

EPA Issues New Source Review Reform Measures

After many years of debate and litigation, on December 31, 2002, EPA promulgated a two-part rulemaking package intended to improve the Agency's NSR program. 67 Fed. Reg. 80,185 (Dec. 31, 2002). The first part is a rule that finalizes portions of EPA's 1996 proposal to revise the NSR program and includes five measures that are intended to provide facilities with additional operational flexibility and greater incentives to install state-of-the-art pollution controls. The second part is a proposed rule that would provide much more specific criteria for determining whether a proposed project at a facility constitutes "routine maintenance, repair, or replacement" and therefore would not trigger NSR requirements. (The proposed rule is discussed in a separate article in this Bimonthly).

Summary of Final Rule

The five reform measures contained in the final rule are summarized below:

Baseline Actual Emissions – For sources other than electric utilities, pre-change emissions will be determined under new "baseline actual emissions" provisions. This new term is generally defined as the emissions actually emitted during any consecutive 24-month period selected by the source within the 10-year period preceding the date actual construction begins or a complete application is submitted, whichever is earlier. Under the prior regulations, as interpreted by EPA, the relevant baseline period was the 2-year period preceding the date of the modification (unless the source could establish that the period was not representative). The new baseline approach is intended to reflect more accurately the business cycles of most industrial sectors. For utilities, the relevant baseline

period will be any consecutive 24-month period within the 5-year period preceding the date on which actual construction begins.

"Actual-to-Projected-Actual" Methodology – The final rule extends to all industrial sectors the use of an "actual-to-projected-actual" method for calculating emissions increases at existing units similar to that already used in the utility sector. Under this "actual-to-projected-actual" method, sources are to calculate emissions increases for a physical change or change in the method of operation at an existing unit by comparing baseline actual emissions with projected post-change actual emissions. Pursuant to the final rule, any source can use this method instead of EPA's controversial "actual-to-potential" test, under which small increases (or decreases) in actual emissions can trigger NSR applicability. The rule provides that the projected actual emissions are the product of (1) the hourly emissions rate, which is based on the emission unit's operational capabilities following the change, taking into account legally enforceable restrictions that could affect the rate following the change and (2) the projected level of utilization, which is based on both the unit's historic annual utilization rate and available information regarding the unit's likely post-change capacity utilization. Under the rule, non-utility sources are not required to submit emissions information to the regulatory authority before actual construction. However, when there is a "reasonable possibility" that the project could result in a significant emissions increase, a source must maintain a record of the baseline, projection, and annual emissions information. Sources must track post-change emissions for only five years, unless the change involves an increase in a unit's design capacity or

potential to emit, in which case the source must track emissions for ten years after completion of the project.

Plantwide Applicability Limitations (PALs) – The rule finalizes EPA’s 1996 proposal for PALs by allowing sources to make changes to their facilities without obtaining a major NSR permit, provided that their actual emissions do not exceed the plantwide cap. A source can apply for and obtain a PAL, which is to be set at the level of a source’s “baseline actual emissions” plus the relevant major modification “significant” level. Once a PAL is established, the source may make any change without undergoing major NSR provided that the emissions do not increase above the PAL level. The term of a PAL is ten years. Upon renewal of the PAL, the emissions levels in the PAL may be reevaluated by the permitting authority to determine whether the PAL should be adjusted downward for any reason.

Clean Unit Applicability Test – The final rule also establishes an alternative “Clean Unit” NSR applicability test. A unit qualifies for Clean Unit status if it has undergone a review process that resulted in its achieving BACT or LAER control levels. Sources that installed other stringent control technologies could also qualify for Clean Unit status, provided that the results are determined by the regulatory authority to be comparable to BACT or LAER. Under the Clean Unit applicability test, a unit with Clean Unit status is not subject to basic NSR applicability requirements when it makes a change if it satisfies two conditions. First, the change under consideration must not cause the need to change the emission limitations or work practice requirements in the permit that produced the Clean Unit status. Second, there must not be any change in the physical or operational characteristics that formed the basis for the permitting decision on which Clean Unit status was based. A unit’s Clean Unit status will last for up to 10 years, but a unit can re-qualify for the exclusion by satisfying certain conditions.

Pollution Control Projects – The final rule contains an exclusion from NSR for pollution control or pollution prevention projects. For a number of years, EPA and States have based such an exclusion upon EPA guidance memoranda. The final rule generally excludes from NSR any activity, set of work practices, or project undertaken at an existing unit that reduces emissions of air pollutants for that unit that is determined to be “environmentally beneficial.” Unlike EPA’s prior policy, the final rule does not require that the “primary purpose” of the activity or project be to reduce emissions.

Effective Date of NSR Program Changes

Under the final rule, the regulatory changes become effective for the federal PSD program on March 3, 2003. As a result, the changes will automatically become effective at that time in the 12 States that have been delegated federal PSD authority by EPA. With regard to the remaining States with approved PSD programs, those States will have three years from the date of promulgation in which to adopt and submit to EPA for its approval SIP provisions that include the regulatory changes as “minimum program elements” for the States’ PSD programs. Similarly, all States have three years in which to adopt and submit to EPA SIP provisions that include the relevant changes as “minimum program elements” for the States’ Nonattainment NSR programs.

Judicial Challenges to the Final Rule

On December 31 – the date of the final rule’s publication – a group of nine Northeastern States^{1/} filed a petition for review in the District of Columbia Circuit challenging the rule. *State of New York, et al. v. EPA*, No. 02-1387. The Commonwealth of Pennsylvania subsequently filed a separate petition for review challenging the rule,

^{1/} The States are New York, Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont, and Maryland.

which was consolidated with the Northeastern States' petition. It is expected that certain environmental groups as well as other parties will also file petitions for review challenging the final rule within the 60-day judicial review period, which ends on March 3, 2003.

On January 31, the Court entered an order granting motions for leave to intervene in support of the rule filed by the NSR Manufacturers Roundtable (a coalition of 11 major trade associations), the Clean Air Implementation Project, the American Petroleum Institute, the National Environmental Development Association's Clean Air Regulatory Project, and the Utility Air Regulatory Group. On January 30, eight States^{2/} sought leave to intervene in support of EPA's adoption of the rule. "

EPA Proposes New Provisions to Clarify What Constitutes Routine Maintenance, Repair, and Replacement

On December 31, 2002, EPA issued a proposed rule that would provide more specific criteria for determining whether a proposed project constitutes "routine maintenance, repair, and replacement" (RMRR) under its NSR regulations and thus would not trigger NSR requirements. 67 Fed. Reg. 80,290. The *Federal Register* notice indicates that the public comment period will end on March 3, 2003, but it is expected that EPA will extend the comment period by at least 30 days.

EPA proposes two categories of activities that would be considered RMRR activities: (1) activities that are covered under an annual maintenance, repair and replacement allowance; and (2) replacements that meet equipment replacement criteria. Activities that do not qualify

2/ Those States supporting the rule are Virginia, Indiana, Kansas, Nebraska, North Dakota, South Dakota, South Carolina, and Utah.

under whatever specified categories are exempted could still take advantage of current tests applied under the RMRR exclusion.

Proposed Annual Maintenance, Repair, and Replacement Allowance

Set forth below are the features of the proposed maintenance, repair, and replacement allowance and key issues on which EPA seeks comment:

Activities that come within the authorized allowance would be automatically excluded as RMRR. The allowance would be applied to the entire facility on an annual basis. EPA requests comment on whether a source should have the option of a multi-year allowance that would be applied over a period of up to five years. EPA also asks for comment on whether the maintenance, repair and replacement allowance should be set on an activity basis, rather than on a single year or multi-year basis. EPA additionally asks for comment on whether the annual allowance should be set on a "process unit" basis or some other basis, rather than for an entire facility as proposed.

The allowance would be based upon a specified percentage of the cost to replace the stationary source. EPA intends to set percentages on an industry-specific basis, but does not propose specific percentages. EPA asks for comment on various methods for setting the percentages. Among those identified are: (1) the threshold necessary to "cover the RMRR capital and non-capital costs that an owner or operator incurs to maintain, facilitate, restore or improve the safety, reliability, availability, or efficiency of the source"; (2) use of the IRS "annual asset guideline repair allowance percentages" that are used in determining the availability of the NSPS capital expenditure exclusion; and (3) use of industry-specific data for choosing an appropriate threshold.

If yearly costs of relevant activities exceed the annual allowance, the activities that would be excluded from NSR under the allowance would be those starting with the least expensive and continuing until none of the annual allowance remains. Activities that did not come within the allowance, and are not otherwise excluded, would be evaluated by applying EPA's case-by-case test.

EPA identifies specific types of projects that would be excluded from being considered as exempt under the annual allowance. These are (1) construction of a new "process unit," (2) replacement of an entire process unit, and (3) any change that results in an increase in the source's maximum achievable hourly emissions rate of any NSR pollutant or in the emission of any such pollutant not previously emitted by the source. EPA asks for comment on the appropriateness and adequacy of the three proposed safeguards and on whether any additional safeguards may be appropriate.

Proposed Equipment Replacement Provision

In addition to the proposed annual maintenance, repair and replacement allowance, EPA is also seeking comment on an additional equipment replacement approach. Key features of the equipment replacement approach and issues on which EPA seeks comment are as follows:

Under the equipment replacement provision, a replacement component that is (1) functionally equivalent to the replaced component, (2) does not change the basic design parameters of the process unit, and (3) does not exceed the cost threshold to be established, would constitute RMRR. EPA is seeking comment on whether this approach should be adopted along with the annual allowance described above, or whether the equipment replacement approach is preferred and should be the only one included in the final rule. If both approaches are recommended to be authorized, EPA seeks comment on how a combined approach would work.

EPA proposes that the equipment replacement exemption would be based upon a percentage of the replacement costs and would be reviewed on a "process unit" basis. EPA does not propose a specific percentage, but indicates that the 50% capital replacement threshold under the NSPS requirements "might constitute an appropriate limitation on when identical or functionally equivalent replacements should qualify as RMRR under the equipment replacement provision without regard to other considerations." EPA seeks comment on whether the equipment replacement cost approach should be established on some basis other than a "process unit" basis.

Other RMRR Issues

EPA's proposal also raises issues on topics other than the annual allowance and equipment replacement provisions. Among these are the following:

- EPA asks whether it should attempt to establish an exclusion for projects that promote efficiency, specifically focusing on energy efficiency, as a "stand-alone" exclusion.
- EPA additionally seeks comment on whether an option should be established under which any activity would be excluded if it did not "increase the capacity of" a process unit. The Agency raises issues regarding how capacity would be determined.
- EPA also asks whether an "age-based" approach should be established. Under such an approach, activities at a process unit under a specified age that do not increase capacity would be excluded from NSR. EPA indicates that the activities could not constitute reconstruction of the unit.

- Finally, in addressing the impacts of the RMRR proposal, EPA states its tentative conclusion that the RMRR proposal, if finalized, would not have any significant effect on emissions and seeks comment on this conclusion. "

EPA Publishes Proposed Rule to Amend General Provisions and Section 112(j) Regulations

On December 9, 2002, EPA published a proposed rule that would revise key provisions of the Part 63 General Provisions and the section 112(j) regulations. 67 Fed. Reg. 72,875. The proposed rule was published primarily in settlement of a judicial challenge brought by the Sierra Club to EPA's April 5, 2002 final rule, which had amended key provisions in both sets of regulations.

Background

The April 5 final rule implemented a settlement agreement between EPA and several industry parties that had challenged the original General Provisions and section 112(j) rules promulgated in 1994. The April 5 final rule, which was the culmination of more than six years of negotiations between the industry parties and EPA, revised and clarified the original rules in numerous respects. Among other things, the final rule created a two-part process for section 112(j) permit applications and provided that Part 2 applications would not be due until May 15, 2004.

After the April 5 final rule was promulgated, the Sierra Club filed a petition for review in the D.C. Circuit challenging certain provisions within the rule even though the Sierra Club had not participated in the rulemaking proceedings. EPA quickly entered into settlement negotiations with the Sierra Club and subsequently signed a proposed settlement agreement. Under the proposed settlement agreement, EPA would

have agreed to change the Part 2 application deadline from May 15, 2004 to May 15, 2003 and to revise certain provisions dealing with startup, shutdown, and malfunction (SSM) plans.

EPA received numerous adverse comments on the proposed settlement agreement during the public comment period. Many commenters argued that the Sierra Club could not challenge the final rule because it had failed to participate in the rulemaking proceedings and therefore had failed to exhaust its administrative remedies. Many commenters also criticized the substance of the proposed regulatory changes. In light of the number and intensity of negative comments – particularly those objecting to the May 15, 2003 deadline for Part 2 applications – Assistant Administrator Holmstead decided to meet with stakeholders, including industry representatives, to discuss possible solutions. These discussions resulted in a revised settlement agreement between the Sierra Club and EPA under which EPA agreed to propose a new scheme for addressing Part 2 application deadlines. The industry parties did not enter into the settlement agreement but ultimately agreed not to oppose a joint motion of EPA and the Sierra Club to sever the Sierra Club's case from the other consolidated cases and to hold it in abeyance.

The Proposed Rule

The principal points contained in the December 9 proposed rule are summarized below:

- EPA proposes a new approach to Part 2 applications suggested by STAPPA/ALAPCO and ECOS, as modified by the suggestions of the industry parties. Under this approach, if EPA misses the promulgation deadline for a standard in the November 2002 or February 2003 "bins," sources in the relevant source category must submit Part 2 applications by May 15, 2003. If EPA misses the promulgation deadline for a standard in the August 2003 bin, the

February 2004 bin, or the new June 2005 bin, the Part 2 application must be submitted 60 days after the promulgation deadline in question.

- EPA indicates in the preamble of the proposed rule that it will provide for an “early warning system” for sources and regulatory authorities when it concludes that it will likely miss a promulgation deadline. However, the preamble does not provide any specific information regarding such advance notice, and the proposed rule contains no suggested regulatory language.
- The preamble provides some guidance concerning the minimum amount of information that must be set forth in Part 2 applications. For example, it states that a source may rely in large part on the proposed MACT standard. The preamble also seeks comments on other measures for streamlining Part 2 applications.
- EPA proposes an approach for dealing with pending applicability determination requests. The Agency explains that a source is to supplement its pending request within 60 days after the proposed standard is published if it concludes that applicability remains unclear. Under this approach, the State agency is required to take action on any such supplemented request.
- EPA proposes the changes to the SSM provisions set forth in the attachment to the settlement agreement with the Sierra Club. Those proposed changes are: (1) deletion of language in section 63.6(e)(1)(i) clarifying that the general duty to minimize emissions is satisfied during SSM conditions if the source either meets the applicable standard or complies with its SSM plan; (2) revising section

63.6(e)(3)(v) to state that EPA “must require” revisions to an SSM plan if EPA finds that the plans fails to satisfy certain conditions; and (3) revising section 63.6(e)(3)(vii) to require, among other things, that all SSM plans and revisions thereto must be submitted to EPA rather than simply being available for inspection at the facility.

- EPA proposes to revise section 63.10(d)(5)(i), which provides that semi-annual SSM reports “must include the number, duration, and a brief description of each startup, shutdown, or malfunction.” The Agency proposes to delete the references to “startups” and “shutdowns” in that provision. It also requests comments on whether the provision should continue to address “malfunctions.”
- EPA seeks comments on two additional provisions in the final rule where EPA made changes without notice and comment. EPA revised the definition of “monitoring” to include verification of work practice standards without providing an opportunity to comment on the ramifications of the change. EPA also revised section 63.9(h)(2)(ii), which addresses the submission of notifications of compliance status, by inserting confusing language concerning situations where different compliance activities have the same deadline.

Comments on the December 9 proposal were due on January 21. Under the settlement agreement, EPA is to take final action on the proposed rule by April 27, 2003. ”

District Court Issues Two Decisions in NSR Enforcement Case

A federal district court judge in Ohio has issued two opinions addressing pre-trial motions in EPA's enforcement action against an electric utility company for alleged failures to obtain PSD permits. *United States v. Ohio Edison Co.*, No. 2:99-CV-1181 (S.D. Ohio, Jan. 17, 2003, and Jan. 22, 2003). In the first decision, the judge rejected the company's argument that the five-year statute of limitations in 28 U.S.C. § 2462 bars EPA's civil penalty claims regarding projects constructed more than five years before EPA's complaint was filed. In the second decision, the court denied the company's motion for summary judgment in which the company argued that all the projects in question were covered by the exclusion for "routine maintenance, repair, or replacement" (RMRR) activities. The court also denied EPA's motion for partial summary judgment in which EPA argued that certain projects were not covered by the RMRR exclusion. Finally, the court granted in part EPA's separate motion contending that certain defenses asserted by the company lacked merit.

The enforcement action involves allegations by EPA that 34 different projects undertaken by the company at one of its facilities in the 1980s and early 1990s constituted "major modifications" that triggered PSD requirements. All the projects entailed replacement of equipment during scheduled maintenance outages.

The principal effect of the judge's rulings is that the issue of whether the projects in question triggered PSD requirements will not be decided until after the trial takes place and the judge can consider witness testimony regarding past regulatory interpretations, industry practices, and the nature and scope of the projects in question.

The judge's rulings are summarized below:

Whether the Statute of Limitations Bars EPA's Civil Penalty Claims

The company moved for summary judgment on the grounds that 33 of the 34 projects involved in the case were undertaken more than five years before EPA's complaint was filed and therefore that EPA's civil penalty claims for those projects are barred by the statute of limitations in 28 U.S.C. § 2462. The company did not argue that EPA's claims for injunctive relief were barred by the statute of limitations. In opposing the motion, EPA maintained that the statute of limitations had not run because the failure to obtain a PSD permit constitutes a "continuing violation."

In his January 17 decision, the judge rejected the company's position based on his belief that, because a preconstruction permit may contain conditions dealing with the subsequent operation of the facility as well as preconstruction requirements, EPA's theory that a violation continues to exist after the time that construction takes place has merit. The court held that "it is illogical to conclude that a defendant may only be held liable for constructing a facility, rather than operating such facility, without complying with the permit requirements." According to the judge, the impact of the statute of limitations is that EPA can recover civil penalties only for the five-year period immediately preceding the filing of its complaint even though the alleged failure to have obtained a PSD permit occurred more than five years before the complaint was filed.

The court's conclusion that the failure to obtain a PSD permit constitutes a "continuing violation" conflicts with the conclusion of virtually every other district court (at least six) that has ruled on the issue. The other district courts have held that the alleged failure to obtain a PSD/NSR permit does not constitute a continuing violation. *See, e.g.,* the May 2001 *Washington Report* at WR-

370. Indeed, the only reported decision that is consistent with the ruling in this case is an earlier decision issued by the same judge in a companion case. *United States v. American Electric Power Co.*, 218 F.Supp.2d 932 (S.D. Ohio 2002). No court of appeals has yet addressed the “continuing violation” issue with regard to PSD/NSR permits.

Whether Projects Are Subject to the RMRR Exclusion

The company also moved for summary judgment on the basis that all the projects undertaken were “routine” within the electric utility industry and that EPA’s claims are inconsistent with the statute, the relevant regulations, and EPA’s own historical interpretations and applications of the regulations. The company relied in part on the deposition statements of an EPA contractor, a private consultant, and the Chief of the Ohio EPA air office to show that PSD permits had never been required for the types of equipment replacements in question. The company also argued that the projects were very different from the large projects that the court found were non-routine in *Wisconsin Electric Power Co. (WEPCo) v. Reilly*, 893 F.2d 901 (7th Cir. 1990).

EPA’s motion for partial summary judgment was based on the theory that the court should defer in this case to EPA’s current interpretation of what is “routine.” Among other things, EPA contended that the test for whether an activity is routine hinges on what is routine for the unit in question, not what is routine for the industry as a whole. EPA maintained that the deposition testimony relied upon by the company was irrelevant because the question of whether an activity is “routine” under the regulations is ultimately a legal question. EPA further contended that its conclusion that the projects involved here were non-routine was properly based on the four-part test (nature/extent, purpose, frequency, and cost) upheld by the *WEPCo* court.

In addressing the motions, the court concluded that, “regardless of which approach is adopted, unresolved questions of fact as to the scope and extent of the projects, the treatment of allegedly similar projects undertaken at other plants and the effect of the projects on the environment render summary judgment particularly inappropriate.” Accordingly, the court denied both sides’ motions involving the RMRR exclusion.

Whether Certain Defenses Raised by the Company Are Valid

EPA filed a separate motion seeking partial summary judgment as to certain affirmative defenses by the company because they are allegedly either legally unupportable or involve no genuine issues of material fact.

The judge concluded that he considered himself bound by his prior decision in the companion case of *United States v. American Electric Power Co.*, 218 F.Supp.2d 932 (S.D. Ohio 2002), in which he had ruled, among other things, that affirmative defenses based on the Takings Clause of the Fifth Amendment, the Tenth Amendment (powers reserved to the States), and the Commerce Clause were without merit. In addition, the judge ruled that the company’s argument that EPA’s alleged re-interpretation of its regulations violates the *ex post facto* clause of the Constitution (Congress cannot enact a law punishing someone for conduct that was legal at the time it was undertaken) similarly lacked merit. With regard to the other defenses challenged in EPA’s motion, the court ruled that the company will have an opportunity to present additional evidence before the court determines whether each defense is valid. ”

EPA and Industry Parties Settle Litigation Involving the Applicability Determination Index

EPA and the Department of Justice have determined that a proposed settlement agreement concerning EPA's Applicability Determination Index (ADI) entered into between EPA and industry parties should be finalized. The settlement agreement had been reached in order to resolve litigation brought by the industry parties to challenge certain *Federal Register* notices involving the ADI. *Utility Air Regulatory Group v. EPA*, Nos. 02-1023 *et al.* (D.C. Cir.). As a result of the agreement, future *Federal Register* notices announcing that documents have been posted on the ADI should not contain language suggesting that the documents are generally applicable to all sources and that the period for judicial review has been triggered.

The controversy arose because of certain language contained in a notice in the November 15, 2001 *Federal Register* announcing that documents had been posted on the ADI. 66 Fed. Reg. 57,453. (The ADI is an electronic database maintained by EPA containing informal determinations concerning whether particular facilities are subject to specific NSPSs, NESHAPs, or certain other standards.) The November 15 notice stated, among other things, that the notice of new postings was being published pursuant to section 552(a) of the Administrative Procedure Act (APA) and section 307(b) of the Clean Air Act. Section 552(a) of the APA requires the publication of agency "interpretations of general applicability," and section 307(b) is the judicial review provision of the Clean Air Act. The foregoing language had not appeared in any previous notice of postings on the ADI.

The references to the APA and the judicial review provision of the Clean Air Act suggested that the determinations being posted on

the ADI were generally applicable as a legal matter to all sources (not just the sources that were specifically addressed in the determinations) and that the publication of the notice triggered the 60-day period for seeking judicial review of any determination being posted. The new language appeared to substantially expand the role of the ADI and to impose a duty on all sources to review new determinations posted on the ADI and challenge them within 60 days or run the risk of being foreclosed from challenging them in the future. At the very least, the new language created significant uncertainty and confusion. Accordingly, certain industry groups – including the Clean Air Implementation Project and the American Chemistry Council – filed petitions for review challenging the notice. One party also challenged a subsequent notice that contained similarly troubling language.

Subsequent negotiations with EPA indicated that the Agency had not understood the possible consequences of the language it had used and had not intended to make newly posted documents generally applicable to all sources. In October 2002, the industry parties and EPA entered into a proposed settlement agreement to resolve the litigation. EPA agreed that it would not use the disputed language in the future and that it would clarify the intent of the November 15 notice in a future notice involving new ADI postings. The Agency will explain that, to the extent that any document in the November 15 notice set forth a "final agency action" for judicial review purposes, it was not a "nationally applicable" action under section 307(b) of the Clean Air Act. This language clarifies that a posted determination applies only to the particular source addressed in the document – not generally to all sources.

On November 13, 2002, EPA published a notice regarding the proposed settlement pursuant to section 113(g) of the Clean Air Act, which requires that the public have an opportunity to comment on any settlement agreement before it is finalized. 67 Fed. Reg. 68,863. The public

comment period closed on December 13. EPA and the Department of Justice decided following the close of the public comment period that the settlement agreement is now final. "

Company Pleads Guilty to Criminal Violations of Title V

A company that manufactures nitrogen-based products has pleaded guilty to charges that it violated Title V permitting requirements by failing to include 20 emission units in its permit application. *United States v. PCS Nitrogen, Inc.*, Cr. No. 02-90-A-MI (M.D. La.) (Sept. 10, 2002). The company agreed to pay \$2 million in fines and could face five years of probation. It has also pleaded guilty to similar charges in two Louisiana state courts. The case is believed to be the first case involving a criminal conviction for the submission of an incomplete Title V permit application.

In November 1997, the company submitted its Title V permit application for the facility in Geismar, Louisiana. In October 2000, the company allegedly submitted a Title V permit modification application that identified emission units not previously identified in its original Title V permit application. Again, in April 2001, the company allegedly submitted a second modification application that addressed emission units that had not been identified in the original application. A subsequent investigation by EPA and the FBI allegedly revealed that a total of 20 emission units had been omitted from the original application and thus had not been subjected to Title V permitting requirements.

According to the U.S. Attorney, the \$2 million criminal fine represents the largest criminal fine for air pollution in Louisiana history. In addition to paying \$2 million in fines, the company agreed to undertake \$5 million in supplemental

environmental projects (SEPs), including the installation of a new scrubber to control ammonia and particulate emissions. "