

## Appendix B

# Current Status of NSR Reform

This chapter is current as of March 2004. Due to the expected rulemakings and court decisions on NSR reform, please consult USEPA's website for the most up-to-date information:

<http://www.epa.gov/air/nsr-review>.

Although USEPA promulgated the New Source Review (NSR) reform rules on December 31, 2002, fourteen states, plus other governmental entities and several public health/environmental organizations, filed suits in the Court of Appeals for the District of Columbia Circuit challenging the rules. Based on comments received after final promulgation, USEPA decided to reconsider six elements of the rules and published a notice of reconsideration on July 30, 2003. On October 30, 2003, USEPA decided not to make any of the six changes but only to clarify two aspects of the final rule. The December 31, 2002, rulemaking became effective in Minnesota on March 3, 2003, because the federal PSD rules are delegated to Minnesota at 40 CFR 52.1234(b). The NSR reform elements from this rulemaking are detailed in this training manual.

Final rules to provide additional certainty on routine maintenance, repair and replacement (RMRR) and specifically routine equipment replacement activities were issued on August 27, 2003. Those rules were to take effect on December 26, 2003, but the US Court of Appeals for the District of Columbia Circuit stayed the effective date. Because this rule is not yet effective, it is not detailed in this training manual.

All of the appeals have been consolidated into a single docket (03-1380) and a schedule for filing of briefs has been set, with final briefs due in July or August 2004. Hearings may or may not follow, and the appellate court will decide the fate of the rules. The rules could be left as is, or all or parts of the rule remanded back to the USEPA for reconsideration. Any decision is likely to be appealed to the US Supreme Court.

What does this mean for permitting sources in Minnesota, particularly for those whose permits trigger or are affected by NSR/PSD regulations? For now, the rules (with the exception of RMRR), as promulgated in December 2002 and clarified by USEPA in October 2003, continue to be in effect. Sources in the state are subject to the rules, as is the MPCA, which will continue to process permits under the rules in effect.

In the event that the rules are changed, the sources affected by any changes to the rules will need to review their permits and make decisions to seek or not seek permit amendments in light of the revised rules at the time they are revised. Revisions to existing permits may be needed if they used NSR reform elements that are changed in future rulemaking. Until that time, all of the new options promulgated

under the December 31, 2002, NSR reform rulemaking are available, and the permit forms and processes will allow the use of those options.

For RMRR, there remains a body of guidance on what constitutes "routine maintenance, repair and replacement." Much of this is available on USEPA's website, particularly Region VII's site: <http://www.epa.gov/region07/programs/artd/air/nsr/nsrpg.htm>. Decisions on whether changes are "routine maintenance, repair and replacement," and thus exempt as a modification under PSD, should continue to be made in light of historical guidance. When the final USEPA RMRR rules take effect, the clarifications contained in those rules will inform those type of decisions.

USEPA has also announced that it intends to pursue rulemaking for the three additional NSR reform elements/issues at some time in the future:

- De-bottlenecking
- Aggregation of projects
- Allowable PALs

No draft rules are currently available for these issues, and USEPA has not issued any notices of proposed rulemakings or advanced notices of proposed rulemakings, beyond what was noted in the preamble to the final rules and clarification. No date has been set to propose or finalize these rules.