



NSR/PSD Update NACAA Permitting Conference July 14, 2009

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Rule Reconsiderations

- PM_{2.5} NSR Rule
- Fugitive Emissions Rule
- Reasonable Possibility Rule
- Aggregation, Debottlenecking and Project Netting Rule
- WI NSR Reform SIP Approval
- Johnson CO₂ Memo



PM2.5 NSR Rule

- Petition for Reconsideration and stay of final rule submitted to EPA by NRDC, ED and Earthjustice on July 15, 2008, followed by a “Motion to Stay Pending Review” filed with the court on August 18, 2008.
- Court denied Petitioners’ motion to stay aspects of the rules.
- On a joint motion by Petitioners and EPA, the court has stayed the litigation until June 1, 2009, to provide EPA time to consider the petition for reconsideration. The petitioners have agreed to extend the litigation stay by 60 days – August 1, 2009



PM_{2.5} NSR Rule

Petitioners asked EPA to reconsider 4 elements of the final PM_{2.5} NSR Rule:

1. 3-year schedule for SIP revision submittal & policy to continue using PM₁₀ surrogate policy in the interim.
2. Grandfathering of PM₁₀ surrogate policy under Federal PSD program (EPA + delegated states).
3. Transition period for condensable particulate matter (CPM).
4. Interpollutant Trading: EPA-preferred offset ratios for PM_{2.5} precursors.



PM2.5 NSR Rule

- In January 2009, then-Administrator Johnson signed a letter to petitioners denying both reconsideration and stay of rule.
- On February 10, 2009, same petitioners filed a second request for reconsideration to Administrator Jackson.
- On April 24, 2009, EPA issued a letter to the petitioners granting the petition for reconsideration in order to allow public comment on each of the four issues raised in the petition and also stayed the grandfathering provision for 3 months. Notice of the stay was published on June 1, 2009.
- In that letter to the petitioner, EPA also indicated our intent to propose repealing the grandfathering provision under the Federal PSD program. EPA has not yet determined any specific proposed action on the other 3 issues.



Fugitive Emissions Rule

- NSR Applicability for fugitive emissions
- Do not count fugitive emissions when determining whether a major modification has occurred unless in one of 28 source categories
- Final 12/19/08
- Reconsideration and stay granted 4/24/09



Reasonable Possibility Rule

- Rule identifies when a source should do recordkeeping and reporting after undergoing a modification that does not trigger major NSR
- Requires recordkeeping and reporting when the projected increase in emissions to which the "reasonable possibility" test applies equals or exceeds 50 percent of the Clean Air Act's NSR significance levels for any pollutant.
- Final 12/21/07
- Granted reconsideration no stay on



Aggregation, Debottlenecking and Project Netting Rule

- September 8, 2006: EPA proposed three changes to the NSR program:
 - Aggregation – how to group related projects at a single source for NSR purposes
 - Debottlenecking – considers emission increases at units downstream and/or upstream from the changed unit
 - Project Netting (PN) – source-wide analysis of emissions increases and decreases over a five-year period
- Final Rule on Aggregation only: 1/15/09
 - Combine emissions when projects are substantially related either technically or economically
 - Denottlenecking rule withdrawn and took no action on PN.
- Reconsideration granted 2/09
- Effective date of 1/09 rule delayed until 5/18/10 8



Ethanol Rule

- Ethanol Rule promulgated 5/1/07
- EPA denied NRDC reconsideration request on 3/27/08 and NRDC sued.
- Lawsuit held in abeyance while new NRDC request for reconsideration of 3/2/09 is under review.
- EPA considering whether to grant reconsideration



WI NSR Reform SIP Approval

- Wisconsin SIP incorporating 2002 NSR Reform rule was approved in 12/08
- NRDC/Sierra petition for reconsideration and request for withdrawal/stay of rule, saying proposed SIP revisions violated CAA sections 110(l) and 193.
- EPA is considering whether to grant reconsideration



Johnson CO₂ Memo

- EPA Interpretation of “Regulated NSR pollutant” and “subject to regulation” under the Act
- Includes only those pollutants “subject to a statutory or regulatory provision that requires actual control of emissions of that pollutant”
- Excludes pollutants, including CO₂, for which the Act only requires monitoring
- Published 12/31/08
- Reconsideration granted 2/17/09



Pending Final Rules

- Flexible Air Permit Rule
- PM_{2.5} Increments, SILs and SMC Rule
- Tribal NSR Rules



Flexible Air Permitting Rule

- Strategies for flexible NSR and Title V permitting
 - Advance approval of alternative operating scenarios and approved replicable methodologies
- Final 1/13/09
- Under EPA review



PM_{2.5} Increments, SILs & SMC

- Proposed on September 21, 2007
- Estimated promulgation date is Spring 2010
- Covers primarily PSD, but SILs used in Appendix S also.



Tribal NSR Rules

- Regulations for nonattainment major NSR and minor NSR in tribal lands
- Proposed 8/21/06
- Final Rule anticipated Spring 2010