



Permit Program Updates

Spring 2020

Air Quality Policy Division

Office of Air Quality Planning and Standards

Juan Santiago, Associate Director



Overview

- Review Completed Permit Policy and Regulatory Actions
- Update on Ongoing Actions
- Website Enhancement/NSR Training
- Permitting Process Improvements

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_{2.5} 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

Source Determination Clarification – Adjacent

- **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

Ambient Air Policy

- **12/10/2019: Final Policy issued “Revised Policy on Exclusions from Ambient Air”**
- Limited change to the way EPA applies regulatory definition of ambient air, *“that portion of the atmosphere, external to buildings, to which the general public has access”* – 40 CFR 50.1(e)
- EPA 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”*
- 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”*

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

- Plantwide Applicability Limit (PAL) Guidance
- 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 CO₂ in PSD Proposed Rule

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 generating perceived risk/disincentives
 - Comment period closed 3/16/2020; Final guidance anticipated –Summer 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 explores flexibilities under the existing rule language that would allow certain non-emitting activities to be undertaken prior to obtaining a permit
 - Draft guidance memo posted for 45-day comment 3/25/2020; Final guidance anticipated – Fall 2020

NSR Rulemakings Underway

- **Project Emissions Accounting Rule**

- Proposed rule revisions (84 FR 39244, 8/9/2019) would clarify that both increases and decreases resulting from a project are to be accounted for under Step 1 of the NSR applicability process
 - Intended to eliminate any uncertainty with the rule language
 - Comment period closed 10/8/2019
- Final Rule expected Fall 2020

- **NSR Error Corrections Rule**

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

NSR Rulemakings Underway (cont.)

- **2008 Fugitive Emissions Rule Reconsideration**
 - Final Rule exempted certain source categories from considering fugitive emissions in NSR major modification determinations
 - EPA granted an NRDC petition for reconsideration of the Rule and stayed its effectiveness
 - Litigation (Newmont Mining and NRDC) held in abeyance
 - Currently working on a proposal: to OMB May 2020; signature Summer 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 is taking action on several SIPs involving ethanol facilities
 - Currently working on a proposal to address partial grant (target proposal date is February 2021)

NSR Rulemakings Underway (cont.)

- **Treatment of Biogenic CO₂ in Air 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 CO₂ 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

ACE Rule EGU Hourly Emissions Test

- As part of the proposed Affordable Clean Energy rule, EPA proposed to incorporate an hourly emissions test for NSR modification applicability for EGUs
- Hourly test would be a tool for states to implement the ACE rule; adoption would not be mandatory
- NSR rulemaking was severed from June 2019 final ACE rule
- Administration still interested in pursuing action on the NSR hourly emissions test

Title V Petitions Rule

- EPA published the final **“Revisions to the Petition Provisions of the Title V Permitting Program”** in the Federal Register on February 5, 2020 (85 FR 6431)
 - Effective April 6, 2020
- Three main :
 - 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

Website Enhancements/Training Development

- Website Improvements
 - Completed several enhancements to the existing EPA air permitting rule and guidance website <https://www.epa.gov/nsr/new-source-review-policy-and-guidance-document-index>
 - Organizing guidance documents in NSR and Title V index by topic area
 - Phase I enhancements completed November 2019
 - Phase 2 including topic page descriptions and document summaries targeted for completion of June 2020
- NSR Training Development
 - Received state agency input on recommended NSR training topics
 - Currently developing NSR training modules that will be available through the improved permitting website
 - Targeted for completion of July 2020

Process Improvements: Electronic Systems

- Central Data Exchange (CDX) for receipt of Title V petitions
 - Target completion date - September 2020
- 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
 - Target for completion – FY-2021
- Replacing and modernizing RACT/BACT/LAER Clearinghouse
 - Target for completion – FY-2021

Questions and Comments

