

## **Fact Sheet - Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of the Inclusion of Fugitive Emissions**

### **ACTION**

- On November 6, 2007, the US Environmental Protection Agency (EPA) responded to a petition from the Newmont Mining Corporation requesting reconsideration of the New Source Review (NSR) Reform rules of 2002.
- In its July 2003 petition, Newmont argued that EPA failed to comply with the Clean Air Act when the Agency required fugitive emissions to be counted when determining whether a major modification occurs in sources not listed according to section 302(j). Newmont also argued we failed to provide notice and comment on this issue.
- EPA is proposing to revise the way the December 2002 final rules treat fugitive emissions for purposes of determining whether a physical or operational change at an existing major source qualifies as a major modification. A major modification would require the facility to obtain an NSR permit before moving forward with construction. That permit would include required emission control measures to insure that changes at the facility would not degrade air quality.
- 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 as defined by section 302(j) of the Act including iron and steel mills, refineries, and coal-fired power plants. This rule does not propose to modify that list.
- This rule would amend all four portions of the major NSR program regulations, and would make conforming changes to Appendix S upon promulgation of the final rule.
- EPA will accept comment on this proposed action for 60 days after publication of the proposed rule in the *Federal Register*.

### **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.

- EPA's 1980 NSR rules, required that sources count fugitives emissions when determining whether an emissions increases qualifies as a major modification only if the source belonged to a Clean Air Act section 302(j) listed category.
- 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.
- EPA finalized an interpretive ruling in 1989 requiring that fugitive emissions be counted from all source categories when determining whether an emissions increase qualifies as a major modification regardless of whether the category is on the 302(j) list. EPA did not specifically codify regulatory language to implement the interpretive rule.
- In contrast to EPA's 1989 interpretive rule, EPA continues to require sources to count fugitives emissions when determining whether a source qualifies as a major stationary source only if the source belongs to a Clean Air Act section 302(j) listed category.
- 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.
- Sources must apply two different fugitive emission rules depending on whether the source is determining its major source status or whether a change results in a major modification.
- This rule would change EPA's existing regulation and result in a consistent treatment of fugitive emission for both major source and major modification determinations.

## FOR MORE INFORMATION

- For more information, call Lynn Hutchinson at 919-541-5795 or email at [hutchinson.lynn@epa.gov](mailto:hutchinson.lynn@epa.gov).
- **HOW TO COMMENT:** Comments should be identified by Docket ID No. EPA-HQOAR-2004-0014 and submitted by one of the following methods:
  - [Federal eRulemaking Portal](#)
  - e-mail ([a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov)),
  - Mail (EPA Docket Center, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460), or

- Hand delivery (EPA Docket Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW, Washington, DC).

Below is the list of industrial source categories that are required to count fugitive emissions for determining if a modification is major. This rule would not modify this list:

- Coal cleaning plants (with thermal dryers);
- Kraft pulp mills;
- Portland cement plants;
- Primary zinc smelters;
- Iron and steel mills;
- Primary aluminum ore reduction plants;
- Primary copper smelters;
- Municipal incinerators capable of charging more than 250 tons of refuse per day;
- Hydrofluoric, sulfuric, or nitric acid plants;
- Petroleum refineries;
- Lime plants;
- Phosphate rock processing plants;
- Coke oven batteries;
- Sulfur recovery plants;
- Carbon black plants (furnace process);
- Primary lead smelters;
- Fuel conversion plants;
- Sintering plants;
- Secondary metal production plants;
- Chemical process plants;
- Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- Taconite ore processing plants;
- Glass fiber processing plants;
- Charcoal production plants;
- Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, and
- Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.