

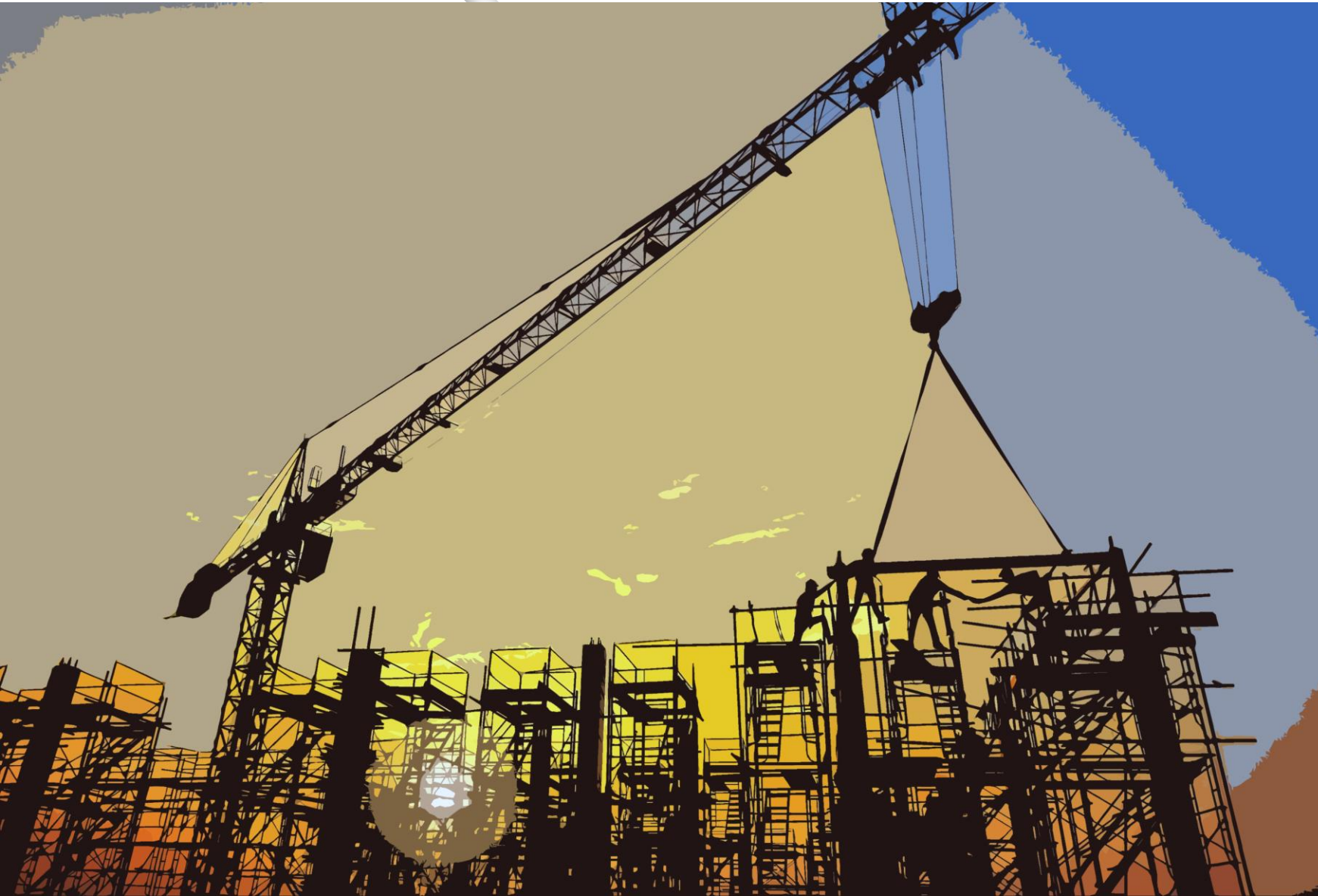


Clean Air Act Permitting Updates

**AAPCA Spring
Meeting**

April 24-26, 2024

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



Permitting in the PM_{2.5} NAAQS Transition



A facility has a final permit in hand before the May 6, 2024, effective date of new standard

- Project moves ahead; permit already issued
- No additional new air permitting requirements



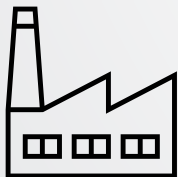
A facility has a permit in process when new standard takes effect – limited reassessment

- Compare current air quality modeling results to the new standard level, working with permitting agency
- Evaluate whether more refined modeling is needed to “wring out” additional conservatism
- Evaluate whether additional air pollution emissions reductions are needed
- Permit issued after reassessment



Plans for building new facility or expanding an existing one

- Work with permitting agency to estimate how much particle pollution will be emitted and choose best available air pollution control technology
- Demonstrate compliance with Clean Air Act requirements



Plans for building new facility or expanding one in an area designated nonattainment (permit needed after EPA designations process is completed – likely in or after 2026)

- Work with permitting agency to estimate how much particle pollution will be emitted and choose pollution controls with lowest achievable emission rate
- Demonstrate compliance with Clean Air Act requirements

- **Minor New Source Review Program Guidance**
- **Project Emissions Accounting Rule Reconsideration**
- **Fugitive Emissions Rule Reconsideration**
- **Guidance on Enforceable Limitations on Potential to Emit**
- **Use of Significant Impact Levels (SILs) in State PSD Permitting Programs**

Minor NSR Program Guidance

- EPA has been reviewing requirements at 40 CFR 51.160-164 that apply to state/local agency Minor NSR programs, in response to:
 - Concerns raised in a 2021 Office of Inspector General report over air agency adherence to public participation requirements for Minor NSR
 - Concerns raised in multiple petitions by ENGO/community groups over alleged misuse of General Permits/Permits by Rule (GP/PBR) and alleged lack of safeguards to protect air quality given the large number of projects authorized under Minor NSR each year
- Stakeholder Early Engagement – Sep 2022 to Jan 2023
 - EPA conducted over 25 group discussion sessions
 - Participants included state/local agencies, ENGOs, industry associations, and small business officials

- EPA has decided to develop comprehensive guidance on the Minor NSR program that will:
 - Cover Minor NSR legal authorities and common program elements, including public participation, general permits/permits-by-rule, NAAQS protection, program demonstrations and applicability
 - Clarify existing regulatory requirements for each program element
 - Provide EPA's interpretations of the existing regulations
 - Explain the different types of permits authorized under Minor NSR
 - Provide best practices for implementing the Minor NSR program
- EPA intends to provide draft guidance for public comment – Fall/Winter 2024



Project Emissions Accounting Rule Reconsideration (PEAR)

- October 2020 PEA Rule (85 FR 74890) interpreted the existing EPA major NSR regulations to allow for accounting of both increases and decreases in emissions at Step 1 of the NSR applicability process (i.e., the project emissions increase)
- Proposed reconsideration rule signed February 22, 2024; awaiting FR publication
- Key elements
 - Expansion of the definition of the term “project” in the NSR regulations
 - Discrete change or group of changes that are “substantially related” to each other
 - Changes are substantially related if they are dependent on each other to be economically or technically viable
 - Consistent with the 2018 final action on project aggregation
 - Requirement that emissions decreases accounted for at Step 1 be enforceable
 - Citing to requirement that already applies to Step 2 emissions decreases
 - Revisions to Reasonable Possibility (RP) recordkeeping and reporting provisions
 - Requirements apply to projects for which the owner/operator accounts for one or more decreases at Step 1, regardless of the projected emissions increase
 - Expanded project description criteria for pre-project records
 - Expanded reporting requirements
 - Clarification of certain existing requirements

- Proposed rule published October 14, 2022 (87 FR 62322)
 - Proposed change in this rule is that non-listed major sources undergoing major modification will no longer have an exemption for the accounting of fugitive emissions.
 - The treatment of fugitive emissions in determining whether a new or existing source is a major source is well-established and is not impacted by this proposed action.
 - “The EPA expects any impacts of this proposed action on a limited subset of the regulated community to be manageable.”
- Comment period closed February 14, 2023, after extensions totaling 120 days.
 - Significant objections raised with EPA’s rationale and legal arguments, costs not considered in this rulemaking, lack of real environmental benefit for this regulatory change, and eliminating the non-listed source category exemption (e.g., mining, distilleries).
 - EPA continues to assess comments.



Guidance on Enforceable Limitations on Potential to Emit

- EPA is working to address concerns raised by OIG in a 2021 audit report on EPA oversight of synthetic minor source permitting
- In response to the OIG audit report, EPA committed to issuing updated guidance on practical enforceability of PTE limitations
- Updated guidance would address enforceable limitations on PTE across multiple CAA programs, including NSR, NESHAP, and Title V
 - A substantial body of EPA guidance, administrative decisions, and rulemaking actions addressing the effectiveness and enforceability of limits taken to restrict PTE under EPA regulations has evolved since the late 1980's
 - This guidance would aggregate and synthesize relevant existing guidance into a single document for improved awareness and consistent application
- Target: Draft for informal public comment by Fall/Winter 2024



Use of Significant Impact Levels (SILs) in State PSD Permitting Programs

- May 30, 2023, Administrative Petition from Environmental Groups requesting that the EPA Region 6 Administrator address alleged failures of the States of LA and TX to implement the CAA PSD permitting, NAAQS requirements and protections, and specifically their alleged inappropriate use of [EPA's SILs guidance](#).
- Litigation
 - Formosa Plastics: Litigation in LA state court on PSD permit issued by LDEQ. On 1/19/2024, the LA Court of Appeal First Circuit upheld LDEQ's decision to grant the Formosa PSD permit, finding that LDEQ complied with the Clean Air Act and overturned the 9/12/2022 lower court decision that vacated the PSD permit because modeling showed NAAQS violations and LDEQ relied on SILs to support its conclusion that Formosa did not cause or contribute to the violations.
 - Commonwealth LNG: Litigation in the 5th Cir. on PSD permit issued by LDEQ. Sierra Club alleges that the PSD permit issued by LDEQ unlawfully relies on SILs to avoid further analysis of likely air pollution increases that will result from the LNG project.
 - Suncor: Litigation in the 10th Cir. on Title V petition order challenging Colorado's use of the PSD SILs in permitting determinations for the Suncor refinery.

Use of SILs in State PSD Permitting Programs (cont.)

- EPA HQ and Regional efforts to review concerns
 - EPA Region 6 and OAQPS have engaged in communications with Petitioners and affected states
 - OAQPS and Regional offices have engaged in a workgroup process to investigate the use of SILs in PSD permitting by EPA, state, and local permitting authorities at the national level consistent with commitments made in the 2018 SILs guidance
- Results of ongoing activities will inform potential revision of existing guidance regarding the use of SILs in the PSD permitting program; target 2025

- **Title V Applicable Requirements Rule**
- **Title V Petition Orders**
- **OIG Closeout on Fees**

Title V Applicable Requirements Rule

- Proposed Title V Applicable Requirements Rule published January 9, 2024 (89 FR 1150)
 - Proposal to codify EPA's existing (2017-present) position on the limited situations in which unique title V oversight tools (e.g., objections, petitions) can be used to address NSR permitting issues
 - Also addresses "General Duty Clause" under CAA 112(r)(1) concerning accidental releases of hazardous substances (not implemented through title V)
- Comment period closed April 10. EPA still evaluating comments.
- Preliminary feedback:
 - Concern from environmental groups, who want title V to be used for oversight
 - States and industry support not using title V to address NSR issues
 - States and industry concerned with provisions addressing notice on NSR permits

Title V Petition Orders

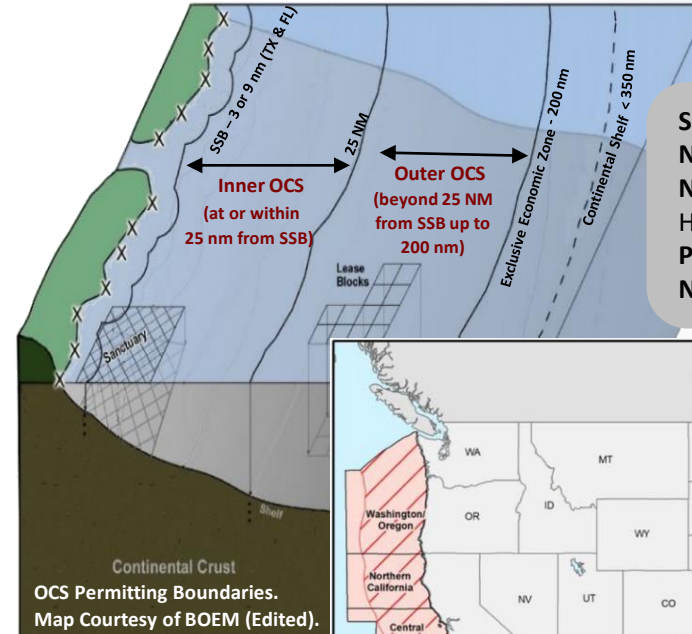
- Petition trends (FY23 through 1st half of FY24):
 - Industry focus: Half of all petitions are associated with oil and gas; remainder split between manufacturing, power plants, and other industries
 - Geographic focus: Regions 3 (PA), 4 (AL), 6 (LA, TX), 8 (CO)
 - Frequent petitioners: Sierra Club, Environmental Integrity Project, Center for Biological Diversity, WildEarth Guardians
- Issues/responses (FY23 through 1st half of FY24; total of 179 claims):
 - EPA granted 33% of petition claims; objected to 59 different issues
 - Most common issue raised: monitoring and compliance assurance (44% of all claims received); Most often granted issue: EPA granted half of monitoring claims; 75% of EPA objections were because *state permit record was insufficient*
 - 2nd most common: NSR issues (typically denied)
 - Other persistent issues: whether title V permit clearly includes all applicable requirements; whether permit process complied with public participation requirements
- EPA continues to respond to more petitions each year than received, reducing the backlog.

Title V Fees

- All corrective actions specified in the January 12, 2022, Office of Inspector General (OIG) Report: *EPA's Title V Program Needs to Address Ongoing Fee Issues and Improve Oversight* have now been completed.
- EPA will continue to work towards improving oversight of title V fees through trainings, guidance, and data collection and analysis.
- Resources:
 - Title V Fee Website: <https://www.epa.gov/title-v-operating-permits/permit-fees>
 - [Updated Guidance on Fee Evaluations and Oversight](#)
 - [Title V Fee Webinar for Permitting Authorities](#)

Permit Program Updates – OCS

- CAA section 328 directs EPA to establish regulatory requirements to control air pollution from sources located on the Outer Continental Shelf (OCS). Regulations established in 40 C.F.R. part 55 (1992).
- Air pollution control requirements are implemented through OCS permits.
- Applicability of CAA requirements depends on the OCS source location.
 - Inner OCS sources (sources within 25 miles of an SSB) are subject to the state/local requirements (e.g., NNSR) of the Corresponding Onshore Area (COA) which is generally the onshore area geographically closest to the OCS source (40 C.F.R. § 55.14).
 - All OCS sources, including outer OCS sources (sources beyond 25 miles from an SSB), are subject to NSPS, NESHAPs, PSD and title V requirements if the source meets the applicability criteria for those programs (40 C.F.R. § 55.13).
- EPA has OCS permitting jurisdiction outside all coastal states except in the States of Texas, Louisiana, Mississippi and Alabama and in the Chukchi and Beaufort Seas off the State of Alaska.
- EPA has delegated the OCS permitting program to three States (Delaware, Maryland and Virginia) and 4 California permitting authorities (San Luis Obispo, Santa Barbara, South Coast, and Ventura County).



SSB – State Seaward Boundary
NSPS – New Source Performance Standards
NESHAPs – National Emissions Standards for Hazardous Air Pollutants
PSD – Prevention of Significant Deterioration
NNSR – Nonattainment New Source Review



OCS Permitting (cont.)

- OCS permitting program currently focused on permitting offshore wind energy sources
 - Consistent with Executive Order 14008 Tackling the Climate Crisis at Home and Abroad (Jan. 2021), in March 2021; DOI, DOE and DOC set a goal to deploy 30 GW of Offshore Wind by 2030.
- By the end of April 2024, EPA will have issued 8 OCS permits for approximately 10 GW of permitted energy capacity:
 - [Vineyard Wind \(May 2021\)](#), [South Fork Wind \(Feb. 2022\)](#), [Revolution Wind \(Sep. 2023\)](#), [Empire Wind \(Feb. 2024\)](#), [New England Wind I and II \(April 2024\)](#), [Sunrise \(April 2024\)](#) and [CVOW-C \(April 2024\)](#).
- On February 26, 2024, EPA held an [OCS Air Permitting Seminar](#) for project developers to explain the permitting process in detail and address their questions.
- [Online database](#) of selected offshore wind energy permitting topics and associated EPA-issued OCS permits addressing those topics.



Questions and Comments



1. Historical Background of CAA Permitting Programs (NSR/Title V) -

https://airknowledge.gov/Mod/Historical_Background_of_the_Clean_Air_Act_Permitting_Programs/Web/index.html#/

2. Basic Elements of the NSR Program -

https://airknowledge.gov/Mod/New_Source_Review_Program/Web/index.html#/

3. Setting Enforceable Potential to Emit Limits in NSR Permits -

https://airknowledge.gov/Mod/Setting_Enforceable_Potential_to_Emit_Limits_in_New_Source_Review_Permits/Web/story.html

For more information about NSR permitting, go to www.epa.gov/nsr

