

# Permitting Policy, Program Oversight, & Other Implementation Updates

NACAA Virtual Fall Meeting  
October 21, 2020

Juan Santiago, Associate Director  
Air Quality Policy Division  
Office of Air Quality Planning and Standards





# Overview

- Permit Program Updates
- National Policy for Oversight of Permitting
- Startup, Shutdown & Malfunction
- Affordable Clean Energy Rule

# Review of Completed Permit Policy Actions

## Completed Guidance Documents

- Actual-to-Projected Actual Emissions Applicability Memo (12/7/2017)
- Project Emissions Accounting Under NSR Memo (83 FR 13745; 3/13/2018)
- PM<sub>2.5</sub> and Ozone Significant Impact Level (SIL) Guidance (4/17/18)
- Source Determination Clarifications – “Common Control” Interpretation
  - Meadowbrook 4/30/2018 memo to Pennsylvania DEP
  - Ameresco 10/16/2018 memo to Wisconsin DNR
- Source Determination Clarification (11/26/2019) – Adjacent
- Ambient Air Policy (12/10/2019) – Effective Measures
- Plantwide Applicability Limit (PAL) Guidance (8/4/2020)

# Review of Completed Permit Policy Actions

## Completed Rulemakings

- Project Aggregation Reconsideration Final Rule (83 FR 57324; 11/15/18)
- Tribal NSR Oil & Gas FIP Streamlining Amendment (85 FR 15279; 3/19/20)
- Reasonable Possibility Rule Reconsideration

# Update on Ongoing Actions

## Guidance Documents

- Begin Actual Construction Guidance

## Rulemakings

- Project Emissions Accounting Final Rule
- NSR Error Corrections Final Rule
- Fugitive Emissions Proposed Rule Reconsideration
- Ethanol Production Major Source Proposed Rule Reconsideration
- Treatment of Biogenic CO<sub>2</sub> in PSD Proposed Rule

# Project Emissions Accounting Final Rule

- Proposed rule revisions (84 FR 39244, 8/9/2019) would clarify that both increases and decreases in emissions resulting from a project are to be accounted for under Step 1 of the NSR applicability process
- First discussed in a 2018 memo, which is currently in litigation, abeyance pending rule outcome
- Rule intended to eliminate any uncertainty with the rule language
- Comment period closed 10/8/2019
- Final Rule cleared OMB 10/15/2020
- Final Rule expected in the coming weeks

# NSR Error Corrections Final Rule

- Proposed rule (84 FR 70092, 12/20/2019) would correct NSR regulation typos and incorrect citations, and update the regulations to remove vacated elements
- Comment period closed end of January 2020
- Final Rule expected Fall 2020

# 2007 Ethanol Major Source Rule Reconsideration

- Final Rule raised the applicability threshold from 100 tpy to 250 tpy for major NSR and title V for certain ethanol production facilities
- EPA granted 2009 petition for reconsideration from NRDC; litigation held in abeyance
- EPA letter to NRDC issued 10/21/2019 partially denying/granting petition
- Region 7 has already approved 4 SIPs involving ethanol facilities
- Region 4 recently took action to approve 6 SIPs involving ethanol facilities
- Region 5 is working to take action to approve several SIPs
- Currently working on a proposal to address partial grant (target proposal date is February 2021)



# Treatment of Biogenic CO<sub>2</sub> in PSD Permitting

- Consolidated Appropriations Act (FY2017-FY2020) 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 CO<sub>2</sub> resulting from the combustion of biomass from managed forests at stationary sources for energy production as carbon neutral
- Draft Proposed Rule is currently at OMB for review

# National Policy for Oversight of Permitting

- EPA is developing a national policy to improve the effectiveness and efficiency of our oversight of permits and permitting programs over time.
- The policy is designed to improve management of our resources, provide strategic insight, and improve program responsiveness to changing needs.

# Scope of the Policy

- The Policy will apply to EPA's oversight of permitting authorities delegated, authorized, or approved to issue permits.
- It applies to the following permitting programs:
  - Clean Air Act New Source Review (NSR) and Title V
  - Clean Water Act National Pollutant Discharge Elimination System (NPDES)
  - Resource Conservation and Recovery Act Subtitle C; and
  - Safe Drinking Water Act Underground Injection Control (UIC).

# Data-driven Framework

- The Policy creates a data-driven framework to inform adjustments to oversight and program priorities over time.
- Starts with establishing a baseline that looks back (generally over the past year):
  - What oversight did EPA conduct?
  - How timely did EPA communicate the results of that oversight to the permitting authority?
  - What do those findings tell us about:
    - Permit quality
    - Permit timeliness, and
    - Permit program integrity?

# Regular “Check-in” Discussions with Permitting Authorities

- The policy sets up the concept of a check-in discussion between EPA and the permitting authority, generally annual, to discuss the data, program priorities and challenges, and whether any changes to oversight are warranted.
  - Form, timing, and frequency of that check-in is flexible to take advantage of existing processes and communication venues.
  - Both parties can agree that no meeting is necessary if the current data are mutually understood, and no issues or changes in oversight need to be discussed.
- Communication and mutual understanding of the data is crucial to ensure “no surprises” for either EPA or the permitting authority.

# Program Specific Metrics

- Each of the EPA media programs is developing draft program-specific metrics for EPA oversight conducted, timeliness of EPA oversight, and oversight results in terms of permit quality, permit timeliness, and program integrity.
  - The first draft of these program-specific metrics are based largely on available data
  - As the metrics directly impact the permitting authorities, EPA plans to share the draft metrics and consider input on metrics currently tracked by permitting authorities or additional or alternative metrics that should be considered.
  - We anticipate that improved metrics, including those that may require new information collections, will be developed over time.

# Implementation Schedule

- EPA plans to begin implementing the policy in FY21.
- Program-specific differences may impact the ability of an individual program to fully implement the policy in that first year.
  - EPA is currently considering program-specific phased implementation based upon factors, such as data availability and number of permitting authorities implementing the permitting program.

# Provisions Concerning Start-Up, Shutdown and Malfunction (SSM) Events in SIPs

- In 2015 EPA finalized the SSM SIP Action which included:
  - (1) a response partially granting and partially denying Sierra Club's petition for a SIP call;
  - (2) updating, restating, and consolidating SSM policy; and,
  - (3) a SIP Call applying that policy and directing several states to revise SSM-related provisions for exemptions and affirmative defenses in their SIPs.
- Litigation in the D.C. Circuit challenging that action was put in abeyance in April 2017.
- Three related actions have been taken this year:
  - EPA Region 6 announced an alternative interpretation and withdrew the SIP call for Texas with respect to affirmative defense provisions.
    - Final action published in the *Federal Register* on February 7, 2020; challenged by Sierra Club and others in the D.C. Circuit on April 7, 2020.
  - EPA Region 4 announced an alternative interpretation and withdrew the SIP call for North Carolina with respect to automatic and director's discretion exemptions
    - Final action published in the *Federal Register* on April 28, 2020; also challenged by Sierra Club and others in the D.C. Circuit on June 29, 2020.
  - EPA Region 7 proposed an alternative interpretation and proposed to withdraw the SIP call for Iowa with respect to automatic exemptions.
    - Proposal published in the *Federal Register* on June 22, 2020 (comment period closed July 22).



# Provisions Concerning Start-Up, Shutdown and Malfunction (SSM) Events in SIPs

- On October 9, the Administrator signed the guidance memorandum, *“Inclusion of provisions governing periods of SSM in SIPs,”* which outlines whether and when it may be permissible for a state to include certain types of provisions governing periods of SSM in SIPs.
- On October 13, the D.C. Circuit entered a briefing schedule for the Texas SSM case, and on October 14, the D.C. Circuit entered a briefing schedule for the North Carolina SSM case (20-1115 *Sierra Club, et al v. EPA*).
  - Texas case - petitioners’ opening brief is due November 13 and EPA’s response is due January 7.
  - North Carolina case - petitioners’ opening brief is due November 25 and EPA’s response is due January 19.

# Affordable Clean Energy (ACE) Rule

- ACE is an emission guideline promulgated under Clean Air Act (CAA) section 111(d)
- The focus is on coal-fired electric utility steam generating units (EGUs) with nameplate capacity greater than 25 MW-net and commenced construction on or before January 8, 2014
- These emission guidelines rely on cooperative federalism to achieve emission reductions. These roles can be summarized by a three-step process:
  - EPA identifies best system of emission reductions (BSER) for coal-fired electric utility steam generating units (EGUs)
  - States develop plans to set standards of performance for designated facilities within jurisdiction
    - Standards must be consistent with emission limitation achievable by application of BSER and account for remaining useful life and other factors as appropriate
  - Affected sources comply with standards of performance (set by states) using most appropriate technologies or techniques
    - Sources do not have to apply BSER technologies to comply with standards

# EPA's Current ACE Focus

- State plans due July 8, 2022
- States are actively developing plans and talking to EPA's Regional Offices to address issues and concerns.
  - Often these questions bubble up to EPA HQ and we work on developing answers to help facilitate implementation
- Generally, EPA has chosen to focus its role on helping states develop plans rather than dictating what a federal approach might look like
  - Not intending to develop a federal plan
  - Significant state flexibility, within the bounds of the statute and the regulation
- Other focus is on addressing litigation
  - Oral Arguments were held on 10/8/2020 on CPP Repeal/ACE case - American Lung Association v. EPA (D.C. Cir.)



# Questions and Comments

