

FACT SHEET

Rescission of Preconstruction Permits Issued Under the Clean Air Act

Action

- On May 27, 2016, the Environmental Protection Agency (EPA) proposed to amend the Federal Prevention of Significant Deterioration (PSD) rules to remove a date restriction that limits the use of a provision allowing a permit to be cancelled. This is known as permit rescission. Under current PSD regulations only permits based on rules issued on or before July 30, 1987 and any PSD GHG permits issued as part of Step 2 of the Tailoring Rule can be rescinded. Removing this restriction would allow for the rescission of EPA-issued PSD permits that are no longer needed and clarify the implementing provisions.
- The EPA also proposed to add a permit rescission provision to the major Nonattainment New Source Review (NA NSR) Rules that apply in Indian country. Adding this provision to the tribal NSR rules would ensure that all federal major source permitting programs have rescission authority since the EPA is the air permitting authority in most areas of Indian country until 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 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 proposing to add a rescission provision to the NSR rules that apply to these agencies.
- The EPA is not proposing to 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.
- While the Clean Air Act establishes requirements for preconstruction permit programs, it does not specify how long a permit is to remain in effect or whether there are circumstances under which a permit may be rescinded. However, 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 today's proposed rule from the EPA's web site at: <https://www.epa.gov/nsr/nsr-regulatory-actions>.

How to Comment

- The EPA will accept comments for 30 days beginning when this proposal is published in the *Federal Register*. All comments should be identified by Docket ID No. EPA-HQ-OAR-2015-0782 and submitted to the Federal e-rulemaking portal (www.regulations.gov). Follow the online instructions for submitting comments. If anyone requests a public hearing within 5 days of the proposal publication date, we will published a subsequent *Federal Register* document announcing details of the hearing.
- For additional information about other ways to submit comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.
- For general information about this proposed rule, contact Jessica Montanez at (919) 541-3407 and montanez.jessica@epa.gov, of the EPA's Office of Air Quality Planning and Standards.