

requesting reconsideration of many aspects of the final rules.²

On July 30, 2003 (68 FR 44624), we granted reconsideration on six issues raised by petitioners who had filed petitions prior to July 2003.³ At that time, we did not act on any of the remaining issues in those petitions. Instead, we indicated that we planned to announce our final decision on whether to reconsider the remaining petition issues no later than 90 days after the publication of the **Federal Register** notice.

The first of the six issues on which we granted reconsideration involves a document we released in November 2002, entitled "Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules."⁴ Our purpose in granting reconsideration on this issue was to provide the public an opportunity to comment on our analysis and to submit any additional information that they believe to be relevant to the inquiry. The remaining issues for which we granted reconsideration involved five narrow aspects of the final rule as follows:

- Using potential-to-emit (PTE) to determine baseline actual emissions for an emissions unit on which actual construction began after the 24-month PAL baseline period when establishing a PAL;
- Eliminating synthetic minor limits [(r)(4) limits] under the PAL;

- Including a "reasonable possibility" requirement for triggering recordkeeping and reporting provisions;

- Using the actual-to-projected-actual test for replacement units; and,

- Effect of redesignation of an area from attainment to nonattainment on Clean Unit status.

We describe these issues at 68 FR 44624. For the reasons indicated at 68 FR 44624, we did not grant a stay of the final rules pending our reconsideration of these issues.

On August 14, 2003, we held a public hearing on the issues for which we granted reconsideration. Twenty-two individuals gave oral presentations at the hearing. The transcript of their comments is located in Docket OAR–2001–0004 (Legacy Number A–90–37), which can be accessed on the internet at <http://www.epa.gov/edocket>.

We provided a public comment period on the reconsideration issues that ended on August 29, 2003. For issues arising out of the August 14th public hearing, the comment period was extended until September 15, 2003. More than 400 written public comments on the reconsideration issues were received. The individual comment letters can be found in Docket OAR–2001–0004 (Legacy Number A–90–37).

III. Today's Action

At this time, we are announcing our final action after reconsideration of these six issues. We are also announcing our final decision on reconsideration of the remaining issues that were raised by the petitioners. Today, we are making available a document entitled, "Technical Support Document for Prevention of Significant Deterioration (PSD) and Non-attainment New Source Review (NSR): Reconsideration," EPA 456/R–03–005 (Technical Support Document). This document contains (1) a summary of comments received on the issues for which we granted reconsideration and our responses to these comments, and (2) a summary of petition issues for which we are not granting reconsideration, and our rationale for denying reconsideration. This document is available on our Web site at <http://www.epa.gov/nsr/>; and, through the National Technical Information Services, 5285 Port Royal Road, Springfield, VA 22161; telephone (800) 553–6846, e-mail <http://www.ntis.gov>; and, from the US EPA, Library Services, MD C267–01, Research Triangle Park, NC 27711, telephone (919) 541–2777, e-mail library.rtp@epa.gov.

A. Six Issues for Which Reconsideration Was Granted

We received numerous responses to our request for comment on the "Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rule." After carefully considering the information that was submitted, we have determined that none of the new information presented leads us to conclude that the analysis was incorrect or substantially flawed. Therefore, we are re-affirming the validity of the original conclusions. A summary of the comments received and our responses to these comments can be found in our Technical Support Document.

With respect to the five remaining issues on which we granted reconsideration, we have concluded that two clarifications to the underlying rules are warranted. These changes relate to issues raised as a result of our request for comment on: (1) Whether replacement units should be allowed to use the actual-to-projected-actual applicability test to determine whether installing a replacement unit results in a significant emissions increase; and, (2) using potential-to-emit (PTE) to determine the baseline actual emissions for an emissions unit on which construction began after the 24-month baseline period when establishing a PAL. As explained below, while we are not making any changes to the general approach in the final rules with respect to these issues, we are making two clarifying changes to the regulations. First, we are adding a definition of replacement unit to the final rules. Second, we are clarifying that the potential-to-emit approach for determining baseline actual emissions when establishing a PAL is only available to emissions units that are added to the major stationary source after the 24-month baseline period, and is not available to emissions units that existed during the baseline period whether or not they have been modified since that time.

We are not making any changes to the final rules with respect to eliminating synthetic minor limits [(r)(4) limits] under the PAL, the "reasonable possibility" requirement for triggering recordkeeping and reporting provisions, or the effect of redesignation of an area from attainment to nonattainment on Clean Unit status. Our reasons for this conclusion, and our response to significant comments received, are summarized in our Technical Support Document.

1. Replacement Units

² Petitions for reconsideration of the December 31, 2002 final rule that EPA received before July 2003 were filed by: Northeastern States (CT, ME, MD, MA, NH, NJ, NY, PA, RI, VT); South Coast Air Quality Management District (CA); and Environmental Groups (led by NRDC, Earthjustice, Clean Air Task Force, and Environmental Defense). Additional petitioners joined existing petitions: The People of California and California Air Resources Board (joined South Coast and Northeastern States petitions); Yolo-Solano Air Quality Management District (CA) (joined South Coast petition); Santa Barbara, Ventura, and Monterey Air Pollution Control Districts (CA); and Sacramento Air Quality Management District (CA) (joined South Coast petition). Petitions for reconsideration of the FIP rule were filed by: Delegated States (CA, CT, IL, MA, NJ, NY, DC, South Coast Air Quality Management District (CA), and Santa Barbara Air Pollution Control District (CA)); and Environmental Groups (essentially the same groups that filed petitions to reconsider the December 31, 2002 rule).

On July 11, 2003, we received another petition for reconsideration filed by Newmont USA Limited, dba Newmont Mining Corporation. This petition was subsequently joined by the National Cattlemen's Beef Association and the National Mining Association. We are not responding to that petition at this time, but will do so in the near future.

³ In this notice, the term "petitioner" refers only to those entities that filed petitions for reconsideration with EPA prior to July 2003.

⁴ Available through our NSR Web site at <http://www.epa.gov/nsr> and in Docket ID No. A–90–37, Document IV–A–7.