

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

SEP 11 1986

SUBJECT: Ozone Control Strategy - Regional Office Review of Potential in
Improvements In New Source Review (NSR) Regulations

FROM: G. T. Helms, Chief Control Programs Operations Branch (MD-15)

TO: See Addressees

Attached is a list of NSR "loopholes" that occur in some State regulations and that are inconsistent with Federal requirements as adopted in 1980. Closing these loopholes has been proposed as a control measure under the ozone control strategy to minimize emissions increases that otherwise might result from new source growth.

This control measure was discussed by a committee of Headquarters and Regional representatives at the 1985 Regional Workshop in Southern Pines. From those discussions and other information available to the New Source Review Section in the Standards Implementation Branch, the attached list of potential improvements in State NSR regulations has been prepared. Before attempting to include this list in the national ozone strategy, we are sending it to the Regional Offices for review and comment, particularly in regard to the expected benefits from closing the specific loopholes. For example, it would be helpful if you could relay to us experiences you may have had regarding the magnitude of emission increases that resulted from use of one of these loopholes. To assist you in your review, a sample worksheet is attached to provide a format for your comments. Also, please feel free to describe additional loopholes that you believe should be addressed.

Please coordinate your response with the other addressees in your Region and with your Regional Counsel. Since we are on a tight time frame for developing ozone strategy, we would like to have your comments by September 24. If you have any questions, please call David Johnson (FTS 629-5665) or Barb Duletsky (FTS 629-5516).

Attachments

Addressees:

Chief, Air Branch, Regions I-X
Marcia Spink, Region I
John Courcier, Region I
Kevin Doering, Region II
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Estena McGhee, Region III
Roger Pfaff, Region IV
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New Source Review (NSR) State Implementation Plan (SIP)
Loopholes Affecting Ozone

1. Clean Spot Exemption. This loophole exempts sources that are located in a 107 designated nonattainment area from NSR requirements if the source can demonstrate that it does not "affect" the nonattainment problem in an area. This is sometimes demonstrated by showing that an increase in a pollutant from a particular source is insignificant when compared to the areawide nonattainment problem. This type of exemption was removed in the August 1980 response to the Alabama Power court settlement [40 CFR 51.18(j)(2)].
2. General Exemptions. This loophole exempts certain source types (e.g., cotton gins) and/or source classes (e.g., reactivated sources) from some or all NSR requirements. These exemptions apply regardless of the quantity of emissions generated by the source. Even though section 51.18(j) contains some exemptions in the definition of major modification [40 CFR 51.18(j)(1)(v)] and major stationary source [40 CFR 51.18(j)(1)(iv)] and NSR policy allows States to exempt a source from offsets if a growth allowance is available, some States have added additional (unauthorized) exemptions that should be removed.
3. Vague Offset Requirements. This loophole is the omission of specific, enforceable, and replicable criteria for approving offsets. These criteria include a definition of baseline (CMA Exhibit B), a requirement that reductions must be Federally enforceable (CMA Exhibit A), and a prohibition on the use of any emission reduction, as an offset, that the State had previously used to demonstrate attainment [40 CFR 51.18(j)(3)].
4. Vague or Incorrect Netting Requirements. This loophole is similar to 3 above but the requirements apply to netting rather than offsetting. Netting is used to exempt sources from NSR requirements by allowing sources to get credit from emission reductions within the same source to remain below certain major source emission cut offs. The requirements for netting should include an "actual" baseline (CMA Exhibit B), a health and welfare equivalence (CMA Exhibit A), the lack of a specific contemporaneous timeframe, and consistency with the reasonable further progress and attainment demonstrations. Some SIP's have "significant" levels that are higher than those allowed by Federal requirements [40 CFR 51.18(j)(1)(x) and (vi)].
5. Use of Nonfederally Enforceable Permit Conditions. This loophole allows sources to use permit conditions that are not federally enforceable to exempt sources from NSR requirements (CMA Exhibit A). Federal regulations only allow the use of federally enforceable permit conditions to limit the potential to emit below the maximum capacity. The proposal to make operating permits federally enforceable does not close this loophole [40 CFR 51.18(j)(q)(iii)].

6. **The Omission of Source Responsibility Provisions.** This loophole allows a source to: (1) state that an NSR permit relieves it from complying with other applicable requirements, and (2) use a federally enforceable permit condition to exempt a potentially major source from NSR requirements when the source is constructed and to request a relaxation from the federally enforceable condition without having to subject the source to NSR requirements. Federal requirements prohibit both practices. This second provision has become increasingly important in fuel switching situations and in times of increased economic activity [40 CFR 51.18(j)(5)].
7. **Incorrect VOC Definitions.** This loophole exempts certain sources from NSR requirements by excluding certain VOC substances from the emission calculation used in applicability determinations. These incorrect definitions include vapor pressure criteria and "Rule 66" exemptions. Federal requirements only allow the exclusion of organic compounds which EPA has declared insignificantly photochemically reactive [40 CFR 51.18(j)(3)(ii)(d) and certain Federal Register notices on VOC reactivity].
8. **Use of Federally Approved Attainment Demonstrations.** This loophole allows the State to use a State developed attainment demonstration even if the demonstration has not been approved by EPA to determine whether an offset/netting transaction is consistent with RFP. This is particularly a problem when EPA has actually determined that the State attainment demonstration is not approvable because it does not meet Federal attainment [40 CFR 51.18(j)(3)].
9. **Use of State Nonattainment Designations.** This loophole allows a State to exempt sources that are located in 107 designated nonattainment areas if the State designates the area as attainment. The EPA criteria for redesignating an area as attainment may be more stringent than the State's criteria [40 CFR 51.18(j)(2)].
10. **Unclear or Incorrect Definitions.** This loophole allows States to exempt sources from NSR by using less restrictive definitions or more creative interpretations of vague definitions. The definitions that are most important for applicability determinations are: stationary source, actual emissions, allowable emissions, fugitive emissions, commence or begin construction, building structure or facility (dual source definition issue), and major stationary source. For correct application of control requirements the LAER definitions should match the Clean Air Act provisions [40 CFR 51.18(j)(1)(a)].

IMPROVEMENTS IN NEW SOURCE REVIEW REGULATIONS

Potential States with Example Suggested
Improvement Deficient of a Wording
(i.e., Regulation Deficient to Correct
existing State Deficiency
loophole) Regulation

IMPROVEMENTS IN NEW SOURCE REVIEW REGULATIONS (cont.)

Potential Priority
Emission (low,
Reduction medium,
in or high)
Nonattainment
Areas
(low, medium,
high)
