

Routine Maintenance, Repair, and Replacement Questions

Background:

EPA defined a major modification under the Prevention of Significant Deterioration (PSD) regulations is as:

“any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.” 40 CFR §52.21(b)(2)(i)

There are several exceptions to the definition of “*physical change in or change in the method of operation*”. One of those exclusions is “*routine maintenance, repair and replacement (RMRR)*” [40 CFR §52.21(b)(2)(iii)(a)]. The Department has adopted these rules in 567 IAC Chapter 33. There is no regulatory definition of what is considered “*routine*”.

There have been several court decisions concerning RMRR over the last 5 – 6 years. However, all of these decisions relate back to one (1) utility case which is *Wisconsin Electric Power Co. v. Reilly* (7th Circuit 1990) which is referred to as WEPCO.

One of the main items from the WEPCO decision was the “*Multi-factor Test*” for determining RMRR. The Multi-factor test is a case-by-case analysis of each activity looking at:

- Nature & extent
- Frequency
- Purpose
- Cost

The court cases following WEPCO have provided additional guidance when conducting the case-by-case Multi-factor Test. The main cases that EPA cites are:

- *United States v. Southern Indiana Gas and Electric Company* (Southern District of Indiana, February 13, 2003)
- *United States v. Ohio Edison* (Southern District of Ohio, 2003)
- *United States, et al., v. Duke Energy Corporation* (Middle District of North Carolina, 2003)
- *United States, et al., v. Cinergy Corp.* (Southern District of Indiana, 2007)

All of these cases combined give a person insight on both the scope of the regulation and the types of issues a person needs to look at when making RMRR determinations.

The Department is often asked for determinations on whether projects are classified as RMRR under the Prevention of Significant Deterioration (PSD) regulations. In order to reduce the amount of time needed to make these determinations the Department has developed a list of questions that, at a minimum, must be answered by the company along with any supporting documentation. The Department may still request additional information, but by providing answers to these questions an applicant will reduce the majority of back and forth the Department encounters during its review of RMRR determinations.

Questions:

- Nature & Extent
 - Provide a detailed description of the project. This description must list **all** changes to be made during the project. Also, please provide a percentage of the unit that is being repaired or replaced.
 - Will the project be done by in-house maintenance staff or outside contractors?
 - Have there been any planning studies prepared in preparation for the project? If so, please provide a copy of all studies.
 - How long will the project take to complete? How long is your normal maintenance shutdown period?
 - Are the replacement components of the same design as the components they are replacing?

- Purpose
 - Please provide a brief description of why this project is being undertaken at this time.
 - What was the expected lifetime of the unit when it was first installed?
 - What is the unit's current age?
 - Will the changes increase availability or reliability of the unit?
 - Will the changes extend the lifetime of the unit?
 - What was the original maximum rated capacity of the unit?
 - What is the current capacity of the unit?
 - Will the changes restore the unit to its original rated capacity?
 - For combustion units:
 - What was the original efficiency of the unit?
 - What is the current efficiency of the unit?
 - Will the changes restore the unit to its original efficiency?

- Frequency
 - Are the components being repaired/replaced the original components?
 - How often are these changes made to the unit during its lifetime?
 - How often are these changes made to similar units elsewhere?

- Cost
 - What is your company's annual operation and maintenance (O&M) budget?
 - What is the cost of this project?
 - Where will the funding from this project come from (i.e. O&M budget or capital expenditure)?
 - Does your company follow Generally Accepted Accounting Principles (GAAP)?
 - Is this project being capitalized or expensed?