

FACT SHEET
REASONABLE POSSIBILITY PETITION FOR RECONSIDERATION

ACTION

- On January 16, 2009, the Environmental Protection Agency (EPA) announced that it has denied a petition by the State of New Jersey for reconsideration and a request for a stay of the December 21, 2007, final rule entitled: “Prevention of Significant Deterioration and Nonattainment New Source Review: Reasonable Possibility in Recordkeeping.”
- The final “reasonable possibility” rule identifies for sources and reviewing authorities the criteria under which an owner or operator of a major stationary source undergoing a physical or operational change that does not trigger major New Source Review (NSR) permitting requirements must keep records. The reasonable possibility standard also specifies the recordkeeping and reporting requirements on such sources.
- On February 20, 2008, EPA received a Petition for Reconsideration and request for a stay from the State of New Jersey. The petitioners argued that:
 - (1) one component of the final rule is not a “logical outgrowth” of the proposed rule, and EPA therefore failed to give the notice required under both the Administrative Procedure Act and the Clean Air Act (CAA); 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.
- EPA determined that we had given the required notice and that we had already addressed in the final rule the issues discussed in the petition. Thus, we found that the objections New Jersey raised in its petition do not trigger the Clean Air Act requirements to grant reconsideration.
- EPA addressed the Court’s earlier remand in the final rule by, for example, building in more recordkeeping for certain changes the Court was concerned about. At the same time we determined that, for these changes, records documenting emissions and compliance before a change is made at a facility are sufficient for enforcement purposes.

BACKGROUND

- The “reasonable possibility” standard establishes for sources and reviewing authorities the criteria for determining when recordkeeping and reporting are required for a modification that does not trigger major NSR. The standard also specifies the recordkeeping and reporting requirements for such sources.
- This final action will require recordkeeping and reporting when the projected increase in emissions to which the "reasonable possibility" test applies equals or exceeds 50 percent of the Clean Air Act’s NSR significance levels for any pollutant.

- NSR significance levels are pollutant-specific threshold emission rates (tons per year). If a project results in an emissions increase of a regulated NSR pollutant that equals or exceeds the significance level for that pollutant, the increase is a "significant emissions increase" and NSR permitting requirements would apply.
- The emissions increase to which the reasonable possibility trigger is applied is calculated as the difference between the project's (1) baseline actual emissions and (2) sum of projected actual emissions and emissions attributable to an independent factor (such as demand growth).

FOR ADDITIONAL INFORMATION

- The response to New Jersey and today's notice of EPA's decision denying New Jersey's position may be found at EPA's website at <http://www.epa.gov/nsr> under Regulations & Standards.
- The final reasonable possibility rule published in the Federal Register on December 21, 2007 (72 FR 72607) is also available at EPA's website at <http://www.epa.gov/nsr> under Regulations & Standards.
- Background information on the reasonable possibility rulemaking is available either electronically at <https://www.regulations.gov>, EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room.
 - The Public Reading Room is located in the EPA Headquarters, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW, Washington, DC. Hours of operation are 8:30 a.m. to 4:30 p.m. eastern standard time, Monday through Friday, excluding Federal holidays.
 - Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.
 - Supporting information for this action can be accessed under Docket ID No. EPA-HQ-OAR-2001-0004.
- For general information about the petition for reconsideration or the final reasonable possibility rule, please contact Carrie Wheeler of EPA's Office of Air Quality Planning and Standards at (919) 541-9771, or wheeler.carrie@epa.gov.