Fact Sheet - Proposed Flexible Air Permitting Rule

ACTION

- On August 28, 2007, the U.S. Environmental Protection Agency (EPA) proposed revisions to both the clean air operating permits (title V) and the new source review (NSR) programs under the Clean Air Act. These proposed revisions would make more broadly available a new approach to air permitting known as a "flexible air permit". Flexible air permits would encourage pollution prevention; provide increased flexibility, enable industrial facilities to make rapid changes to respond to market demands; save resources for state permitting authorities, and improve public information.

- Under the operating permits program, a flexible air permit would explain its operational plans and possible changes to those plans for the duration of the permit term – typically 5 years -- and the state, local or tribal air quality permitting authority would include permit conditions to ensure protection of public health and the environment for all of those operating conditions. These flexible permits do not provide approval for operational changes not within the scope of conditions considered at the time of the permit application, and facilities would still be required to meet their requirements under the Clean Air Act.

- EPA's proposed options under the operating permits program define and clarify the use of alternative operating scenarios (AOSs) and approved replicable methodologies (ARMs).

    1. Alternative Operating Scenarios (AOSs) – An AOS enables a source to obtain approval to make changes to existing emissions units by including in the permit an explanation of how the facility would continue to assure compliance with the different Clean Air Act requirements. For example, an AOS for an existing boiler might allow the unit to switch from oil to coal (if it were previously capable of doing so) without a permit revision, even though the change would be subject to source to different Clean Air Act requirements.

    2. Approved Replicable Methodologies (ARMs) –An ARM is a replicable protocol placed in a title V permit to facilitate compliance with an applicable requirement in situations that otherwise could require a permit revision. For example, an ARM could specify a replicable testing procedure for updating an emissions factor, rather than requiring a permit revision to accomplish its update. To be approvable, an ARM must deliver replicable results (usually numerical) when operating on the same input data.

- EPA is also describing successful approaches used in State pilots to authorize “advance approved” changes in programs, such as minor NSR. Advance approvals authorize planned individual changes or categories of changes, including the addition of entirely new units that would otherwise require review and approval by the permitting authority before they could occur. Advance approvals, including those under minor NSR, can then be incorporated into the sources operating permit, along with other terms, as necessary, to assure that such changes will comply with all applicable air requirements.

- The proposed revisions to EPA’s NSR program describe how industrial facilities would obtain advance approvals of certain future changes under major NSR through the use of a new permit option called a “Green Group.” A Green Group consists of a collection of emissions points ducted to a common, high performing air pollution control device. This emissions control device must meet “best available control technology” (BACT) or “lowest achievable emission rate” (LAER), as applicable. The total annual emissions from all the new and existing emissions activities included in the Green Group are restricted to a level determined to be protective of the applicable national ambient air quality standards and the increments established to protect visibility and other air quality values. The state, tribal or local permitting authority would retain the ability to determine if the Green Group permitting approach would be appropriate in a particular situation.

- Sources may make changes within the scope of a Green Group approval without further review or approval by the permitting authority. To establish a Green Group, a source must go through the major NSR permitting process and obtain a permit which would limit future emissions growth over a 10-year period.

- The proposed changes involve revisions and/or clarifications to mandatory program elements which mean that states would need to include them in their permit programs. EPA does not expect that these proposed changes would necessitate revisions to many approved state operating permit programs. EPA expects that most states would need to revise their major NSR programs in order to implement the Green Group provision.

- EPA will accept comment on this proposed rule for 60 days after it is published in the *Federal Register.*

BACKGROUND

- In 1990, Congress amended the Clean Air Act to require all States to develop operating permit programs. These programs require an

operating permit for each industrial facility that is a “major source” of air pollution. These permits clarify which underlying federal air pollution control requirements (applicable requirements) apply to the source and requires the source to track its compliance with meeting these requirements.

- Under this operating permits program, a source is considered major when it emits a certain level or more of a specific air pollutant. Depending on the pollutant, this can be a little as 10 tons per year or less.

- The applicable requirements that go into operating permits come from EPA’s and the states’ Clean Air Act regulations. These regulations typically:
    - limit the amount of air pollution the source can emit,
    - require the source to construct and operate specific pollution control equipment,
    - require specific work practices to be performed to reduce emissions, and
    - require monitoring and recordkeeping for the source to determine its compliance with the limits, pollution controls, and work practices mentioned above.

- 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.
    - First, it ensures the maintenance of air quality standards when sources such as factories, industrial boilers and power plants are modified or added. In areas that do not meet the national air quality standards, NSR assures that new emissions do not slow progress toward cleaner air. In areas that meet the standards, especially pristine areas like national parks, NSR assures that new emissions fall within air quality standards.
    - Second, the NSR program assures that state of the art control technology is installed at new plants or at existing plants that are undergoing a major modification.

- For more than a decade, EPA has worked closely with state environmental agencies in a cooperative effort to develop flexible air permitting approaches. Several state pilot permitting efforts were launched to address the delay and uncertainty that companies reported in the early 1990s associated with making operational changes that required approval and authorization through air permitting actions. The goal of EPA’s program was to provide sources operational flexibility so that they could more effectively compete in the global market, and, at the same time, assure environmental protection and promote pollution prevention.

- In 2001-2002, EPA conducted a detailed evaluation of the implementation experience of six flexible air permitting pilots. Information on EPA's evaluation can be accessed in the docket for today's proposed rulemaking.

- The evaluation demonstrated that the proposed rulemaking would produce enforceable permits which achieve environmental benefits by encouraging emissions reductions and facilitating pollution prevention activities. Of the five pilot sources evaluated by EPA that had operated under their flexible permits for three or more years, all five achieved 30 to 80 percent reductions in actual plantwide emissions and/or emissions per unit of production.

- This proposed rule also would enhance certain opportunities for public involvement and comment in the permitting process. The inclusion of advance approvals and AOSs in a permit presents a comprehensive picture of a source's operations over the permit term, while emissions caps limit plantwide emissions during the permit term. Permitting authorities who participated in pilots also noted benefits associated with improved information flows and reporting on plantwide emissions.

- Advance approvals and AOS typically improve operational efficiency at sources by allowing more efficient resource allocation and accommodate process improvements and pollution prevention activities. Facilities in the pilot program reported that flexible air permitting approaches significantly reduce the uncertainty and transaction costs associated with the permitting process. Several companies linked their increased operational flexibility under the permits to their ability to capture new market opportunities, to retain and attract jobs, and to compete more effectively in global markets. Permitting authorities also noted longer term administrative benefits from the pilot permits, enabling them to free staff time and resources to focus on reducing permitting backlogs or other higher priority environmental needs.

FOR MORE INFORMATION

- Interested parties can download the notice from EPA's web site on the Internet under recently signed rules at the following address: http://www.epa.gov/nsr.

- Today's proposed rule and other background information are also available either electronically in EDOCKET, EPA's electronic public docket and comment system, or in hardcopy at EPA's Air and Radiation Docket and Information Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. (Docket ID No. EPA-HQ-OAR-2004-0087). 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.

- **HOW TO COMMENT**: Comments will be accepted for 60 days beginning when this proposal is published in the Federal Register. All comments should be identified by Docket ID No. OAR-2004-0087 and submitted by one of the following methods:
  - Federal eRulemaking Portal (http://www.regulations.gov);
  - Facsimile ((202) 566-9744;
  - Mail (Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460); or
  - Hand delivery (Air and Radiation Docket and Information Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW, Washington, DC).

- For further information about the proposed rulemaking, contact Michael Trutna at EPA's Office of Air Quality Planning and Standards at 919-541-5345.