

Fact Sheet -- Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Removal of Vacated Elements

ACTION

- On June 5, 2007 the Environmental Protection Agency (EPA) removed provisions for pollution control projects (PCP) and clean units (CU) from its New Source Review (NSR) regulations. These provisions were part of EPA's NSR improvement rule issued on December 31, 2002.
- On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit vacated the portions of the 2002 and 1992 NSR rules that pertained to CU and PCP. In response to this Court action EPA must remove from the Code of Federal Regulations (CFR) all vacated provisions.
- This final rule will take effect when it is published in the *Federal Register*.

BACKGROUND

- EPA intended the PCP exemptions to encourage investments in pollution control. Companies undertaking certain specified environmentally beneficial activities would have been free to do so after notifying their permitting authority. No permit activity would have been required.
- The Court concluded that EPA lacks the authority to grant exemptions from NSR requirements through rules.
- EPA developed the CU provisions to encourage the installation of state-of-the-art air pollution controls. EPA would have given plants attaining "clean unit" status flexibility in the future if they continue to operate within permitted limits. This operational flexibility would have been an incentive for plants to voluntarily install the best available pollution controls. Clean units would have needed an NSR permit or other regulatory limit requiring the use of the best air pollution control technologies.
- The Court concluded that the CU provision was not consistent with the intention of the Clean Air Act.

FOR FURTHER INFORMATION

- For further information concerning this action, contact Mr. David Painter of EPA's Office of Air Quality Planning and Standards at (919) 541-5515.