

**RECONSIDERATION OF NEW SOURCE REVIEW'S ROUTINE  
MAINTENANCE, REPAIR AND REPLACEMENT RULE**

**FACT SHEET**

**ACTION**

- On June 29, 2004, the Environmental Protection Agency (EPA) granted a request to reconsider certain aspects of the equipment replacement provision or “ERP” adopted as part of the Agency’s New Source Review (NSR) permitting program. The Administrator received petitions for reconsideration from a number of environmental and public interest groups and a group of states.
- EPA’s decision to reconsider three limited issues in the rule does not mean that EPA has decided to change any aspect of the rule at this time. EPA continues to believe that the changes finalized in the October 2003 rulemaking are fully justified and provide much needed reforms to the NSR program while still ensuring environmental protection.
- EPA is soliciting additional comments on the following three issues:
  1. the basis for determining that the ERP was allowable under the Clean Air Act
  2. the basis for selecting the cost threshold (20 percent of the replacement cost of the process unit) that was used in the final rule to determine if a replacement was routine; and
  3. a simplified procedure for incorporating a Federal Implementation Plan into state plans to accommodate changes to the New Source Review rules.
- EPA is reviewing two remaining issues raised by the Petitioners but at this time, EPA has determined that only the three issues noted above warrant a grant of reconsideration. The two issues remaining are:
  1. the retroactive applicability of the ERP in enforcing the NSR rules; and
  2. the simplified procedures for incorporating the revised Federal Implementation Plan into certain areas within state plans.
- EPA will issue a final decision on all issues in 180 days.
- On October 27, 2003, EPA finalized a rule for the NSR permitting program that clarified what types of “equipment replacements” are exempt from major NSR requirements under the Routine Maintenance, Repair and Replacement (RMRR) exclusion. The aim of this RMRR rule is to provide additional regulatory certainty and remove barriers for industrial facilities to improve environmental performance through safer, more reliable and more efficient operations.

- The ERP preserves the public health protections provided by the Clean Air Act through the National Ambient Air Quality Standards, the Acid Rain program, the NOx SIP Call and other CAA programs. Power plants cannot increase their emissions past their current Clean Air Act limits.
- The Equipment Replacement Provision will provide certainty for industrial facilities, by spelling out equipment replacement activities that are exempt from NSR permitting requirements. It will also ensure that industries maintain safe, reliable and efficient operations that will have little or no impact on emissions.
- On November 14, state and local governmental groups challenging the final rule asked the U.S. Court of Appeals for the District of Columbia Circuit to stay the final ERP (i.e., prevent the rules from taking effect) until the challenges are resolved by the Court. Environmental Petitioners filed a similar request on November 17. On December 24, 2003, the Court granted those requests and issued an order to stay the effective date of the ERP.
- Also on December 24, 2003, EPA published a rule amending its Prevention of Significant Deterioration (PSD) provisions for state programs that did not have approved state PSD rules. Prevention of Significant Deterioration is a permitting program designed to protect air quality in areas meeting national air quality standards. In each of these states, EPA previously had made the area subject to the PSD rules in the Federal Implementation Plan ("FIP"). The rule simplified the procedure for incorporating new changes.

### **ADDITIONAL INFORMATION**

- EPA will accept comments on these three issues for 60 days after publication of this notice in the *Federal Register*.
- EPA also plans to hold a public hearing to listen to oral testimony on these issues of reconsideration. The hearing will occur approximately 30 days after the notice is published in the *Federal Register*. EPA will issue a subsequent notice with the exact time and date of this public hearing.
- Interested parties can download information on the NSR Reconsideration from EPA's Web site at: [www.epa.gov/nsr](http://www.epa.gov/nsr). EPA's Office of Air and Radiation's homepage on the Internet contains a wide range of information on air pollution programs and issues. The address is: [www.epa.gov/oar/](http://www.epa.gov/oar/).
- Today's reconsideration notice, the final ERP rule, ERP Technical Support Document, and other background information are also available through the EPA's Air and Radiation Docket and Information Center (Docket Number OAR-2002-0068; legacy number A-2002-04) by calling (202) 566-1742 or fax (202) 566-1741. A reasonable fee may be charged for copying.

- Written comments on the three issues of reconsideration should be submitted (in duplicate) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number OAR-2002-0068 (Legacy Number A-2002-04), U. S. Environmental Protection Agency, Air and Radiation Docket and Information Center, (MC-6102T) Room B-108, EPA West Building, 1301 Constitution Avenue, Washington, D.C. 20460. Please also send a separate copy to Chandra Kennedy, Office of Air Quality Planning and Standards, ITPID (C339-03), Research Triangle Park, North Carolina 27711; facsimile number (919) 541-5509; electronic mail address kennedy.chandra@epa.gov.
- If you are submitting proprietary information, you must clearly distinguish it from other comments and clearly label it confidential. To ensure proprietary information is not released or inadvertently placed in the public docket, send such information directly to: Roberto Morales, OAQPS Document Control Officer (C404-02), U.S. Environmental Protection Agency, RTP, NC 27711.

### **NEW SOURCE REVIEW BACKGROUND**

- Congress established the New Source Review program as part of the 1977 Clean Air Act Amendments and slightly modified it in the 1990 Amendments. NSR is a preconstruction permitting program that serves two important purposes.
  - ▶ First, it ensures that air quality is not significantly degraded from the addition of new and modified factories, industrial boilers and power plants. In areas with unhealthy air, NSR assures that new emissions do not slow progress toward cleaner air. In areas with clean air, especially pristine areas like national parks, NSR assures that new emissions do not significantly worsen air quality.
  - ▶ Second, the NSR program assures people that any large new or modified industrial source in their neighborhoods will be as clean as possible, and that advances in pollution control occur concurrently with industrial expansion.
- Over time, the NSR program has become continually more complex and it has not kept pace with industry's needs to make rapid changes in order to stay competitive in the market place. EPA has worked for 10 years to improve the NSR rules to provide flexibility for industry in making changes to their facilities, while ensuring environmental protection.
- In 1992, EPA issued a regulation addressing issues regarding NSR at electric utility steam generating units making major modifications, and declared our intent to issue guidance on the subject of RMRR. This is referred to as the "WEPCO" rule.
- In December 2002, EPA proposed to make changes that would streamline and simplify the procedure for making RMRR determinations under the existing NSR program. EPA solicited comments on all aspects of its RMRR proposal.

- Following the RMRR rule proposal, EPA held five public hearings where environmental groups, industry, public interest groups, and state and local agency representatives participated.
- The final and proposed NSR rules and associated materials are located on EPA's Web site at: [www.epa.gov/nsr](http://www.epa.gov/nsr).
- EPA's improvements to the NSR program are the result of more than a decade of review, a review that has spanned three administrations and has benefited from the expertise of State and local government officials of both political parties, the environmental community, business leaders, and a host of other stakeholders.