

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[OAR-2003-0180; FRL-_____]

[RIN 2060-AK29]

Request for Comment on Potentially Inadequate Monitoring in Clean Air Act
Applicable Requirements and on Methods to Improve Such Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: Today's ANPR asks for public comment to help us identify monitoring in applicable requirements under the Clean Air Act (Act) that is potentially inadequate with respect to the statutory monitoring requirements for operating permits issued under title V of the Act. Today's ANPR also asks for public comment on ways to improve such monitoring. The EPA believes that it will be more effective, more equitable, and more efficient to improve inadequate monitoring in applicable requirements, where necessary, through rulemakings to revise the applicable requirements themselves or through other programmatic approaches, rather than by addressing inadequate monitoring on a case-by-case basis in the issuance and renewal of title V operating permits. To inform EPA's consideration of improvements to existing monitoring, today's ANPR seeks stakeholder input to identify inadequate monitoring in certain Federal standards and State implementation plan (SIP) rules and to suggest specific ways to improve such monitoring. Comments received in response to today's ANPR will enable EPA to better evaluate

whether and where inadequate monitoring exists and to determine how to craft any necessary improvements.

DATES: Comments. We must receive written comments on or before [insert date 60 days following publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. OAR-2003-0180, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Website: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: Send electronic mail (e-mail) to EPA Docket Center at a-and-r-docket@epamail.epa.gov.
- Fax: Send faxes to EPA Docket Center at (202) 566-1741.
- Air and Radiation Docket, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery: Air and Radiation Docket, U.S. Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Avenue, NW, Washington DC, 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR-2003-0180. The EPA's policy is that all comments received will be included in the public docket without

change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov websites are “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit EDOCKET on-line or see the Federal Register of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. 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 Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Herring, Information Transfer and Program Implementation Division, Office and Air Quality Planning and Standards, Mail Code C304-04, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-3195; fax number: (919) 541-5509; and e-mail address: herring.jeff@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

Categories and entities potentially affected by this action include facilities currently required to obtain title V permits under State, local, tribal, or Federal operating permits programs, and State, local, and tribal governments that issue such permits pursuant to EPA-approved programs.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit CBI to EPA through EDOCKET, regulations.gov or e-mail. Instead, mail CBI to the following address:
Mr. Roberto Morales, OAQPS Document Control Officer (C404-02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Attention E-Docket ID No.

OAR-2003-0180. Alternatively, such information may be hand delivered to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404-02), U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709, Attention E-Docket ID No. OAR-2003-0180. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to Mr. Morales, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI.

In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted to EPA's electronic public docket. If you submit a CD ROM or disc that does not contain CBI, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the FOR FURTHER INFORMATION CONTACT section. Information marked as CBI will not be disclosed except in accordance with procedures set forth in title 40 of the Code of Federal Regulations (CFR), part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:
 - Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
 - Follow directions - The agency may ask you to respond to specific questions

or organize comments by referencing a CFR part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

C. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of today's notice is also available on the World Wide Web through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of today's notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

D. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

I. General Information

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II. Background

Two provisions of EPA’s State and Federal operating permits program regulations require that title V permits contain monitoring requirements. The “periodic monitoring” rules, 40 CFR §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), require that:

[w]here the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), [each title V permit must contain] periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit, as reported pursuant to [§§ 70.6(a)(3)(iii) or 71.6(a)(3)(iii)]. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of [§§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B)].

The so-called “umbrella monitoring” rules, §§ 70.6(c)(1) and 71.6(c)(1), require that each title V permit contain, “[c]onsistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.”

In a final rule entitled “Revisions to Clarify the Scope of Certain Monitoring Requirements for Federal and State Operating Permits Programs” (69 FR 3202, January 22, 2004), also known as the “umbrella monitoring” rule, EPA announced a four-step strategy for improving existing monitoring that is designed to minimize reliance on case-

by-case monitoring reviews and so-called “gap-filling” in title V operating permits over time. Today’s ANPR is part of that strategy.

In the first step, the umbrella monitoring rule (69 FR 3202, January 22, 2004), EPA decided not to adopt proposed revisions to the regulatory text of §§ 70.6(c)(1) and 71.6(c)(1) (67 FR 58561, September 17, 2002) and instead ratified the regulatory text of those rules without making any changes. The EPA also announced that it has determined that the correct interpretation of these provisions is that they do not establish a separate regulatory standard or basis for requiring or authorizing review and enhancement of existing monitoring independent of any review and enhancement as may be required under §§ 70.6(a)(3) and 71.6(a)(3). The EPA explained that §§ 70.6(c)(1) and 71.6(c)(1) require that title V permits contain: (1) Monitoring required by “applicable requirements” under the Act, as that term is defined in 40 CFR §§ 70.2 and 71.2; and (2) such monitoring as may be required under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). See *Appalachian Power Co. v. EPA*, 208 F.3d 1015 (D.C. Cir. 2000). The term “applicable requirements” includes, but is not limited to: Monitoring required under the compliance assurance monitoring (CAM) rule, 40 CFR part 64, where it applies; monitoring required under Federal rules such as new source performance standards (NSPS) in 40 CFR part 60, national emissions standards for hazardous air pollutants (NESHAP) in 40 CFR part 61, maximum achievable control technology (MACT) standards in 40 CFR part 63, the acid rain program rules in 40 CFR parts 72 through 75; and monitoring required in SIP, tribal implementation plan and Federal implementation plan rules. Thus, for monitoring, EPA explained, §§ 70.6(c)(1) and 71.6(c)(1) constitute “umbrella provisions” that direct

permitting authorities to include monitoring required under existing statutory or regulatory authorities in title V permits. Based on EPA's interpretation of the Act, the plain language and structure of §§ 70.6(c)(1) and 71.6(c)(1), and the policy reasons described in the preamble to the umbrella monitoring rule (see 69 FR at 3204), EPA concluded that §§ 70.6(c)(1) and 71.6(c)(1) do not require or authorize a new and independent type of monitoring in permits beyond what is required by section §§ 70.6(a)(3)(i) and 71.6(a)(3)(i).

In the umbrella monitoring rule, EPA also announced plans to address monitoring in three related rulemaking actions. First, EPA announced plans to encourage States to improve potentially inadequate monitoring in certain SIP rules. The EPA intends to address such monitoring in guidance to be developed in connection with an upcoming rulemaking concerning the implementation of the national ambient air quality standards (NAAQS) for fine particulate matter (particulate matter with an aerodynamic diameter of less than 2.5 micrometers, or PM 2.5), also referred to as the proposed PM 2.5 implementation rule. The primary purpose of the proposed PM 2.5 implementation rule will be to describe the requirements that States and Tribes have to meet in order to implement the PM 2.5 NAAQS. Because opacity and particulate monitoring are related to compliance with particulate matter standards, one part of this proposal will address EPA's plans to develop separate guidance on how States can reduce PM 2.5 emissions by improving source monitoring related to particulate matter emission limits. This may include increasing the frequency of existing opacity monitoring, adding monitoring for parameters of a control device, installing continuous particulate emissions monitoring, or

a combination of the above. See 69 FR at 3204.

In addition, EPA announced plans to publish a separate proposed rule to address what monitoring constitutes “periodic” monitoring under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) and what types of monitoring should be created under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). Finally, EPA announced plans for today’s ANPR. See 69 FR at 3204-3205. Together with the umbrella monitoring rule, these three related rulemaking actions comprise EPA’s four-step strategy for improving existing monitoring where necessary on a programmatic basis.

In the umbrella monitoring rule, EPA stated that the strategy will ensure that the Act’s monitoring requirements will be met. See 69 FR at 3207. For instance, EPA explained that “section 504(c)’s command that each title V permit ‘set forth . . . monitoring . . . to assure compliance with the permit terms and conditions’ will be satisfied through the combination of EPA and, as necessary, State rulemakings to address monitoring, and the addition to permits of such monitoring as may be required under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). See 42 USC § 7661c(c).” *Id.* The EPA also explained that “[s]atisfying the specific monitoring requirements of section 504(c) will assure that the more general requirements of section 504(a) are satisfied as to monitoring.” See 42 USC § 7661c(a) (“Each [title V] permit . . . shall include . . . conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan”). *Id.* Further, the EPA noted that the Act grants the Agency broad discretion to implement the monitoring requirements of section 504 of the Act as well as the “enhanced monitoring” requirement of section

114(a)(3) of the Act. 69 FR at 3207; see 42 USC § 74 14(a)(3) (“[the Administrator shall in the case of any person which is the owner or operator of a major stationary source ... require enhanced monitoring....”).

III. What Is the Purpose of Today’s ANPR?

The purpose of today’s ANPR is to request public comments to identify potentially inadequate monitoring contained in certain applicable requirements and on ways to improve such monitoring. In particular, EPA is requesting comments on existing monitoring requirements in NSPS under 40 CFR part 60 and NESHAP under 40 CFR part 61 that were promulgated prior to the 1990 Amendments to the Act. See Section IV of this preamble for identification of categories of monitoring in which individual rules may have inadequate monitoring. We believe these categories, listed below, are a good starting point to frame public comments on potential monitoring inadequacies in Federal standards. However, we are not limiting comment to the categories which we specifically list for comment. In addition, as explained below, in this ANPR, EPA is asking for comments identifying specific SIP rules which contain inadequate monitoring. Although we believe some SIP’s are likely to contain some of the potential monitoring inadequacies listed below, we do not identify specific SIP rules where such inadequacies may exist. In this notice, EPA is not making any determinations that the categories of potentially inadequate monitoring listed below represent inadequate monitoring in any specific Federal rules and SIP rules, and thus, an important purpose of this notice is to seek public comments to help us to identify specific Federal rules and SIP rules where such monitoring categories actually result in monitoring that is inadequate. Further, we note

that the Agency has met any obligation it had to promulgate regulations for the “enhanced monitoring” requirement in section 114(a)(3) of the Act. Nevertheless, EPA will consider any comments in response to this ANPR regarding whether any of the monitoring requirements in the pre-1990 NSPS and NESHAP and in any specific SIP rules fail to meet “enhanced monitoring” requirements and the monitoring requirements in title V of the Act. If we conclude that any such inadequacies exist, we will take appropriate action to ensure that these statutory requirements are fully satisfied.

By contrast, we are not seeking comments on or otherwise reopening standards promulgated after the 1990 Amendments to the Act, for example, many NESHAP standards under part 63, and acid rain requirements, because we believe these more recent standards are unlikely to contain inadequate monitoring. This is so because such rules are already required to meet and were promulgated to meet Act requirements for monitoring that were enacted in 1990. Therefore to the extent the categories listed below exist in Federal rules promulgated since 1990, EPA believes they are unlikely to contain inadequate monitoring. For example, in the final NESHAP for lime manufacturing plants published on January 5, 2004 (69 FR 394), we allowed use of a continuous opacity monitoring systems (COMS) to serve as a surrogate for HAP metals instead of requiring continuous particulate mass monitoring. This is an example of a category of potentially inadequate monitoring in which limits on both PM mass and opacity are specified, but only monitoring of opacity is required, not PM mass. A commenter asserted that a COMS as a surrogate for HAP metals emitted from kilns, coolers, or processed stone operations was inappropriate because COMS does not correlate to particulate matter (PM) mass, and

that a better alternative was to use PM continuous monitoring that measures PM mass in units directly related to the mass emissions limit (see 69 FR 407). In its response, EPA agreed that COMS cannot directly measure PM emissions, but argued, for this standard, that a properly calibrated and maintained COMS is sufficient to demonstrate long term PM control device performance, since the purpose of the monitoring is to demonstrate with reasonable certainty that the PM control device is operating as well as it did during the PM emission test used to demonstrate compliance. For this standard, EPA also justified the use of a COMS because PM continuous emission monitoring systems (CEMS) and PM detectors (bag leak detectors) are significantly more expensive to purchase and maintain than a COMS, and because PM CEMS measure concentration, while the basis of the standard is mass per unit of feed input.

We are also not seeking comment on or otherwise reopening the CAM rule because we believe the CAM rule is currently structured such that, when it applies, it already requires adequate monitoring in permits. (The next paragraph discusses in more detail how this ANPR relates to the CAM rule.)

An important purpose of this notice is to solicit comments that could inform rulemaking actions that potentially would reduce the resource burdens associated with case-by-case review under the periodic monitoring and CAM rules. Because periodic monitoring rules apply when existing monitoring is not “periodic” and our strategy for improving existing monitoring through rulemaking may result in more existing monitoring that is “periodic,” our strategy for improving monitoring will likely result in fewer instances where periodic monitoring rules apply. Also, for two reasons, our strategy for

improving monitoring through rulemaking may result in less need for case-by-case review and enhancement under the CAM rule. First, as provided in § 64.2(b)(1)(i), any rulemakings to revise emission limitations and standards established pursuant to section 111 or 112 of the Act will result in exemptions from CAM for those emission limitations and standards. The CAM rule provides for this because any such rulemakings must satisfy certain Act requirements for monitoring, and thus, EPA believes further enhancements to monitoring through CAM would be unnecessary. Second, § 64.4(b)(1) allows States to provide SIP rules designed to satisfy certain CAM requirements (the requirements to document the appropriateness of monitoring within the CAM plan) for particular types of emission units. To the extent that our strategy for improving monitoring through rulemaking results in SIP rules designed for this purpose, it follows that this strategy may potentially reduce some of the burdens associated with implementation of the CAM rule.

IV. What Are We Specifically Seeking Comment On?

To focus analysis and comment on potential monitoring inadequacies in existing Federal and State rules, we provide the following categories of potential monitoring inadequacies based on our preliminary review of certain NSPS and NESHAP rules:

- No monitoring of any kind is required.
- Monitoring is specified for certain units, but no monitoring is required for other units.
- Limits on both PM mass and opacity are specified, but only monitoring of opacity is required (and not of PM mass).

- Monitoring is specified for certain control devices (e.g., monitoring of pressure drop), but no monitoring is specified for other control devices.
- Monitoring method is specified, but no monitoring frequency is specified, or monitoring is required only when directed by permitting authority.
- Infrequent periodic testing required, but no monitoring of the control device is specified between required tests.
- Monitoring of parameters may be insufficient to assure proper operation of control device.
- Monitoring of parameters required, but no parameter range is specified, nor is a procedure for setting the range specified.
- No monitoring or recordkeeping (to serve as monitoring) is specified for work practices (such as keeping covers closed at all time except during transfer of materials).

To help us gather useful information to decide if Federal or State rules may need to be revised, we ask the following questions:

Question: Identify specific pre-1990 Federal rules, including rules in the categories listed above, where you believe that the monitoring is inadequate. Explain why you believe the existing monitoring is inadequate and what types of monitoring you believe would be adequate for the specific example provided.

Question: Are there other categories of potential monitoring inadequacies in Federal rules? Please specify what you believe to be monitoring inadequacies, including citation to specific rules of concern. Are there other ways to identify inadequate

monitoring by source category, industry, pollutant, emission limitation, and/or pollution control device that would be more useful?

Question: What kinds of revisions or improvements would you suggest be made to improve inadequate monitoring in underlying Federal rules? Types of revisions or improvements that could be made through rulemaking include, but are not limited to: (1) establishing periodic testing or monitoring for each emission limitation, (2) more frequent monitoring using existing monitoring methods, (3) the collection of data that is more representative of control device operation or of the industrial process, (4) switching from monitoring methods that provide an indication of compliance to those that measure the pollutant of interest more directly, and (5) a combination of the above. In your comments, please provide any available information about cost, accuracy, feasibility, or any other factors that you consider relevant to the revised or improved monitoring.

Question: What kinds of programmatic or other changes would you suggest be used to make changes to improve inadequate monitoring? Options include conducting rulemaking to revise emissions standards, issuing guidance or policy, or other approaches. Please be specific on which option(s) you prefer and provide reasons for your preference(s).

Question: Do the categories of potential monitoring inadequacies identified above also appear in SIP rules such that you believe the monitoring to be inadequate? If so, identify such SIP rules. Do you believe there to be other categories of inadequate monitoring in SIP's, and if so, what are they? How would you suggest we go about identifying the specific standards or rules in specific implementation plans that contain

potential monitoring inadequacies? Please specify what you believe to be the standards, the inadequate monitoring, and the type(s) of improvements necessary to correct any potential inadequacies you identify. In your comments, please provide any available information about cost, accuracy, feasibility, or any other factors that you consider relevant to the revised or improved monitoring. What programmatic changes would be best to effect these changes (e.g., EPA or State rulemaking, SIP calls, voluntary programs, issuing guidance or policy, or other means)?

Question: Is opacity an effective means of determining compliance with PM limits in pre-1990 applicable requirements such as NSPS and NESHAP? Are other monitoring technologies more effective in assuring compliance with PM limits? Please specify situations where other monitoring approaches would be more appropriate and effective as indicators of compliance with PM limits. What new technologies may serve as cost-effective and reliable means of determining compliance with those PM limits (e.g., bag leak detectors which detect problems that may lead to a deviation or continuous emissions monitoring systems that directly monitor PM emissions)? Please specify when such new technologies may be warranted, including the standards, the current monitoring, and the more appropriate monitoring technology.

In this ANPR we are only seeking comments to identify potential monitoring inadequacies in the Federal rules identified in section III of this ANPR (i.e., NSPS under 40 CFR part 60 and NESHAP under 40 CFR part 61 promulgated prior to 1990) and SIP rules, and to suggest ways to correct any such inadequacies we may later determine to exist with respect to section 114(a)(3) of the Act and the monitoring requirements in title

V of the Act. We have not opened for comment any provisions of the operating permits program rules in 40 CFR parts 70 and 71, the CAM rule in 40 CFR part 64, any post-1990 NESHAP or any other post-1990 Federal rules or any issues related to State, local, tribal, or EPA implementation of permitting programs approved under or based on those rules.

What Additional Steps Are Expected After EPA Reviews Comments Received?

Once EPA receives comments on our preliminary analysis of potential monitoring inadequacies and suggestions on methods to correct such inadequacies, we will determine the appropriate next steps. The EPA believes, at this time, the next steps will likely include rulemakings to improve monitoring requirements in some Federal rules. We are open to comments and have made no decisions as to which Federal rules, have inadequate monitoring, nor on how to proceed to correct any such monitoring. Any rulemakings we may decide to undertake in the future will be conducted using notice and comment procedures. In addition, prior to finalizing any changes to Federal rules, we will consider all specific facts associated with the upgrades we propose for each standard and conduct any required analyses of burdens, including economic impacts, necessary to satisfy statutory and other requirements.

Date

Stephen L. Johnson, Acting Administrator