

09/04/02

FACT SHEET

REVISIONS TO CLARIFY THE SCOPE OF TITLE V SUFFICIENCY MONITORING REGULATIONS UNDER THE CLEAN AIR ACT

TODAY'S ACTION

- The Environmental Protection Agency (EPA) is today issuing an interim final rule and a parallel proposal to clarify the scope of monitoring required in operating permits issued by State, local and tribal permitting authorities or by EPA under title V of the Clean Air Act.
- Today's interim final rule, which is effective immediately, applies to a section of the operating permits regulations known as sufficiency monitoring provisions. These provisions require a facility owner/operator to perform monitoring to show compliance with the facilities' permit.
- Specifically, the interim final rule will suspend, for 60 days, the phrase "[c]onsistent with paragraph (a)(3) of this section" from the sufficiency monitoring provisions in EPA's operating permits program regulations. Deleting this phrase clarifies that the sufficiency monitoring provisions require each operating permit to contain monitoring "sufficient to assure compliance with the terms and conditions of the permit." The deleted phrase referred to the requirement contained in EPA's operating permits regulations for a different type of monitoring known as periodic monitoring.
- Today's proposed rule would make the same revisions as the interim final rule through an expedited notice and comment rulemaking process. In 60 days, EPA expects to carefully review and respond to the comments received on the proposal and issue a final rule that will take effect when the interim final rule "sunset" (expires).

BACKGROUND

- In 1990, Congress amended the Clean Air Act to require all states to develop operating permit programs to improve compliance with federal air regulations by issuing a single operating permit to each major pollution source.
- Under the operating permits program, a source of air pollution is considered a major source when it emits minimum levels of a specific type of air pollutant. This can be a little as 10 tons per year.

Operating permits contain air pollution control requirements (applicable requirements) that primarily come from other Clean Air Act regulations. These applicable requirements may

include such things as limits on the amount of pollution the facility can emit into the air, requirements to operate specific pollution control devices to remove pollution before it is emitted into the air, and requirements to conduct monitoring to show that they meet their pollution reduction requirements. These applicable requirements go into the operating permit and are the core of the permit's requirements. It is only when monitoring in the applicable requirement is absent or deficient that the periodic and sufficiency monitoring provisions of title V are used to improve the monitoring that is put in the permit.

- In 2000, the EPA Administrator responded to petitions from a private citizen and an outdoor conservation group objecting to operating permits issued by Wyoming and Washington permitting authorities. Today's interim final rule codifies, for 60 days, EPA interpretations as described in the Administrator's response which took the form of "adjudicatory orders." The EPA issued these orders to electric generating stations, PacifiCorp, and a pulp and paper mill, Fort James. The proposed rule would codify the same interpretation beyond the 60-day period when the interim final rule is in effect.
- Today's interim final and proposed rules are consistent with the U.S. Court of Appeals for the District of Columbia Circuit's (the D.C. Circuit) decisions in two previous cases that have addressed the clean air operating permit monitoring requirements, NRDC and Appalachian Power.
- In NRDC, the court held that periodic and sufficiency monitoring together ensure that a permitted industrial facility must undertake "monitoring ... sufficient to assure compliance" with an operating permit when monitoring requirements included in other Clean Air Act regulations do not apply.
- In Appalachian Power, the court found that periodic monitoring provisions apply only when an applicable requirement "requires no periodic testing, specifies no frequency, or requires only a one-time test." In this decision, the court did not address when the sufficiency monitoring requirements apply nor did they try to explain how their decision was consistent with the previous NRDC decision.

REQUIREMENTS OF TODAY'S RULE

- The EPA is taking these actions to address the claims of some facility owners and operators, permitting authorities and citizens regarding confusion about the scope of EPA's operating permit air monitoring regulations.
- The primary purpose of these rulemakings is to clarify how periodic and sufficiency monitoring work together in operating permits. These monitoring requirements work together as follows:

Where an applicable requirement does not require any periodic testing or monitoring, permit conditions are required to establish periodic monitoring consistent with the operating permit regulations. In contrast, where the applicable requirement already requires periodic testing or monitoring but that monitoring is not sufficient to assure compliance, the permit must meet the requirements for sufficiency monitoring. Where the periodic monitoring provision applies, it satisfies the requirements for sufficiency monitoring.

- These actions are consistent with title V of the Clean Air Act. These actions are also consistent with EPA's defense of pending litigation, where industry groups are challenging EPA's interpretation of the sufficiency monitoring provisions in the D.C. Circuit. In EPA's brief defending this industry challenge, EPA informed the court of its intent to take today's rulemaking actions.
- Today's interim final and proposed rules are limited in scope and they do not address any other issues related to air monitoring requirements under EPA's operating permits program, such as the type of monitoring required under the periodic or sufficiency monitoring provisions. The EPA expects to consider comments on these monitoring issues during a separate, future notice and comment rulemaking.

ECONOMIC CONSIDERATIONS

- Today's interim final rule and proposal will simply clarify existing requirements, rather than impose new requirements, thus, they will not have a significant economic impact on a substantial number of small businesses, nor will they result in additional costs to state, local, or tribal governments, or to the private sector.

FOR MORE INFORMATION

- To download the text of today's rulemaking actions, go to EPA's World Wide Web site at the following address: <http://www.epa.gov/ttn/oarpg/t5pfpr.html>.
- For general information on this action, contact Jeff Herring of EPA's Office of Air Quality Planning and Standards at (919) 541-3195.