

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of the Inclusion of Fugitive Emissions

Fact Sheet

Action

- This rulemaking package responds to a July 11, 2003 petition from Newmont Mining Corporation requesting reconsideration of NSR Reform 2002 final rules. Newmont argued EPA failed to comply with section 302(j) of the Act by in requiring fugitive emissions be counted for purposes of determining whether a major modification occurs in sources not listed pursuant to 302(j). Newmont also argued we failed to provide notice and comment on this issue.
- This proposed rule revises the provisions of the December 2002 final rules related to the treatment of fugitive emissions for purposes of determining whether a physical or operational change at an existing major source qualifies as a major modification. Specifically, this rule proposes to include fugitive emissions in determining whether a physical or operational change results in a major modification only for sources in the source categories that have been designated through rulemaking pursuant to section 302(j) of the act.
- This rule would amend all four portions of the major NSR program regulations: 40 CFR 51.165, 51.166, 52.21, and will make conforming changes to Appendix S of part 51 upon promulgation of the final rule.
- EPA expects the NPRM to be published in the Federal Register in November, 2006.

Background

- Fugitive emissions are emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Examples of fugitive emissions include windblown dust from surface mines and volatile organic compounds emitted from leaking pipes and fittings at petroleum refineries.
- In the preamble to the 1980 NSR rules, EPA granted an exemption for major source determinations and for major modification determinations where the outcome depended on the inclusion of fugitive emissions for it to be considered major.
- The 1984 proposal and 1989 final FR notices established our existing approach regarding whether to count fugitive emissions in determining whether a major modification occurs. We proposed and finalized an interpretive ruling in 1989 that required that fugitive emissions be counted from all source categories

regardless of whether the category is on the 302(j) list.

- EPA's 1990 "New Source Review Workshop Manual" (taken by 2nd Circuit to be authoritative in a 2002 decision) reversed the agency's position back to the 1980 stance, reasserting the fugitive emissions exemption.
- The 2002 NSR rules specifically codified inclusion of fugitive emissions in determining whether a physical or operational change results in a major modification for listed and non-listed sources.
- This proposed rule intends to eliminate any uncertainty that now exists as a result of the seeming inconsistency between our final interpretive ruling (which represents the Agency's current policy) and some other materials (e.g., the existing rule language at §52.21(i)(1)(vii) and the language from the 1990 Workshop Manual discussed above).

For More Information

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