

NSR Rules/Guidance Updates

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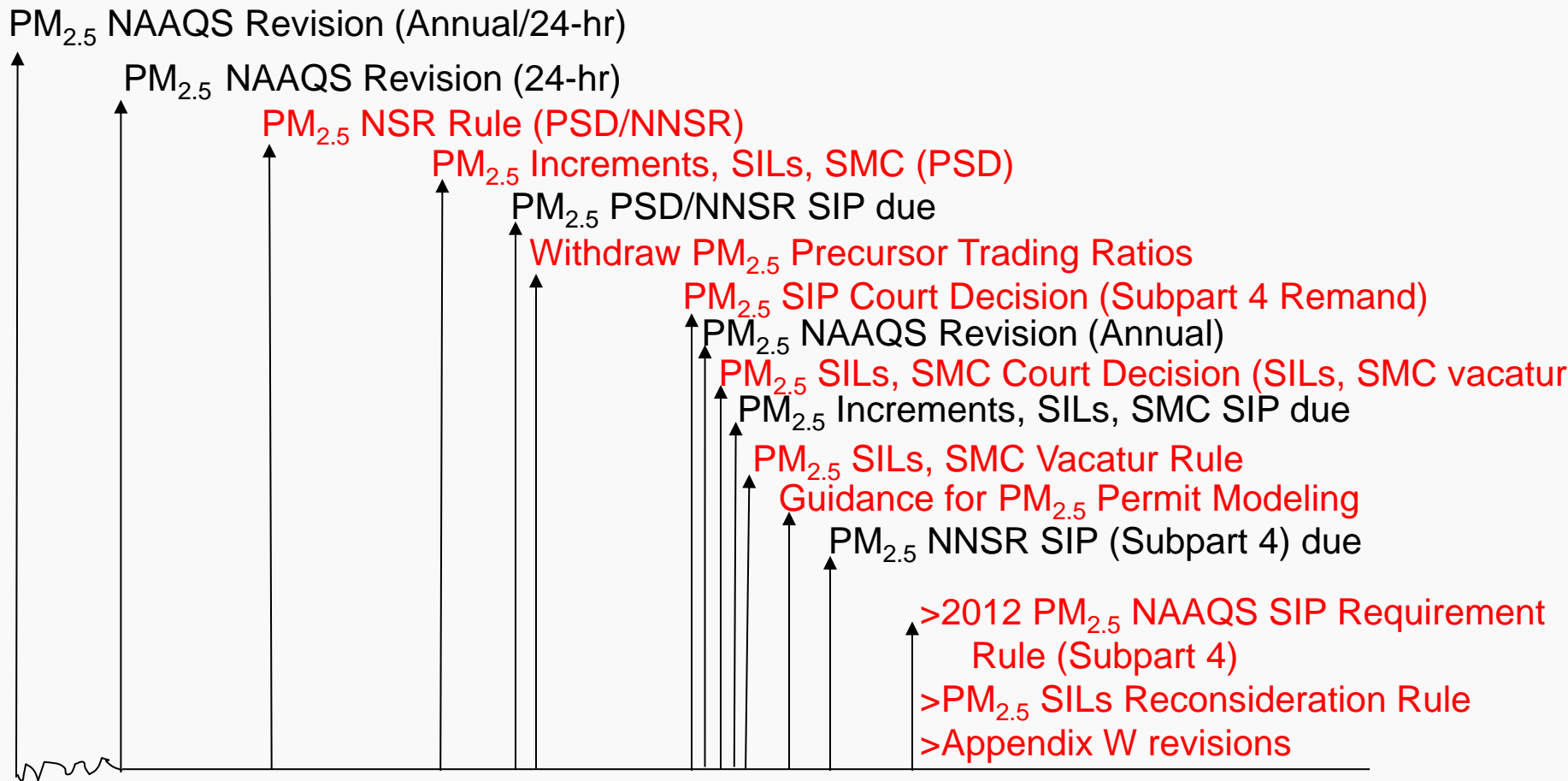


Overview

- PM_{2.5} Rules Updates
 - PM_{2.5} NAAQS Implementation Chronology
 - 2012 PM_{2.5} NAAQS Implementation Rule NPRM
 - PM_{2.5} SIL Rule NPRM & SMC Vacatur Rule
- Ozone Rules Updates
- Other Updates
 - PSD Permit Extension Guidance
 - Regional Consistency Rule Revision NPRM (Part 56)
 - Ambient Air and PSD Offset Provisions



PM_{2.5} NAAQS Implementation Chronology





PM_{2.5} NAAQS Implementation Chronology

PM _{2.5} NAAQS Revision (Annual/24-hr)	July 18, 1997
PM _{2.5} NAAQS Revision (24-hr)	Oct 17, 2006
PM _{2.5} NSR Rule (PSD/NNSR)	May 16, 2008
PM _{2.5} Increments, SILs, SMC (PSD)	Oct 10, 2010
PM _{2.5} PSD/NNSR SIP due	May 16, 2011
Withdraw PM _{2.5} Precursor Trading Ratios	July 21, 2011 (Memo)
PM _{2.5} SIP Court Decision (Subpart 4 Remand)	Jan 4, 2013
PM _{2.5} NAAQS Revision (Annual)	Jan 15, 2013
PM _{2.5} SILs, SMC Court Decision (SILs, SMC vacatur)	Jan 22, 2013
PM _{2.5} Increments, SILs, SMC SIP due	Oct 10, 2013
PM _{2.5} SILs, SMC Vacatur Rule	Dec 9, 2013
Guidance for PM _{2.5} Permit Modeling	May 21, 2014
PM _{2.5} NNSR SIP (Subpart 4) due	Dec 31, 2014

{ 2012 PM_{2.5} NAAQS Implementation Rule NPRM
PM_{2.5} SILs Reconsideration Rule NPRM
Appendix W revisions NPRM } Future



PM_{2.5} NAAQS Court Decisions

- Two Key Court decisions in 2013 affect PM_{2.5} NSR
 - **January 4 Decision: Subpart 1 vs. Subpart 4**
 - Court ruled that under Part D of the CAA, PM_{2.5} should be regulated by same provisions as for PM₁₀—Subpart 4
 - Court Remanded 2007 PM_{2.5} SIP Rule and 2008 PM_{2.5} NSR Rule
 - Attainment plans and NNSR must follow Subpart 4
 - EPA believes decision has no affect on PSD
 - 2012 PM_{2.5} NAAQS Implementation Rule addresses this decision



PM_{2.5} NAAQS Court Decisions (Cont'd)

- **January 22 D.C. Circuit Court Case on PM_{2.5} SILs and SMCs**
 - Court vacated PM_{2.5} SILs and SMCs
 - Court stated that EPA lacks authority to allow for exemptions (SMCs) for air quality monitoring data requirement
 - Court remanded to EPA the SILs provision at 51.166(k) and 52.21(k) to correct inconsistency with preamble
 - PM_{2.5} SILs at 40 CFR 51.165(b) continue to apply
 - Proper use of the PM_{2.5} SILs
 - EPA released PM_{2.5} Q&A's March 4, 2013
 - Permits should not rely on the SILs alone to demonstrate "cause or contribute"
 - Additional "care" should be taken so permitting record supports conclusion of no "cause or contribute" to a violation
 - EPA issued Guidance for PM_{2.5} Permit Modeling in May 2014



2012 PM_{2.5} NAAQS Implementation: SIP Requirements NPRM

- PM_{2.5} NAAQS SIP Requirements NPRM
 - Take comment on approaches to clarify nonattainment implementation requirements according to subpart 4 of part D of Title I of the CAA, consistent with January 2013 D.C. Circuit Court decision
 - Address how subpart 4 court decision affects nonattainment NSR permitting requirements (e.g., with respect to major source threshold, precursors, etc.)
 - Proposal anticipated in early 2015



PM_{2.5} Significant Impact Levels (SILs) NPRM

- Rule will focus on legal and technical basis for the SILs – more solid basis than articulated in the 2010 SILs Rule
- Proposal anticipated in Fall 2015



Significant Monitoring Concentration (SMC) Rule

- Direct final “Good Cause” rule published at 78 FR 73698, December 9, 2013
 - Rule removed $PM_{2.5}$ SILs and the provisions for implementing them at 51.166(k)(2) and 52.21(k)(2)
 - Rule removed the $PM_{2.5}$ SMC from 40 CFR 51.166 and 52.21



PM_{2.5} NNSR SIP Submittals

- January 4, 2013 court decision affects 1996-2006 PM_{2.5} NNSR SIP submittals
 - SIPs due to EPA on Dec 31, 2014 (79 FR 31566, 6/2/14)
 - NNSR program must address Subpart 4 requirements
- EPA has approved some SIPs as “SIP strengthening” even though VOC and NH₃ are not yet included as PM_{2.5} precursors, additional precursors or demonstration for exemption must still be submitted
- States seek guidance to exempt VOC and NH₃ from regulation as PM_{2.5} precursors via § 189(e)
 - We are working with Regions on a case-by-case basis



Ozone NAAQS Rules

- Two ozone NAAQS Rules underway
 - 2008 Ozone SIP Requirements Rule (Final)
 - 2015 Revised Ozone NAAQS Rule (Proposal)
- 2008 Ozone NAAQS SIP Requirements Rule
 - Proposed June 6, 2013 (78 FR 34178)
 - Proposed revocation of 1997 Ozone NAAQS (Anti-backsliding implications)
 - Clarified that inter-precursor trading is allowed
 - Anticipate final rule in early 2015



Ozone NAAQS Rules (Cont'd)

- 2015 Ozone NAAQS Rule
 - PSD becomes effective as of the effective date of the revised NAAQS
 - Includes a grandfather provision for pending PSD permit applications
 - Court Deadlines
 - Proposal – December 1, 2014 (Signed November 25, 2014)
 - Final Rule – October 1, 2015



PSD Permit Extension Guidance

- On January 31, 2014 EPA issued national guidance
- Clarifies what constitutes adequate justification for permit extension (40 CFR 52.21 (r) (2))
- Does not require reanalysis of permit terms for first permit extension
- Generally permit will be extended for an additional 18-month period; shorter or longer time periods may be granted depending on justification provided
- No public notice necessary for first extension
- A second permit extension request will generally require substantive reanalysis or a new application



40 CFR Part 56 Amendments – Regional Consistency

- The regional consistency regulations were promulgated in 1980 to ensure that EPA implements major provisions of the Act in a consistent way across the nation.
- The Summit 6th circuit court decision essentially limited the meaning of the term “adjacent” to proximity alone
- EPA issued a guidance memo stating that the 6th circuit decision only applied in 6th circuit states. NEDA/CAP sued EPA on the grounds that the memo was inconsistent with “Regional Consistency” Regulations (Part 56)
- The court ruled against EPA and one remedy option cited by the court to address differing judicial decisions in the future was to revise the regional consistency regulations.



40 CFR Part 56 Amendments – Regional Consistency (Cont'd)

- We intend to propose a revision to Part 56 to allow for a variance to the regional consistency provisions for judicial decisions.
- If finalized, this revision would allow the Agency to follow a general principle of CAA law that a federal circuit decision is binding only within that circuit.
- This is a Tier 3 action classified as non-significant by OMB – NPRM – anticipated in early 2015



Miscellaneous Issues

1. Ambient Air Definition

Industry contends that current definition/interpretation (1980 Costle memo) is too restrictive

Wants flexibility in interpretation of “Effective Barrier” especially within the property line

2. PSD Air Quality Offsets

In areas with background close to the NAAQS, sources cannot show compliance with the NAAQS; PSD permit cannot be issued
40 CFR 51.165(b)(3) provides option for compensating for adverse air quality impacts

Infers a modeling approach which industry believes is difficult to accomplish

EPA looking into both issues