

Small Business Meeting

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Permit Streamlining

NSR Improvements and Other Recent Actions

Completed Actions

- Actual-to-Projected-Actual Applicability Test Guidance Memorandum
- Project Emissions Accounting Memo
- Source Aggregation Guidance, Meadowbrook Letter, Draft Guidance on Interpreting Adjacency
- PM_{2.5} and Ozone SILs Guidance
- Once-In-Always-In Policy Change

- Project Aggregation Reconsideration
- Ambient Air Guidance

On-Going Work

- Project Emissions Accounting Rulemaking
- Rulemaking on Treatment of Biomass for Permitting



NSR Updates: Actual-to-Projected-Actual Applicability Test Guidance Memorandum



- **Memorandum: “New Source Review Preconstruction Permitting Requirements: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability,”** signed by Administrator Pruitt on December 7, 2017
 - Available at https://www.epa.gov/sites/production/files/2017-12/documents/policy_memo.12.7.17.pdf
 - Where a source projects an insignificant emissions increase, the level of actual emissions after the project governs applicability
 - Projections may reflect the intent to actively manage post-project operations in order to prevent a significant emissions increase from occurring
 - EPA will not second-guess NSR applicability analyses that comply with the procedural requirements of the regulations



Project Emissions Accounting (PEA) Guidance Memorandum



- **Memorandum: “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program”** was published on March 30, 2018 (83 FR 13745)
 - Available at www.gpo.gov/fdsys/pkg/FR-2018-03-30/pdf/2018-06430.pdf
 - Communicates EPA’s interpretation that the current NSR regulations provide that emissions increases and decreases to be considered at Step 1 of the NSR applicability process, i.e., determining whether a project will result in a significant emissions increase
 - Interpretation is grounded in the principle that the plain language of the CAA indicates that Congress intended to apply NSR to changes that increase actual emissions and the language in the corresponding NSR regulations is consistent with that intent



Project Emissions Accounting (PEA) Guidance Memorandum (cont'd)



- Prior EPA guidance had indicated that the relevant provisions of the NSR regulations preclude the consideration of emissions decreases at Step 1
 - For the reasons discussed in the memo, EPA will no longer apply such interpretation
- May 29, 2018, Petition for Review in the DC Circuit from EDF, NRDC and Sierra Club
- Court granted Petitioner's unopposed motion to hold the case in Abeyance on July 13, 2018, while EPA conducts the PEA rulemaking



Source Aggregation Policy and Guidance

- EPA defines “*stationary source*” in the permitting programs as all of the pollutant-emitting activities that are:
 - located on one or more **contiguous or adjacent** properties, *and*
 - are **under common control** of one person (or persons under common control), *and*
 - belong to the same major industrial grouping (2 digit SIC code)
- EPA clarified its interpretation of “common control” in an April 2018 letter to Pennsylvania DEP (the Meadowbrook Letter)
 - The Meadowbrook Letter explains EPA’s view that control means 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
- EPA’s interpretation of “adjacent” has evolved through source-specific determinations
 - 2016 Rulemaking clarified “adjacent” for oil and gas operations
 - Adjacent operations are limited to those within ¼ mile with shared equipment



Source Aggregation Policy and Guidance (cont'd)

- EPA posted on September 5, 2018, the **“Draft Guidance: Interpretation Adjacent for New Source Review and Title V Source Determinations in All Industries other than Oil and Gas”**
 - Guidance can be found at www.epa.gov/nsr/forms/interpreting-adjacent-source-determinations
 - Public comment period ended October 5, 2018
 - Received 14 total comment letters (10 in support, 2 opposed, and 2 neutral)
 - Supporting comments were from industry groups and one state agency (Wyoming DEQ)
 - Opposing comments were from Tribes (Fond du Lac Band of Lake Superior Chippewa and Nation Tribal Air Association Executive Committee)
 - Neutral comments were from permitting authorities (Minnesota Pollution Control Agency and Wisconsin DNR)
- Next steps
 - Incorporate edits into guidance in response to comments as appropriate
 - OAR Senior Leadership Final Review
 - Post Final Guidance Document online



Major MACT to Area Guidance Memo



- On January 25, 2018, EPA issued guidance memorandum, **“Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act”**
 - Memo (also known as Major MACT to Area or MM2A) addresses when a major source subject to a maximum achievable control technology (MACT) standard under section 112 of the Clean Air Act (CAA) may be reclassified as an area source and no longer subject to major MACT requirements
 - Withdraws 1995 Seitz memo “Once In Always In” policy, which required major sources to limit potential to emit to below the major source thresholds by the first substantive compliance date to be treated as an area source
 - EPA intends to issue a proposal to take comment on regulatory text to implement EPA’s plain language reading of statute as discussed in January 2018 MM2A guidance memorandum



Major MACT to Area Guidance Memo (cont'd)



- On March 26, 2018, coalition of environmental groups filed a petition for review of the 2018 MM2A Memo in the D.C. Circuit Court
 - Oral arguments on the case were held on April 1, 2019
- EPA submitted the proposal package to OMB for interagency review in February 25, 2019
- EPA anticipates issuing the proposal for public review and comment in June 2019



Project Aggregation Reconsideration



- 2009 Rule for Project Aggregation
 - Established “substantially related” criterion for aggregating projects, and a 3-year rebuttable presumption against aggregating
 - Did not amend the CFR text (definition of “project”), considered an interpretive rule
 - Calling it a “new interpretation” of the rule text, it only applies prospectively
- Reconsideration and Stay of the 2009 Rule
 - NRDC petitioned for reconsideration and sued EPA on the 2009 Rule
 - EPA granted reconsideration and stayed the effectiveness of the 2009 Rule pending completion of the reconsideration or litigation
 - In 2010, EPA proposed reconsideration with a preference to revoke 2009 Rule
- Final Reconsideration
 - OMB Review Process completed on October 5, 2018
 - Final Action Signed November 7, 2018



Ambient Air Guidance

- EPA defines “*ambient air*” as “that portion of the atmosphere, external to buildings, to which the general public has access” (40 CFR 50.1(e))
 - EPA’s longstanding policy for implementing ambient air 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*”
 - Subsequent guidance provided over the years by EPA to recommend how to apply 1980 policy statement for specific situations
- A draft was posted on November 2018 and comments were accepted through January 11, 2019. The revised guidance focused on evaluating several key terms associated with the definition including: “general public”, “access” and “building” to determine where additional flexibility may be appropriate
- EPA anticipates releasing the final guidance summer 2019



Project Emissions Accounting (PEA) Proposed Rule

- EPA published on March 30, 2018, the **Issuance of Guidance Memorandum, “PEA Under the New Source Review Preconstruction Permitting Program”**
- As discussed in the memo, this clarification applies to all project categories (including existing units only, new units only, and new and existing units)
 - Memo can be found at www.gpo.gov/fdsys/pkg/FR-2018-03-30/pdf/2018-06430.pdf
- This proposal will codify the considerations and interpretations reflected in the memorandum
 - Currently under-going OMB review
 - Current proposal schedule is summer 2019



Treatment of Biogenic CO₂ Emissions in Permitting

- On April 23, 2018, the EPA Administrator issued a policy statement on the treatment of forest biomass for energy production at stationary sources
 - Recognizes the benefits of using managed forest biomass for energy production at stationary sources
 - Signals the Agency's intent to treat managed forest biomass biogenic CO₂ emissions from energy production at stationary sources as carbon neutral in future regulatory actions
 - https://www.epa.gov/sites/production/files/20184/documents/biomass_policy_statement_2018_04_23.pdf
- EPA considering approaches related to the treatment of biogenic CO₂ emissions from stationary sources



NSR Improvement Phase 1 Actions

Phase 1

Phase 2

- Actual-to-Projected-Actual Applicability Test Guidance Memorandum
- Project Emissions Accounting Memo
- Once-In-Always-In Policy Change
- Source Aggregation
 - Common Control Guidance, Meadowbrook Letter
 - Draft Guidance on Interpreting Adjacency
- PM_{2.5} and Ozone SILs Guidance
- Project Aggregation Reconsideration Final Action
- Draft Ambient Air Policy



Ongoing Phase 1 Actions

Phase 1

Phase 2

Action	Status	Target Date
Final Adjacency Guidance	Reviewing Comments	Late Spring 2019
Final Ambient Air Guidance	Reviewing Comments	Late Spring 2019
NPRM Project Emissions Accounting		Summer 2019
NPRM Treatment of Biomass for Permitting		TBD



Upcoming Phase 2 Improvement Actions

Phase 1

Phase 2

Action	Target Date
NPRM NSR Error Corrections Rule	Late Spring 2019
NPRM Oil and Gas FIP Part I Registration Form Amendment	Late Spring 2019
Begin Actual Construction Guidance (Draft)	Summer 2019
Routine Maintenance Repair and Replacement (RMRR) Guidance (Draft)	Summer 2019



Upcoming Phase 2 Improvement Actions (cont'd)

Phase 1

Phase 2

Action	Target Date
Plantwide Applicability Limit (PAL) Guidance (Draft)	Fall 2019
NSR Actual to Projected Actual Applicability Test (ATPA) Guidance (Draft)	Fall 2019
2010 NSR Reconsiderations (Reasonable Possibility, Fugitive Emissions and Ethanol)	TBD
NSR E-Guidance Compendium and Training	December 2019



Title V Permitting

- Rulemakings in Progress
 - Finalize Title V Petitions Process Rulemaking – Summer 2019
- Process Improvements
 - Increased use of electronic systems
 - Testing electronic permit submission system with permitting authorities in several regions
 - Hoping to expand testing to more permitting authorities through ECOS
 - Petition Resolution
 - Resolving more petitions (see Appendix)
 - Addressing petitions more quickly
- Lean Kaizen Event held last year
 - Goal for Agency-issued permits is 6 months from receipt



Power Plant and Other Rules

Administration Directives

- Executive Orders

- EO 13783, Promoting Energy Independence and Economic Growth, March 28, 2017
 - October 25, 2017, Report from EPA: *“Final Report on Review of Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources under Executive Order 13783”*
- EO 13777, Enforcing the Regulatory Reform Agenda, February 24, 2017
- EO 13771, Reducing Regulation and Controlling Regulatory Costs, January 30, 2017

- Presidential Memoranda

- Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, January 24, 2017
 - October 6, 2017, Report from U.S. Department of Commerce: *“Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing”*
- Promoting Domestic Manufacturing and Job Creation – Policies and Procedures Relating to Implementation of Air Quality Standards, April 12, 2018

- Other

- Back-to-Basics Process for Reviewing National Ambient Air Quality Standards, May 9, 2018



Affordable Clean Energy (ACE) Rule

- **October 2017:** Proposed repeal of Clean Power Plan (CPP)
- **August 2018:** Proposed ACE rule to replace CPP
 - Establishes emission guidelines for states to use for developing plans to limit greenhouse gas emissions from their power plants, specifically CO₂
 - Defines the “best system of emission reduction” (BSER) for existing power plants as on-site, heat-rate efficiency improvements
 - Provides states with list of “candidate technologies” to be used to establish standards of performance and be incorporated into state plans
 - Restores an “inside the fence line” approach to developing section 111 standards
 - Proposes new implementing regulations to govern state and federal roles for all future 111(d) emission guidelines
- **October 2018:** Comment period closed
- **Next Steps:** Reviewing comments, final rule expected in the summer of 2019



Review of Greenhouse Gas Standards for New Electric Generating Units

- **December 2018:** Proposed to revise the greenhouse gas new source performance standards (NSPS) for new, reconstructed, and modified coal-fired power plants
 - The proposed best system of emissions reduction (BSER) for new coal-fired power plants is the most efficient demonstrated steam cycle in combination with the best operating practices
 - Would replace EPA's 2015 determination that partial carbon capture and storage (CCS) is the BSER for new coal-fired power plants
- The proposed BSER determination is based on
 - An updated cost analysis
 - An updated analysis of the geographic availability of CCS
- The proposed standards for reconstructed and modified coal-fired power plants, which are currently based on efficient operation, would be made consistent with the proposed emission rates for new units
- **March 2019:** Comment period closed
- **Next Steps:** Reviewing comments, final rule expected by the end of 2019



Mercury and Air Toxics Standards (MATS)

- **February 2019:** Proposed a revised Supplemental Finding and the results of the Residual Risk and Technology Review (RTR)
 - Proposed that the 2016 Supplemental Finding was flawed and, after a revised consideration of costs and benefits, it is not “appropriate and necessary” to regulate HAP emissions from power plants under CAA section 112
 - Proposed that the cost of compliance should be primarily compared to the benefits specifically associated with reducing emissions of HAP
 - Did not propose to remove coal- and oil-fired power plants from the list of sources that are regulated under CAA section 112
 - Proposed that no revisions are needed based on results of the residual risk and technology reviews required by CAA section 112
 - Solicited comments on establishing a separate subcategory for emissions of acid gas HAP from certain existing units that generate electricity using eastern bituminous coal refuse
- **April 2019:** Comment period closed
- **Next Steps:** Reviewing comments, working on final rule



Oil and Gas NSPS

- **March 2018:** Amended two narrow provisions in the methane rule that posed significant and immediate compliance concerns
- **September 2018:** Proposed targeted improvements to the methane rule to address various technical issues, clarify certain requirements, and make other targeted improvements to the rule
 - Streamlines implementation and reduces duplicative requirements
 - Projected cost savings of \$75 million annually
- **December 2018:** Comment period closed
- **Next steps:** Reviewing comments, working on final rule



Boat Manufacturing and Reinforced Plastics Composites Production Residual Risk and Technology Review

- April 18, 2019 – EPA proposed amendments to the 2001 NESHAP for Boat manufacturing and the 2003 NESHAP for the Reinforced Plastic Composites Manufacturing
- EPA is proposing minor amendments to enhance the effectiveness of these rule by improving compliance and implementation
- RTR review resulted in:
 - Risks to be acceptable to provide an ample margin of safety
 - Did not identify any developments that would further reduce emissions
- EPA is proposing to:
 - Revise startup, shutdown and malfunction language to be consistent with court decisions
 - Require electronic submittal of compliance reports, including performance test results.
 - Taking comment on controlled spray training work practice standard
- 45 day public comment period after publication in the Federal Register



Upcoming Rules Affecting Industries with Small Businesses

PROJECT*	SIGNATURE DATE*
Surface Coating of Automobile and Light-Duty Trucks, Miscellaneous Metal Parts, and Plastic Parts and Products RTR NPRM (SAN 6006)	5/17/19 (3/13/20 Final)
Reclassification of Major Sources as Area Sources Under Section 112 of the CAA (SAN 4908)	5/31/19
Organic Liquids Distribution (OLD) RTR NPRM (SAN 6494)	7/5/19 (3/13/20 Final)
Municipal Solid Waste Landfills RTR NPRM (SAN 6838)	7/19/19 (3/13/20 Final)
Residential Wood Heaters NSPS Amendments Final Rule (SAN 6717)	8/2019
Oil & Gas NSPS Reconsideration Final Rule (SAN 5719.8)	8/30/19
Oil & Gas NSPS Review Final Rule (SAN 6616)	12/16/19
Residential Wood Heaters NSPS NPRM (SAN 6719)	12/18/19

***Projects and Signature Dates are subject to change.**

Dates in red indicate legal deadline/court order.



OAQPS Small Business Activities

- **Purpose for Better Engagement:**
 - Minimize unnecessary burden of OAQPS rules on small businesses.
 - Provide opportunities for small businesses to have effective, early engagement in the rulemaking process.
 - Assist small business entities to better comply with OAQPS rules by developing outreach materials, providing rule interpretation, and delivering training to affected entities.
 - Explain to small businesses the health impacts of air toxics and other priority pollutants at neighborhood level.
- **3 Areas of OAQPS Engagement:** Implementation, Technical Support, Small Business Liaison
- **Roles:** OID facilitator/liaison, OAQPS technical experts (including providing facility locations if possible), HEID analysts (to help identify small business entities and the potential for small entity impacts), and SBA (which small businesses and associations need to participate.)
- **Status:** Developing a strategy
 - Needs assessment
 - Input moving forward

