

NEW SOURCE REVIEW PROGRAM: AGGREGATION – STAY OF EFFECTIVE DATE AND RECONSIDERATION

FACT SHEET

ACTION

- On February 9, 2009, the U.S. Environmental Protection Agency (EPA) stayed the effective date of the final rule that modifies the New Source Review Program's policy on the term "aggregation." The stay will allow the new EPA leadership to review this final action. Aggregation refers to the grouping of multiple, related physical or operational changes into a single project for evaluating requirements under EPA's New Source Review (NSR) program.
- Memoranda from the White House (1/20/09) and Office of Management and Budget (1/21/09) suggest that executive branch agencies consider extending, for 60 days, the effective date of rules that:
 1. were published prior to January 20, 2009 but have not yet become effective, and
 2. raise substantial questions of law and policy.
- EPA also announced, through a separate action, that it will reconsider certain aspects of this final rule raised by the Natural Resources Defense Council in a January 30, 2009 petition for reconsideration. EPA will propose action in response to the request for reconsideration as soon as it has fully evaluated NRDC's petition.
- This final rule for NSR Aggregation was published in the Federal Register on January 15, 2009. It retained the existing rule but explained that source owners and permitting authorities should combine emissions when changes are "substantially related" – either from an economic or technical standpoint. It further specified that:
 - a source may not use timing alone as a basis for determining if changes should be grouped, but that
 - sources and permitting authorities can presume that plant modifications that are separated by three or more years are not substantially related, unless they can prove otherwise.
- After reviewing these memoranda, and considering the issues raised in the NRDC petition for reconsideration, EPA has decided to stay the effective date of this rule for 90 days – until May 18, 2009.

BACKGROUND

- Congress established the 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 ensures that new emissions fall 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 ADDITIONAL INFORMATION

- Interested parties can download information on these actions from EPA's Web site at: www.epa.gov/nsr.
- The January 15, 2009 final action 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 B102, 1301 Constitution Avenue, NW, Washington, DC (Docket ID No. EPA-HQ-OAR-2003-0064). 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.