

FACT SHEET

Review of New Sources and Modifications in Indian Country

Action

- On August 9, 2006, EPA proposed a Federal Implementation Plan (FIP) that would implement New Source Review (NSR) requirements in areas under tribal jurisdiction. In these areas, often referred to as Indian country, new or modified small industrial facilities and large industrial facilities in areas not meeting national clean air standards would be subject to air permitting requirements.
- The proposed FIP includes two NSR rules for the protection of air quality in Indian country.
 1. The first rule, known as the minor NSR rule, would apply to new and modified small (or minor) stationary sources. It would also apply to minor modifications at large (or major) stationary sources. A minor source is one that generally emits less than 100 tons per year of a target air pollutant. A major source emits over 100 tons per year.
 2. The second rule, known as the nonattainment major NSR rule, would apply to new major stationary sources and major sources that undergo significant modifications in areas of Indian country that are designated as not attaining the National Ambient Air Quality Standards.
- The proposed FIP would give EPA the authority to review clean air permits in Indian country or delegate that authority to tribes able to take on the responsibility. The FIP could be replaced by an EPA-approved tribal implementation plan

Minor NSR Rule

- The proposal would set pollutant emissions thresholds for small sources. The thresholds and are based on a review of several state minor NSR programs and ensure environmental protection while allowing economic growth.
- Under the proposed rule, industrial facilities in Indian country with a potential to emit equal to or greater than the proposed minor NSR threshold and generally less than 100 tons per year of a target pollutant would be a "minor source" of emissions and be subject to the rule requirements.
- Owners or operators of these facilities would be required to submit a minor New Source Review permit application that may include plans for emissions controls. The reviewing authority (EPA or a tribal air agency) would be responsible for reviewing and approving or denying the permit.
- In some instances, the permit reviewing authority may require an air quality analysis as part of the permit application.
- Additionally, this rule would allow facilities in Indian country otherwise considered to be major sources under the NSR program to voluntarily accept emission limitations on their potential to emit. With these limitations on emissions, they would be considered "synthetic minor sources" and would be able to avoid more stringent major NSR rules

than required by the Clean Air Act. This option would be available to different types of facilities including those that emit hazardous air pollutants so that they would not be subject to MACT standards for major sources.

- The program would provide a variety of permit options including:
 - Limiting individual emissions units. This would be a typical permit with allowable emissions limits on individual emissions units or equipment;
 - Minor source plantwide applicability limitation (PAL). This permit would have a source-wide cap for any pollutant and provide flexibility to the source to make rapid process or equipment changes without permit review so long as the source's emissions stay below the cap. Facilities with such permits would generally be subject to enhanced monitoring and recordkeeping;
 - General permit. A "general permit" is a preconstruction permit that may be applied to a number of similar equipment or facilities. The purpose of a general permit is to simplify the permit application and issuance process for similar facilities, thereby benefiting both the facility and the permit reviewing authority; or
 - Synthetic minor permit. With such a permit a facility would be able to avoid more stringent major NSR rules required by the Clean Air Act.

- EPA is proposing that the permit issuance process include public notice and comment requirements and administrative and judicial review provisions.

Nonattainment Major NSR Rule

- Under this rule, affected major industrial facilities would be required to comply with the provisions of a transitional New Source Review rule known as "Appendix S", which generally applies to areas that do not have a State Implementation Plan for implementing New Source Review provisions.

- Sources subject to this rule would be required to:
 - Install emissions controls that meet the requirements of Lowest Achievable Emission Rate (LAER) control technology,
 - Obtain emissions offsets – new or modified major facilities contributing to increased emissions would have to obtain emissions reductions to offset that increase,
 - Certify compliance -- each affected facility owner must certify that other facilities under common ownership are in compliance with all air quality regulations, and
 - Complete a net air quality benefit analysis – the facility must demonstrate a net air quality benefit resulting from the proposed project.

- There are a limited number of industrial facilities in Indian country. As a result, offsets or emissions reductions are not generally available. EPA has proposed two options for addressing this lack of availability of offsets in Indian country.
 1. Designating an Economic Development Zone (EDZ) as provided by the Clean Air Act. Under certain circumstances an area can seek an EDZ designation, resulting in an offset waiver option for facilities locating in that area.
 2. Appendix S exempts facilities from the offset requirement if the attainment dates for a pollutant have not passed and certain conditions are met.

- EPA is proposing that the permit issuance process include public notice and comment requirements and administrative and judicial review provisions, similar to those in the minor NSR rule.

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.
- First, it ensures the maintenance of air quality standards when factories, industrial boilers and power plants are modified or added. 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 fall within air quality standards.
- Second, the NSR program assures that state of the art control technology is installed at new plants or at existing plants that are undergoing a major modification.
- EPA currently implements the Prevention of Significant Deterioration (PSD) program, a clean air permitting program for large industrial sources in areas of Indian Country that attain the national air quality standards.
- There is though, no mechanism to permit air emissions from new or modified major facilities in areas that do not attain the national air quality standards (nonattainment areas). Further, there is no mechanism in place to permit air emissions from new or modified minor sources or minor modifications at major sources.
- This proposed rule would fill this regulatory gap and provide certainty to allow for environmentally sound economic growth in Indian country.

FOR ADDITIONAL INFORMATION

- Interested parties can download today's proposed rule from EPA's web site at: <http://www.epa.gov/nsr/actions.html#aug06>
- Today's proposed action and other background information are also available either electronically in EPA's electronic public docket and comment system, or in hard copy at EPA's Docket Center, Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW, Washington, DC (Docket ID No. OAR-2003-0076). 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 EPA Docket Center is (202) 566-1742.
 - NOTE: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's Federal Register notice at 71 FR 38147 (July 5, 2006) or the EPA website at www.epa.gov/epahome/dockets.htm for current information on docket operations, locations and telephone numbers. The Docket Center's mailing

address for U.S. mail and the procedure for submitting comments to www.regulations.gov are not affected by the flooding and will remain the same.

How to Comment

- EPA will accept comments for 90 days beginning when this proposal is published in the Federal Register (i.e., November 20, 2006). All comments should be identified by Docket ID No. EPA-HQ-OAR-2003-0076 and submitted by one of the following methods:
 - Federal e-rulemaking portal (www.regulations.gov);
 - E-mail (a-and-r-docket@epa.gov);
 - Fax (202-566-1741)
 - Mail (Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460).

Note: The comment period for this proposal has been reopened for an additional 60 days. The deadline for submitting comments is now March 20, 2007.

- Please include a total of two copies. EPA requests a separate copy also be sent to the contact person identified below. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 725 17th St., NW, Washington, DC 20503.
- For general information about this proposed rule, contact Raj Rao of EPA's Office of Air Quality Planning and Standards at (919) 541-5344, rao.raj@epa.gov, or Jessica Montanez at (919) 541-3407, montanez.jessica@epa.gov.