



Clarifying/Revising the Minor New Source Review Program for Air Agencies

Fall 2022 Stakeholder Engagement Sessions



Presentation Outline

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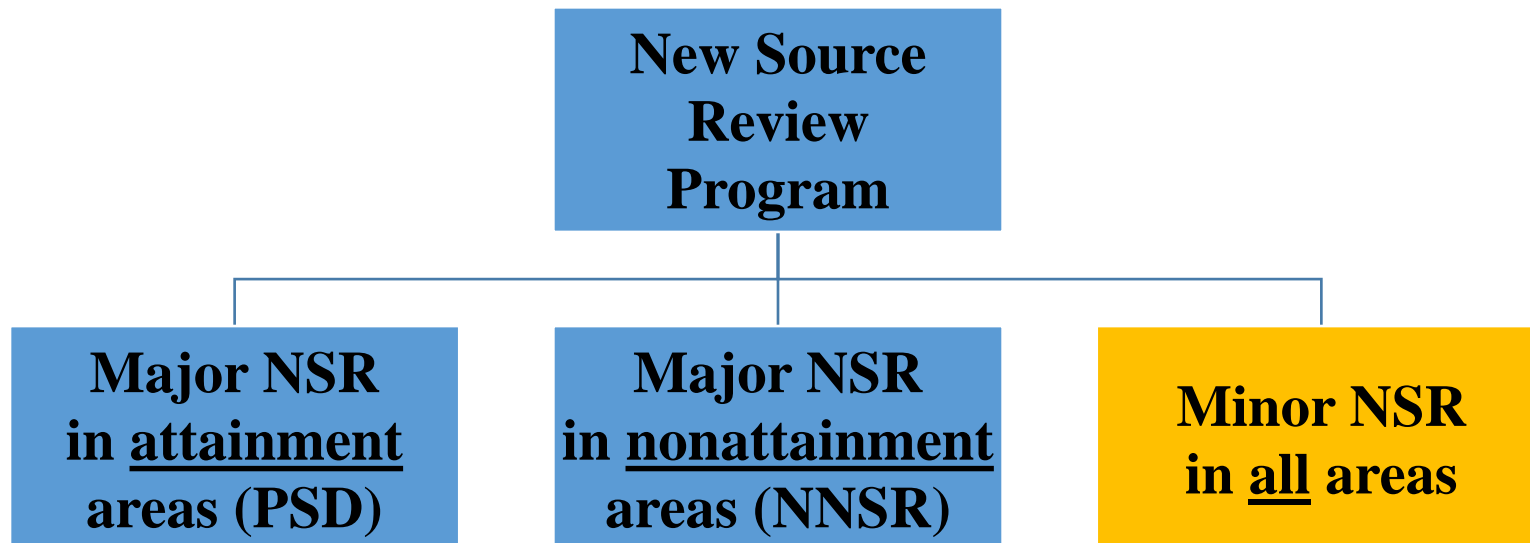


Purpose of Session

- To share EPA’s focus areas and initial thinking on a project to clarify and potentially revise the Minor New Source Review (NSR) program requirements implemented by state and local air pollution agencies (“air agencies”).
- To seek feedback – including experiences, context, and perspectives – from *individual stakeholders* on the Minor NSR program and on EPA’s initial thinking for this project. *EPA is not seeking collective viewpoints across participants.*
 - Individual participants are invited to submit follow-up or additional comments or reiterate their input within 2 weeks after this session. Email to: svendsgaard.dave@epa.gov



Components of New Source Review





Minor NSR Program Overview

- Minor NSR is authorized by the Clean Air Act (CAA), which requires that each air agency have a program to regulate “*the modification and construction of any stationary source . . . as necessary to assure that the national ambient air quality standards are achieved.*” CAA §110(a)(2)(C).
- Minor NSR regulates the construction of a new source, or the modification of an existing source, when its emissions or emissions increase of a NAAQS pollutant is below the applicability thresholds of the Major NSR program.
 - The Major NSR threshold for a new source is 100 or 250 tons/year (depending on source category) in areas designated attainment or unclassifiable for the NAAQS, and 100 tons/year (and, in some cases, less than 100 tons/year) in designated nonattainment areas, based on the source’s potential to emit (PTE).
 - The Major NSR threshold for a modification at an existing major source is the pollutant-specific “significant” emissions rate.
 - The Major NSR threshold for a modification at an existing minor source is the same as the Major NSR threshold for a new source.



Minor NSR Program Overview (cont.)

- Minor NSR is typically fulfilled through a source obtaining a preconstruction permit, but other means of regulation are permissible.
- The threshold for Minor NSR applicability may vary between air agencies but each agency's Minor NSR program must regulate the construction of new and modified sources as necessary to assure that the NAAQS are achieved.
- NSR is pollutant-specific, so sources proposing to construct may require a Major NSR permit for some pollutants and a Minor NSR permit for others.



Minor NSR Program Overview (cont.)

- EPA's rules for state implementation plans (SIPs) set forth a basic set of requirements for air agency Minor NSR programs, including:
 - Legally enforceable procedures enabling the air agency to determine whether the proposed new or modified source will result in interference with attainment or maintenance of the NAAQS, and, if so, to prevent such construction;
 - Identifying the type and size of projects subject to the preconstruction review program and explaining the basis for any exemption from the program; and
 - Providing opportunity for at least 30 days of public review and comment on the permit application, draft permit decision, and the agency's analysis of the project's effect on ambient air quality.
 - Notice to the public seeking comment must be "by prominent advertisement in the area affected" and is media-neutral (i.e., via web/electronic or newspaper).
- Many air agencies use General Permits (GP) and Permits by Rule (PBR) to streamline Minor NSR permitting for similar emission units or sources.
 - GP/PBRs typically undergo a public notice and comment process when initially issued but have no public notice or review when sources are obtaining coverage.
- Some air agencies use their operating permit programs (Title V or FESOP) to authorize actions subject to Minor NSR.



Project Overview

- Purpose: Ensuring EPA's rules that govern the Minor NSR program for state and local agencies and their implementation clearly provide for the necessary:
 - Accountability – to protect the National Ambient Air Quality Standards (NAAQS); and
 - Transparency – to offer the public an opportunity to participate meaningfully in the permit process.
- Regulatory Agenda
 - “Revisions to Minor New Source Review (NSR) Permit Program Requirements for State Implementation Plans” (RIN: 2060-AV67) added Spring 2022
 - Anticipated NPRM: July 2023
 - CFR provisions under review: 40 CFR 51.160 – 51.161
- Stakeholder engagement sessions scheduled October through December 2022



Project Overview (cont.)

- Focus areas of this project:
 - Public notice and comment requirements for different types of Minor NSR permit actions – i.e., synthetic minor sources, modifications at major stationary sources, and true minor sources
 - Measures taken to ensure NAAQS protection, including Minor NSR program demonstrations, air quality impact assessments for individual Minor NSR permits, and measures to ensure that the authorization of sources covered by General Permits and Permits by Rule does not compromise protection of the NAAQS
 - Procedural requirements for General Permits and Permits by Rule
 - Other aspects of the Minor NSR rule provisions that relate to public review and participation
- EPA will determine whether to propose to amend regulations and/or issue guidance to achieve desired outcomes.



Public Notice – Synthetic Minor Sources

- “Synthetic minor” includes sources that request enforceable limits on their physical/operational capacity, usually to avoid Major NSR or title V applicability. Permits for these sources include:
 - Greenfield sources
 - Modifications
 - Amendments
- EPA’s current rules for SIPs require agencies to provide an opportunity for public comment of 30 days for any NSR permit, which thus applies when permitting any synthetic minor source.
 - Some agencies have different public participation for synthetic minor sources if their PTE exceeds some percentage of the Major NSR threshold (e.g., 80 or 90%).
 - Some synthetic minor sources are currently issued permits through a FESOP.
- Discussion Point: The act of setting limitations/conditions on a source to ensure, on an ongoing basis, that its emissions (or emissions increase) are not subject to the more prescriptive requirements under Major NSR warrants transparency and accountability, although flexibility for smaller emitting modifications may be warranted.



Public Notice – Modifications at Major Sources

- Many large major stationary sources that are subject to Major NSR requirements when being built often modify their facilities over the years by way of Minor NSR actions. These can include:
 - Facility expansions and process line reconfigurations
 - Additions of new or replacement pieces of equipment
- To ensure that a project at a major source is not subject to Major NSR, an applicant's analysis may include projection of future emissions, as well as decisions on aggregation, netting, and debottlenecking.
- Some air agencies currently exempt from permitting a modification if its emission increase is below the agency's minor NSR permitting threshold.
- EPA's current rules for SIPs require agencies to provide an opportunity for public comment of 30 days for any NSR permit, which thus applies when permitting any of these minor NSR modifications.
- Discussion Point: An applicant's analyses that establish that its project at a major source is not subject to Major NSR warrant transparency and accountability, although flexibility for smaller emitting modifications may be warranted.



Public Notice – True Minor Sources

- “True minor” sources are those sources that do not require enforceable limits to avoid being subject to Major NSR.
- For many true minor sources and modifications, emissions are smaller, and of lesser concern to the NAAQS, than those from many synthetic minor sources. But some true minor sources can be of more concern, specifically:
 - Higher-emitting sources (up to 249 tons/year of a single NAAQS pollutant)
 - Sources locating in areas with high background concentrations of NAAQS pollutants
 - The permitting of multiple sources in the same discrete area, from which cumulative emissions may raise NAAQS concerns
- EPA’s current rules for SIPs require agencies to provide an opportunity for public comment of 30 days for any NSR permit, which thus applies when permitting any true minor source.
- Discussion Point: Given the higher variability of air quality concerns for different types of true minor NSR permits, air agencies may need more flexibility to permit these sources in ways that optimize air agency resources while ensuring a commensurate level of transparency and accountability.



General Permits/Permits by Rule

- EPA's current regulations for SIPs do not explicitly refer to General Permits or Permits by Rule. EPA's Minor NSR program regulations for sources on tribal lands include rules for GP/PBRs in 40 CFR part 49.
- Discussion Point: It is important for air agencies that implement a GP/PBR program to have a regulatory framework that ensures accountability and transparency of the Minor NSR program. EPA is considering:
 - Reviewing the best practices for developing and promulgating a GP/PBR that ensures NAAQS protection.
 - Reviewing the best practices for granting coverage to a source under a GP/PBR to ensure that the public is made aware of the permitted source (e.g., online posting) and has access to permit materials.
 - Whether EPA's processes for tribal NSR GP/PBRs may be suitable for air agencies.
 - Whether certain types of permit actions should be restricted from coverage under a GP/PBR (e.g., greenfield synthetic minor sources) or whether these permit types warrant additional procedural steps, including public review or an air quality analysis, before granting coverage.
 - Whether GP/PBRs should be periodically re-authorized through a public notice and comment process and accompanying NAAQS assurance analysis.



Program Demonstrations

- EPA's current regulations allow air agencies, through a program demonstration providing the basis for determining which facilities are subject to review, to exclude from Minor NSR review projects that they demonstrate would be inconsequential to attainment or maintenance of the NAAQS.
 - These exclusions typically enable a type or class of source or emission unit, or those sources/units that emit below a certain threshold, to avoid review and permitting under the Minor NSR program.
- Many Minor NSR program exemptions and thresholds were approved many years ago when the air agency was creating or implementing its original permitting program and have not been updated or reassessed since that time.
- Discussion Point: It is important to ensure that the exemptions from Minor NSR permitting continue to be protective of current day NAAQS, including short term NAAQS. EPA is considering:
 - Whether permitting exemptions that apply to projects occurring in nonattainment areas are different, or separately justified, from exemptions in attainment areas.
 - Understanding whether any air agencies restrict synthetic minor sources or modifications at major sources from qualifying for a permitting exemption.



Other Areas of Permit Review

- Apart from public notice and comment requirements, EPA is interested in other ways that air agencies effectively provide for meaningful public participation in the permit process, including:
 - Offering public hearings or public meetings.
 - Making accessible a complete/updated/searchable database of Minor NSR information (*i.e.*, permit decisions, applications, source locations, air quality analyses) on the air agency's website, and ensuring permit records are retained and available to access even if a permit expires.
 - Ensuring that the public has access to an understanding of administrative and legal remedies for challenging the air agency's minor NSR decisions.
 - Understanding the process some air agencies use to notice the permit application for a short period to gauge whether there is public interest in a full public notice and comment process and how the public may be informed of the subsequent proposed permit.



Other Areas of Permit Review (cont.)

- Apart from assessing program demonstrations, EPA is interested in other ways that air agencies ensure protection of the NAAQS, including:
 - Understanding criteria used by air agencies to require an air quality analysis before approving a case-by-case minor NSR permit or granting coverage under a GP/PBR.
 - Ensuring agencies have clear authority to prevent construction of a proposed project if it would interfere with attainment or maintenance of the NAAQS.



Questions/Feedback?