

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

September 3, 1992

MEMORANDUM

SUBJECT: New Source Review (NSR) **Program Supplemental
Transitional Guidance on Applicability of New Part D
NSR Permit Requirements**

FROM: John S. Seitz, Director /s/
Office of Air Quality Planning and Standards (MD-10)

TO: Addressees

The Clean Air Act Amendments of 1990 (1990 CAAA) made numerous changes to the NSR requirements in the Clean Air Act (Act). To address some immediate concerns generated by the 1990 CAAA, the Environmental Protection Agency (EPA) issued an initial NSR transitional memorandum on March 11, 1991, entitled "New Source Review Program Transitional Guidance." This memorandum supplements that effort by clarifying EPA guidance regarding the permitting of new or modified sources in situations where a State does not submit a State implementation plan (SIP) revision implementing the augmented Part D NSR provisions of the 1990 CAAA by the applicable statutory deadline. The statutory deadlines for submission of revised NSR SIP's are listed in the attachment. Moreover, as more fully set forth in the March 11, 1991 transitional memorandum, this supplemental memorandum sets forth nonbinding guidance that does not create any rights or otherwise predetermine the outcome of any procedures. Also, many of EPA's interpretations of the new Part D NSR requirements are in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (see 57 FR 13498, 13552-556, April 16, 1992). These interpretations are not affected by this memorandum.

Title I of the 1990 CAAA requires that States with nonattainment areas or areas in the Northeast Ozone Transport Region (NOTR) submit to EPA, by specified deadlines, augmented new source permit rules which meet the amended requirements of Part D of Title I of the Act. For example, for NSR permit

programs in most ozone nonattainment areas and the NOTR, section 182 of the Act specifies increased offset ratios, lower source applicability thresholds, and presumptive treatment of nitrogen oxides (NO_x) as ozone (O_3) precursors. For ozone, the 1990 CAAA require that States submit SIP's meeting the amended Part D NSR requirements by November 15, 1992.

Where States do not submit the Part D NSR SIP by the applicable statutory deadline (**and for purposes of determining the approvability of revised NSR SIP's**), sources that have submitted complete permit applications (as determined by the reviewing authority) by the submittal deadline may receive final permits under existing State NSR rules. In this situation, such sources will be considered by EPA to be in compliance with the Act without meeting the amended Part D NSR provisions of the 1990 CAAA, provided they meet the following conditions:

1. The State and source move expeditiously towards final permit issuance.
2. Construction begins no later than 18 months from the date of permit issuance unless an earlier time is required under the applicable SIP.
3. Construction is not discontinued for a period of 18 months or more.
4. Construction is completed within a reasonable time. States may not grant permit extensions beyond these time periods unless the permittee is required in a federally-enforceable manner to meet the new Part D NSR provisions.

Sources approved for construction in distinct phases require additional clarification. Individual phases of a construction project are considered either as "mutually dependent" or "mutually independent" from the other phases. Mutually-dependent phases are those where construction of one phase necessitates the construction of the other in order to complete a given project or provide a different type (not level) of service. An example of a project with possible mutually-dependent phases is a kraft pulp mill, where all phases of construction are needed to complete the project and produce paper. On the other hand, an example of a project with possible independent phases is a three-boiler, electric power plant, where each boiler could be a mutually independent phase providing different levels of electrical power.

For phased construction projects with complete Permit applications submitted by the Part D NSR statutory deadline for SIP submittal, EPA will grandfather individual phases from meeting the new Part D NSR requirements, provided:

1. For mutually-dependent phases, if one of the facilities has met the construction conditions of this guidance (e.g., begins construction within 18 months of permit issuance), then all dependent phases specifically permitted at the same time will hold such status.

2. For mutually-independent phases, each phase that meets the construction conditions of this guidance (e.g., begins construction of that phase within 18 months of initial permit issuance) will hold such status.

Also, under today's guidance, where States miss the statutory deadline for Part D NSR SIP submittal, for sources **that have not** submitted complete permit applications by the SIP submittal deadline, EPA will also consider the source to be in compliance with the Act where the source obtains from the State a permit that is consistent with the substantive new NSR Part D provisions in the 1990 CAAA. The substantive new provisions are the new applicability thresholds, the new offset ratios, the offset requirements of section 173, and the NO_x requirements of section 182(f) for most nonattainment areas and the NOTR.

The State, of course, must be sure that all permits contain the minimum requirements for a Part D NSR permit as required by the current SIP or, where applicable, the Emission Offset Interpretative Ruling (40 CFR Part 51, Appendix S (Offset Ruling)).

Please note that the Act allows States to implement the new Part D NSR provisions prior to the statutory deadlines and in a manner more stringent than EPA guidance or rules. Thus, today's guidance does not apply in any State to the extent that the State's own rules or transitional guidance is more stringent.

The Act, as amended, requires offsets for all source categories, and emissions reductions are on a tons-per-year basis. To the extent Appendix S is incompatible with these statutory provisions, it must be considered superseded by the 1990 CAAA.

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The Regional Offices should send this memorandum to their States. Questions concerning specific issues and cases should be directed to the appropriate EPA Regional Office. If you have any general questions, please contact Mr. Michael Sewell of the New Source Review Section at (919) 541-0873.

Attachment

Addressees

Director, Air, Pesticides and Toxics Division,
Regions I, IV, and-VI

Director, Air and Waste Management Division, Region II

Director, Air, Radiation and Toxics Division, Region III

Director, Air and Radiation Division, Region V

Director, Air and Toxics Division, Regions VII, VIII, IX, and X

ATTACHMENT

As required by the Clean Air Act Amendments of 1990, the statutory deadlines for States to submit new Part D new source review (NSR) rules to the Environmental Protection Agency are:

- ! May 15, 1992 for sulfur dioxide (SO₂) nonattainment areas without approved SO₂ SIP is prior to enactment [see section 191(b)];
- ! November 15, 1993 for all other SO₂ nonattainment areas designated prior to enactment [see section 172(b)];
- ! May 15, 1992 for nitrogen dioxide (NO₂) nonattainment areas (see section 191(b));
- ! July 6, 1993 for lead nonattainment areas designated on January 6, 1992 (see section 191(a)),
- ! June 30, 1992 for particulate matter (PM-10 nonattainment areas (see section 189(a)(2)(A));
- ! November 15, 1992 for ozone nonattainment areas and November 15, 1992 for carbon monoxide (CO) nonattainment areas with a design value above 12.7 parts per million (ppm) (see section 187(a)(7)); and
- ! November 15, 1993 for CO nonattainment areas with a design value of 12.7 ppm or less [see section 172(b)].

For future nonattainment designations, Part D NSR rules are due within 18 months from redesignation for all SO₂, NO₂, PM-10, and lead nonattainment areas [see sections 189(a)(2)(B) and 191(a)], and within 2 years of redesignation for ozone [see section 181(b)(1)] and many CO nonattainment areas (within 3 years for CO nonattainment areas with design values less than 12.7 ppm) [see section 186(b)(1)].