

# **EPA COMPLETES RECONSIDERATION OF NEW SOURCE REVIEW EQUIPMENT REPLACEMENT PROVISION**

## **FACT SHEET**

### **ACTION**

- On June 6, 2005 the Environmental Protection Agency (EPA) issued its final response on the reconsideration of the Equipment Replacement Provision (ERP), as part of the Agency's New Source Review (NSR) permitting program.
- Under this provision, "equipment replacements" that meet certain criteria can automatically proceed under the New Source Review Routine Maintenance, Repair and Replacement (RMRR) exclusion.
- After evaluating the comments received during the reconsideration process, EPA has decided to not change any aspect of the ERP as it was originally issued in 2003. However, the Agency has clarified a number of our positions in support of the ERP, including the legal basis and support for selecting 20 percent for the threshold cost criterion.
- EPA continues to believe that the ERP ensures environmental protection while at the same time providing much needed improvements to the NSR program.

### **BACKGROUND**

- On October 27, 2003, EPA finalized the Equipment Replacement Provision under its NSR permitting program. Pursuant to the ERP, replacement of process components with "like-kind" (i.e., identical or functionally equivalent) components is "routine maintenance, repair and replacement", and therefore excluded from major NSR requirements. In order to fall within the coverage of the ERP, a particular equipment replacement must meet the following requirements:
  - replacement may not change basic design parameters of the process unit;
  - permitted emissions of the process unit may not be exceeded; and
  - fixed capital cost of the replacement may not exceed 20% of the cost to construct a new process unit.If a particular equipment replacement fails to meet any of these criteria, the activity is subject to case-by-case scrutiny. The activity still may qualify as RMRR, but the exclusion from NSR requirements is not automatic.
- The ERP preserves the public health protections provided by the Clean Air Act through the National Ambient Air Quality Standards, and other Clean Air Act programs. The ERP is designed to promote safe, reliable and efficient operation of manufacturing facilities.

- On November 14, 2003, state and local governmental groups challenging the final rule asked the U.S. Court of Appeals for the District of Columbia Circuit to stay the final ERP (i.e., prevent the rules from taking effect) until the challenges are resolved by the Court. Environmental Petitioners filed a similar request on November 17, 2003. On December 24, 2003, the Court granted those requests and issued an order to stay the effective date of the ERP.
- Also on December 24, 2003, EPA published a rule amending its Prevention of Significant Deterioration (PSD) provisions for state programs that did not have approved state PSD rules. Prevention of Significant Deterioration is a permitting program designed to protect air quality in areas meeting national air quality standards. In each of these states, EPA previously had made the area subject to the PSD rules in the Federal Implementation Plan (FIP). The rule simplified the procedure for incorporating new changes.
- The Administrator received petitions for reconsideration from several environmental and public interest groups and a group of states on three aspects of the October 27, 2003, ERP rule and on two aspects of the December 24, 2003, FIP rule. In a *Federal Register* notice dated July 1, 2004, EPA granted reconsideration and requested comment on three of the five areas cited in the petitions:
  - the legal basis for the ERP;
  - the basis for selecting the cost threshold (20 percent of the replacement cost of the process unit) to determine if a replacement is routine; and
  - a simplified procedure for incorporating a Federal Implementation Plan into state plans to accommodate changes to the New Source Review rules.
- On August 2, 2004, EPA held a hearing to take public comment on the issues under reconsideration. Five people presented public comments at that hearing. The public comment period remained open until August 30<sup>th</sup>. EPA received over 350 comments on this action.

### **ADDITIONAL INFORMATION**

- Interested parties can download information on the NSR Reconsideration from EPA's Web site at: [www.epa.gov/nsr](http://www.epa.gov/nsr) .
- Today's reconsideration notice, the final ERP rule, ERP Technical Support Document, and other background information are also available through the EPA's Air and Radiation Docket and Information Center (Docket Number OAR-2002-0068; legacy number A-2002-04) by calling (202) 2566-1742 or fax (202) 566-1741. A reasonable fee may be charged for copying.