

Southern Arizona Environmental Management Society
1st Annual Regulatory Roundup

ADEQ NSR Rule Revisions

New Source Review (NSR) Overview



- Federally mandated “preconstruction” permitting programs
- Apply to:
 - Construction of new sources (“greenfield”)
 - Modifications to existing sources
 - *Any physical or operational change that*
 - *Causes an increase in emissions above a specified threshold*

Clean Air Act NSR Requirements



■ Major NSR

- Attainment areas subject to **Prevention of Significant Deterioration (PSD)** program
- Nonattainment areas subject to **Nonattainment NSR** program
- **Apply to:**
 - Construction of “major” sources
 - Major source threshold = potential to emit 100-250 TPY (except in certain nonattainment areas)
 - “Major modifications” to existing major sources
 - Major modification threshold = emissions increase greater than “significant”
 - ✓ 40 TPY for VOC, NO_x, SO₂
 - ✓ 15 TPY for PM₁₀
 - ✓ 10 TPY for PM_{2.5}

Clean Air Act NSR Requirements



■ Minor NSR

- SIP-required pre-construction review program for new minor sources and changes to existing minor sources
- Each plan must set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in—
 - (1) A violation of applicable portions of the control strategy; or
 - (2) Interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State.

[40 C.F.R. § 51.160(a)]

- General requirements for such procedures (e.g., information, public participation, administrative) set forth at 40 C.F.R. 51.160-164
- States have considerable discretion to match the amount and timing of the review process to the environmental significance of the change
- "*De minimis*" changes can forego review altogether

ADEQ NSR Rulemaking Purposes



- Address discrepancies between Arizona's NSR rules and those currently approved by EPA as part of the State Implementation Plan (SIP) (e.g., the "SIP gap")
- Implement EPA's Major NSR Reform Rule changes
- Adopt approvable minor NSR program
- Make the NSR program a more effective means of reducing emissions of regulated air pollutants and protecting the national ambient air quality standards

Major NSR Reform Rules



- On December 31, 2002, EPA published the NSR Reform Rules in the Federal Register (67 Fed. Reg. 80,186)
- The NSR Reform Rules addressed five major areas:
 - Baseline actual emissions
 - “Actual-to-projected actual” applicability test
 - Actual plantwide applicability limits (PALs)
 - Clean Unit Exemption
 - Pollution Control Project Exclusion
- In June 2005, the U.S. Court of Appeals vacated requirements, including the Clean Unit and Pollution Control Project exclusions

Major NSR Reform Rules (cont'd)



- EPA required states to adopt the December 2002 elements of the Federal NSR regulations or submit an “equivalency demonstration”
- Revisions to the SIP were due to EPA by January 2, 2006
- Failure to submit the mandatory SIP revision could trigger an 18-month sanctions clock upon issuance of a “failure to submit” finding by EPA

ADEQ Major NSR Revisions



- ADEQ initial NSR rule revision proposals included certain modifications to the EPA Reform Rule provisions
 - 5-year (rather than 10-year) look-back period for calculating baseline emissions
 - Same 24-month baseline period for all pollutants (rather than different periods for different pollutants)
 - Miscellaneous clarifications and corrections
- On July 29, 2010, HB 2617 became law requiring ADEQ to adopt and construe its rules “to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter.”
- ADEQ’s proposed major NSR revisions have been amended to conform closely to EPA’s NSR Reform Rules.

ADEQ Minor NSR Issues



- Applicability thresholds
- Structure
- Ambient air modeling
- Control technology review
- ADEQ review process
- Public participation
- Permit content
- Implementation

Proposed ADEQ Minor NSR Program



■ Structure

- Existing: Class II Permit
- Proposed: Source Registration and Class II Permit

■ Applicability

- Existing: PTE “significant” quantities of regulated air pollutants
- Proposed:
 - Class II Permit: PTE “significant” quantities
 - Source Registration: PTE in excess of “permitting exemption thresholds” (½ “significant” thresholds)
 - Minor NSR modification: PTE in excess of “permitting exemption thresholds”



■ Source Registration Process

- Application completeness review within 30 days
- Substantive review and final action within 60 days (90 days if hearing requested) after application administratively complete
- Public notice and participation, unless PTE is below permitting exemption thresholds
- NAAQS compliance review (by ADEQ)
 - May require SCREEN modeling
 - May require Class II permit



■ Source Registration Content

- Identification of emission units and applicable requirements, including testing, monitoring, recordkeeping, and reporting imposed by those requirements
- Elective limits or controls and associated operating, maintenance, monitoring, recordkeeping and annual compliance report
- Record retention (at least 3 years)

■ Source Registration Revision

- Modification that results in 2.5 TPY emissions increase (0.3 TPY for lead)
- Relocation of a portable source
- Transfer to new owner



■ Minor NSR Process

- Applies to construction of any new Class I or II source or any minor NSR modification to a Class I or II source
- Must meet *either* of the following conditions:
 - Implement Reasonably Available Control Technology (RACT)
 - Ambient air quality assessment must demonstrate no interference with attainment or maintenance with NAAQS
- Significant permit revision procedures and full public participation generally required
- Some changes may be processed as a minor permit revision if presumptive RACT imposed or SCREEN analysis shows expected concentrations below certain levels

Status of ADEQ NSR Rulemaking



- Last “strawman” draft made available by ADEQ on October 28, 2010
- Meeting with counties to get feedback
- ADEQ to meet with EPA Region 9 on February 17, 2011
- ADEQ expects to publish a notice of proposed rulemaking in March 2011



Questions?