



New Source Review Program Update

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NSR Rule Reconsiderations

- $PM_{2.5}$ NSR Rule
- Aggregation, Debottlenecking and Project Netting Rule
- Fugitive Emissions Rule
- Reasonable Possibility Rule
- WI NSR Reform SIP Approval



PM_{2.5} NSR Rule

- Earthjustice (for NRDC & Sierra Club) petitioned EPA for reconsideration of 4 issues contained in May 16, 2008 PM_{2.5} NSR Implementation Rule
- Original petition submitted on 7/15/2008 denied; but agreed to by new Administration following 2nd submittal on 2/10/09
- In an April 24, 2009 memo, EPA agreed to
 - Reconsider all 4 issues
 - Issue NPRM to repeal grandfather provision
 - Issue administrative stay (3 mo) for grandfather provision



PM_{2.5} NSR Rule

The 4 issues are:

1. 3-year schedule for SIP revision submittal & policy to continue using PM₁₀ surrogate policy in the interim.
2. Grandfathering of PM₁₀ surrogate policy under Federal PSD program (EPA + delegated states).
3. Transition period for condensable particulate matter (CPM).
4. Interpollutant Trading: EPA-preferred offset ratios for PM_{2.5} precursors.



PM₁₀ Surrogate Policy

- 2/11/2010 NPRM to repeal grandfather provision (allowed continued use of PM₁₀ Surrogate Policy for “grandfathered” sources) and end early the use of the PM₁₀ Surrogate Policy in states with approved PSD
- Administrative stay of grandfather provision (6-1-2009 to 9-1-2009)
- Second stay (via rulemaking) on grandfather provision (9-22-2009 to 6-22-2010)
- Approximately 40 commenters (including public hearing); majority opposed repeal of grandfather provision & ending the surrogate policy early
- Final rule under development— projected for end of June 2010



Condensable PM

- NPRM to end NSR transition period (TP) for condensable particulate matter (CPM) (sought comment as part of NPRM for PM Test Methods - 3/25/2009)
- Current NSR transition period for CPM scheduled to end on January 1, 2011 unless EPA decides to shorten it based on the current rulemaking
- Majority of commenters opposed ending the NSR TP early.
- Separated the final rule to end the NSR TP from the final test methods rule - to be published simultaneously with the final test methods rule in July/Aug 2010. NSR TP will end 60 days after promulgation of this rule.



Inter-pollutant Trading Policy

- EPA agreed to propose and seek comment on recommended inter-pollutant offset ratios and also to re-evaluate the ratios and the rationale for their development
- Re-analysis is currently underway
- Tentative proposal date is July/August 2010.



Aggregation, Debottlenecking and Project Netting Rule

- “Project Aggregation” refers to the grouping of multiple, related physical or operational changes into a single project for evaluating requirements under NSR.
 - Another “aggregation” relevant to NSR permitting is determining whether separated emissions sources should be combined and treated as a single source (e.g., oil wells at a gas processing plant) for applicability. (Source Aggregation)



Aggregation, Debottlenecking and Project Netting Rule

- The January 15, 2009 final rule modified EPA's policy on Aggregation.
 - Combine emissions when projects are substantially related either technically or economically
 - Requires that activities must have more in common than (1) timing of construction, and (2) the fact that both activities support the overall basic function of the plant.
 - Presumes that modifications that are separated by 3 or more years are not substantially related.
 - Debottlenecking rule withdrawn and took no action on PN.



Aggregation Reconsideration

- In Jan 2009, Natural Resources Defense Council (NRDC) submitted a petition for reconsideration on the final Aggregation rule.
- In Feb 2009, EPA granted reconsideration and stayed the effective date of the rule until May 18, 2010.
- On April 15, 2010, EPA published its reconsideration proposal.
 - Requests comment on a range of legal and policy issues.
 - Proposes to revoke the final rule because of concerns that it may reduce the effectiveness of the Agency's aggregation policy.
 - 30-day comment period to be extended 30 days – i.e., until 6/16/10.
- Current effective date of the rule is May 18, 2010, but will be extended indefinitely (under APA Section 705) to allow for completion of the reconsideration and litigation.



Fugitive Emissions Rule

- NSR Applicability for fugitive emissions
- Do not count fugitive emissions when determining whether a major modification has occurred unless the source belongs to one of 28 source categories
- Final 12/19/08
- Reconsideration and stay granted 4/24/09



Fugitive Emissions Rule

- 09/30/09 - Notice of Grant of Reconsideration and Administrative Stay of Regulation 09/30/09 – 12/30/09
- 12/11/09 - Interim final rule to extend stay from 12/31/09 to 3/31/10
- 02/11/10 – Proposed an 18 month stay
- 03/31/10 – Finalized an 18 month stay (from 4/1/10 to 10/3/11)



Reasonable Possibility Rule

- Rule identifies when a source should do recordkeeping and reporting after undergoing a modification that does not trigger major NSR
- Requires recordkeeping and reporting when the projected increase in emissions to which the "reasonable possibility" test applies equals or exceeds 50 percent of the Clean Air Act's NSR significance levels for any pollutant.
- Final 12/21/07
- Granted reconsideration on 4/24/09 - no stay
- Tentative Recon Proposal date – 12/31/10



WI NSR Reform SIP Approval

- States and Environmental Groups won partial court victory in NSR Reform case (June 24, 2005 *New York Decision*) Court upheld 3 of 5 NSR Reform Elements
- The court rejected the initial anti-backsliding challenge on ripeness grounds. A key point in decision was that environmental impacts needed to be addressed case-by-case.
- Wisconsin SIP incorporating 2002 NSR Reform rule was approved in 12/08
- NRDC/Sierra petition for reconsideration and request for withdrawal/stay of rule, saying proposed SIP revisions violated CAA sections 110(I) and 193.



WI NSR Reform SIP Approval

- Environmental Groups provided no evidence, but did raise question of how much supporting record is needed to approve SIP changes.
- For Wisconsin, our Response to Comments required us to:
 - Re-visit and affirm Benefits Analysis for Reform Rule
 - Further examine Wisconsin's record supporting SIP Revision
- Resulted in EPA performing supporting analyses to affirm continued Reasonable Further Progress and Rate of Progress to attainment for Wisconsin
- EPA Denied Petition for Reconsideration on January 19, 2010. Lawsuit Is Still Pending. A similar petition has been filed for Ohio's SIP approval



PM_{2.5} Increments, SILs & SMC

- Proposed on September 21, 2007
- Package cleared OMB review
- Estimated promulgation date is 06/2010