



U.S. Environmental Protection Agency - October 2007 FY08 – FY10 Compliance and Enforcement National Priority: Clean Air Act, New Source Review/Prevention of Significant Deterioration

What is the Environmental Problem?

New Source Review (“NSR”) consists of two programs: prevention of significant deterioration (“PSD”) and nonattainment NSR. New and modified sources in attainment areas, *i.e.*, where air quality standards have been met, and in unclassifiable areas, are required to follow PSD rules, which means they must obtain a pre-construction permit, prove that the construction will not cause violations of certain air quality standards, and show that their operations are in continuous compliance with the best available control technology (“BACT”) requirements. In nonattainment areas, *i.e.*, where air quality standards have not been met, new and modified sources are required to obtain pre-construction permits, to offset emissions increases with emissions reductions from other sources in the area, and to install lowest achievable emissions rate technology (“LAER”).

To comply with the CAA, the NSR/PSD program requires that before new sources begin construction, and existing sources change their processes, they apply for and obtain pre-construction permits (where the new construction or changes will cause emissions to increase above statutory and regulatory emissions thresholds). The United States Environmental Protection Agency (“EPA”) has determined that many sources have made changes to existing facilities without applying for and obtaining pre-construction permits. Consequently, sources have illegally increased their emissions where they would have otherwise likely been required to install pollution control technologies.

EPA has selected four industrial sectors for investigation based on the probability of past modifications that would have required NSR/PSD permits and the sectors’ overall emission profile. The four sectors are: coal-fired electric utilities, cement manufacturing facilities, sulfuric and nitric acid manufacturing facilities and glass manufacturing facilities.

Why Are We Addressing The Problem?

The Agency selected the four sectors for the priority Strategy, because each contributes significant amounts of pollutants to the atmosphere. The coal-fired power plant sector emits approximately two-thirds of the nation’s sulfur dioxide (“SO₂”) and approximately one-third of the nitrogen oxide (“NO_x”). The cement sector is the third largest industrial source of pollution, emitting more than 500,000 tons per year (“TPY”) of SO₂, NO_x and carbon monoxide (“CO”). Acid plants emit approximately 300,000 TPY of SO₂ and NO_x and glass plants emit

approximately 174,000 TPY of NO_x, SO₂ and particulate matter. Investigation and enforcement of NSR/PSD in the latter three sectors has the potential to reduce emissions up to 75% in each of these sectors, with possible emission reductions of approximately 750,000 tons per year.

A strong federal presence in NSR/PSD enforcement is necessary because of widespread non-compliance with the NSR/PSD program in the identified sectors and because of inconsistent permitting decisions made by permitting authorities about both the necessity for permits and the level of emission controls required. Despite indications that many cement, acid and glass facilities have made modifications requiring preconstruction permits, only a small percentage of facilities have NSR/PSD permits. Where permits have been issued, many state permits do not reflect the BACT for a particular industry. Outside the permitting context, a strong federal presence is necessary to ensure consistency in approach to litigation and settlement. Although EPA is playing a significant role in NSR/PSD enforcement, the Agency is continuing to actively encourage the states' participation.

How is OECA Addressing the Problem?

OECA will utilize various tools to address violations in the priority sector areas. The primary tool to be utilized will be compliance investigation and evaluation. Compliance investigations can take different forms but generally include some or all of the following: (1) written information requests, (2) state/local permit file reviews, (3) regional file reviews, (4) public information reviews, (5) on-site compliance inspections, (6) source emission testing information requests, (7) notices of violation, (8) administrative orders, administrative penalty orders, or case referrals to the Department of Justice, (9) supporting referred claims, (10) developing cases for filing, and (11) training for regional personnel to increase the level of awareness of NSR/PSD investigatory techniques.

Highlights from the FY 2005-2007 Planning Cycle

NSR/PSD was selected as a national enforcement and compliance priority for the FY2005 - FY2007 priority cycle. The priority had two components. First, the Office of Enforcement and Compliance Assurance ("OECA") continued its efforts to ensure coal-fired power plants comply with the NSR/PSD program. As a result of its efforts, EPA has secured commitments that will reduce emissions of criteria pollutants by more than one billion pounds per year at a cost of approximately \$5.8 billion (for the installation of state-of-the-art air pollution controls). Second, OECA identified the cement, glass, and acid manufacturing sectors for further NSR/PSD investigation.