

New Source Review

Update

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December 31, 2002 Rule

- 10-year baseline lookback, actual-to-future-actual applicability test, PALs, Clean Units, PCPs
- June, 2005 Court Ruling vacating Clean Units and PCPs (EPA will remove from rules) and remanding to EPA the issue of record keeping (ongoing discussions within EPA)
- January, 2006 SIPs due
 - Four states proposed for approval—Ohio, Kentucky, Colorado, and Mississippi
 - Equivalency demonstrations being discussed with Regions

October, 2003 ERP Rule 20% Cost Test

- Stayed by DC Circuit Court December, 2003
- Reconsideration completed June, 2005
- Vacated by the DC Circuit Court March, 2006
- Only in a Humpty Dumpty world
- Ongoing discussions between EPA and DOJ on options

Alternative Applicability Test for Utilities

- Proposed in October, 2005 without regulatory language
 - Change from TPY test to maximum achievable hourly emissions rate test for modifications
- Public hearing December, 2005
- Supplemental proposal with regulatory language possible this summer

Aggregation and Debottlenecking

- Aggregation involves multiple units installed as a part of an overall project or multiple activities at a single unit over a period of time
- Debottlenecking involves “downstream” increases in emissions at a facility
- Proposal is at OMB
- EPA hopes to publish the proposal in June

Ozone SIP NSR Issues

- Major stationary source thresholds, significant emission rates, and offset ratios under 1990 CAA for NO_x, VOC, PM-10, and CO
 - Changes to SIP rules and Appendix S
- NO_x as ozone precursor in nonattainment and attainment areas
- Shutdown Credits
 - Can use pre-application shutdown credits for offsets and netting if carried in projected emissions inventory used for attainment demonstration
 - Dropped requirement for approved attainment demonstration
- Changes to 52.24
 - Extended Appendix S applicability from 18 months to until SIP rule approved
 - Removed construction bans per 1990 CAA
- Not adopting “transitional” NSR program under section VI. of Appendix S as proposed

PM_{2.5} NSR SIP Issues

- PM₁₀ surrogate program in effect
 - 100/250 TPY for new sources, 15 TPY for increases
 - No precursors
- Proposed SIP rule issues
 - Precursors (NO_x, SO₂, and NH₃)
 - Major source rates
 - Significant increase rates
 - Offset ratios
 - Role of condensables
 - Air quality analysis
 - Preconstruction monitoring
 - Interpollutant trading (precursors)
 - Rural transport areas
 - Coordination with Ozone NSR program
- Hope to finalize in October/November

Appendix S

- **NSR in nonattainment areas without an approved SIP**
- **Rulemaking will conform to Dec, 2002 rule**
 - **Baseline, Actual-to-future-actual applicability test, PALs**
 - **Final action expected July, 2006**

Treatment of Corn Milling Facilities

- Ethanol Production Facilities
- Likely removal of these facilities from classification as a chemical process plant
- Effect will be to raise the major threshold level from 100 TPY to 250 TPY for PSD and Title V applicability
- NPRM 3/06, Final Action 3/07

Routine Maintenance, Repair, and Replacement

- Establishment of a regulatory definition for maintenance and repair activities
- Originally proposed options on 12/31/02
- ERP portion was finalized on 10/27/03 but vacated by the court
- This action will propose and take comments on an additional approach
- No given timeframe

IGCC and BACT

- Should IGCC be considered in the Top-down BACT analysis for a coal-fired utility boiler PSD permit?
- December, 2005 letter from EPA stating
 - Not under 165(a)(4) BACT for each pollutant
 - But as part of the 165(a)(2) analysis
 - Interested party opportunity to submit alternatives to the proposed source
 - Same for LAER under 175(a)(5)

Utility Court Cases

■ Alabama Power

- U.S. District Court Judge Virginia Hopkins
- Parties before a mediator
- Lawsuit involves five plants
- Partial settlement reached on one plant
 - SCR operation year round
 - FGD installation by Dec 31, 2011
 - PM limit of 0.03 #/MMBTU
 - Mercury CEMs by Dec 31, 2008
 - Retire \$4.9 million in SO₂ allowances
 - \$100K civil penalty

Utility Court Cases

- **Duke Energy**
 - 2003 decision regarding NSPS test (hourly emissions) for modification
 - 2005 4th Circuit decision upholding the lower court
 - The Government declined to appeal to the Supreme Court, but environmental groups did, arguing the court lacked jurisdiction (only DC Circuit should rule on environmental matters having national implication)
 - So far the Supreme Court is silent

Utility Court Cases

■ Cinergy

- January, 2006 7th Circuit Court agreed to hear the case-- Judge Larry McKinney
- Conn., New Jersey, New York co-plaintiffs
- Pre-trial rulings mixed—industry standard part of consideration for maintenance and Cinergy burden of proof
- Jury trial

■ TVA

- U.S. District Court Judge Virginia Hopkins
- Ruled in favor of TVA
- Enviros have appealed to 11th Circuit

Utility Court Cases

- **American Electric Power (AEP)**
 - Judge Sargus (ruled against Ohio Edison in 2003)
 - Trial held in July, 2005
 - Final written briefs submitted in October
 - Penalty trial set for January, 2007

Utility Court Cases

- **Milton Young Station (N. Dakota)**
 - Recent settlement
 - Lignite coal-fired utility
 - SO₂ scrubbers (90%)
 - NO_x control 40% 2007, BACT by 2011
 - \$5 million renewable energy development projects