, common-sense usage of the word "change" in "physical change" and "change in the method of operation" shows that "change" is susceptible to multiple meanings. As we have noted previously, "EPA has always recognized that Congress did not intend that every activity at an existing facility be considered a physical or operational change for purposes of NSR." 57 FR 32,314, 32,319 (July 21, 1992). Conceivably, "change" could encompass a range of activities from periodically replacing filters in production machinery, to once in-a-lifetime anticipated replacement of a component, to complete replacement of a production unit.

For example, all cars must periodically have their oil "changed." When considered from one perspective, this activity does represent a "change" because old oil is removed and new oil is added. From another perspective, however, this activity would not be considered a change because it does not alter any significant characteristic of the car.

More to the point, chemical and pharmaceutical manufacturing operations often are designed, operated, and permitted as "multi-function" facilities. These facilities have numerous pieces of equipment (such as storage tanks, reactors, distillation columns, centrifuges, filter dryers, *etc.*) that can be reconfigured to accommodate a wide variety of products and operating conditions. When switching from product X to product Y, a plant can make substantial "changes" in the types of equipment used, the processing conditions, and the raw materials, reagents, solvents, and other processing materials. In this case, the same basic equipment is used to make a wide variety of end products. But, as long as the facility is operated as designed and permitted, we would not consider (and have not considered over the 20+ year life of the NSR program) such changes to be physical or operational "changes" for purposes of administering the NSR program.

Similarly, manufacturing equipment often is built with expendable components. For example, industrial gas turbines, such as those used to drive compressors on natural gas pipelines, regularly need to have components