2013 EPA/State/Local Modelers Conference

NSR UPDATE

Dallas, Texas
April 22-25, 2013
Overview

• Legal Problems in the NSR World
  – Hey, EPA, PM$_{2.5}$ is PM$_{10}$, too!
  – Court not crazy about our SILs and SMC ("vacate – "vacate")
  – Not all the news is too bad (for now, anyway)

• NAAQS, NAAQS, and more NAAQS
  – The short-term kind will kill ya
  – Avoiding one bullet: visibility index standard
  – PM$_{2.5}$ increments beginning to take effect
  – Don’t be an Anti-backslider

• Getting it Done: It’s all in the MATRIX
Legal Issues
Subpart 4 – PM$_{2.5}$ Implementation

- January 4, 2013 Remand for PM NAAQS
  - “We remand to EPA to repromulgate these rules pursuant to Subpart 4 consistent with this opinion.”
- Court ruled that PM$_{2.5}$ is to be treated as PM$_{10}$ for nonattainment implementation purposes
- Court decision affects 2008 PM$_{2.5}$ NSR Implementation Rule with regard to nonattainment area NSR
  - We do not interpret the Court decision to directly affect PSD
- Probable amendments:
  - New, lower PM$_{2.5}$ major source threshold for Serious areas;
  - Broader applicability of precursors?
Legal Issues
Subpart 4 –PM$_{2.5}$ Implementation

• Court decision implicates EPA precursor policy in a footnote
• Subpart 4 provision does not read as a total precursor exemption, but an exemption applicable to control requirements for major sources of precursors
  – Sec. 189(e) PM–10 precursors. The control requirements applicable under plans in effect under this part for major stationary sources of PM–10 shall also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. The Administrator shall issue guidelines regarding the application of the preceding sentence
Legal Issues
PM$_{2.5}$ SILs and SMC

- January 22, 2013 Vacatur and Remand for PM$_{2.5}$
  - Court vacated PM$_{2.5}$ SILs and SMC while remanding to EPA the PM$_{2.5}$ SILs provision at paragraph (k)(2)
  - EPA requested vacatur and remand for paragraph (k)(2)
  - Court clearly ruled that EPA exceeded its authority to exempt PSD applicants from ambient monitoring data requirements (PM$_{2.5}$ SILs unlawful)
  - Court decision did not address the EPA’s legal authority to adopt SILs or whether the PM$_{2.5}$ SILs represent de minimis thresholds
  - NOTE: Court did not vacate SILs at 40 CFR 51.165(b)(2)
Legal Issues
PM$_{2.5}$ SILs and SMC

• **52.21(k)(2) Significant Impact Levels.** For purposes of PM$_{2.5}$, the demonstration required in paragraph (k)(1) of this section *is deemed to have been made if ….*

• **51.165(b)(2) A ….source will be considered to cause or contribute to a violation of a [NAAQS] when such source would … exceed the following significance levels…**
Legal Issues
Ozone-Section 166 (PSD) Petition

• Court dismissed PSD portion of case on July 12, 2012: ("[Section 166(a) does not mandate that EPA issue [PSD] regulation when EPA revises a NAAQS.")
• Judgment appealed on August 15, 2012
• EPA filed Respondent’s Brief on January 25, 2013
• Stay tuned
PM NAAQS Implementation

• EPA plans to do rulemaking to provide a modified process for use of the PM2.5 SILs

• Interim PM2.5 SILs policy:
  – Q & A’s + Draft PM2.5 Permit Guidance posted on EPA website
  – Derive authority to use PM2.5 SILs from 40 CFR § 51.165(b)
  – SILs should not be relied on as a “safe harbor” to bypass the cumulative analysis. (Ambient data will be available as a result of Court’s decision on PM2.5 SMC)

• Outstanding SILs/SMC Issues:
  – SMC glitch: (i)(5))(iii)
  – Class I PM2.5 SILs
  – Conflicting state regulations/SIPs
  – Impact of Court decision on other SILs/SMC
  – Other Issues to report?
PM NAAQS Implementation

- Revised PM NAAQS took effect on March 18, 2013
  - Did not include a new secondary visibility index standard
  - PSD Grandfathering provision shelters certain sources from new requirements
  - End of PM\textsubscript{10} Surrogate Policy necessitates use of PM\textsubscript{2.5}, including precursors, for addressing the PSD requirements
  - January Court decisions--subpart 4 implementation and PM\textsubscript{2.5} SILs/SMC--are already affecting the way NSR/PSD analyses are carried out.

- PM\textsubscript{2.5} increments are now in effect and must be addressed—affected by SILs decision, including lack of Class I area SIL
NO$_2$/SO$_2$ NAAQS Implementation

- New 1-hour NAAQS for NO$_2$ and SO$_2$ involve a level of stringency that is challenging the PSD process
- EPA guidance has addressed some of the issues
- Interim SILs claimed to be of little value for screening
- Accuracy of models and “worst case” nature of modeling demonstrations continue to be challenged
- Also, remember:
  - Annual and 24-hour SO$_2$ NAAQS remain in effect until areas designated for new 1-hour SO$_2$ NAAQS
  - Annual and 24-hour SO$_2$ increments are statutory increments; keep counting them
Recent PSD NO₂/SO₂ Modeling Guidance

- Applicability of Appendix W Modeling Guidance for the 1-hour NO₂ National Ambient Air Quality Standard, June 28, 2010
  - [http://www.epa.gov/ttn/scram/ClarificationMemo_AppendixW_Hourly-NO2-NAAQS_FINAL_06-28-2010.pdf](http://www.epa.gov/ttn/scram/ClarificationMemo_AppendixW_Hourly-NO2-NAAQS_FINAL_06-28-2010.pdf)

- Applicability of Appendix W Modeling Guidance for the 1-hour SO₂ National Ambient Air Quality Standard, August 23, 2010
  - [http://www.epa.gov/ttn/scram/ClarificationMemo_AppendixW_Hourly-SO2-NAAQS_FINAL_08-23-2010.pdf](http://www.epa.gov/ttn/scram/ClarificationMemo_AppendixW_Hourly-SO2-NAAQS_FINAL_08-23-2010.pdf)

- Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO₂ National Ambient Air Quality Standard, March 1, 2011
  - [http://www.epa.gov/ttn/scram/Additional_Clarifications_AppendixW_Hourly-NO2-NAAQS_FINAL_03-01-2011.pdf](http://www.epa.gov/ttn/scram/Additional_Clarifications_AppendixW_Hourly-NO2-NAAQS_FINAL_03-01-2011.pdf)
Ozone NAAQS Implementation

- 2008 ozone NAAQS SIP requirements proposal has cleared OMB
- Proposal addresses PSD applicability, but no new PSD requirements
- Options for addressing Anti-backsliding
Ongoing Permit Modeling Issues

- Compliance with new 1-hour NO$_2$ and SO$_2$ NAAQS
- PM$_{2.5}$ air quality impact analysis, including PM$_{2.5}$ precursors
- Ozone air quality impact analyses
Rulemakings Under Consideration

- **PM$_{2.5}$ SILs/SMC Court Vacatur Response Rule**
  - In response to 1/22/13 court decision
  - Remove PM$_{2.5}$ SMC and faulty SILs reg text: 40 CFR 52.21 and 51.166
  - Direct Final Rule

- **PM$_{2.5}$ PSD SIP “Error Correction” Rule**
  - Ensure SIPs are consistent with 1/22/2013 court decision
  - Disapprove PM$_{2.5}$ SMC and SILs reg text (vacated by Court) in about 12 approved SIPs

- **2012 PM$_{2.5}$ NAAQS Implementation Rule**
  - Ensure NSR implementation of 2012 PM NAAQS is consistent with Court’s 1/4/2013 decision on Subpart 4
  - Address NSR component of this rule, e.g., precursor status, per remand
Rulemakings Under Consideration

• PM$_{2.5}$ SIL Reconsideration Rule
  – In response to Court’s 1/22/13 decision & TCEQ petition for reconsideration
  – Comprehensive rulemaking to:
    • Re-propose existing provisions
    • Re-establish PM$_{2.5}$ SILs that are not simply “safe harbor” instruments
    • Clarify 52.21(i)(5)(iii)
    • Re-evaluate Precursor SERs (under consideration)
That’s It

• Thanks for your attention
• Questions? Comments?