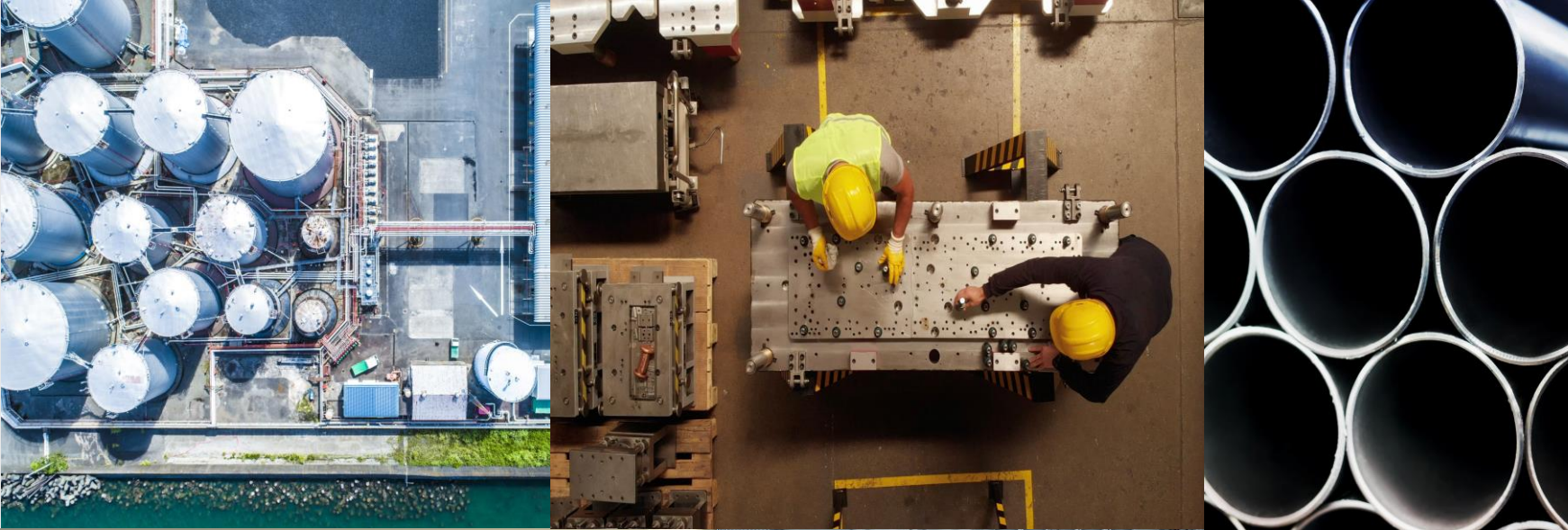




# CAA Permit Program Updates



**AAPCA Fall Meeting**

**August 29, 2024**



**Rochelle King**  
Group Leader, New Source Review  
Group, Office of Air Quality  
Planning & Standards

- **Project Emissions Accounting Rule Reconsideration**
- **Fugitive Emissions Rule Reconsideration**
- **Minor New Source Review Program Guidance**
- **Guidance on Enforceable Limitations on Potential to Emit**
- **Use of Significant Impact Levels (SILs) in State PSD Permitting Programs**
- **PSD Permitting for 2024 Annual PM<sub>2.5</sub> NAAQS**
- **Outer Continental Shelf (OCS) Permitting**



# Project Emissions Accounting Rule Reconsideration (PEAR)

- October 2020 PEA Rule (85 FR 74890) revised the EPA major NSR regulations to explicitly provide for accounting of both increases and decreases in emissions at Step 1 of the NSR applicability process (i.e., the project emissions increase) consistent with EPA's interpretation of the pre-existing regulations in the 2018 PEA memo.
- Proposed reconsideration rule published May 3, 2024 (87 FR 36870). Comment period closed July 2, 2024.
- Key elements of the proposal:
  - Expansion of the definition of the term "project" in the NSR regulations as a 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" recordkeeping and reporting provisions.
    - New trigger for requirements: 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/reports.
    - Expanded reporting of pre-project records for all source categories.
    - Clarification of certain existing requirements.



- Proposed rule published October 14, 2022 (87 FR 62322)
  - Repeal the 2008 Fugitive Emissions rule by removing certain remaining stayed provisions.
  - Remove exemption of major modification applicability for non-listed source categories.
  - The treatment of fugitive emissions in determining major stationary source applicability 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.
- EPA continues to assess comments and determine next steps in the final rulemaking process.

# Minor NSR Program Guidance

- After stakeholder early engagement (Sep 2022 to Jan 2023) EPA 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.

# Guidance on Enforceable Limitations on Potential to Emit

- EPA committed to issuing updated guidance on practical enforceability of PTE limitations in response to the 2021 Office of Inspector General report “[EPA Should Conduct More Oversight of Synthetic-Minor-Source Permitting to Assure Permits Adhere to EPA Guidance](#)”
- Update 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.
- Draft guidance is under development by the EPA workgroup; EPA intends to provide the draft guidance for public comment.

# PSD Permitting for PM<sub>2.5</sub> NAAQS

- [Effective Permitting Tools for Fine Particulate Matter under the Prevention of Significant Deterioration Permitting Program – Fact Sheet](#). On April 30, 2024, EPA posted a reference list of policy and technical guidance, models, and tools to assist stakeholders in identifying and accessing these resources as part of a PSD permitting action for PM<sub>2.5</sub>.
  - Significant Impact levels (SILs) – revised annual SIL value from 0.20 to 0.13 µg/m<sup>3</sup>.
  - Model selection including alternative models, treatment of background sources, determining representative background including consideration of exceptional events.
  - MERPS – “Guidance on the Development of Modeled Emission Rates and Precursors (MERPS) as a Tier 1 Demonstration Tool for Ozone and PM<sub>2.5</sub> under the PSD Permitting Program.”
  - Ambient Air – “...may be excluded from ambient air where the source employs measures, which may include physical barriers, that are effective in precluding access to the land by the general public.”
  - Project Emissions Accounting – for modification projects at existing major sources, both emissions increases and decreases may be included in the major modification applicability decision (i.e., at Step 1).
  - Plantwide Applicability Limits – PALs.
  - Mitigation through Offsets – obtain offsetting emission reductions (PSD offsets) to mitigate adverse impacts of new/modified project. See 40 CFR 51.165(b)(3).
- Air agencies and permit applicants seeking to obtain EPA assistance should contact their appropriate [EPA Regional office](#).



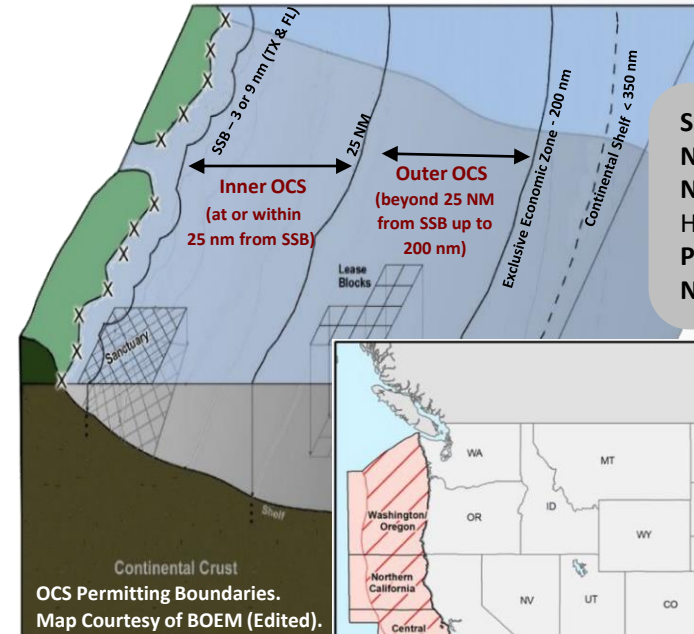
# Use of Significant Impact Levels (SILs) in PSD Permitting Programs

- The use of SILs in permitting and EPA's 2018 [EPA's SILs guidance](#) have been the subject of increasing scrutiny and criticism in recent years.
- SILs-related 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. On April 29, 2024, the [Court upheld](#) LDEQ's use of SILs to both define when cumulative modeling is required and to determine whether a source "contributes" to a violation against a Sierra Club argument that the CAA requires "any" source contribution arguably above a NAAQS to require further controls to prevent such impact.
  - Suncor: Lawsuit filed Nov. 17, 2023, in the 10th Cir. on an [EPA Title V petition order](#). The [petition](#) included a challenge to Colorado's use of the PSD SILs in permitting determinations for the Suncor refinery.
- EPA is reviewing the use of SILs in PSD permitting by EPA, state, and local permitting authorities. This is intended to inform potential future revision of existing guidance regarding the use of SILs in the PSD permitting program (to be evaluated in 2025).

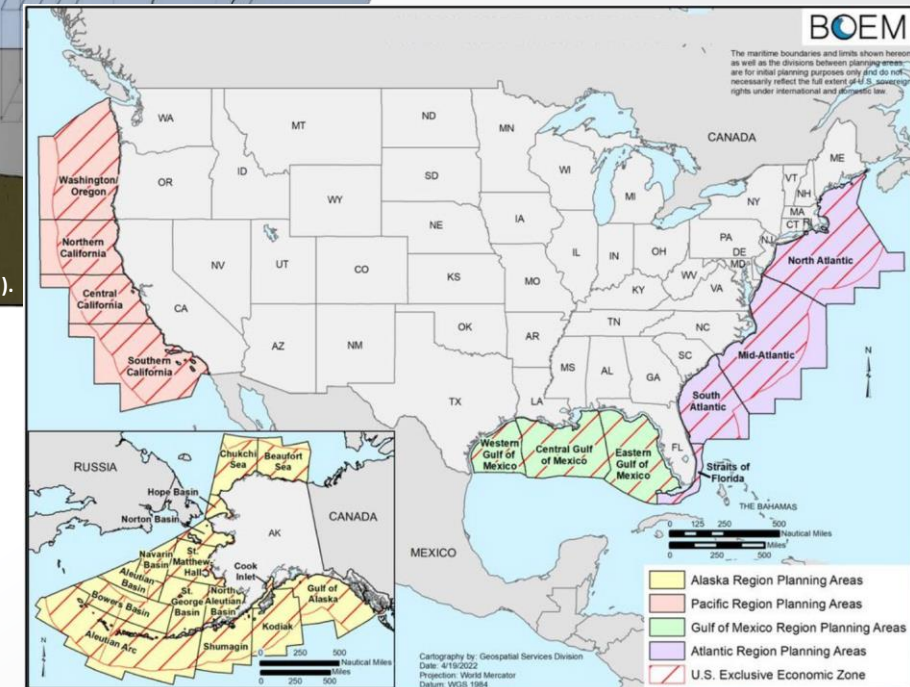


# Permit Program Updates – OCS

- 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 has been focused on permitting offshore wind energy sources
  - Consistent with Executive Order 14008 [Tackling the Climate Crisis at Home and Abroad](#), in March 2021 DOI, DOE and DOC set a [goal](#) to deploy 30 GW of Offshore Wind by 2030.
- EPA has issued 8 OCS permits for approximately 10 GWs 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 \(April 2024\)](#).
- [OCS Air Permitting Seminar](#) (Feb 26, 2024) presentation for project developers to explain the permitting process in detail.
- [Online database](#) of selected offshore wind energy permitting topics and associated EPA-issued OCS permits addressing those topics.

- 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#/](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#/](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](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](http://www.epa.gov/nsr)







# Questions and Comments

