

FACT SHEET

Treatment of Fugitive Emissions in the New Source Review Permitting Program Interim Replacement Stay

ACTION:

- On March 8, 2011, the U.S. Environmental Protection Agency (EPA) issued an interim rule to stay a December 2008 rule known as “ the Fugitive Emissions Rule.” The Fugitive Emissions Rule established new provisions for how fugitive emissions, those that do not pass through a stack, chimney, vent, or other similar opening, should be treated for New Source Review permitting. This stay replaces the stay EPA issued on March 31, 2010, that was to be effective through October 3, 2011.
- The March 2010 stay of the Fugitive Emissions Rule inadvertently covered portions of the New Source Review permitting requirements in the *Code of Federal Regulations* that should not have been stayed. Today’s action stays the 2008 Fugitive Emissions Rule as originally intended and reverts the regulatory text back to the language that existed prior to the Fugitive Emissions Rule amendments that EPA is currently reconsidering.
- This interim rule is effective immediately, but provides for a 30-day public comment period after publication in the *Federal Register*. After carefully reviewing all comments received, EPA will issue a final rule either affirming the interim rule or affirming the interim rule with revisions.
- The final rule will remain in effect until EPA completes its reconsideration of how fugitive emissions should be treated in the New Source Review permitting program. EPA intends to complete the reconsideration and issue a final rule by October 4, 2012.

BACKGROUND:

- On December 19, 2008, EPA issued a final rule revising the requirements of the NSR permitting program regarding the treatment of fugitive emissions. (73 FR 77882) The final rule required fugitive emissions to be included in determining whether a physical or operational change results in a major modification only for sources in industries that have been designated through rulemaking under section 302(j) of the Clean Air Act. Examples of those industry sectors include oil refineries, portland cement plants, and iron and steel mills. The final rule amended all portions of the major NSR program regulations: permit requirements, the PSD program, and the emission offset interpretive ruling.
- On February 17, 2009, the Natural Resources Defense Council (NRDC) submitted a petition for reconsideration of the December 2008 Fugitive Emissions Rule.

- On April 24, 2009, EPA agreed to reconsider the approach to handling fugitive emissions challenged in the NRDC petition and granted a 3-month administrative stay of the Fugitive Emissions Rule.
- The administrative stay of the Fugitive Emissions Rule became effective on September 30, 2009. EPA put an additional 3-month stay in place from December 31, 2009, until March 31, 2010.
- EPA completed an additional 18 month stay of the Fugitive Emissions Rule on March 31, 2010, to remain effective through October 3, 2011. That stay was put in place to allow for sufficient time for EPA to propose, take public comment on, and issue a final action concerning the inclusion of fugitive emissions in the federal NSR program.
- EPA has recently become aware that the administrative stay and its two extensions were worded in such a way that some provisions not meant to be affected by the stay were affected.

HOW TO COMMENT:

- EPA will accept comment on the interim rule for 30 days after publication in the Federal Register. Comments, identified by Docket ID No. EPA-HQ-OAR-2004-0014, may be submitted by one of the following methods:
 - www.regulations.gov Follow the online instructions for submitting comments.
 - E-mail: Comments may be sent by electronic mail (e-mail) to a-and-r-docket@epa.gov
 - Fax: Fax your comments to: (202) 566-9744.
 - Mail: Send your comments to: EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2004-0014, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
 - Hand Delivery or Courier: Deliver your comments to: U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20004, Attention Docket ID No. EPA-HQ-OAR-2004-0014. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

FOR MORE INFORMATION:

- Interested parties can download information on this action from EPA's Web site at: www.epa.gov/nsr.
- The interim rule and proposed rule to remove the stay on certain paragraphs of 40 CFR parts 51 and 52 affected by the Fugitive Emissions Rule and revise the

regulatory text and other background information are also available either electronically in www.regulations.gov, EPA's electronic public docket and comment system, or in hard copy at EPA's Air and Radiation Docket and Information Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW, Washington, DC. Docket Number EPA-HQ-OAR-2004-0014.

- 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 and Radiation Docket and Information Center is (202) 566-1742.
- For more information, call Peter Keller at 919-541-5339 or email at keller.peter@epa.gov or visit the NSR website at www.epa.gov/nsr.