

Southern Section AWMA Conference

NSR and Title V Updates

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NSR Improvements and Other Recent Actions

Completed Actions

- Actual-to-Projected-Actual Applicability Test Guidance Memorandum
- Project Emissions Accounting Memo
- Source Aggregation Guidance, Meadowbrook Letter, Draft Guidance on Interpreting Adjacency
- PM_{2.5} and Ozone SILs Guidance
- Once-In-Always-In Policy Change

On-Going Work

- Project Aggregation Reconsideration
- Ambient Air Guidance
- Project Emissions Accounting Rulemaking
- Rulemaking on Treatment of Biomass for Permitting



NSR Updates: Actual-to-Projected-Actual Applicability Test Guidance Memorandum

- **Memorandum: “New Source Review Preconstruction Permitting Requirements: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability”** signed by Administrator Pruitt on December 7, 2017
 - Available at https://www.epa.gov/sites/production/files/2017-12/documents/policy_memo.12.7.17.pdf
 - Where a source projects an insignificant emissions increase, the level of actual emissions after the project governs applicability
 - Projections may reflect the intent to actively manage post-project operations in order to prevent a significant emissions increase from occurring
 - EPA will not second guess NSR applicability analyses that comply with the procedural requirements of the regulations



Project Emissions Accounting (Project Netting) Guidance Memorandum

- **Memorandum: “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program”** was published on March 30, 2018 (83 FR 13745)
 - Available at www.gpo.gov/fdsys/pkg/FR-2018-03-30/pdf/2018-06430.pdf
 - Communicates EPA’s interpretation that the current NSR regulations provide that emissions decreases as well as increases are to be considered at Step 1 of the NSR applicability process, i.e., determining whether a project will result in a significant emissions increase
 - Interpretation is grounded in the principle that the plain language of the CAA indicates that Congress intended to apply NSR to changes that increase actual emissions and the language in the corresponding NSR regulations is consistent with that intent
- Prior EPA guidance had indicated that the relevant provisions of the NSR regulations preclude the consideration of emissions decreases at Step 1
 - For the reasons discussed in the memo, EPA will no longer apply such interpretation



Source Aggregation

- EPA defines “*stationary source*” in the permitting programs as all of the pollutant-emitting activities that are: [40 CFR 70.2 and 52.21(b)(1) and (5)]
 - located on one or more contiguous or adjacent properties *and*
 - are under common control of one person (or persons under common control), *and*
 - belong to the same major industrial grouping (2 digit SIC code)
- EPA clarified its interpretation of “common control” in an April 2018 letter to Pennsylvania DEP (the Meadowbrook Letter)
 - The Meadowbrook Letter explains EPA’s view that control means the power or authority of one entity to dictate decisions of the other that could affect the applicability of, or compliance with, relevant air pollution regulatory requirements
- EPA’s interpretation of “adjacent” has evolved through source-specific determinations
 - 2016 Rulemaking clarified “adjacent” for oil and gas operations
 - Adjacent operations are limited to those within ¼ mile with shared equipment
 - EPA posted on September 5, 2018, the “**Draft Guidance: Interpretation Adjacent for New Source Review and Title V Source Determinations in All Industries other than Oil and Gas**” and will accept public comment through October 5, 2018 at www.epa.gov/nsr/forms/interpreting-adjacent-source-determinations



PM_{2.5} and Ozone SILs Guidance

- **Guidance on Significant Impact Levels (SILs) for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program** signed on April 17, 2018, by Peter Tsirigotis
- Includes both a revised PM_{2.5} SIL and new ozone SIL for permittees to use in streamlining the air dispersion modeling permitting process
- The guidance is comprised of a policy memorandum, a technical document and legal support document
 - All three will be referenced and included in any permit record where the recommended SILs are used by a permitting authority
 - The guidance is not a final agency action and is not binding for industry, permitting authorities, or the public



Once In Always In

- **2018 EPA Withdraws Once In Always In**

- On January 25, 2018, EPA issued guidance memorandum, **“Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act”**
 - Memo addresses when a major source subject to a maximum achievable control technology (MACT) standard, under section 112 of the Clean Air Act (CAA), may be reclassified as an area source and no longer subject to MACT requirements
 - Discusses EPA’s plain language reading of the statutory terms “major source” and “area source”
 - Withdraws 1995 Seitz memo “Once In Always In” policy, which required major sources to limit potential to emit to below the major source threshold by the first compliance date to be treated as an area source
 - Responds to comments received in response to E.O. 13777 and 13783 on the need to revise 1995 OIAI policy
 - EPA intends to issue a FR Notice to take comment on regulatory text to implement EPA’s plain language reading of statute as discussed in January 2018 guidance memorandum

- **Litigation**

- On March 26, 2018, coalition of environmental groups filed a petition for review in the D.C. Circuit Court

- **For More Information**

- <https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean>
- Contact: Debra Dalcher, Policy and Strategies Group, 919-627-4883 or Dalcher.debra@epa.gov



Project Aggregation Reconsideration

- 2009 Rule for Project Aggregation
 - Established “substantially related” criterion for aggregating projects, and a 3-year rebuttable presumption against aggregating
 - Did not amend the CFR text (definition of “project”), considered an interpretive rule
 - Calling it a “new interpretation” of the rule text, it only applies prospectively
- Reconsideration and Stay of the 2009 Rule
 - NRDC petitioned for reconsideration and sued EPA on the 2009 Rule
 - EPA granted reconsideration and stayed the effectiveness of the 2009 Rule pending completion of the reconsideration or litigation
 - In 2010, EPA proposed reconsideration with a preference to revoke 2009 Rule
- Final Reconsideration Rule under OMB review
 - Current schedule: Fall 2018



Ambient Air Guidance

- EPA defines “*ambient air*” as “that portion of the atmosphere, external to buildings, to which the general public has access” (40 CFR 50.1(e))
 - EPA’s longstanding policy for implementing ambient air for PSD purposes was stated in a 1980 Costle letter, “*the atmosphere over land that is owned or controlled by the source and to which public access is precluded by a fence or other physical barriers*”
 - Subsequent guidance provided over the years by EPA to recommend how to apply 1980 policy statement for specific situations
- We are evaluating several key terms associated with the definition including: “general public”, “access” and “building” to determine where additional flexibility may be appropriate
- EPA anticipates releasing draft guidance for comment on the internet in fall 2018



Project Emissions Accounting (PEA) Proposed Rule

- EPA published on March 30, 2018, the **Issuance of Guidance Memorandum, “PEA Under the New Source Review Preconstruction Permitting Program”**
- As discussed in the memo, this clarification will apply to all project categories (including existing units only, new units only, and new and existing units)
 - Memo can be found at www.gpo.gov/fdsys/pkg/FR-2018-03-30/pdf/2018-06430.pdf
- A proposal will codify the considerations and interpretations reflected in the memorandum
 - Current schedule: Winter 2018



Treatment of Biogenic CO₂ Emissions in Permitting

- **On April 23, 2018, the EPA Administrator issued a policy statement on the treatment of forest biomass for energy production at stationary sources**
 - Recognizes the benefits of using managed forest biomass for energy production at stationary sources
 - Signals the Agency's intent to treat managed forest biomass biogenic CO₂ emissions from energy production at stationary sources as carbon neutral in future regulatory actions
 - https://www.epa.gov/sites/production/files/20184/documents/biomass_policy_statement_2018_04_23.pdf
- EPA is considering regulatory approaches related to the treatment of biogenic CO₂ emissions from stationary sources



Title V Permitting

- Rulemakings in progress
 - **Proposed Title V Petitions Process Rulemaking** on August 15, 2016 (81 FR 57822)
- Process Improvements
 - Increased use of electronic systems
 - Central Data Exchange (CDX) for receipt of petitions
 - Beta test of permit submission system in Region 9
- Lean Kaizen Event held on March 26, 2018



Title V Petitions

- Title V Petitions continue to be a substantial work load
- Petitions Received FY2018 – 9
- Petitions Resolved FY2018 – 34
 - 20 Orders
 - 14 Resolved by other means (petitioners agreed to withdraw, previous responses identified)
- Pacificorp Hunter – EPA will not look back at decisions made in NSR permitting process in the context of title V
 - Provided that there was an opportunity for public comment and judicial review
 - Decision being challenged in 10th Circuit (Utah) and D.C. Circuit



NSR and Title V Lean/Kaizen Efforts and Next Steps

- As part of the Agency streamlining efforts, we are taking a look at the permitting process and timelines for EPA-issued permits under both Title V and NSR
- We are applying Lean/Kaizen concepts to the permitting process with the goal of identifying actions we could take to expedite the process and make permitting more efficient
 - These events are focused on EPA-issued permits
- Lean/Kaizen Teams are currently piloting standard visual management systems to track performance against the Agency's goal of issuing permits within 6 months of an application
 - Also developing common resources such as templates and training, and staff/resource sharing to accomplish goal





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Regulatory Reform

Recent EPA Guidance

September 26, 2018

Maria Zufall

EPA PSD Memos – Importance to Industry

- ▶ Facilities are frequently completing projects with physical changes
- ▶ Increases in potential and actual emissions must be evaluated
- ▶ Many manufacturing sites are seeing increasing production rates again
- ▶ PSD permitting is difficult with more stringent PM_{2.5} modeling requirements
- ▶ Newer methods may allow for more flexibility in analyses and permitting

NSR Enforceability/ATPA

▶ History

- DTE mailed a letter to Michigan DEQ on March 12, 2010 for work on the power plant
- Emission calculations showed increases below the PSD thresholds due to demand growth exclusion
- Work began on March 13, 2010
- May 2010 – EPA issues NOV claiming they needed a PSD permit
- Several back and forth court decisions; Supreme court declined review

NSR Enforceability/ATPA

- ▶ December 7, 2017 Scott Pruitt issues memo to clarify
 - Planning to actively manage future emissions to remain below PSD thresholds is “relevant information” in determining the PAE
 - Different from past where actively managing meant a PSD Avoidance limit. PSD Avoidance lasts forever, projected actual lasts 5 or 10 years
 - What if getting close to PSD and install controls after the original permitting?
 - “Because increased emissions may be caused by multiple factors...the source must exercise judgement to exclude increases for which the project is not the ‘predominant cause’”
 - More flexibility with demand growth exclusion?

NSR Enforceability/ATPA

- ▶ December 7, 2017 Scott Pruitt issues memo to clarify
 - EPA intends to focus on post-project monitoring and emissions to determine enforcement
 - “unless there is a clear error...EPA does not intend to substitute its judgement for that of the owner or operator”
 - “regulations are clear that owners or operators need not obtain approval for their pre-project NSR calculations”
 - Although this may be true in some states (MI), does not apply in all

Project Emissions Accounting (PEA)

- ▶ Previous interpretation of PSD applicability process
 - Step 1 – Project emissions increases only
 - Project-related emissions reductions can only be included in a Step 2 contemporaneous netting analysis
 - All decreases must be federally enforceable
 - “Project Netting” is not allowed

Project Emissions Accounting (PEA)

- ▶ March 13, 2018 Scott Pruitt Memo
 - Re-interprets rule to allow for “project emissions accounting” in Step 1
 - May use project-related emissions decreases in Step 1
 - Decreases do not need to be enforceable
 - The owner/operator is best suited to define the “project”
 - Will be clarified in project aggregation rule
 - Definition of “project” to be discussed in PEA rule
 - Intend to propose changes via rulemaking next year

Project Emissions Accounting (PEA)

- ▶ Example – New Paper Machine – old method
 - Replacing 2 of 3 existing machines with one new high capacity unit
 - New machine does not qualify as a “replacement unit” since it has a larger design capacity than either existing machine
 - Step 1: Project Increases = PTE emissions of new machine + increase in emissions from upstream and downstream sources results in PSD for PM₁₀, PM_{2.5}, NO_x, and VOC
 - Step 2: Use reduction from shutdown machines, but now include boiler project from two years ago – PSD Still Triggered

Project Emissions Accounting (PEA)

- ▶ Example – New Paper Machine – new method
 - Replacing 2 of 3 existing machines with one new high capacity unit that is not a “replacement unit”
 - Project Increases = PTE emissions of new dryer + increase in emissions from upstream and downstream sources + **reduction from shutdown paper machine**
 - PSD is **NOT** triggered at Step 1
 - A Step 2 contemporaneous netting analysis is not required

Project Emissions Accounting (PEA)

▶ Example – New Boiler Project

- Mill wants to install a new natural gas boiler and does not plan to remove any existing boilers
- New boiler triggers PSD for NO_x emissions
- What if:
 - Facility plans to use existing boilers less in the future such that BAE-to-PAE shows NO_x decreases?
- Questions:
 - Do we need to take usage or emissions limits on existing boilers?
 - What post project tracking is required and what happens at the end of that period?

Project Emissions Accounting (PEA)

- ▶ Implementation by state
 - Most states administer their own PSD programs
 - Some states already interpret their rules this way
 - North Carolina (“EPA says, not in so many words, let’s start doing it North Carolina’s way”)
 - Alabama
 - LA proposed rule to specifically change rule wording to allow for PEA
 - Some states have already said they will follow – OK, SC, WI
 - Other states are open to the approach, but would like to discuss in advance of permit action – GA, MS
 - TX, VA will not follow
- ▶ EPA working on rulemaking

Implementation of New Guidance

- ▶ Contact your state/local agency
 - Discuss plans and use of any new guidance
 - Review state-specific rules to see if those rules preclude use of the guidance
- ▶ Understand implications for your project if guidance were changed
- ▶ Recordkeeping is more important than ever

Future Guidance In the Works

- ▶ Ambient Air Part 1 – likely concentration on receptor locations, guidance drafted, expect in 2–3 weeks
- ▶ Project Definition – Part of PEA rulemaking
- ▶ Project Aggregation – Draft rule undergoing internal review
- ▶ Step 2 netting – actual-to-actual basis
- ▶ Routine Maintenance, Repair, and Replacement (RMRR) – routine in industry, causation
- ▶ Begin actual construction
- ▶ Debottlenecking/non-modified affected units
- ▶ Ambient Air Part 2 – Other “beyond the property line” opportunities
- ▶ Others?



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A&WMA Southern Section - NSR Panel Questions

Huntsville, AL - September 26, 2018

Chris Pool, P.E.



Once In Always In (OIAI)

- > What level of permitting activity (number of applications/draft permits) have you seen that take advantage of OIAI?
- > Have you seen sources in your industry attempt to remove major source MACT requirements?
- > Have you seen any variant or unusual state/local authority interpretations?

Once In Always In (OIAI)

- > Any concerns for facilities evaluating these options?
 - ❖ Area source MACT standards
 - ❖ Emissions tracking to demonstrate a source is an area source

Project Emissions Accounting and Managing Projected Actual Emissions (1 of 4)

- > Projected Actual Emissions (Managing Emissions)
 - ❖ Have you reviewed any permit applications or PSD applicability assessments where the applicant proposed to manage emissions below the PSD SER?
 - ◆ If yes, what types of monitoring/testing/reporting has been accepted?

Project Emissions Accounting and Managing Projected Actual Emissions (2 of 4)

- > Projected Actual Emissions (Managing Emissions)
 - ❖ Any tips or other considerations for applicants who might rely on emissions management as part of a PSD applicability assessment?
 - ❖ Any hesitance to rely upon emissions management from an industry perspective?

Project Emissions Accounting and Managing Projected Actual Emissions (3 of 4)

> Emissions Decreases in Step 1 of a PSD Applicability Analysis

- ❖ Have you received any questions from state agencies on implementing changes related to allowing emissions decreases in Step 1 of a PSD applicability analysis?
- ❖ Are you aware of anyone in the industry relying upon the change to Project Emissions Accounting in applications?

Project Emissions Accounting and Managing Projected Actual Emissions (4 of 4)

- > Emissions Decreases in Step 1 of a PSD Applicability Analysis
 - ❖ Any concerns about enforceability of emissions decreases?
 - ❖ Any concerns on potential circumvention by aggregating projects together that would not otherwise be aggregated?

Reactivation and Project Aggregation/Limetree *(1 of 3)*

- > Argues that multiple factors should be considered when evaluating whether a source is “reactivated” and should be evaluated as a new source for purposes of PSD applicability - different from presumption that a source would be presumed to have been permanently shutdown if not operated for 2 years:
 - ❖ For facilities that intend to temporary idle a source, what type of documentation should they keep to demonstrate that idling is temporary?

Reactivation and Project Aggregation/Limetree *(2 of 3)*

- ❖ Should facilities demonstrate through ongoing maintenance that a source has not been permanently shutdown?
- ❖ Any practical examples of maintenance activities conducted for idled equipment?
- ❖ Other thoughts?

Reactivation and Project Aggregation/Limetree (3 of 3)

- > Discuss technical/financial dependency for assessing whether multiple projects should be aggregated for determining PSD applicability
 - ❖ What are the key factors an applicant should be able to demonstrate to prove projects are unrelated?
 - ❖ A facility may propose many capital projects related to the same goal (produce more widgets, etc.); however, these projects may not necessarily be technically dependent - Can projects simply be linked by the fact that there are similar goals, or would they be linked if a facility defined a specific initiative? Industry concerns on implementing?

Common Control (Meadowbrook)

- > Any recent permitting decisions in Region 4 related to common control?
- > Other thoughts?

Interpreting Adjacent

- > EPA is currently accepting comments on: *Draft Guidance: Interpreting "Adjacent" for New Source Review and Title V Source Determinations in All Industries Other Than Oil and Gas*
- > Any initial thoughts on draft guidance?

Affordable Clean Energy (ACE) Proposed Rule (1 of 2)

> Main actions:

- ❖ *1. ACE defines the “best system of emission reduction” (BSER) for existing power plants as on-site, heat-rate efficiency improvements;*
- ❖ *2. ACE provides states with a list of “candidate technologies” that can be used to establish standards of performance and be incorporated into their state plans;*
- ❖ *3. ACE updates the New Source Review (NSR) permitting program to further encourage efficiency improvements at existing power plants; and*
- ❖ *4. ACE aligns regulations under CAA section 111(d) to give states adequate time and flexibility to develop their state plans.*

Affordable Clean Energy (ACE) Proposed Rule (2 of 2)

> Initial thoughts on proposed rule?

Closing Thoughts?

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