

**New Source Review Permitting Program: Reconsideration of Recent Rules
Covering Record Keeping, Fugitive Emissions, and Permitting for Sources of Fine
Particle Pollution**

FACT SHEET

ACTION

- On April 24, 2009, the U.S. Environmental Protection Agency (EPA) notified Petitioners of the Agency's intent to reconsider certain aspects of three rules under the New Source Review (NSR) Permitting Program.
- The NSR program is a preconstruction clean air permitting program that provides important public health and environmental protection. To ensure that the public has an opportunity to fully review any recent changes that would impact the implementation of NSR, EPA has agreed to reconsider portions of the following rules:
 1. Prevention of Significant Deterioration and Nonattainment New Source Review: Reasonable Possibility in Recordkeeping
 2. Prevention of Significant Deterioration and Nonattainment New Source Review: Inclusion of Fugitive Emissions
 3. Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})

A summary of each rule, the associated petition for reconsideration and EPA's planned actions follows:

Reasonable Possibility

- In December 2007, the final "reasonable possibility" rule identified when a major source undergoing a physical or operational change not triggering major NSR permitting requirements must keep records. This final rule also specifies the recordkeeping and reporting requirements on those sources.
- On February 20, 2008, the State of New Jersey petitioned EPA to reconsider and stay the final rule. The petitioner argued that:
 1. EPA failed to give the notice required under both the Administrative Procedure Act and the Clean Air Act (CAA) for its decision not to require post-change recordkeeping and reporting where sources exclude certain emissions from their projections (i.e., those not related to the change) because it was not a "logical outgrowth" of the proposed rule; and
 2. the final rule does not address the aspects of the NSR Rule remanded by the D.C. Circuit as, in New Jersey's view, it remains unenforceable and unlawful.
- On January 16, 2009, EPA denied New Jersey's petition.

- On March 11, 2009, New Jersey submitted a letter to EPA that reiterated its request.

Action on Reasonable Possibility

- The issues raised by New Jersey have been under review by the new EPA leadership. After further review of the issues raised and the rulemaking record, EPA believes that additional public comment is warranted.
- EPA has decided not to stay the rule while reconsideration is underway because we believe that the standard in the current rule is preferable to the prior standard which was vacated by the Court as too vague.

Fugitive Emissions

- Fugitive emissions are emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- In December 2008, EPA issued a final rule in response to an industry petition for reconsideration of the Agency's approach for including fugitive emissions in NSR applicability determinations. The final rule requires that fugitive emissions be included in determining whether a physical or operational change results in a major modification *only* for sources in industries that have been designated through rulemaking under section 302(j) of the Clean Air Act. This action changed a 2002 rule which included these emissions in determining whether a physical change at a facility was a major modification and subject to NSR requirements.
- On February 17, 2009, EPA received a Petition for Reconsideration and request for a stay from the Natural Resources Defense Council asking the Agency to:
 1. Announce that EPA does not intend to require states to submit State Implementation Plan revisions to adopt the Fugitive Emissions Rule, and that states may not implement the Fugitive Emission Rule changes through mere "public announcement" that the state accepts those changes by interpretation;
 2. Convene a public notice-and-comment period following reconsideration of the final rule; and
 3. Withdraw and abandon the final rule.

Actions on Fugitive Emissions

- The issues raised by NRDC have been under review by the new EPA leadership. After further review of the issues raised and the rulemaking record, EPA believes that additional public comment is warranted, and therefore, NRDC's petition for reconsideration and stay should be granted.

PM_{2.5} NSR

- EPA's May 2008, final rule, addressed several NSR program requirements for sources that emit PM_{2.5} and the pollutants that contribute to its formation. The requirements addressed include:

- State Implementation Plans (SIPs) outlining modifications to state NSR programs to account for emissions of fine particle pollution are due to EPA in three years.
- Timing for implementation of the rule:
 - When effective the rule applied immediately:
 - in states where the federal PSD program (40 CFR 52.21) applies (either EPA implements the program directly or has delegated that responsibility to the state); and
 - in nonattainment areas of states, through the ‘transitional’ NSR provisions (contained in Appendix S of 40 CFR part 51) until EPA approves a revised SIP.
 - States with EPA-approved PSD programs, could (but are not required to) continue to use the interim approach of relying on PM₁₀ (inhalable particles smaller than, or equal to, 10 micrometers in diameter) as a surrogate for PM_{2.5} for up to 3 years or until their revised SIPs are approved, whichever is sooner.
- This rule does not require states to account for gases that could condense to form particles (called “condensables”) in PM_{2.5} emissions limits in PSD or nonattainment NSR permits until January 1, 2011, or a possible earlier date depending on the timing of an upcoming rule for revised test methods for measuring emissions of these condensable particles.
- For nonattainment areas, interpollutant offset trading which will allow reductions in direct PM_{2.5} to offset precursor emissions increases, emissions reductions of one precursor to offset emissions increases of another precursor, and reductions in precursor emissions to offset direct PM_{2.5} emissions increases.
- On July 15, 2008, Natural Resources Defense Council and the Sierra Club petitioned EPA to reconsider and administratively stay specific parts of this final rule. The Petition objected to four parts of the final rule, including:
 1. using the new transition schedule for PSD programs in states with PSD programs that EPA has approved;
 2. “grandfathering” permit applications that were complete, before the rule’s July 15, 2008 effective date and that rely on EPA’s PM₁₀ Surrogacy Policy, so as to continue reviewing the permit application using PM₁₀ emissions as a surrogate for satisfying the new PM_{2.5} requirements;
 3. allowing states to exclude condensable particulate matter from NSR applicability and emission control requirements until January 1, 2011; and
 4. allowing states to use EPA-recommended PM_{2.5} precursor trading ratios to offset PM_{2.5} emissions increases in PM_{2.5} nonattainment areas

PM_{2.5} NSR Actions

- On January 16, 2009, EPA denied the July 2008 petition. On February 10, 2009, the same petitioners submitted a second reconsideration request for the same four issues and another request for administrative stay. They also requested reconsideration of then-Administrator Johnson’s January 16 denial letter. EPA is granting the February 10 petition for reconsideration in order to allow for public comment on each of the four issues raised. The Agency also is administratively staying the grandfathering provision for three months pending reconsideration.

- EPA will publish a notice of proposed rulemaking in the Federal Register in the near future. As part of this notice, the Agency intends to propose to repeal the grandfathering provision on the grounds that it was adopted without prior public notice and is no longer substantially justified in light of the resolution of the technical issues with respect to PM_{2.5} monitoring, emissions estimation and air quality modeling that led to the PM₁₀ Surrogacy Policy in 1997. At this time, the Agency has not determined any specific action to be proposed concerning the other three issues raised.

BACKGROUND

- Congress established the NSR program as part of the 1977 Clean Air Act Amendments and modified it in the 1990 Amendments. NSR is a preconstruction permitting program that serves two important purposes.
 1. It ensures the maintenance of air quality standards when factories, industrial boilers and power plants are modified or added. In areas that do not meet the national air quality standards, NSR ensures that new emissions do not slow progress toward cleaner air. In areas that meet the standards, especially pristine areas like national parks, NSR ensures that new emissions fall within protective air quality standards.
 2. The NSR program ensures that state of the art control technology is installed at new plants or at existing plants that are undergoing a major modification.
- These are the most recent in a series of actions EPA has taken to ensure that the NSR program protects clean air. On February 9, 2009, EPA announced that it will reconsider certain aspects of the final rule that modifies the New Source Review Program's policy on the term "aggregation." Aggregation refers to the grouping of multiple, related physical or operational changes into a single project for evaluating requirements under EPA's New Source Review (NSR) program.

FOR ADDITIONAL INFORMATION

- Interested parties can download information on these actions from EPA's Web site at: www.epa.gov/nsr.
- Each of these final actions and other background information are also available either electronically in www.regulations.gov, EPA's electronic public docket and comment system, or in hard copy at EPA's Air and Radiation Docket and Information Center, Environmental Protection Agency, Room B102, 1301 Constitution Avenue, NW, Washington, DC. Docket Numbers:
 - Reasonable Possibility EPA-HQ-OAR-2001-0004
 - Fugitive Emission EPA-HQ-OAR-2004-0014

- NSR Implementation for PM_{2.5}: EPA-HQ-OAR-2003-0062
- The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566-1742.