

Update on Regulatory and Air Permit Streamlining

Carolinas Air Pollution
Control Association

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Overview

- Defining Reform
- Review Reforms to Date
- Priorities for Next Year
- So Much to Do so Little Time



Defining “Reform” – “a transitive verb”

- 1a: to put or change into an improved form or condition;
- 1b: to amend or improve by change of form or removal of faults or abuses;
- 2: to put an end to (an evil) by enforcing or introducing a better method or course of action;
- 3: to induce or cause to abandon evil ways reform a drunkard;
- 4a: to subject (hydrocarbons) to cracking;
- 4b: to produce (gasoline, gas, etc.) by cracking.

Defining Reform – What Needs Fixin’?

- **Misunderstanding or a lack of shared perspective of the purpose and effect of NSR?**
 - One perspective: Intended to require controls to be designed in at the planning stage of major capital improvements or new plants – to capitalize on the “opportunity that should not be missed” to design controls in at the outset, since retrofitting is inefficient, expensive, and often not possible.
 - Another perspective: Intended to force every plant in the country to eventually and then continually go through NSR; this view could lead to NSR being the only regulatory program necessary under the Clean Air Act and eliminating the need for SIPs.
- **Unfinished business?**
- **Bad facts leading to decisions with overly broad application? Well-meaning guidance misinterpreted over time?**



NSR Reforms Done Already

	TOPIC	DESCRIPTION/ISSUE	WHAT'S HAPPENED SO FAR?
1.	Once In Always In (Not)	While not technically NSR, clarifies Section 112 allows sources to become area sources any time, not just before first substantive compliance date.	Memo issued January 2018. Challenged in court. Petitioners' brief filed. Next EPA step is revising Part 63 regulations to expressly incorporate the interpretation.
2.	Project Emission Accounting	Clarifies that under the existing regulations, project emission decreases in emissions "are to be" considered in step 1 of NSR analysis.	Memo issued March 2018. Challenged in court. Next EPA step is to revise 52.21 to expressly incorporate. Court case on hold pending the rulemaking.
3.	Source Aggregation	Definition of "adjacent" and what role, if any, functional relatedness should play in determining if sources should be aggregated.	EPA released draft guidance for comment. Comment period closed on Oct. 5.
4.	Project Aggregation	2009 project aggregation interpretive rule stayed in 2010 pending reconsideration.	OMB website says final action has left OMB—now awaiting signature.
5.	ACE Rule / Max Hourly	Provide maximum hourly off-ramp from NSR for utilities.	ACE comments due Halloween. BOO!
6.	Reactivation	What are the criteria for restarting an idled unit without re-permitting?	Limetree Bay memo addressed.

Priority NSR Reforms Worth Considering in Near Term

	TOPIC	DESCRIPTION/ISSUE*
7.	Modeling/Ambient Air	Boundaries required and probability.
8.	Begin Actual Construction	What can be done before a PSD, major NSR, or minor NSR permit is issued? Ability of companies to proceed with activities at own risk is desired.
9.	RMRR	Determining applicability of RMRR exclusion is too complex. Particular interest in what is “routine” and how companies deal with advancements in technology (e.g., the old part is no longer made).
10.	Past-Actual-to-Projected Actual	Difficulty of showing that emissions increases could have been accommodated and are not attributable to a particular physical or operation change. Series of EPA applicability letters constricting application of the independent factors test.
11.	Netting Analysis (Step 2)	EPA has been requiring the use of actual-to-potential or -allowable emissions for contemporaneous projects based on interpretation of the definition of “actual emissions” due to a quirk in how the 2002 regulations were drafted. Emissions projections for contemporaneous project should at least be the same as for the initial emissions analysis for that project.
12.	PALs	Key issue identified: Threat of ratcheting of the PAL after 10 years disincentivizes companies from using them.
13.	Reasonable Possibility	The reasonable possibility rule was challenged by the State of New Jersey alone. EPA put it on hold for the entire Obama Administration.

***The descriptions on page 5 are based on EPA’s characterization of the issue; because EPA has not acted yet, the descriptions on this page are based on the author’s own permitting experience and do not reflect EPA action.**



Priority NSR Reforms Worth Considering in Near Term

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14.	Debottlenecking	How to determine emissions impact of a change on upstream/downstream units. EPA withdrew the debottlenecking proposal before the end of the Bush Administration. Rules apply the actual-to-projected-actual test but could require NSR for changed unit even when its increase is very small. Arises most often with boilers and other utility services.
14.	52.21(r)(4)	Rule has been interpreted to prevent the relaxation of any limit initially imposed for the source to be minor.
15.	Permit Finality	Federally issued PSD permits (and some states) are not final/effective until after appeal (or appeal period expired), creating threat of frivolous (non-material) comments or challenges delaying projects.
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17.	Reasonable Possibility	Required action by EPA from 2005 court case. Was on hold for entirety of the prior administration pending New Jersey's petition for reconsideration.

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So Many Reforms Needed; So Little Time

- Much has been accomplished already.
- Follow through is critical!
 - Challenges
 - State implementation
- Small ball v. swinging for the fences.
- Responsible reform encourages efficiency and emission reduction. A potential win-win situation.

