

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.**



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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.

