

EPA Region 7
Permit by Rule Guidance
for
Minor Source Preconstruction Permits

The following criteria were developed by the EPA Region 7 for the use by State and local agencies when developing generic rules to replace individual minor source preconstruction permitting requirements for numerous similar small sources in an industry.

This guidance is intended to provide the States with information on the criteria the Region will use to determine approvability of permit-by-rule submissions. Any final decision with respect to whether a submission meets the legal requirements will be made in rulemaking on individual submissions. Decisions on approvability of particular rules will be based on the statutory and regulatory requirements, including section 110, in particular section 110(a)(2)(C), and 40 C.F.R. 51.160, which require the EPA to determine that the State has adequate procedures to ensure that construction or modification of sources will not interfere with attainment of a National Ambient Air Quality Standard (NAAQS). We will use these criteria to assist in reaching a decision regarding whether the legal requirements are met with respect to specific State submissions. While there may be circumstances which could arise on a case-specific basis which may warrant other considerations, the EPA has made an attempt to list all general criteria which will be used. States are encouraged to coordinate with the EPA at the earliest state of rule development.

In developing these criteria, the EPA has reviewed the April 14, 1998, Office of Air Quality Planning and Standards guidance memorandum titled, "Potential to Emit (PTE) Guidance for Specific Source Categories." While the guidance was not intended to affect minor source new source review programs, it provides insight into the process for devising potential-to-emit limits for small sources and creating generic potential-to-emit limits in prohibitory rules and general permits for numerous similar small sources in an industry. What the April 1998 guidance does not address, but which has been added to the criteria below, is the need by the State or local agency to address the impact on NAAQS as an important factor in determining operational limitations for permits-by-rule.

Criteria To Be Applied

1. Consistent with 40 C.F.R. part 51, subpart G, the state¹ must provide a demonstration of the relationship between the production and emission-related limits chosen for the rule, and the air quality modeling² showing that the rule is protective of the NAAQS. When

¹The word State is used to apply to both State and local agencies.

²For rules which apply to sources of ozone precursors (e.g., printing or surface coating operations), we do not expect that ozone modeling will be necessary to support the rules. However, we do expect that an air quality analysis will be performed to support a particular rule.

reviewing State submittals for approval, the EPA will review modeled predicted NAAQS concentrations, including background, and provide a higher level of scrutiny to those rules where the modeled concentrations are closest to the standards. Examples of supporting documentation which should be submitted include materials used to derive the emission rates and emission control parameters used in the modeling, as well as all modeling input and output files. The supporting documentation should analyze how the operational limits and required controls were evaluated and accounted for within the supporting air quality modeling. The modeling should account for “worst case” scenarios. (The EPA will work with States to define “worst case” on a source category basis as necessary.)

2. The definition of the sources covered by the permit-by-rule should be clear.
3. The rule should specify acceptable ranges or limits on operational conditions such as production-related parameters and rates as well as emission rates and emission control parameters. The emission limits should be set no higher than the maximum limits in the “worst case” modeling scenario. Also, any limit set as part of the rule must include the appropriate averaging time. To the extent a limit is designed to protect a short-term NAAQS, the emission limit averaging time should be consistent with the NAAQS averaging time.
4. The technical support for the rule should specify emission control objectives, e.g., capture efficiency, control efficiency.
5. The rule should specify the deadline (e.g., 30 or 60 days prior to construction) for both new and existing sources to apply for coverage under the rule and the effective start date of coverage under the rule.
6. The rule should require notification from the source prior to coverage under the rule. The notification should include information necessary for the state to determine that the source is appropriately covered under the rule and qualifies under the “worst case” operating conditions (e.g., maximum allowable emission rates, lowest stack heights, lowest exit speed, lowest temperature) used during the development of the rule (i.e., the “worst case” modeling). Such information should include the basic information such as names and addresses, as well as operation and emission related parameters specific to the source.

The level of detail of the analysis should be dependent on the geographic coverage of the rule. For example, if the rule would apply to sources in or near an ozone nonattainment or maintenance area, more detail would be needed than for a rule which only affects sources which impact attainment or unclassifiable areas. This criterion could also be met by including a provision in a specific rule which excludes from coverage those sources which impact ozone nonattainment or maintenance areas.

7. The rule should require some type of affirmative action by the State on the notification. At a minimum, this action would be a written record of acknowledgment of receipt of the notification and date coverage began.
8. The rule should allow the State to deny coverage, at any time, for cause, under the rule on a case-by-case basis and instead require a construction permit.
9. If mass balances procedures are used to verify coverage and/or compliance, the explicit methodology (e.g., equations and variable descriptions) should be made clear in the rule.
10. The rule should specify required record maintenance and recordkeeping. The rule must require records sufficient to ensure that the limits and conditions contained in the rule can be evaluated and enforced. The rule should specify how long the records must be retained by the source.
11. The rule should address the need and approach for appropriate initial and periodic testing. In addition, the rule should address any required ongoing monitoring. For any required testing or monitoring, the appropriate test methods should be explicitly stated, or procedures included for coordinating with the regulatory agency.
12. The rule should provide that, as a minimum, once a source has exceeded the limits or other requirements, the source is no longer exempted from the conventional permitting rules and is also subject to enforcement action. Such an approach is consistent with the EPA's policy that once a threshold is exceeded the source should be subject to the next higher set of requirements, rather than simply coming back into compliance with the less stringent requirements.
13. The rule should provide for notification to the state whenever the conditions contained in the rule have been exceeded or otherwise violated.

*The word State is used to apply to both State and local agencies

September 12, 2003