

Guidance on Assuring Compliance with SIP Rule 9-3-301 and Major NSR

Arizona Department of Environmental Quality
Air Quality Division

June 1, 2007

Introduction

The purpose of this guidance document is to ensure that ADEQ's administration of the current unitary permit program is consistent with State Implementation Plan (SIP) Rule R9-3-301, which requires the issuance of an installation permit *before* the construction of certain sources and changes to sources may begin. Because EPA has not yet approved ADEQ's current permit program into the SIP, R9-3-301 remains enforceable as a matter of both state and federal law.

ADEQ's current rules require issuance of a permit before construction of a new source subject to SIP rule R9-3-301 may proceed. For the most part, current rules also require issuance of a permit revision that more than meets the requirements of an installation permit under the SIP rule before the changes to an existing source regulated by R9-3-301 may take place. In nearly every instance when public notice and comment and an opportunity for public hearing are mandated by SIP Rule R9-3-301, they are also required by current rules.

There are, however, a few changes to existing sources that require an installation permit under R9-3-301 but that the permitting flexibility provisions of current rules would allow to proceed without ADEQ's prior approval. In addition, current rules in a very few instances may allow a change to proceed without the opportunity for public involvement mandated by the SIP.

This guidance sets forth procedures for ensuring that ADEQ issues a permit revision whenever an installation permit would be required under R9-3-301 and provides an opportunity for public comment and a hearing when mandated by the SIP.

In addition, this guidance establishes a process to ensure that changes subject to major new source review (NSR) are not inadvertently allowed to begin construction under A.A.C. R18-2-317 or R18-2-319 without a significant permit revision meeting major NSR requirements.

Comparison of SIP and Current Rules

SIP Rule R9-3-301

SIP Rule R9-3-301 requires installation permits for the following activities:

1. the construction or major modification of a major source, which requires a "Class A" installation permit;
2. the construction or "alteration" of a source that emits five or more tons of lead per year, which also requires a "Class A" installation permit;

3. the construction or modification of air pollution control equipment, which requires a "Class B" installation permit;
4. the construction of a minor source, which requires a "Class C" installation permit.

SIP Rule 9-3-101 includes the definition of major source found in nonattainment NSR and prevention of significant deterioration (PSD) rules but also defines the term to cover "any source with the capability of generating more than a total of seventy-five (75) tons of air contaminants per day." ADEQ has concluded that the correct reading of "capable of generating" is capable of emitting without controls. It is possible that a title V source could fail to qualify as major under the nonattainment NSR/PSD definition but still be major under the 75-tons-per-day definition.¹

Public notice and an opportunity to comment are required for Class A installation permits but not for Class B or C permits. Thus, the activities described in paragraphs 1 and 2 above require both advance approval by ADEQ and an opportunity for public notice and comment. The activities described in paragraphs 3 and 4 require advance approval but not public participation.

Current NSR Rules

Under current rules a permit is required prior to the construction of any new source subject to Title V. A.A.C. R18-2-101(64), R18-2-302(B)(1)(a). A significant permit revision is required for the construction or major modification of a major source subject to nonattainment NSR or PSD, including any source that has the potential to emit 5 or more tons per year (TPY) of lead. A.A.C. R18-2-319(A)(5), R18-2-320(A), R18-2-401(9)(e).

Current rules thus require new permits or significant revisions for the vast majority of activities that require Class A or C installation permits under the SIP. The application, review and public participation requirements of current rules for permits and significant revisions exceed the equivalent requirements of the SIP. In most cases, then, compliance with current rules shall assure compliance with the SIP.

There are two categories of activities, however, that require Class A permits under the SIP but do not require permits or significant revisions under current rules.

First, current rules do not require a permit or permit revision for an "alteration" other than a major modification to a source with the potential to emit 5 or more TPY of lead.

Second, a significant increase in *actual* emissions at a 75-tons-per-day major source does not require a significant revision if (a) the source is not major under nonattainment NSR/PSD rules and (b) the increase in the source's *potential* emissions is less than significant. See A.A.C. R18-2-319(A)(7), R18-2-320(A) (significant increase in potential

¹ Consider, for example, a source in an attainment area that had the capability of generating 37.5 tons per day each of PM₁₀ and SO₂ and had in place federally enforceable controls for both pollutants with a control efficiency of 98.2 percent. Assume the source is not on the list of source categories with a PSD major source threshold of 100 TPY. The source would be capable of generating 75 tons per day of air contaminants and would therefore be subject to the SIP's Class A permit requirements. The source's potential to emit would be 246 tons per year, above the title V threshold of 100 tons per year, but below the PSD major source threshold of 250 tons per year.

to emit requires significant revision).² In order to assure compliance with the SIP, these two categories of changes should be processed as significant revisions.

In addition, current rules do not include any equivalent to the SIP's Class B permits for the construction or modification of pollution control equipment. Depending on the circumstances, these changes might be eligible to proceed with a minor permit revision under A.A.C. R18-2-319 or on seven days advance notice under A.A.C. R18-2-317. The minor permit revision rule allows sources to proceed with changes on filing an application, which is inconsistent with the SIP's requirement that a permit be issued before the change may be implemented. A.A.C. R18-2-319(G). With that exception, compliance with minor permit revision procedures would be adequate to assure compliance with the SIP, since Class B permits do not require public participation.

The SIP rules do not define "alteration" or "modification." SIP rule 9-3-101, however, defines "major alteration" and "major modification" to mean a physical or operational change that results in a significant net emissions increase. As reflected in the procedures section below, ADEQ interprets the terms alteration and modification to mean a physical or operational change that results in any increase in emissions.

Procedures

Compliance with the SIP

ADEQ's current permit rules notwithstanding, a significant or minor permit revision shall be required for changes at a title V source as indicated below:

Type of Change	Permit Revision Required
A major modification, as defined in A.A.C. R18-2-101(63), to a source that is capable of generating, without taking controls into account, 75 tons per day of all air contaminants	Significant
A physical or operational change that results in <i>any</i> increase in emissions at a source with the potential to emit 5 or more tons per year of lead	Significant
Construction of air pollution control equipment	Minor
A physical or operational change to air pollution control equipment that results in <i>any</i> increase in emissions	Minor

Notwithstanding A.A.C. R18-2-319(G), when a minor permit revision is required by the above table, the change shall not proceed until ADEQ has issued a minor revision authorizing the change.

² An increase in actual emissions can exceed the corresponding increase in potential to emit when, for example, a source with an emissions cap operates at less than full capacity and therefore has actual emissions below the cap for the two years preceding the relevant change. If the change does not necessitate an increase in the cap but will result in increased utilization, it will produce an increase in actual, but not potential, emissions.

Reviewing Minor Revision Applications and 317 Notices for SIP and Major NSR Applicability

Whenever ADEQ receives an application from a Title V source for a minor permit revision or notice under A.A.C. R18-2-317 (“317 notice”), a permit engineer shall review the notice within seven days or the application within the completeness review time frame, not to exceed 41 days. The review shall assure that the notice or application contains adequate information, including reliable emission calculations, to determine whether SIP Rule 9-3-301 or major NSR requirements may apply to the change covered by the application or notice.

If the engineer determines that adequate information is not included, the engineer shall send a letter to the person who submitted the application or notice (the “applicant”) requesting the necessary additional information. The letter shall include a copy of this guidance and the following warning:

If you begin construction or implementation of the change described in your [notice/application] before ADEQ has approved it, and ADEQ determines that the change is subject to major new source review or to the state implementation plan requirements described in the enclosed guidance, you shall be subject to an enforcement action, which may include the imposition of civil penalties of up to \$10,000 per day for each day the violation continues.

On determining that the SIP requirements described above or major NSR requirements apply to a minor permit revision application or 317 notice for a Title V source, the permit engineer shall prepare a draft letter to the applicant for signature by the Air Quality Permit Section Manager. The letter shall advise the applicant that the change requires a significant or minor revision, as appropriate, and may not proceed without ADEQ’s advance approval. If, after consultation with the Air Quality Division Director, the Permit Section Manager agrees with the permit engineer’s determination, the Manager shall send the letter to the applicant.

For each minor permit revision application and 317 notice submitted by a Title V source, the permit engineer shall add appropriate documentation to a Technical Support Document (in the case of a minor revision) or a memorandum routed through management to the file (in the case of a 317 notice). The TSD or memorandum shall describe the analysis that was performed and ADEQ’s justification for its conclusion about the applicability of SIP Rule 9-3-301 and major NSR to the change covered by the application or notice.

Implementation

A copy of this guidance shall be mailed to all Title V sources.

A copy of this guidance shall be distributed to all current Air Quality Division permit engineers immediately after its issuance and to all new permit engineers as part of their orientation.

The guidance shall be discussed at the first meeting of the Air Quality Permit Section following its issuance.

A copy of the guidance shall be posted to ADEQ's web site on the page containing air quality permit application forms. The URL for that page as of the date of guidance issuance is:

<http://www.azdeq.gov/function/forms/appsair.html#permit>

A copy of the guidance shall be provided to any person requesting a minor permit revision application form for a Title V source.