

FACT SHEET

Rescission of Preconstruction Permits Issued Under the Clean Air Act

Action

- On October 26, 2016, the U.S. Environmental Protection Agency (EPA) finalized amendments to the Federal Prevention of Significant Deterioration (PSD) rules to remove a date restriction that limited the use of the permit rescission provision, a provision that allows a PSD permit to be cancelled. Before this revision, only permits based on rules issued on or before July 30, 1987 and any PSD greenhouse gas permits issued as part of Step 2 of the Tailoring Rule could be rescinded. Removal of the date restriction allows for the rescission of EPA-issued or delegated permitting authorities-issued PSD permits that are no longer needed and clarifies the implementing provisions.
- In this rule, the EPA also finalized adding a permit rescission provision to the major source Nonattainment New Source Review (NA NSR) Rules that apply in Indian country. Adding this provision to the tribal NSR rules ensures that all federal major source permitting programs have rescission authority. The EPA is the air permitting authority in most areas of Indian country until a tribe obtains delegation of the applicable EPA rules or those regulations are replaced by an EPA-approved tribal implementation plan.
- While the EPA's permitting rules for state and local air agencies do not contain a rescission provision, the EPA believes that many state and local air agencies either have rescission authority in their laws or rules, or they have other mechanisms to rescind permits that are no longer required. In order to preserve the flexibility for these agencies to continue to administer their programs as they have done to date, the EPA is not adding a rescission provision to the NSR rules that apply to these agencies.
- The EPA also did not change the criteria under which an NSR permit may qualify for rescission. In many cases, the decision to rescind a permit is a very case-specific analysis, and requires a thorough evaluation of the facts of the source requesting a permit rescission, the rules in place at the time, and the court decisions or other events affecting the source.

Background

- Congress established the New Source Review program as part of the 1977 Clean Air Act Amendments. NSR is a preconstruction permitting program that serves two important purposes:
 1. It ensures the maintenance of air quality standards when major stationary sources such as factories, industrial boilers and power plants are constructed or modified. In areas that do not meet the national air quality standards, nonattainment NSR ensures that new emissions do not slow progress toward cleaner air. In areas that meet the standards, including pristine areas like national parks, NSR's PSD program ensures that new emissions will not cause air quality to deteriorate significantly and will continue to attain air quality standards.

2. The NSR program ensures that state of the art control technology is installed at new plants or at existing plants that are undergoing a major modification.
- EPA's federal regulations at 40 CFR 52.21 contain a provision that authorizes the rescission of PSD permits issued by EPA or delegated reviewing authorities.

Additional Information

- Interested parties can download this final rule from the EPA's web site at: <https://www.epa.gov/nsr/nsr-regulatory-actions>.
- For general information about this final rule, contact Jessica Montanez at (919) 541-3407 and montanez.jessica@epa.gov, of the EPA's Office of Air Quality Planning and Standards.