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NSR/PSD Reform: Does Reform Have Legs this Time?

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Agenda

- > NSR Rule Review Process
- > Substantive NSR Issues
 - ❖ Modeling and Appendix W Updates
 - ❖ Aggregation Policy Confusion
 - ❖ RMRR Policy Review
 - ❖ Other Submitted Suggestions
 - ❖ EPA Budget

NSR Rule Review Process

Opportunities for Input

- > 24 Jan 2017 Presidential Memorandum
 - ❖ “Streamlining Permitting and Reducing Regulatory Burdens on Domestic Manufacturing”
 - ❖ All federal agencies affected, not just EPA
- > EPA issues could be addressed to
 - ❖ Secretary of Commerce and/or
 - ❖ EPA Regulatory Reform Task Force

Secretary of Commerce

- > Deadline for public submittals was 31 March 2017
 - ❖ Of 168 submittals, nearly half addressed EPA regulations, guidance, policies, etc.
 - ◆ NSR/PSD permitting was in top 8 most cited EPA items received by Commerce Dept.
- > Commerce has 60 additional days to submit a report to the President
 - ◆ Including a plan to streamline federal permitting processes for domestic manufacturing

Direct Input to EPA

- > 24 Feb 2017 Exec. Order 13777
 - ❖ “Enforcing the Regulatory Reform Agenda”
 - ❖ Agencies designate Regulatory Reform Officer and Regulatory Reform Task Force
 - ◆ EPA Regulatory Reform Officer is Samantha Davis, Senior Counsel and AA for Policy
 - ◆ EPA Task Force chaired by Ryan Jackson, Chief of Staff

Direct Input to EPA

- > Program offices have held listening sessions
 - ❖ Office of Air & Radiation was April 24, for three hours
 - ❖ NSR/PSD issues raised by:
 - ◆ Wood and steel products, electric utilities, and NAAQS Implementation Coalition
 - ❖ About half of time used by environmental advocates to support robust air quality regulation

Direct Input to EPA

- > May 15 deadline to submit comments
 - ❖ 33,000 submissions to EPA submitted one week prior to deadline (all media)
 - ❖ Unlike rescission of Once-in, Always-in policy for major source NESHAPs, PSD and Nonattainment NSR are a complex maze of interlocking issues
 - ◆ Still, EPA made some progress on NSR/PSD Reform in 2002
 - ◆ Major source permitting burdens are substantial, so additional reform effort could be productive

Substantive NSR Issues

Modeling and Appendix W

Introduction

- > EPA finalized updates to its Guideline on Air Quality Models (Guideline or “Appendix W” to 40 CFR Part 51) on 12/20/2016
 - ❖ https://www3.epa.gov/ttn/scram/appendix_w-2016.htm
- > Effective date deferred to 5/22/2017
- > EPA’s finalized changes seek to:
 - ❖ Enhance AERMOD dispersion model;
 - ❖ Prescribe modeling techniques for secondary PM_{2.5} and ozone pollution; and
 - ❖ Make various editorial improvements



Modeling and Appendix W

Why Care About Guideline Changes?

- > Clean Air Act requires modeling
- > EPA and states strive for consistency
- > Changes could affect previous results
- > Changes could affect ongoing results
- > Streamlines permitting if Guideline is followed
- > Provides a baseline of models and methods

Modeling and Appendix W

Summary of Guideline Changes

- > Some changes streamline modeling process 
 - ❖ Tier 3 NO₂ as recommended default
 - ❖ Incorporation of BLP into AERMOD
 - ❖ Modified ADJ_U* available in AERMET
 - ❖ De minimis thresholds for secondary pollutants (MERPs)
- > Some changes could slow the process 
 - ❖ Codified requirements for Model Clearinghouse
 - ❖ Lack of prescriptive guidance or models for secondary pollutant modeling
 - ❖ LowWind options are still beta
 - ❖ Drops CALPUFF and CALINE3 models

Modeling and Appendix W Tiered Ozone and PM_{2.5} Approach

> First Tier:

- ❖ Use existing empirical precursor and secondary impacts data
- ❖ MERP - “Model Emissions Rates for Precursors” - Level of emissions not expected to contribute significantly to Ozone or Secondary PM_{2.5} levels
- ❖ MERPs values and timeline still unknown

> Second Tier:

- ❖ Sub-tiers allow for
 - ◆ Simpler approaches compared conservatively to the SIL and NAAQS
 - ◆ Sophisticated approaches provide more representative impact
- ❖ Recommend chemical transport models to estimate impacts



Summary of illustrative MERPs

- **Most Conservative (Lowest) Illustrative MERP Values (tons per year) by Precursor, Pollutant and Region.** Note: illustrative MERP values are derived based on EPA modeling (as described in section 4 of guidance) and critical air quality thresholds (as described in Section 5 of guidance)

Precursor	Area	8-hr O3	Daily PM	Annual PM	
NOx	Central US	126	1,820	7,427	
NOx	Eastern US	169	107	2,467	10,037
NOx	Western US	184	1,155	3,184	
SO2	Central US		256	1,795	
SO2	Eastern US		675	4,013	
SO2	Western US		225	2,289	
VOC	Central US	948			
VOC	Eastern US	814			
VOC	Western US	1,049			

Modeling and Appendix W

Summary and Impacts on NSR

- > Permit applications requiring modeling are going to have deeper, less consistent protocols
 - ❖ Case-by-case nature of modeling; where is the consistency?
 - ❖ The lack of consistency will lead to greater opportunity for permit challenges and a greater chance of litigation
- > Should see an opportunity for industry-state cooperation as we pool statewide resources to meet the new modeling challenges
 - ❖ It appears some guidance documents are not complete or are “works in progress”
- > May be more pass-throughs by state agencies of decision-making on model options to Federal EPA

Aggregation Clarity?

Background Information

- > PSD avoidance could result in circumvention aka “sham permitting”
- > Aggregate related projects that achieve the same/similar production goals
- > Conflicting guidance:
 - ❖ 3M Maplewood - 6/17/1993
 - ❖ Other EPA policy documents - 6/13/1989 Memo, June 2002 NSR Report to President
 - ❖ Proposed regulation - 2006/2009 - Stayed indefinitely

Aggregation Clarity?

Current Policy

> Questions:

- ❖ How close is the timing of the projects?
- ❖ Are the projects economically and/or technically dependent on each other?
- ❖ How related are the project scopes (i.e., do they contribute to the same overall production goals)?
- ❖ Are the projects funded or managed together or separately?
- ❖ Does the project involve “relaxing” or removing permit conditions from earlier projects?

Aggregation Clarity?

Where are we Heading?

- > Ripe for “streamlining” under the President’s Memorandum?
- > EPA to develop a “bright line” test?
 - ❖ Definitions of technical dependence and economic dependence?
 - ❖ How to appropriately address case-by-case nature?
 - ❖ What about project timing?

Additional Issues

Submitted to Commerce and/or EPA

- > Regulatory definition of exempt Routine Maintenance, Repair or Replacement (RMRR)
 - ❖ Earlier EPA attempt (Equipment Replacement Rule) voided by D.C. Circuit in 2006
 - ❖ Case-by-case determinations often end up in litigation, with widely varying results
 - ❖ EPA/DOJ have primarily focused on electric utilities, using a narrow reading of RMRR, resulting in large settlements, and extraordinary costs for document discovery

Additional Issues Submitted to Commerce and/or EPA

- > Probabilistic Modeling
 - ❖ Rather than assuming simultaneous operation of PSD source at max. allowable emissions, with nearby sources also doing so, in worst case weather conditions
- > Broader base of Nonattainment NSR Offsets
 - ❖ From upwind contributing areas outside nonattainment boundary (as modeled)
 - ❖ From affirmative mobile source reductions beyond business as usual
 - ❖ State set-asides for growth, if RFP is satisfied

Additional Issues

Submitted to Commerce and/or EPA

- > Pre-construction site prep unrelated to emission units themselves should be allowed at permittee's risk
- > Allow presumptive BACT based on NSPS or new source MACT
 - ❖ If HAP are surrogate for criteria pollutants at issue
- > Revive 2002 Pollution Control Project exemption and defend it in court
- > Consistent grandfathering policy for permit applications pending when new NAAQS is issued

An Abundance of NSR Reform Ideas

- > Will EPA have ability to address them?
 - ❖ Remainder of FY17 funding cut only 1%
 - ❖ Trump Administration FY18 target is 31% EPA funding cut and 25% workforce reduction
 - ◆ Congress decides in Sept. 2017
 - ❖ Federal NSR rule revisions/rescissions require documented factual basis to survive court challenge. Requires qualified staff
 - ❖ Many states are free to impose permitting requirements beyond revised federal minimums

Comments/Questions?

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