

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: NSR Engineers Date: July 5, 2000
Thru: John Steib, Air Permits Division Director
From: Ruben Herrera, P.E., Technical Specialist
Subject: Retrospective Federal Permit Analyses and Reviews

We have and continue to come across situations where previously unknown emissions and/or emission sources are discovered at existing plant sites. The question that comes up most often is whether these “new” emissions/sources need to be permitted.

The Texas Clean Air Act requires that authorization be obtained from the commission prior to construction or modification of a facility. This can be done via permits by rule (formerly exemptions) or permits. Regardless of the type of authorization, 30 TAC 116.110 also requires that in order to obtain a permit, the application must include information which demonstrates that the facility is excluded from, or meets the requirements of the federal PSD and nonattainment (NA) rules.

The Federal Clean Air Act (FCAA) states that a *major* source may not be constructed unless a permit is obtained pursuant to the requirements of Parts C and D (PSD and NA sections) of the FCAA. It is important to note that the federal rules apply only if the site is already major, or if the construction or modification of the source is major in and of itself.

Together, these state and federal rules require applicants to obtain authorization for “new” facilities or sources (hereafter just referred to as sources). The purpose of this memo is to provide guidance for conducting the federal applicability analysis and review of newly discovered sources.

The procedures that we use to determine if federal review is required for these sources are the same ones we use for proposed major sources/modifications (see EPA’s 1990 NSR Workshop Manual and the TNRCC’s PSD Guidance Document). The only difference is that when reviewing past activities, we use the rules that were in effect at the time the source was constructed/modified in determining federal applicability, that is, we are performing a retrospective review. The following is a brief outline of the process and is done for each criteria pollutant.

1. Determine if the site is major using the PSD and NA rules in effect at the time of construction/modification.
2. Calculate emissions from the source using best current method; factors, sampling, etc. This is the project increase.

Retrospective Federal Permit Analyses and Reviews

3. Compare the project increase to the major source/significance levels at the time of construction/modification. If the site is minor, but the increase is major in and of itself, then NSR review is triggered.

If the site is major and the increase is major or greater than significance, then netting is required and the contemporaneous sum must be determined. Use the date of construction/modification to set the contemporaneous period and add up all increases and decreases within that time frame. The resulting value is the contemporaneous net.

4. Add the project increase to the contemporaneous net and compare the total to the significance level at the time of construction/modification. If the sum exceeds the significance level, then NSR review is triggered.

As shown above, the process we use to determine federal applicability is the same as for proposed sources, but past major thresholds and significance levels are used. If the analysis indicates that the source should have obtained a PSD or NA permit, then the applicant has to use current meteorological data and BACT (for PSD reviews), or current LAER and offsets (for NA reviews). This is because the authorization for the past construction/modification is done in current time.

One last item to note is that applicants always have the option of proposing the use of controls to the past construction/modification for the purpose of getting emissions under the major source or significance levels. If the applicant chooses to do this, the installation of controls can be done under EPA's Pollution Control Projects and New Source Review Applicability memo (July 1994) and under TNRCC Chapter 116.610 (standard permit). Note that the applicant is still subject to *enforcement* action because the retrospective analysis showed that the construction or modification should have triggered PSD/NA review, but the installation of the controls resolves any outstanding *permitting* issues.

Finally, these cases can be very complex, often involving other multiple activities and sources. Each case should be reviewed in detail to ensure that we have all the facts. Once it is clear that a retrospective analysis is required, be sure to account for all information and thoroughly document your findings.

If you have any questions, or come across anything that is suspect, please contact your team leader, section manager or senior staff that have experience performing these types of reviews.