



# Permitting – NSR and Title V Update

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# Overview

- NSR Improvements and Other Recent Actions
  - Completed Actions
  - Ongoing Work
- Title V Permitting Update
  - Rulemakings
  - Process Improvements
- Title V Petitions Update

# 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- Source Aggregation Guidance, Meadowbrook Letter, Draft Guidance on Interpreting Adjacency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<sub>2.5</sub> 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](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 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](http://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 decreases as well as increases are 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
- 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.)

- 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](http://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 Assoc 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

# PM<sub>2.5</sub> and Ozone SILs Guidance



- **Guidance on Significant Impact Levels (SILs) for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program** signed on April 17, 2018, by Peter Tsirigotis
- Includes both a revised PM<sub>2.5</sub> SIL and new ozone SIL for permittees to use in streamlining the air dispersion modeling permitting process
- The guidance is comprised of a policy memorandum, a technical document and legal support document
  - All three will be referenced and included in any permit record where the recommended SILs are used by a permitting authority
  - The guidance is not a final agency action and is not binding for industry, permitting authorities, or the public
- June 18, 2018 Petition for Review in the DC Circuit from Sierra Club



# Once In Always In 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 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 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 threshold by the first compliance date to be treated as an area source
  - EPA intends to issue a FR Notice to take comment on regulatory text to implement EPA’s plain language reading of statute as discussed in January 2018 guidance memorandum
- On March 26, 2018, coalition of environmental groups filed a petition for review in the D.C. Circuit Court
  - Petitioners’ opening briefs have been received and are under review by OGC. EPA’s response brief is due on December 21, 2018.
- Proposal is expected mid-February 2019.

# Project Aggregation Reconsideration



- 2009 Rule for Project Aggregation
  - Established “substantially related” criterion for aggregating projects, a 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 10/5/18
  - 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
- Draft revised guidance focuses 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 draft guidance for comment on the internet in fall 2018

# 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](http://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
  - Final Agency Review meeting is scheduled for November 5, 2018
  - Current proposal schedule: February 2019

# Treatment of Biogenic CO<sub>2</sub> 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 CO<sub>2</sub> 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](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 CO<sub>2</sub> emissions from stationary sources

# Title V Permitting

- Rulemakings in progress
  - Proposed Title V Petitions Process Rulemaking on August 15, 2016 (81 FR 57822)
    - Recently received the green light to proceed with finalizing this action
  - Workgroup restart expected in November 2018
  - Final rule expected late spring early summer 2019
- Process Improvements
  - Increased use of electronic systems
    - Central Data Exchange (CDX) for receipt of petitions
    - Electronic Permitting System deployment for submission and review of state issued permits
    - Further enhancements planned during FY19

# Title V Petitions

- Title V Petitions continue to be a substantial work load
- Petitions Received FY2018 – 9
- Petitions Resolved FY2018 – 36
  - 20 Orders
  - 16 Resolved by other means (petitioners agreed to withdraw, previous responses identified)
- Pacificorp Hunter – EPA will not look back at decisions made in NSR permitting process in the context of title V
  - Provided that there was an opportunity for public comment and judicial review
  - Decision being challenged by Sierra Club in 10<sup>th</sup> Circuit (Utah) and D.C. Circuit
- Petitions Received so far FY2019 – 1
- Petitions Resolved so far FY2019 – 2

# Questions and Comments

