

Fact Sheet: Prevention of Significant Deterioration: Proposed Rule to Address Emissions of Nitrogen Oxides in Clean Air Areas

Action:

- On February 14, 2005, the Environmental Protection Agency (EPA) proposed three options to meet the objectives of the Clean Air Act's Prevention of Significant Deterioration (PSD) program for nitrogen oxides (NO_x). The PSD program ensures that areas meeting the National Ambient Air Quality Standards maintain clean air.
- The options proposed today include:
 1. Retaining the existing increments for NO_x—measured as nitrogen dioxide (NO₂) in the ambient air. EPA established these increments on October 17, 1988.
 2. Allowing states that choose to implement an interstate cap and trade program for sources of NO_x to rely on the benefits of that program in place of the existing increments to prevent significant deterioration of NO_x air quality. EPA is currently considering establishing such a program known as the Clean Air Interstate Rule for the eastern U.S.
 3. Allowing states to adopt their own planning strategies and implement these in lieu of the increment system for NO_x if they show that PSD for NO_x is satisfied through some combination of state and federal emissions controls that have been or will be adopted.
- By adopting and implementing an alternative program under options 2 and 3, new and modified sources applying for construction permits under the PSD program in those states would be relieved of their obligation to undergo certain case-by-case source impact analyses normally required to demonstrate compliance with the PSD increments for NO_x.
- As part of the process to develop this proposal, EPA reviewed current scientific and technical information regarding effects of NO_x on human health and the environment. EPA has determined that the existing increments meet the requirements of the Clean Air Act and that the data do not provide sufficient basis for changing the existing increments for NO₂.
- The effect of this rule will depend on which of the three proposed options is finalized.
- This proposed rule complies with a court order and the terms of a settlement agreement with Environmental Defense.

- EPA will accept comment on this proposal for 60 days following publication in the Federal Register.

Background:

- The Clean Air Act provides for the protection of air quality in clean air areas of the country. One approach for protecting air quality in these areas is the use of “increments.” Increments are measured in terms of an air quality concentration of the pollutant (micrograms of pollutant per cubic meter), and they limit the amount of degradation of air quality in clean air areas.
- The 1977 Act established specific numerical increments for particulate matter and sulfur dioxide. For the other principal pollutants, the Act provided EPA the authority to establish increments or other measures "at least as effective" as the increments to prevent significant deterioration of air quality.
- EPA promulgated PSD regulations for NO_x, including increments for NO₂, in 1988.
- As part of the permitting process, new and modified industrial facilities must evaluate the impact of their emissions in a clean air (PSD) area to demonstrate that they will not cause or contribute to a violation of any national ambient air quality standard or degrade the air beyond the level allowed by PSD increments.
- Environmental Defense (ED) challenged EPA’s 1988 regulations, claiming that the NO₂ increments were inadequate for protecting against adverse effects and that EPA failed to provide a comprehensive assessment of the statutory criteria governing the establishment of new increments. ED claimed, for example, that the statute does not limit development of increments to only the form of pollutant and averaging periods used for the national air quality standards.
- In 1990, the U.S. Court of Appeals remanded the matter back to EPA to develop an interpretation of the section of the Clean Air Act that considers the criteria previously overlooked by the Agency, and if necessary take new evidence and modify the 1988 regulations.
- In 2003, ED petitioned the Court asking that EPA be ordered to take the actions mandated in 1990 by the Court.
- On November 11, 2003, the Court executed a settlement between EPA and ED. EPA agreed to propose new rules by September 30, 2004 and

final rules by September 30, 2005 to comply with the original Court remand order.

- EPA entered into a joint stipulation with ED to extend the Administrator's signature date for our proposal to February 14, 2005. EPA used the additional time to respond to concerns raised by ED, by considering alternatives to increments (as described above) for meeting the objectives of the statutory PSD program for NO_x.

FOR ADDITIONAL INFORMATION

- Interested parties can download today's proposed rule from EPA's web site at: www.epa.gov/nsr.
- The notice and technical support document are also available through the EPA's Air and Radiation Docket and Information Center (EDOCKET ID Number OAR-2004-0013 and Legacy Docket No. A-87-16) by calling (202) 260-7548 or fax (202) 260-4000. (A reasonable fee may be charged for copying.)
- For general information about this proposed rule, contact Dan deRoeck of EPA's Office of Air Quality Planning and Standards at (919) 541-5593, deroeck.dan@epa.gov, or Lynn Hutchinson at (919) 541-5795.