

7/16/98

FACT SHEET

NEW SOURCE REVIEW: SOLICITATION OF COMMENTS ON WHEN MAJOR NEW SOURCE REVIEW APPLIES FOR A PHYSICAL OR OPERATIONAL CHANGE TO A FACILITY

TODAY'S ACTION

- ◆ The Environmental Protection Agency (EPA) is seeking comment on an alternative approach for states to use in determining whether "major New Source Review" requirements would apply to facilities undergoing a physical or operational change. The major New Source Review program is a pre-construction permits program for new and modified large industrial facilities. The program's intent is to ensure that newly built or significantly modified facilities do not result in unacceptable impacts on air quality.
- ◆ This alternative approach is different from EPA's existing policy in that it would treat utilities the same as all other industrial facilities --- the existing policy has a separate test for utility emission units (i.e., boilers) to determine whether major New Source Review would apply. The alternative approach would allow any facility (either utility or non-utility) to legally avoid being subject to major New Source Review requirements by taking an enforceable "temporary" limit on emissions.
- ◆ EPA is also seeking comment on the timing and circumstances under which permitting authorities should have to revise the emission level set for a given facility under a plantwide applicability limit or "PAL." A plantwide applicability limit is a voluntary limit or "cap" on a facility's total emissions which is established based on the facility's historical emissions. This limit provides flexibility for a facility to make modifications without triggering major New Source Review requirements as long as the emissions cap is not exceeded.
- ◆ Previously, EPA solicited and received several hundred comments on its New Source Review reform package proposed in July 1996. Although both of the items highlighted in today's action were raised in the July 1996 proposal, EPA wants to ensure that the public has an opportunity to evaluate the concepts in greater detail and in light of changed circumstances. Therefore, EPA is seeking additional comments before issuing the New Source Review reform rule in final form.
- ◆ EPA plans to finalize New Source Review reform regulations in May 1999 after considering all significant public comments, including those received on this notice.

BACKGROUND

- ◆ Congress added the New Source Review program to the Clean Air Act in 1977 to ensure that industrial expansion occurs in harmony with environmental protection. The major New Source Review provisions require large industrial facilities to obtain permits before they build new facilities or significantly increase emissions at existing ones. In developing these permits, facilities are required to do certain air quality analyses, and apply “best available control technology” in clean areas or comply with the “lowest achievable emissions rate” and obtain emission reductions to offset any emission increases in dirty areas.
- ◆ Nonattainment New Source Review applies to large facilities in areas of the country that have air pollution levels that exceed the national air quality standards ("nonattainment areas") set for a number of pollutants, including ground-level ozone. The Prevention of Significant Deterioration Program applies to new or changed large facilities in areas of the country that meet national air quality standards for the air pollutants to be emitted by a proposed source.
- ◆ In 1992, EPA issued a New Source Review regulation designed to reduce the regulatory burden for electric utility steam generating units making major modifications. This rule only applies to modifications to existing utility boiler units and does not apply to any other industrial sources. The rule was issued prior to utility restructuring and therefore assumed that utility operations in a then non-competitive market were highly predictable, and that information on utilization typically was assessed by an independent agency (the State Public Utilities Commission) and was available to the public. The generation of electricity is currently being transformed from a highly regulated monopoly to a competitive market. In such a market, utilities will likely operate no differently than other source categories.
- ◆ On July 23, 1996, EPA proposed to make changes to the existing New Source Review program that would significantly streamline and simplify major New Source Review. One of the main changes in this reform effort relates to the circumstances under which major New Source review requirements would apply when a facility undergoes a modification.
- ◆ In the July 1996 New Source Review package, EPA also proposed plantwide applicability limits as an option to determine whether major New Source Review would

apply. A plantwide applicability limit is a voluntary limit or "cap" on a facility's total emissions which is established based on the facility's historical emissions. This limit provides flexibility for a facility to make modifications without triggering major New Source Review requirements as long as the emissions cap is not exceeded.

- ◆ In today's action, EPA is seeking additional comment on: 1) an alternative approach for determining the applicability of major New Source Review requirements to modifications to existing facilities (both utility and non-utility) and 2) the circumstances under which state or local permitting authorities would periodically review and revise the emission level set under a plantwide applicability limit.

WHAT NEW SOURCE REVIEW PROCEDURES APPLY TO MODIFICATIONS AT MOST FACILITIES?

- ◆ In general, under the Clean Air Act and EPA rules, major New Source Review requirements apply if, as a result of a physical or operational change at a large facility, the total post-change emissions from the modified facility exceed the current actual emissions by a significant amount (as defined in the regulations).
- ◆ Generally, the emissions from a unit (e.g. a blast furnace) prior to the modification are calculated based on the average annual emissions at the facility during the two-year period preceding the change (or a more representative period, as appropriate).
- ◆ A unit's "potential" emissions (or the maximum a facility is capable of emitting) are used to estimate the post-change total emissions expected after the modification.
- ◆ A facility owner or operator can avoid the assumption that the unit will operate at its maximum capacity by agreeing to limit its emissions through enforceable restrictions that limit the unit's ability to emit more than it did prior to the modification.

WHAT NEW SOURCE REVIEW PROCEDURES APPLY TO MODIFICATIONS AT UTILITIES?

- ◆ Under the current policy, electric utility steam generating units are given special consideration in determining whether major New Source Review requirements should apply. Under the current policy, a utility's actual emissions before the modification are compared to its projected actual emissions for the 2-year period after the modification.
- ◆ In projecting post-change emissions, a utility does not have to consider any emission increase from increased use of capacity which results from independent factors such as growth in electricity demand.

- ◆ Utilities which complete a modification of one of their units (i.e., a boiler) and are not subject to major New Source Review requirements based on their projected actual emissions must submit to permitting authorities sufficient records each year for 5 years after the change to demonstrate the change has not resulted in an increase in emissions.
- ◆ The rules do not specifically detail either the means for verifying projected actual emissions or the consequences if a facility exceeds its projected emission level.

WHAT IS THE ALTERNATIVE EPA IS CURRENTLY CONSIDERING?

- ◆ An alternative being discussed in this action would allow any facility (either utility or non-utility) to legally avoid being subject to major New Source Review requirements by taking an enforceable “temporary” limit on emissions for a period of 10 years after the physical or operational change. This “temporary” limit would be based on the emission levels from the unit in any one of the 10 years preceding the change. This would allow each facility to choose a year which provided for the largest pre-change emissions level.
- ◆ EPA believes this alternative is reasonable because it treats all facilities similarly and also responds to industry comments that the traditional approach “confiscates” unused plant capacity following a modification. With this approach, when the temporary limit expires after 10 years, the unit may operate at any otherwise legally allowed and available capacity.
- ◆ Making requirements consistent between utilities and non-utilities is a reasonable option since the restructuring and deregulation of the electric utility industry has affected EPA’s previous assumptions about the industry (i.e. non competitive market, reliable projections of operation tied to local demand, and public accountability) that formed the basis for prior decisions on major New Source Review requirements for utilities.

WHY IS EPA CONSIDERING PERIODIC REVIEW OF PLANTWIDE APPLICABILITY LIMITS?

- ◆ Several commenters have suggested that plantwide applicability limits must be periodically updated to reflect recent actual emissions. Periodic review can help to ensure that individual facilities do not indefinitely keep unused emissions “credits” that could be distributed to other facilities within an area in need of a greater emission allotment.
- ◆ Indefinite plantwide applicability limits may also hinder a State’s ability to plan for achieving air quality standards since State inventories must account for emissions allowed under the plantwide limit even if the emissions are not occurring due to

shutdowns or under use of capacity.

- ◆ There may also be legal reasons why periodic review would be necessary to reflect actual emissions within a given time frame.

WHAT OPTIONS IS EPA CONSIDERING FOR ADJUSTING THE PLANTWIDE APPLICABILITY LIMITS?

- ◆ The options EPA is considering include 1) adjusting the limit to take into account shutdowns and under use of capacity, 2) allowing the limit to expire or be renewed, and 3) no adjustment where units at the facility already have good controls.

FOR FURTHER INFORMATION

- ! Interested parties can download the notice from EPA's web site on the Internet under "recent actions" at the following address: <http://www.epa.gov/ttn/oarpg>. For further information about today's request for comment, contact Mr. David Solomon of EPA's Office of Air Quality Planning and Standards at (919) 541-5375. EPA also has a web site on the Internet that contains additional information about New Source Review: www.epa.gov/ttn/nsr.
- ! EPA's Office of Air and Radiation's homepage on the Internet contains a wide range of information on the New Source Review program, as well as many other air pollution programs and issues. The Office of Air and Radiation's home page address is: <http://www.epa.gov/oar>.