



# NNSPRS

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# Background

- ◆ The EPA promulgated revisions to NSR on December 31, 2002.
- ◆ The revisions changed the applicability determination for this program.
- ◆ The North Carolina Environmental Management Commission is amending 15A NCAC 2D .0530 and .0531 to implement EPA's promulgated revisions with minor changes to reflect the needs of the State.

## The EPA revised NSR as follows:

- (1) Plantwide Applicability Limit,
- (2) Clean Unit Test,
- (3) Pollution Control Project Exclusion,
- (4) 2-Years-In-10-Years Baseline, and
- (5) Actual-To-Projected-Actual Test.

# Fourth Circuit Court

- ◆ “Duke” decision (decided 6-15-05)
  - ◆ Decision agreed with lower ct w/ different reasoning
- ◆ Simply read CAA to state:
  - ◆ Use the NSPS definition of modification
  - ◆ Express it in an hourly emission rate
  - ◆ “Mandate” has issued (law for us)
- ◆ Note that the Court used the first step of Chevron

# D. C. Circuit Decision

- ◆ DC Circuit Decision (6-24-05) said:
  - ◆ Actual to Projected Actual Baseline ok
  - ◆ Plant-wide Applicability Limit ok
  - ◆ 2 yrs in 10 ok
  - ◆ PCP not ok
  - ◆ Clean Unit Test not ok

# D.C. Circuit Decision

- ◆ Court did discuss the NSPS modification issue
- ◆ Court gave some indication that issue was not as clear as 4<sup>th</sup> Circuit Court had said, but:
- ◆ "We express no opinion as to whether Congress had intended to require...identical...definitions of modification across the NSPS and NSR programs."

# Response to NSR Rule (in the context of SIP approvals)

- ◆ Among other questions raised in petitions of SIP rules implementing the 2002 rule was the CAA “anti-backsliding provision” (have you seen this argument before?)
- ◆ Where is such a provision?
  - ◆ Section 172(e) and 193 – in non-attainment areas only and deal with pre-existing control requirements
  - ◆ “Section 116” simply says that states cannot relax standards without modifying their SIP

# Proposed NSR Rule for EGU

- ◆ Sought to implement the 4<sup>th</sup> Circuit decision
- ◆ First: physical change or c. in m.o.o.
  - ◆ Capital expense?
- ◆ Modification depends on increases in:
  - ◆ Maximum achievable hourly emission rate
  - ◆ Maximum achieved hourly emission rate, or
  - ◆ Output-based test – emission rate/heat input

# NC Awaits Adoption of PSD Rule

- ◆ NNSR rule has passed – not in SIP yet
  - ◆ To the extent it mirrors EPA rule that is ok
- ◆ PSD
  - ◆ Can use maximum hourly test
  - ◆ Can use actual to potential test
- ◆ No PCP and no Clean Units