



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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August 4, 2008

Reply To  
Attn of: OAWT-107

**MEMORANDUM**

**SUBJECT:** Region 10 Non-concurrence on the Prevention of Significant Deterioration New Source Review: Refinements of Increment Modeling Procedures Rulemaking

**FROM:** Rick Albright, Director  
Office of Air, Waste and Toxics, Region 10

**TO:** Cheryl Newton, Acting Director  
Air and Radiation Division, Region 5

The purpose of this memorandum is to transmit Region 10's formal position on the draft final Prevention of Significant Deterioration New Source Review: Refinements of Increment Modeling Procedures Rulemaking. Region 10 non-concurs with this draft final rulemaking. This non-concurrence represents the position of Regional Administrator Elin Miller.

While this draft final rulemaking addresses a number of the concerns that Region 10 raised prior to the publication of the proposed rule, there are still several "fatal flaws" with this rulemaking. These flaws are ones that we raised previously and which, in our opinion, have not been adequately addressed. The result of these flaws is that the revised rule would substantially weaken EPA's current regulations and would effectively allow for nearly unfettered deterioration of air quality in clean areas rather than preventing significant deterioration of air quality as required by Part C of Title I of the Act.

**The Flaws**

**Allowing permit applicants to select either average emissions or maximum emissions for purposes of modeling short-term increment consumption will inappropriately minimize the amount of predicted increment consumption**

PSD increments are a regulatory threshold that must be met. In PSD permit decisions, there must be a "bright line" test as to whether the proposed new major stationary source or major modification does, or does not, cause or contribute to concentrations that exceed the maximum allowable increase. Allowing PSD permit applicants to "cherry pick," on an emissions unit by emissions unit basis, whether they want to compute increment consumption (or expansion) using an actual maximum rate or an average rate means that they can manipulate the baseline and current emission inventories to get any answer that they want. From the rule language itself, it

appears that the applicants can actually use a different averaging period (maximum or average) for the same emission unit for the dates. So depending upon how an emissions unit operated during the baseline and how it operates today, what changes have been made to the unit during the interim (e.g., addition of pollution controls), and what data is available on emission rates, applicants would have complete discretion to construct baseline and current actual emission inventories that completely mask the real change in emissions since the baseline date. Since, as the preamble now correctly states, the only measure of increment consumption is what the dispersion modeling analysis predicts based on the change in actual emissions from baseline to present, allowing the permit applicant to manipulate the emissions inventories in this manner completely undermines the entire increment program.

We strongly recommend that EPA promulgate a single methodology for calculating short-term emissions for purposes of increment consumption analyses. While there are arguably issues associated with either approach, we recommend that we remain consistent with the long-standing guidance from the New Source Review Manual and promulgate a requirement to use the actual maximum rate for short-term increment analyses.

**Allowing the use of “source-specific allowables” will inflate baseline actual emissions and inappropriately minimize the amount of predicted increment consumption**

The final rule would continue to allow the permitting authorities (and hence PSD permit applicants) to presume that source-specific allowables are equivalent to actual emissions as of a particular date. Since allowable emissions are, in most cases, greater than a source’s actual emissions, the use of allowable emissions provides conservative results when used to model a source’s current or future impacts on air quality. That is, the use of allowable emissions will overestimate the actual impact of a source. However, using allowable emissions to establish the baseline concentration for PSD increment consumption analyses is NOT conservative as this will overestimate the baseline emissions and hence underestimate the amount of increment consumption.

Since EPA has never defined the term “source-specific allowables” and it has generally been misused by States and permit applicants in the past (some agencies maintain that any limit in a permit is a source-specific allowable), we strongly recommend that this provision be dropped entirely from the new regulatory provisions for increment consumption. However, if it is to be retained, we recommend that it be limited to current or future actual emissions (not baseline) and that the rules include a definition of the term consistent with the preamble of the 1980 PSD rules.

**Allowing the use of different emission calculation methodologies for baseline emissions and current emissions without ensuring that sources compare “apples to apples” will inappropriately minimize the amount of predicted increment consumption**

While Region 10 continues to prefer an approach that would better specify the emission calculation methodologies that are to be used for developing actual emission inventories for increment consumption, we could accept the approach being taken in this final rulemaking provided change are made to address the most important aspect of emission calculations – the emission factors used. This rulemaking fails completely to address this aspect of the process and

in fact, muddies the waters by mentioning data from continuous monitoring systems without discussing other sources of data used to determine emission factors. Based on many years of PSD enforcement investigations, we are finding that operational data is usually available for the early years of the PSD program, but data on actual emissions (source test results, CEMS, etc.) are rarely available. If EPA really wants to make sure that sources compare "apples to apples" when current emissions data is based on CEMS or recent source test results, then we need to provide better guidance on how to calculate baseline actual emissions and preclude reliance on unrepresentative AP-42 emission factors. We have often seen cases where sources choose to rely in high AP-42 emission factors for baseline calculations when available information clearly shows that much lower emission factors, based on source-tests after the baseline period, represent actual emissions during the baseline period. We strongly recommend that the rule language be expanded to address this important aspect of the actual emissions inventories.

#### **Allowing the use of proprietary software and data will prevent the public from reviewing agency permitting decisions**

We continue to believe that all software code and data should be available to the public in order for there to be an independent review of a permitting authority's decision to authorize the construction or modification based on the results of a modeling analysis. While the preamble to the final rule significantly tightens what EPA was proposing to allow by narrowing the scope of the proprietary information and clearly establishing that permitting authorities have a right to review the software code and data, even that language does not ensure that information that should clearly be available to the public, such as onsite meteorological data collected for the permit application, would actually be available to the public for review.

#### **Other Significant Comments**

##### **Relationship to Appendix W**

While we understand and agree with the need to clarify that these new regulatory provisions supersede any conflicting provisions in Appendix W, the language in paragraph (f)(1)(vii) is too broad and needs to be narrowed to refer to the specific provisions of Appendix W that are being superseded (i.e., the provisions of Appendix W that deal with emissions inventories for increment consumption analyses).

##### **Use of alternative time periods**

While we agree with the approach for allowing the use of alternative time periods when the 24-month period immediately preceding a particular date is not representative of normal source operation, the gatekeeper language regarding whether operations during the alternative time period are representative of the operations as of the particular date does not adequately address all of the types of changes that would make such operations non-representative. Other changes to the source, such as construction of new emission units, modifications to existing emission units, and changes in the method of operation which occurred before or after the 24-month period immediately preceding the particular date, not just operations that permanently ceased,

also need to be taken into account when determining what is representative of normal operation. We recommend that the rule either be expanded to provide more comprehensive guidance or that the current sentence be deleted entirely and the issue be addressed through case-by-case determinations.

### **Status of the Draft New Source Review Manual**

While we recognize that the 1990 Draft New Source Review Manual is woefully out of date in many areas and that there are sections of the Manual that have been superseded by more recent guidance documents, there are portions of the Manual that remain EPA's current guidance on important topics (e.g., BACT). Simply expunging the Manual from EPA's guidance documents without replacing it with current guidance is not an acceptable approach. EPA should either update the Manual with a current version that can be used by federal, State, and local permit writers as well as permit applicants, or EPA should issue separate guidance documents that cover those portions of the manual that are still current and appropriate.

Note that reliance on the Region 7 database is not without problems as well, since documents in the database are not linked to the version of the PSD rules upon which they are based. There are many guidance documents that have been superseded by later determinations and all or portions of some guidance documents have been made moot by subsequent rule changes. Since HQ seems to be satisfied with leaving out-of-date guidance documents in the Region 7 database, leaving the New Source Review Manual in the database creates no additional issues.