



NSR and Title V Program Updates

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NACAA JOINT PERMITTING & ENFORCEMENT WORKSHOP – FEBRUARY 25, 2020

Overview

- Website Enhancements/Training and Curriculum Development
- New Source Review Program Updates
- Title V Program Updates
- Permitting Process Improvements
- Electronic Permitting System (Demonstration)



Website Enhancements/Training Development

- Website Improvements
 - Enhancements to existing EPA air permitting website
 - Organizing guidance documents in NSR and Title V index by topic area
 - Phase I complete; Phase II in progress
- NSR Training Development
 - EPA/OAQPS updating NSR training courses and APTI platform
 - Received NACAA input on recommended NSR training topics – April 2019
 - Currently developing training modules that will be posted on permitting website



Permitting Curriculum

- Permitting Curriculum Development
 - OAQPS working with EPA Regions, State/local, and tribal agencies to develop an Air Permitting curriculum
 - Curriculum identifies the topics for which OAQPS will develop and maintain up-to-date, technically accurate training materials
 - EPA POC Adam Baumgart-Getz: baumgart-getz.adam@epa.gov



NSR Program Updates

Actual-to-Projected-Actual Emissions Applicability

- **Memorandum: “New Source Review Preconstruction Permitting Requirements: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability”**
 - Signed 12/7/17
 - EPA will not “second guess” NSR applicability analyses that comply with the procedural requirements of the regulations
 - EPA intends to focus on the level of actual emissions during the 5- or 10- years recordkeeping or reporting period after the project to determine whether to exercise its enforcement discretion



Project Emissions Accounting

- **Memorandum: “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program”**
 - Signed 3/13/18 (83 FR 13745)
 - 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
- **Proposed Rule (84 FR 39244, 8/9/19)**
 - Proposed revisions to clarify that both increases and decreases resulting from a project are to be accounted for under Step 1 of the NSR applicability process
 - This rulemaking is intended to eliminate any uncertainty with the rule language.
 - Comment period closed 10/8/19
- **Final Rule expected Fall 2020**



Project Aggregation (Reconsideration)

- 2009 “Interpretive Rule” for Project Aggregation Established “substantially related” criterion for aggregating projects and a 3-year rebuttable presumption against aggregation
- 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
- **Final Action--Reconsideration (83 FR 57324; 11/15/18):**
 - Affirmed the interpretation finalized in 2009
 - Lifts the stay of the 2009 action, making it immediately effective



Ambient Air

- 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 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
- **12/10/19: Final Policy “Revised Policy on Exclusions from Ambient Air” issued**
 - Limited change to the way EPA applies regulatory definition of ambient air
 - Change replaces specific concept of a fence or other physical barriers with *measures, which may include physical barriers, that are effective in deterring or precluding access to the land by the general public*



PM_{2.5} and Ozone SILs Guidance

- **Guidance on Significant Impact Levels (SILs) for Ozone and Fine Particles in the PSD Permitting Program**
 - Signed 4/17/18
 - Revised PM_{2.5} SILs/new ozone SILs:
 - Based on new technical approach and legal rationale
 - Streamlined the air dispersion modeling process for PSD
 - Guidance comprised of (1) Policy memorandum; (2) Technical document and (3) Legal support document
 - Where SILs are used, reference all three and include in any permit record
 - Not final agency action; not binding for industry, permitting authorities, or the public



Source Determination – Adjacency

- Determining which pollutant-emitting activities constitute a single "stationary source" can impact the applicability of major NSR and title V. Criteria are:
 - located on one or more contiguous or adjacent properties;
 - under common control of one person (or persons under common control); and
 - belonging to the same major industrial grouping
- EPA's interpretation of "adjacent" has evolved through source-specific determinations
- 2016 rule clarified "adjacent" operations for the oil and gas industry are limited to those activities within ¼ mile with shared equipment
- **11/26/2019: Final Guidance issued "Interpreting Adjacent for New Source Review and Title V Source Determinations in All Industries other than Oil and Gas"**
 - For all industries other than oil and natural gas production and processing, EPA adopts an interpretation of "adjacent" based on physical proximity only.
 - The concept of "functional interrelatedness" would not be considered by EPA when determining whether activities are located on adjacent properties.



Source Determination – Common Control

- **Meadowbrook Letter**
 - 4/30/18 letter to PA DEP clarified EPA’s interpretation of “common control”
 - 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
- **Ameresco Letter**
 - 10/16/18 letter to WI DNR further clarified EPA’s interpretation of “common control”
 - In a situation where two entities each exercise some level of control of a single, limited aspect of otherwise separate operations, it is reasonable to conclude that they are separate sources
 - Shared activities should be allocated to a single source to avoid unworkable outcomes



Other NSR Rules Underway

- **Tribal NSR Oil & Gas FIP**
 - Proposed Part I Registration Form streamlining amendment 7/15/2019
 - Rule would reduce the pre-construction waiting period by up to 30 days by providing for concurrent submissions of Part I Form and ESA/NHPA screening documentation
 - Final expected Spring 2020
- **NSR Error Corrections Rule**
 - Corrects NSR regulations due to typos and incorrect citations, and update to remove vacated elements
 - Final expected Spring 2020



Other NSR Guidance Underway

- **Plantwide Applicability Limit (PAL) Guidance**
 - PAL regulations were established as part of 2002 NSR reform
 - Guidance addresses elements of the PAL regulations that stakeholders have identified as sources of perceived risk/disincentive
 - Draft guidance memo posted for comment 2/13/2020
- **Begin Actual Construction Guidance**
 - Sources cannot legally “begin actual construction” of a major source or major modification without first obtaining a major NSR permit
 - Guidance would explore potential flexibilities under the existing regulatory language to allow certain non-emitting activities to be undertaken prior to obtaining a permit



Other NSR Reconsiderations Underway

- **2007 Reasonable Possibility Rule**
 - 2007 rule established criteria for determining recordkeeping, monitoring and reporting requirements that apply to projects for which ATPA applicability test is applied
 - EPA granted a petition for reconsideration from New Jersey; litigation held in abeyance
 - EPA issued letter to NJ on 11/5/19, communicating that EPA is no longer reconsidering the rule
- **2008 Fugitive Emissions Rule**
 - Rule exempted certain source categories from considering fugitive emissions in a 2008 rule
 - EPA granted an NRDC petition for reconsideration of the 2008 rule and stayed its effectiveness
 - Litigation (Newmont Mining and NRDC) held in abeyance
 - Currently working on a proposal
- **2007 Ethanol Rule**
 - 2007 rule raised the applicability threshold for major NSR and title V for certain ethanol production facilities
 - 2009 petition for reconsideration from NRDC; litigation held in abeyance
 - Letter partially denying/granting petition issued 10/21/2019, SIP actions in Region 7
 - Proposed rule to address partial grant in progress



MACT Once In Always In Policy

- **Memorandum: “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act” (“MM2A memo”)**
 - Signed 1/25/18
 - Withdraws 1995 memo “Once In Always In” (OIAI) policy
 - Addresses when a major source subject to a maximum achievable control technology (MACT) standard may be reclassified as an area source and no longer subject to MACT requirements
- **2019 MM2A Proposal (84 FR 36304, 7/26/2019)**
 - Addresses questions received after 2018 MM2A Memorandum issued
 - Reclassification process; Criteria for establishing effective PTE HAP limitations
 - Supersedes and replaces 2007 NPRM NESHAP: General Provision Amendments; addresses reclassification issues covered in 2007 NPRM
 - Timing for compliance with applicable NESHAP standards; Notification requirements; Recordkeeping requirements; Interaction with enforcement actions
 - Comment period closed 11/1/19
 - Currently working on final rule



Treatment of Biogenic CO₂ in Air Permitting

- FY2017 thru FY2020 Consolidated Appropriations Act outlines how EPA and other agencies are to establish consistent policies regarding the use of forest biomass for energy production including policies that reflect the carbon-neutrality of forest bioenergy
- April 2018 EPA policy statement: Forthcoming regulatory actions will treat biogenic CO₂ resulting from the combustion of biomass from managed forests at stationary sources for energy production as carbon neutral
- Fall 2019 regulatory agenda shows a proposed rule for this spring

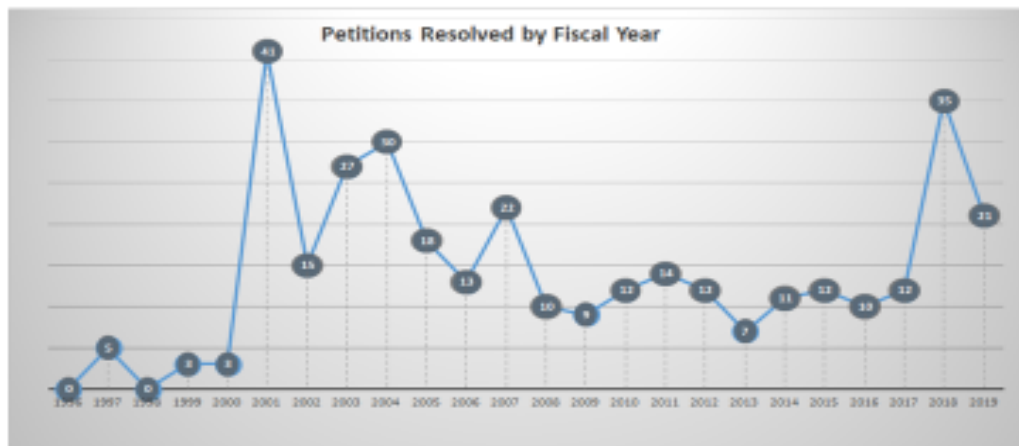


Title V Program Updates

Resolving Title V Petitions More Efficiently

Background

- Title V of the Clean Air Act (CAA) allows the public to petition the EPA Administrator to object to a title V operating permit that is believed to be deficient
- On average, EPA receives 20 title V petitions per year
- Petition responses have historically taken longer than the 60 days allowed by the CAA



New Approaches = Faster Response Times

Increasingly complex petitions have spurred the need for new approaches to improve response times



Central Data Exchange (CDX)

Petitions can be submitted electronically



Cross-Office Collaboration

OAQPS + Regions + OGC+
ORC + OECA

Regulations.gov
Your voice in federal decision-making

Petitions Rule
Streamlines and clarifies petition process

Title V Petitions Rule

- Published in the Federal Register February 5, 2020
 - Effective April 6, 2020
- Three main changes
 - How to submit a petition (*where* to send it)
 - Mandatory content for petitions (tell us *what* the problem is, on *which* permit)
 - Requires permitting authorities to respond in writing to significant comments, and provide the response with the proposed permit to EPA for review
 - Permitting authorities determine what is significant
 - We have spelled out how this works with “concurrent” review



Petitions Rule (cont.)

- Also added requirement for petitioner to send permitting authority and source a copy of the petition
- We did NOT finalize:
 - Requirement to provide notice to public when proposed permit goes to EPA
 - EPA intends to post information on its own websites
 - Ultimately, Electronic Permit System (EPS) will show this information

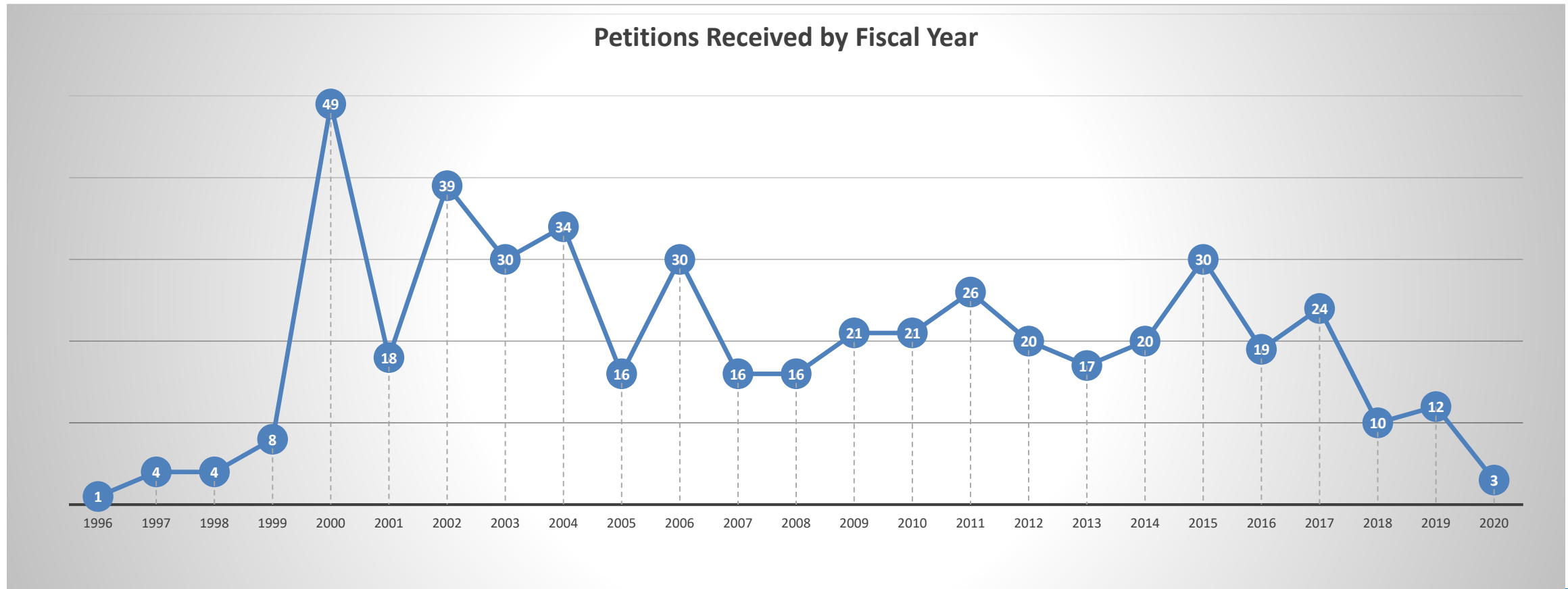


Title V Petitions & Petitions Process Rulemaking

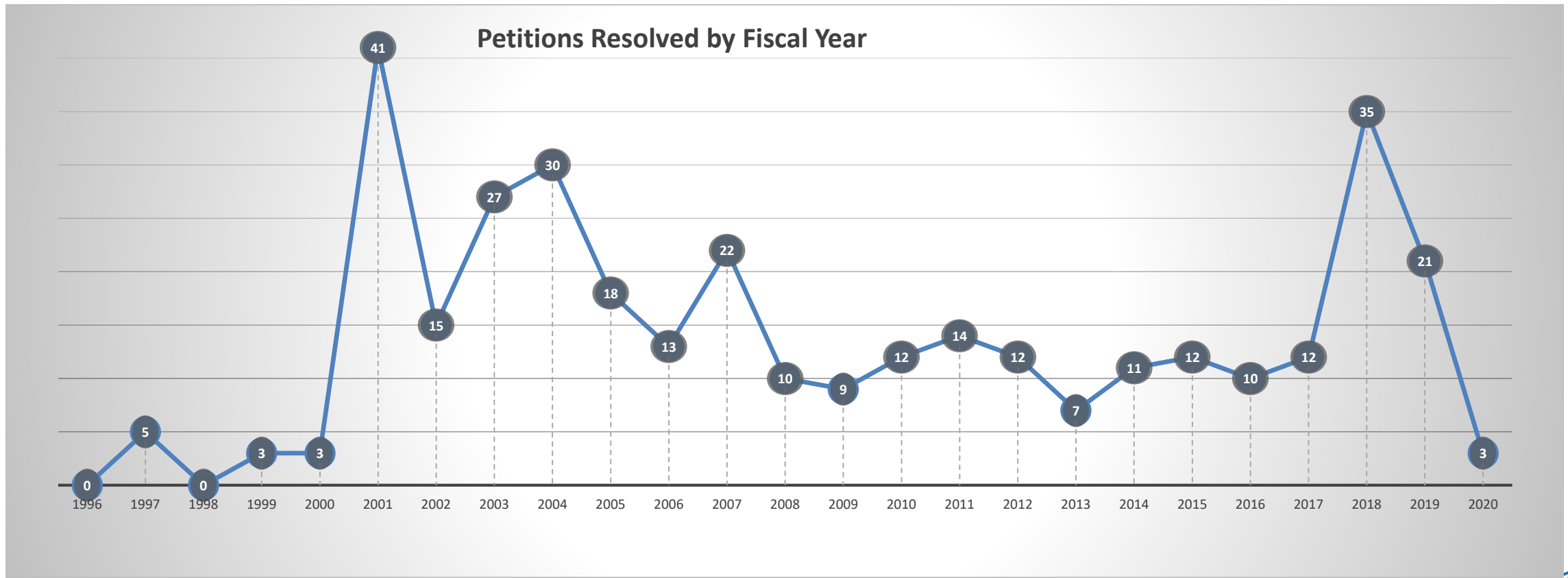
- Title V Petitions continue to be a substantial work load
- Trends:
 - Increased focus on wood pellet manufacturing – Morehouse, LaSalle (2), Highland Pellets, Enviva
 - Texas permits related to incorporation by reference (received in 2016-17)
 - Monitoring for synthetic minor limits
 - Monitoring to determine that a limit does NOT apply (Newark Bay, Riverview)



Petitions Received by Year



Petitions Resolved



Title V Petitions – NSR Interface

- PacifiCorp Hunter Order (10/16/2017) – EPA will not look back at decisions made in NSR permitting process in the context of Title V
 - Permitting agencies and EPA need not reevaluate- in the context of title V permitting, oversight, or petition responses- previously issued final preconstruction permits, especially those that have already been subject to public notice and comment and an opportunity for judicial review
 - Concerns with these final preconstruction permits should instead be handled under the authorities found in title I of the Act (e.g., enforcement actions under CAA § 113 or 167, state court appeals of preconstruction permits, or citizen enforcement actions under CAA § 304)
 - Where a final preconstruction permit has been issued, whether it is a major or minor NSR permit, the terms and conditions of that permit should be incorporated as "applicable requirements"
- Big River Steel Order (10/31/2017) – Applies same interpretation to fact set involving merged NSR/Title V program



Permitting Process Improvements

- Increased use of electronic systems
 - Central Data Exchange (CDX) for receipt of Title V petitions
 - Electronic Permitting System (EPS)
 - Working with 35 state and local programs to develop system that will allow electronic submittal of state-issued NSR, Title V, and other permits for EPA review
 - Also electronic processing of EPA-issued NSR and title V permits
 - Replacing and modernizing RACT/BACT/LAER Clearinghouse



EPS Demonstration

Questions and Comments

