

NACAA Permitting and New Source Review Committee

Notes on EPA’s NSR and Title V-Related Actions Under Trump Administration

WORKING DRAFT IN PROGRESS / DISCUSSION DOCUMENT of July 23, 2018

Date	Action	Summary	Effects
10/16/2017	<u>PacifiCorp-Hunter Title V Petition Order</u>	Reversing longstanding precedent, EPA announces it will no longer review substantive NSR claims in a Title V petition	<ul style="list-style-type: none"> • Speeds EPA review of permits, petitions and S/L responses to comments • NSR issues need not be reviewed or addressed in Title V permitting/RTCs • Less opportunity for citizens/environmental groups to challenge NSR decisions
10/31/2017	<u>Big River Steel Title V Petition Order</u>	Reiterates new interpretation from PacifiCorp-Hunter Order, in this case, in the context of a merged Title I and Title V program	<ul style="list-style-type: none"> • Same as above • States may have to consider separating Title I and V actions to preserve public participation process
12/07/2017	<u>DTE Memorandum</u>	EPA will no longer “second-guess” a company’s pre-construction emissions projections, so long as the company complies with procedural requirements. EPA will not bring NSR enforcement actions unless post-project actual emissions data indicate a significant emissions increase did in fact occur.	<ul style="list-style-type: none"> • Could invite risky behavior on the part of applicants in states that do not have SIP-approved programs • Combined with PacifiCorp and Big River decisions, erodes ability of third parties to intervene in permit actions • Makes NSR permitting more of a “trust based” program

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01/25/2018	<u>Wehrum Memorandum – Rescission of “Once In, Always In”</u>	Rescinds the OIAI policy announced in 1995 Seitz Memo, which provided that once a source of HAPs is considered a major source under Section 112, it remains major even if its emissions drop below major-source levels. Henceforth, HAP sources previously classified as “major” sources may be reclassified as “area” sources at any time, provided the facility limits its PTE below major-source thresholds	<ul style="list-style-type: none"> • Could allow increases of HAP emissions from sources previously subject to major source MACT requirements without any air quality analysis • Could increase public exposure to HAPs • May reduce disincentive to implement pollution prevention efforts or technological innovations to reduce HAP emissions
03/13/2018	<u>Project Emissions Accounting Memorandum</u>	EPA interprets existing NSR regulations to allow sources to consider emissions decreases as well as increases at “Step 1” of the 2-step NSR applicability process.	<ul style="list-style-type: none"> • Allows/incentivizes companies to selectively “bundle” unrelated projects to avoid NSR • Results in fewer sources triggering NSR and therefore avoiding the required air quality analysis and emissions control installation
04/05/2018	<u>Limetree Bay Terminals – Permitting Questions</u>	Signals that EPA intends to reconsider its “Reactivation Policy” in the near future, under which a major source that has been idled for 2 or more years is presumed to be permanently shut down and thus a “new” source subject to PSD upon reactivation.	<ul style="list-style-type: none"> • If the presumption is removed, would likely result in fewer sources triggering NSR and therefore avoiding the required air quality analysis and emissions control installation
04/17/2018	<u>Final SILs Guidance for Ozone and PM_{2.5}</u>	Sets recommended threshold levels below which a source’s emissions can be presumed to not cause or contribute to a violation of the ozone or PM _{2.5} NAAQS	[NOTE: the final guidance has been challenged in the D.C. Circuit by Sierra Club, which argues that SILs create an illegal waiver of PSD requirements]

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04/23/2018	<u>Statement on Treatment of Biogenic CO₂ Emissions from Biomass Energy Plants</u>	Announces that EPA will treat CO ₂ emissions from combustion of forest biomass for energy production at stationary sources as carbon neutral in future regulatory actions and various programmatic contexts, including permitting.	<ul style="list-style-type: none"> • Would presumably exclude biogenic CO₂ emissions from PSD permitting (unclear how this will work under existing legal precedent)
04/30/2018	<u>Meadowbrook Energy and Keystone Landfill Common Control Analysis</u>	EPA has revised its interpretation of the term “common control” for purposes of source aggregation in NSR and Title V permitting. Henceforth, EPA’s assessment of “control” will focus on “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.”	<ul style="list-style-type: none"> • Potentially creates incentive to structure owner/operator arrangements to avoid NSR?
<i>Planned Future Actions</i>			
Draft expected later Summer/early Fall 2018 for 30-day informal comment	Ambient Air Guidance	EPA evaluating its interpretation of key terms in “ambient air” definition (“that portion of the atmosphere, external to buildings, to which the general public has access”) – including “general public,” “access,” and “building” to determine where additional flexibility may be appropriate	<ul style="list-style-type: none"> • Will likely ease air quality modeling requirements by reducing the amount/placement of receptors where sources must demonstrate that emissions do not cause or contribute to NAAQS violation
Was expected “late Spring” 2018; no updated estimate	Routine Maintenance, Repair and Replacement (RMRR) Guidance	EPA anticipates clarifying its interpretation and appropriate application of RMRR provision under NSR regulations.	<ul style="list-style-type: none"> • Will likely increase amount of projects considered RMRR, thus avoiding NSR and therefore avoiding the required air quality analysis and emissions control installation

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Expected Summer 2018	Project Aggregation Reconsideration	EPA plans to take final action on NRDC’s petition for reconsideration of 2009 rule on Aggregation and Project Netting, which has remained stayed. Rule established “substantially related” criterion for aggregating projects and a 3-year rebuttable presumption against aggregating.	<ul style="list-style-type: none"> • Could lead to fewer emissions-increasing projects being aggregated which in turn reduces projects subject to NSR
Expected Fall 2018	Project Emissions Accounting Rulemaking	EPA plans to issue a proposed rule to codify the interpretations in the 3/13/18 project emissions accounting memorandum.	<ul style="list-style-type: none"> • See above
Expected early 2019	Rulemaking on Rescission of “Once In, Always In”	EPA plans to issue a proposed rule to codify the rescission of the OIAI policy announced in the 1/25/18 Wehrum Memorandum.	<ul style="list-style-type: none"> • See above
Later	Additional Rulemaking	EPA intends to engage in notice-and-comment rulemaking to “lock in” other interpretations and policy changes announced above	