

**NEW SOURCE REVIEW
REFORM DISCUSSION GROUP MEETING
DISCUSSION TOPIC:
ROUTINE MAINTENANCE, REPLACEMENT AND REPAIR (RMRR)
DECEMBER 16, 2003**

EMERGENCY RULE MAKING

Joe Koncelik, Director's Office, Ohio EPA provided a summary of the recent decision by Ohio EPA and the Governor's Office to do emergency rule making to adopt (by reference) the federal RMRR rules. The rules are to be effective by February 1, 2004. The emergency rule package is temporary, lasting 90 days, and will be followed by a proposal of the permanent rule package. He responded to several questions about the rule making.

OVERVIEW/BACKGROUND

RMRR RULE

Bob Hodanbosi (DAPC) provided background information and an overview on this section of the NSR rules

RMRR RULE - OPEN DISCUSSION

1. Commenter asked for clarification on administrative procedure for adopting the RMRR rules. Can OEPA have two amendments to Chapter 31 proposed at the same time?
 - a. OEPA response: No. Once a chapter is open, it stays open under the rule process until done.
 - b. OEPA response: We can open up more than one particular rule under a chapter at the same time, but can't have two amendments to the same rule open.
2. What will be the procedure for sharing information about a RMRR request either in a permit or with USEPA?
 - a. OEPA response: Ohio EPA has not thought that far ahead about all the processes that will be needed for the implementation of this rule.
3. Commenter questioned the federal interpretation (USEPA) about what's considered "routine" for purposes of RMRR? For example, is a 20-year period consider routine in the industry for RMRR?

- a. OEPA response: In response to defining “routine,” it might be helpful to look at industry standards/history of maintenance, repair and replacement activities to see what the typical industry standards might be in this area. Thinks this type of information might be valuable. OEPA hasn’t looked specifically at this issue in the past. USEPA has commented, however, that routine can span a length of time.
4. Commenter mentioned that if OEPA adopts the rule by reference, there are several Federal Register notices that pertain to the RMRR rule. How will companies be able to get access to the Federal Register information? Is it possible for Ohio EPA to consider providing this information on their Web site?
 - a. OEPA response: Good suggestion about the Web site. Ohio EPA can evaluate this option.
5. Commenter requests clarification in response to previously commenter’s questions about what constitutes “routine.” Isn’t timing a moot point under the new RMRR rule? It’s more of a cost analysis now, correct?
 - a. OEPA response: Yes, this is correct. And, the 20% threshold isn’t a completely bright line. A company can attempt to demonstrate that expenditures of >20% also can qualify as RMRR.
6. Commenter asks: How will USEPA and/or Ohio EPA monitor and consider enforcement with respect to the 20% cost analysis that will be done by companies?
 - a. OEPA response: We recognize that there might be some concerns with this issue, however, we do have two staff economists available at the Agency for assistance in evaluating cost-related information, if needed. So, there are some internal resources available. However, if OEPA is inundated with cost demonstrations, it may be difficult to keep up.
7. Commenter asks: Has either USEPA or Ohio EPA done any studies on this particular rule and the environmental effects that it may have?
 - a. OEPA response: Ohio EPA has not done an independent study of this rule. USEPA has done an evaluation of this rule, however, we would need to go back to look at the initial rule to see their specific analysis. There is quite a bit of information from USEPA on this rule making to demonstrate why they think it is effective.
8. Commenter asks: What is Ohio EPA’s interpretation of the language that states “without regard to other considerations...” in the RMRR rule. He stated that he is very concerned about this particular language and states that the interpretation could be that an equipment change by a company is O.K. if the 20% criteria is met, without regard to air quality impacts. Commenter states that if this is Ohio EPA’s interpretation of this specific language, then this should be publicly stated.
 - a. OEPA response: There are other air quality rules and standards that apply to

facilities and the RMRR rule doesn't wipe out these existing standards that a company would be responsible for complying with. Given these existing standards, and additional standards to be imposed in the future (to address issues such as ozone and PM), Ohio EPA doesn't believe that passing the RMRR rule will result in a massive negative air quality impact.

- b. Ohio EPA: The RMRR rule doesn't eviscerate existing standards, permit considerations, etc. It is intended to increase flexibility so that companies can make appropriate, beneficial changes.
 - c. Commenter responds to above by stating that the RMRR rule provides an economic test to pass, not an environmental test and he restated that he is very concerned about this particular language ("without regard to other considerations...")
9. Commenter stated that he has been doing air permitting for a company for the past 15 years and has found the process to be difficult and confusing, particularly with respect to figuring out the permit implications of making changes at the plant. He stated that ambiguity in the current system leads to discretion of individual permit writers to determine the permitting applicability - creating inconsistency.

The commenter stated that, overall, he believes that the RMRR rule is a strong step in the right direction of clarifying the situations where companies need to make changes. He stated that this rule is important to industry and helpful.

Commenter stated that he does not believe that the RMRR rule is intended to result in deterioration of air quality. NAAQS is still the gold standard for clean air and there are other mechanisms to control pollutants, such as MACT and permitting standards.

He again stated that he felt the rule provides clarity and will help decrease the amount of time it takes to figure out whether a permit is needed. It is not being interpreted by industry as an open gate to increase pollution.

10. Commenter stated that he does not believe the purpose of NSR to cut down on emissions. He states that given the complete flexibility of the rules, when will state-of-the-art controls really be installed by industry?

This commenter stated that he also has specific concerns about the RMRR language which references "without regard to other considerations..." What will be taken into consideration?

Commenter stated that he fears that NSR will exempt a whole host of activities, given the plain English interpretation of the rule.

11. Commenter mentions that there are other parameters that must be met in the RMRR demonstration and that it is not just strictly an economic demonstration. She specifically mentioned that other parameters include (1) you can't exceed an enforceable limit and (2) you can't change design parameters. Is this correct?
 - a. OEPA response: Yes. He also mentioned that in response to a number of the previous statements, the future is heading in the direction of decreasing emissions, not increasing emissions, particularly for larger sources.
12. Commenter stated that his interpretation is the NSR is really designed more to benefit utilities versus manufacturing. He said that he is involved with the P&E group and they've done some research and feels that they have some ideas that provide a compromise between promoting flexibility for industry and meeting the goals of OEPA. He invited Bob Hodanbosi to a future meeting of this group to discuss their ideas.
13. Commenter wanted to make some statements with respect to the ideas regarding the certainty of future rule making and backstops. He gave a specific example of the HAP-related studies that have been done for utilities, particularly with respect to mercury. He indicated that there was a federal court order to impose mercury-related regulations by yesterday, based on the CAA report. He states that USEPA is now proposing to "walk away" from the previous findings and may consider a cap/trade program for utilities.

Commenter states that the above is an example which demonstrates that there can be no confidence in the process, particularly that other rules will address further reductions. Commenter states that the NSR program is an "industry's dream" because everything will be considered RMRR.

- a. OEPA response: Future rule making will address more reductions. For example, we are currently in the process of going through the PM 2.5 non-attainment analysis and USEPA will soon be designating ozone non-attainment areas. Ohio EPA will need to do SIPS for these which will include our strategies for addressing reductions (particularly for SO₂ and NO_x).
14. Commenter read some specific language from the Federal Register concerning "state/local permitting authority to address air quality impacts." He asked if Ohio EPA will be adopting any additional rules to ensure that we'll be maintaining NAAQS compliance when the RMRR rules are passed.
 - a. OEPA response: As previously stated, as an example, we'll be required to complete an evaluation of strategies for compliance with 8-hour ozone and PM 2.5 standards. Rules will be developed to address these specific issues. We don't anticipate rule making as described specifically by the commenter. Rules will be designed to ensure that there are additional emission reductions. Also restates that we should remember that NSR is just one tool/technique to meet air quality standards.

15. Commenter states that with the new non-attainment designations, there may be other sources subject to NSR. He also states that, in the past, efficiency-related projects have been shelved because of this. He thinks that P2 projects will be encouraged under the new rules, where they were discouraged under the old rules.
16. Commenter states that any changes to the current system will be welcomed by industry.
17. Commenter asks question: Isn't it true that attainment demonstrations are based on allowables? Commenter states that OEPA has this safeguard that doesn't allow an increase in allowables.
 - a. OEPA response: Yes.
 - b. Another commenter responds: Yes, except for ozone.
 - c. OEPA response to commenter (b): SO₂ is based on maximum allowable, TSP on allowable and ozone was based on actual emissions and projected growth.
 - d. Commenter states that if OEPA isn't notified of changes, they can't make this assessment.
 - e. OEPA response to commenter (d): It will be interesting to see how many PSD applications are received for modifications. Also points out that there are Title V related ramifications too.
18. Commenter asks how many notices or permit modifications Ohio EPA is expecting on equipment replacement.
 - a. OEPA response: We haven't yet focused on this level of detail regarding implementation of the program.
19. Commenter stated that with respect to non-attainment, mobile sources will be an important issue as well. Given this, he states that achieving air quality standards will be everyone's battle, both stationary and mobile sources.
20. Commenter states that he is aware of the complexity of the rules. He states that he feels the rules are moving backwards by allowing for an economic test versus an environmental test. He also states that in 30 years of working in this area (LAA), they have never had to deal with this issue. He questions what the specific "emergency" is that necessitates an emergency rule making on this.

Commenter continues by indicating that there may be other alternatives to the current federal rule, including coming up with a list of acceptable RMRR alternatives that would make sense and could be easily adopted.

- a. OEPA response: USEPA may have considered this option in the original rule making. It would be very time consuming to do this.
21. Commenter had a specific question about slide #21 from the presentation. He had a question about the language regarding “any component of the actual process unit,” and asked for clarification on this.
- a. OEPA response: OEPA responded by providing an example - How much paint can be applied in a paint booth.
 - b. OEPA response: There may also be a situation where a line is related to a larger process operation. In this scenario, you can have restrictions on one process unit that can have an affect on the line.

ACTUAL-TO-PROJECTED ACTUAL REVIEW

As a follow-up to the previous meeting, Jennifer Nichols provided an overview of the actual-to-projected actual portion of the NSR rule (agenda topic at last meeting).

22. Commenter had a question on slide #76 and OEPA’s comments on this. He asks the question: Does there need to be a projection made before the NSR applicability determination? He specifically pointed out the language which states: “Documentation cannot be generated for the purpose of the applicability test, they must have existed and been distributed previously.”

Commenter stated that he didn’t feel that this language was correct as, under this scenario, if industry doesn’t have pre-existing information on projections before NSR they won’t be eligible to use this option.

- a. OEPA response: This is taken out of the Federal Register and is based on USEPA’s analysis. We will need to look back at the Federal Register on this for clarification.
23. Commenter points out the specific language that is included on slide #49 regarding that it is “no secret that USEPA tends to subject Ohio to a high degree of scrutiny...” He states that he wants to point out that the environmental community will also be putting Ohio EPA under scrutiny. He stated that if Ohio is the first to adopt the RMRR rule, we’ll likely be sued.

24. Commenter states that he thought there had already been clarification provided by USEPA on the SSM issue raised in slide #89.

a. OEPA response: We'll need to confirm this in conversations with USEPA.

OPEN DISCUSSION/WRAP-UP

Bob Hodanbosi points out that Ohio EPA will be receiving comments on the RMRR rule until 1/5/04.

Susan Willeke (Ohio EPA, PIC) reminded the group about how to submit comments and the next meeting date.