

Postponing the Effective Date of the New Source Review Permitting Program Rule on Aggregation

Fact Sheet

ACTION

- On May 6, 2010, the U.S. Environmental Protection Agency (EPA) extended the effective date of the January 15, 2009 final rule that modified the New Source Review (NSR) air permitting program's policy on "Aggregation."
- Aggregation refers to the grouping of multiple, related physical or operational changes into a single project for evaluating requirements under the NSR program.
- The final rule for Aggregation directs facilities and permitting authorities to combine emissions from plant modifications only when those activities are "substantially related." The final rule further specifies that:
 - To be aggregated, activities must have more in common than (1) timing of their construction, and (2) the fact that both activities support the overall basic function of the plant.
 - Plant modifications that are separated by 3 or more years are presumed not to be substantially related.
- In response to a petition for reconsideration from the Natural Resources Defense Council (NRDC), EPA announced it would grant reconsideration of the final rule. EPA also stayed the effective date of the rule until May 18, 2010.
- On April 15, 2010, EPA published a proposed reconsideration that requested comment on a range of legal and policy issues presented by NRDC in their petition. In that notice, EPA also proposed to revoke the final rule because of concerns that the rule may have introduced ambiguities that could reduce the effectiveness of the Agency's aggregation policy. The proposed reconsideration also proposed to extend the effective date of the rule for another six months to allow time to complete the reconsideration proceeding
- Under today's action, EPA is using the authority under Section 705 of the Administrative Procedure Act (APA) to further delay the effective date of the NSR Aggregation rule. This statutory provision allows an Agency to postpone the effective date of an action if litigation is pending and if the Agency "finds that justice so requires" postponing the action.
- Allowing the final rule to go into effect, even temporarily, would lead to confusion in the regulated community and the public as well as create difficulties for state and local agencies administering the program. Based on the potential problems stakeholders would have if the final rule went into effect, EPA finds that justice

requires postponing the effectiveness of the NSR Aggregation Amendments in order to allow for proper evaluation of the comments on the April 15, 2010 notice.

- The April 15, 2010 notice proposed to extend the effective date of the rule to allow time to complete the reconsideration proceeding. The comment period on that notice closes on May 17, 2010. Because EPA would need time to collect and review public comments before finalizing either the extension of the effective date or the issues under reconsideration, those options are not viable methods to use before the rule would become effective. EPA will continue to review comments on the effective date extension and will examine whether to continue the delay of effectiveness when reviewing the comments.

BACKGROUND

- Congress established the New Source Review (NSR) program as part of the 1977 Clean Air Act Amendments and modified it in the 1990 Amendments. NSR is a preconstruction permitting program that serves two important purposes.
 1. It ensures the maintenance of air quality standards when factories, industrial boilers and power plants are modified or added. In areas that do not meet the national air quality standards, NSR ensures that new emissions do not slow progress toward cleaner air. In areas that meet the standards, especially pristine areas like national parks, NSR's PSD permitting program ensures that new emissions keep air quality within protective air quality standards.
 2. The NSR program ensures that state of the art control technology is installed at new plants or at existing plants that are undergoing a major modification.

FOR MORE INFORMATION

- To download a copy of this notice, go to EPA's World Wide Web site at: <http://www.epa.gov/nsr>.
- Today's action and other background information are also available electronically at <http://www.regulations.gov>, EPA's electronic public docket and comment system. The docket number for this action is Docket ID No. EPA-HQ-OAR-2003-0064.
- For more information on this action, contact Dave Svendsgaard at (919) 541-2380 or svendsgaard.dave@epa.gov.