EPA's New Source Review and Title V Permitting 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- Source Aggregation Guidance, Meadowbrook Letter, Draft Guidance on Interpreting Adjacency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

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
- The Sierra Club petitioned the EPA on June 18, 2018 in the US Court of Appeals for the DC circuit the April 17, 2018 guidance.
  - The Department of Justice has tentatively proposed a schedule for filing briefs for this fall.

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 CO_2 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 CO_2 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 considering regulatory approaches related to the treatment of biogenic CO_2 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
  - See subsequent slide for more information

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

Questions or Comments?

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