

Air Permit Program Updates

AAPCA SPRING 2023
April 6, 2023



Scott Mathias, Director
Air Quality Policy Division
Office of Air Quality Planning
& Standards



PSD Program Updates

- Reviewing aspects of Project Emissions Accounting Rule for determining major modification applicability
 - Discretionary rulemaking to consider issues raised in a January 2021 petition.
 - Project Emissions Accounting Final Rule: 85 FR 74890 (11/24/20); Denial of Petition for Reconsideration: 86 FR 57585 (10/18/21).
- Evaluating sufficiency of minor NSR program provisions
 - Public notice/participation requirements.
 - Guidance/oversight related to synthetic minor permitting.
- Addressing “potential to emit” concerns from July 2021 OIG report:
 - by October 2023, update EPA’s 1989 *Guidance on Limiting Potential to Emission in New Source Permitting* on practical enforceability to more clearly describe how the technical accuracy of a permit limit should be supported and documented.
 - by October 2024, revise EPA guidance to communicate key expectations for synthetic minor permit terms and conditions to ensure PTE remains below applicable major source thresholds, including meeting criteria for what it means for the PTE limits to be legally and practicably enforceable.



PSD Program Updates (cont.)

- Reconsidering the 2008 Fugitive Emissions Rule
 - The proposed rule would require fugitives to be counted for all existing major sources undergoing a major modification (87 FR 62322, 10/14/22) .
 - This rule does not impact the determination of a new major source, only non-listed source(s) that are existing major source(s) undergoing major modification(s).
 - Comment period ended December 13, 2022. Many states expressed strong support and agreed with EPA that the proposed rule changes should be considered minimum NSR program elements.
- Withdrew on December 9, 2022, EPA's 2017 enforcement discretion memo titled "New Source Review Preconstruction Permitting Requirements: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability".



Title V Program Update

- Citizen Petitions
- Removal of Title V Affirmative Defense Provisions
 - Renewal of 2016 proposal, repropose April 1, 2022 (87 FR 19042).
- Title V Applicable Requirements Rule
 - Would clarify the definition of “applicable requirement” within title V program as it relates to NSR permit requirements.



Title V Program Update (cont.)

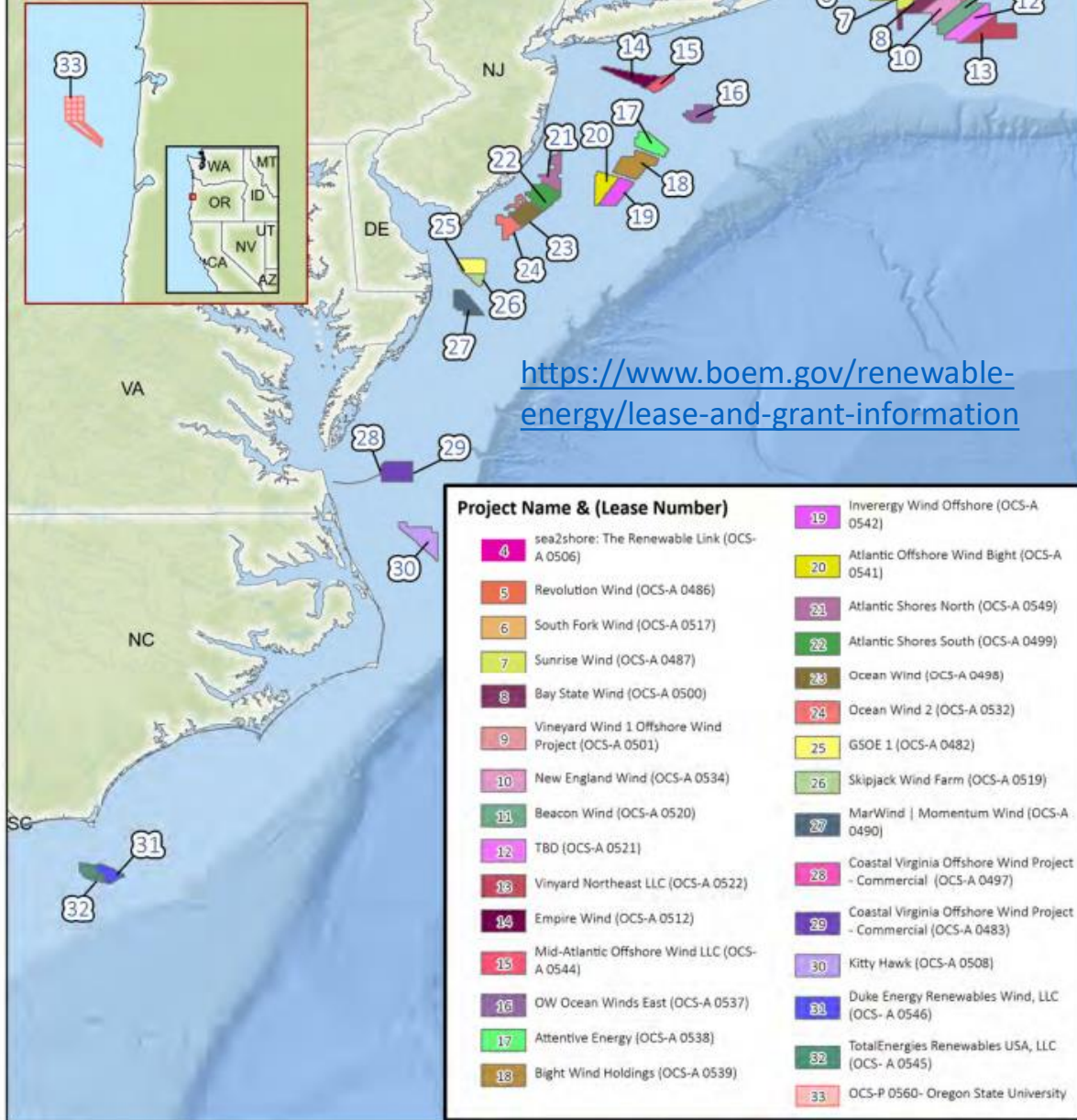
- EPA Office of Inspector General January 2022 report “EPA’s Title V Program Needs to Address Ongoing Fee Issues and Improve Oversight.”
- OIG concluded that declining Title V fee revenues and the misuse of Title V funds pose a “significant challenge” to EPA and state and local permitting authorities.
- EPA is implementing corrective actions that include:
 - 1) Identify and share current best practices;
 - 2) Update EPA’s 2018 guidance to include criteria EPA Regions would use for how and when to conduct fee evaluations of state programs, and set expectations on time frames for permitting authorities to complete any corrective actions identified in evaluations and to implement escalating consequences if timely corrective actions are not completed; and
 - 3) Update and provide training to EPA staff and state/local air agencies.



Environmental Justice

- EPA has defined environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.”
- [“Principles for Addressing Environmental Justice in Air Permitting”](#) (December 22, 2022)
 - Eight guiding principles that support EPA Regions to take action to address EJ concerns in EPA air permitting.
 - Encourages EPA Regions to share the principles with regulatory partners and to work proactively and collaboratively with those partners to facilitate consideration and application of these principles in their air permitting actions.
 - Encourages examining all relevant statutory and regulatory authorities, including discretionary authorities to address or mitigate identified air quality impacts to the extent feasible.
- OGC’s External Civil Rights Compliance Office issued [“Environmental Justice and Civil Rights in Permitting / Frequently Asked Questions”](#) (August 16, 2022)
 - Provides information to EPA, federal, tribal, state, and local environmental permitting programs on how to integrate EJ into their permitting processes. Outlines how recipients of EPA financial assistance are obligated to comply with federal civil rights statutes, including Title VI of the Civil Rights Act of 1964, in permitting.
 - OEJECR is also expected to issue additional guidance in 2023 to clarify the legal standards applied under federal civil rights laws, including Title VI and the EPA's implementing regulation, with respect to whether an action, policy or practice involves disparate impacts and disparate treatment.

Outer Continental Shelf Renewable Energy Leases



OCS Wind Energy

- Leases/projects administered by BOEM, most are expected to be covered by procedures in Title 41 of the Fixing America's Surface Transportation Act (aka FAST-41 projects).
- Federal Permitting Improvement Steering Council (FIPSC) works to enhance coordination among Federal and state partners and project sponsors for issuing infrastructure project permits.
- At least 17 wind farm projects expected to be developed on the OCS by 2030 where EPA will be the primary air permitting authority.



Outer Continental Shelf Air Permitting

- OCS air permits are “umbrella permits” for air pollution control from sources located in the OCS. OCS permitting requirements include:
 - NSPS, NESHAPs, NSR/PSD, nonattainment NSR, title V and any other state/local requirements applicable in the Corresponding Onshore Area (except for outer OCS projects).
- OCS wind energy air permits issued by EPA:
 - Vineyard Wind 1 (May 2021). Facility began construction in Nov. 2021.
 - South Fork Wind (Jan. 2022). Facility began construction in Feb. 2022.
- Policy interpretations:
 - Pull-ahead anchor Cable Laying Vessels are not OCS sources.
 - Permitting-related emissions offsets are not required for OCS construction.
 - Define OCS sources as the entire Wind Development Area for the project, which can include air pollutant emitting and non-emitting equipment and activities.
 - Case-by-case modeling exemptions for temporary emissions sources.
 - Conditions for assessment of OCS permitting requirements during the construction and operational phases of an OCS project.
 - Conditions for aggregating emissions from separate but adjacent wind farms under common control.

Questions and Comments

