



U.S. Environmental Protection Agency – November 2004
Compliance and Enforcement National Priority:
Clean Air Act, New Source Review/Prevention of
Significant Deterioration

Pursuant to a memo dated Oct. 13, 2005, from EPA Deputy Administrator Marcus Peacock, the Office of Enforcement and Compliance Assurance is revising its NSR/PSD Strategy to account for new Agency rule-makings affecting coal-fired power plants. While OECA will continue to pursue filed cases and cases in active negotiation against coal-fired power plants, OECA will shift its future focus in the NSR/PSD Strategy from coal-fired power plants to other sectors where compliance assurance activities have the potential to produce significant environmental benefits. It is expected that strategy revisions will be completed by the end of 2005.

The United States Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance (OECA) has established national priorities for federal fiscal years (FY) 2005 through 2007. OECA and the EPA's 10 Regions will make the following issues priorities for monitoring, compliance assistance, enforcement and cleanup actions over the next three years:

1. Clean Air Act: Air Toxics
2. Clean Air Act: Prevention of Significant Deterioration and New Source Review
3. Tribal
4. Clean Water Act: Wet Weather, including:
 - Concentrated Animal Feeding Operations
 - Combined Sewer Overflows
 - Sanitary Sewer Overflows
 - Storm Water
5. Resource Conservation and Recovery Act: Mineral Processing and Mining

After evaluating the Safe Drinking Water Act (SDWA) Microbial Rules as a national priority, the Agency determined that it was more appropriate to address the microbial non-compliance problems, which occur predominately at very small drinking water systems, through the SDWA core program. The Petroleum Refining national priority is near completion and will be assessed during the coming year to determine if sufficient progress has been made to return this priority to the core program.

The New Source Review/Prevention of Significant Deterioration (NSR/PSD) strategy summary that follows provides clear goals to achieve maximum compliance with environmental regulations in order to protect human health and the environment.

Background

New Source Review/Prevention of Significant Deterioration was selected as a national enforcement and compliance assurance priority for the FY 2005 - FY 2007 period because it met the selection criteria: (1) increased national attention could lead to significant environmental

in this strategy area.

The Clean Air Act (CAA) requires installation of state-of-the-art pollution controls when new sources of emissions are constructed or when existing sources are modified in a manner that increases air pollution. State-of-the-art pollution controls result in removal of 90 to 99.99 percent of many pollutants. Many of the pollutants in the NSR/PSD arena are criteria air pollutants, which include ozone, nitrogen oxides (NO_x), sulfur dioxide (SO₂), particulate matter (PM) and volatile organic compounds (VOCs). All of these pollutants have been linked by the EPA to chronic and acute health effects and adverse environmental impact.

Noncompliance with NSR/PSD provisions of CAA results in inadequate control of emissions and the release of thousands of tons of illegal pollution into the atmosphere each year. These illegal emissions aggravate already poor air quality in places that are designated non-attainment areas because they do not meet air quality standards, threaten to drive areas with good air quality into non-attainment status, and have a significantly negative impact on public health and the environment.

The Environmental Problems

Modifying an existing source of emissions to increase production or to extend the life of a facility has the potential to increase considerably the amount of pollution emitted from the source or facility. Despite the fact that trade association journals and economic indicators show that industrial facilities have substantially increased production across almost all sectors of the economy, a review of state permitting in recent years indicates that states are issuing very few PSD or NSR permits. The lack of NSR/PSD permitting likely indicates that many stationary sources are illegally emitting thousands of tons of pollution into the environment by avoiding these CAA requirements.

Industries have traditionally avoided NSR and PSD requirements by claiming that the program's complex nature renders compliance difficult. The program's potential to add substantial costs to the construction or operation of facilities is more likely to be the incentive to avoid permit review by state or federal authorities.

The small number of NSR/PSD permits issued and the upswing in economic indicators in certain sectors led EPA to investigate and discover that the NSR/PSD program has become a major national compliance issue. While modifications of existing sources appear to have the highest rate of non-compliance, EPA also believes that violations can be found at new major sources.

Enforcement actions taken in NSR/PSD between 2000 and 2003, have yielded settlements that have achieved annual reductions of over one-half million tons of sulfur dioxide (SO₂), close to a quarter-million ton of nitrogen oxide (NO_x) emissions, and over 100,000 tons of volatile organic compounds (VOCs), particulate matter (PM), and other pollutants. Given the scope of the reductions to be obtained, addressing NSR/PSD non-compliance as an OECA national priority should result in substantial human health and environmental benefits.

Goals

Goal 1: By the end of FY 2007, ensure that 75 percent of the nation's coal-fired power-generating capacity is in compliance with the NSR/PSD provisions or that non-compliance is being addressed through settlement, filed civil action, or referral to the Department of Justice (DOJ) for action.

EPA will achieve this goal through the following activities:

- Identify the percentage of coal-fired electric utility power-generating capacity that is subject to enforcement
- Review of all requests for information on violations issued to coal-fired power plants and resolve violations through referral to DOJ or administrative action.
- Identify facilities that still need to be reviewed for compliance status and issue additional information requests as needed.

Goal 2: Expand upon the coal-fired power plant enforcement initiative, which began in the late 1990s, by adding three new national sectors for NSR/PSD review by the end of FY 2006. EPA estimates that the power plant strategy will result in the reduction of 700 million pounds annually of air pollutants.

EPA will achieve this goal through the following activities:

- Develop baseline information and identify sectors/facilities
- Develop region-state partnerships and receive regional nominations of sectors
- Conduct sector inspections and other field analyses
- Complete the selection of additional sectors based on the ability of enforcement efforts to yield significant environmental benefits, the availability of measurable milestones and the opportunity to improve compliance
- Establish compliance-related goals for the three new sectors
- Publish and publicize new priority sectors and provide opportunity for settlement and compliance assistance

Strategies

For targeting:

- Target facilities and industries with the highest emissions, or that are in systems or areas that have already been sued, or that are the most egregious violators (e.g., facilities that have been in violation for long periods of time or have a history of non-compliance)
- Consult with regional and state experts when identifying the three additional sectors
- Develop standard selection mechanisms to aid in identifying sectors, such as: the potential for emissions reductions; recent or expected expansion; age/expected life of processor current

controls; and availability of better controls

- Review state permits to develop information to be used either after a sector has been selected or to aid in selecting a sector
- Review the proximity of sources to population centers and environmental justice communities and consider potential federal facilities
- Review trends in air quality to determine where in the nation reductions in emissions are most needed

For implementation:

- Continue to use enforcement (mainly judicial actions) as an effective tool for achieving compliance
- Consider other tools like compliance assistance, compliance incentives and increased state involvement in new target sectors
- Use information collected during site visits in training regional, state, and headquarters staff

Performance Measurement

Upon achievement of the FY 2005 - FY 2007 goals, the coal-fired utility sector and three additional sectors will be gradually returned to the core NSR/PSD enforcement program. EPA Headquarters will continue to work with its regions and states to resolve residual non-compliance in these sectors, to carry out future baseline compliance monitoring, and to preserve the environmental benefits obtained through settlements and litigation. Other assistance measures could include: providing training, sharing sector and regulation expertise, providing model documents to enforcement staff, providing contractor and financial assistance, cataloguing best controls by sector, and articulating targeting and permitting strategies. EPA regions and the states will continue to regularly report data regarding activities in these sectors to the Agency's national databases. The data will enable the EPA to gauge the long-term effectiveness of the strategy and to determine when the targeted sectors should be returned to the core compliance program.