

NEW SOURCE REVIEW UPDATE

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TOPICS

- Menu of Options Update
- State Updates
- 8-hour Ozone NSR
- PM2.5 NSR
- Court Cases
- Significant Permits

MENU OF OPTIONS

- <http://www.cleanairworld.org/newsourcemenue.html>
- One page summary attached to this presentation in the books
- Nonattainment portion will be released soon

State Updates

- Many States/Locals are Waiting for the Outcome of the Legal Challenges
- Some are Adopting Federal Rules Verbatim (Colorado)
- Others Have Legislative Mandates to Adopt, but are Customizing the Rules to Fit Programs
- Most are Waiting Until 2005

Wisconsin

- Limits on use of demand growth exclusion
- Baseline is same for all pollutants and sources in a project
- Replacement units are treated as new units
- Declining PALs in nonattainment areas
- Clean Units BACT/LAER as of 1/1/2001
- Redesignation changes Clean Unit test
- <http://www.dnr.state.wi.us/org/aw/air/hot/nsr/index.htm>

Indiana

- HAPs retained in PSD review
- Clean Units must have current BACT/LAER
- Record keeping and reporting requirements with annual reporting
- Title V provisions (minor mods for Clean Units and listed PCPs; major mods for PALs and unlisted PCPs)
- <http://www.in.gov/idem/air/permits/nsr/index.html>

Ohio

- Mostly identical to federal rule
- Record keeping and reporting provisions
- Maintain minor source provisions
- Title V coordination
- <http://www.epa.state.oh.us/dapc/nsr/nsrgroup.html>

Expect to Hear

- Industry comments calling for adoption of the federal rule “word for word”.
- Industry comments calling for state recognition that the federal rule is more stringent than the current rule.
- Industry concerns that any deviation from the federal rule will hold up approval by EPA.

Example Industry Comment

- Moreover, the S/A menu of options approach is not broadly supported but has been developed by S/A's working group, which includes only a small subset of state and local regulators. The menu of options has not been subject to notice and comment and to the extent it contains elements on which US EPA solicited comment during its 10- year rulemaking process, those options were rejected by US EPA.

Moving from the 1-hr to the 8-hr Standard

- EPA will revoke the 1-hour standard on June 15, 2005 - 1 year after the effective date of designating areas for the 8-hour standard.
- States are not required to retain the New Source Review program requirements that applied under the 1-hour standard (offset ratios and major source thresholds) once EPA revokes the 1-hour standard.
- Instead, States must establish an 8-hour NSR program based on the 8-hour ozone designation and classification.

Effective Date of 8-hour NSR program

- For areas that were previously designated attainment for the 1-hr standard and are now designated nonattainment for the 8-hr standard, 8-hour NA NSR will begin to apply on June 15, 2004.
 - If the area lacks an approved NA NSR program, the State or EPA will issue preconstruction permits under 40 CFR Part 51, Appendix S.
 - EPA hopes to update Appendix S to incorporate reform and other changes in the very near future.

Effective Date of 8-hour NSR program

- For areas that were designated nonattainment for the 1-hr standard, and are now designated nonattainment with a lower classification for the 8-hour standard, the 8-hr NA NSR program will apply once the 1-hr standard no longer applies. The time at which an area can stop enforcing the NSR requirements related to the 1-hr standard will depend on the specific language in an area's SIP.
 - In some area's, the requirements will cease to apply when EPA revokes the 1-hr standard.
 - In other areas, the SIP will have to be revised before the requirements will no longer apply.

Phase II

- EPA will be addressing areas that were designated nonattainment for the 1-hour standard and are now designated with a higher classification for the 8-hour standard in phase II of the ozone implementation rule.
- EPA hopes to issue the Phase II implementation rule by late July.
- EPA hopes to issue revisions to Appendix S by June 15, 2004.

Why is EPA allowing States to remove 1-hour NSR obligations?

- Unlike control requirements, such as reasonably available control technologies (RACT) and inspection and maintenance programs (I/M), the NSR program is not specifically designed to produce emissions reductions. Instead, its purpose is to allow new source growth to occur without interfering with an area's ability to attain a NAAQS.
- In this respect, the NSR program is different from control programs whose specific purpose is to move an area as expeditiously as practicable toward attainment.

Why is EPA allowing States to remove 1-hour NSR obligations?

- Moreover, changing the NSR requirements that apply in an area will not result in degradation of air quality because the change only affects the requirements applied to future sources and emissions. The requirements for any major stationary source that received a permit under the 1-hour standard would continue to remain in effect.

NSR requirements in the OTR

- Attainment areas in the OTR must comply with nonattainment NSR requirements as if the area is classified moderate nonattainment for the 8-hour standard.
- This means that areas located in the OTR will continue to apply a 50 tpy major source threshold for VOC, a 100 tpy major source threshold for NO_x, and an offset ratio of 1:1.15 unless an area has a higher than moderate classification for the 8-hour standard.

PM_{2.5} NSR Questions

- Precursors: VOC, NO_x, SO_x, NH₄
- Condensable Emissions
- Major Source Threshold
- Significant Emissions Rate
- Increments and Significant Impact Level
- Pre-Construction Monitoring
- Offsets
- Transition from PM₁₀

Litigation

- Consolidated under
State of NY et al v. EPA (02-1387)
 - December 2002 final rules
 - March 10, 2003 FIP rule
 - 1980 Rules
 - 1992 WEPCO rules

- Fugitive Emissions
Newmont USA Limited v. EPA
 - Severed from December 2002 litigation
 - Granted reconsideration on

Litigation

- ERP Rule - *State of NY v. EPA (03-1380)*
- NOx Increments-*Environmental Defense v. EPA*
 - Court remand NO2 increment for further justification.
 - Court ordered deadlines
 - Proposal Sept 2004
 - Final September 2005

Litigation Schedule on December Final Rules

S&L Gov't, Citizens, Industry	5/11/04
Amicus Briefs	5/18/04
EPA	8/9/04
Interveners	8/30/04
Replies	9/20/04
Final Briefs	10/26/04

What's Happening in 2004?

- Notice of ERP Stay;
- Reconsideration on RMRR rule;
- Proposal on Project Aggregation, Debottlenecking, and Allowable PALs;
- NSR rules related to 8-hr ozone and PM2.5 NAAQS implementation;

What's Happening in 2004?

- Revisions to Appendix S;
- Proposal on NO_x increments;
- Reconsideration on fugitive emissions;
- Major nonattainment NSR rule for Indian Country;
- Minor NSR rule for Indian Country.

Additional Issues (but no time)

- Continued Federal NSR Cases
 - American Electric Power (AEP)
 - Cinergy
 - Ohio Edison (First Energy)
 - Illinois Power (DYNERGY)
 - Southern Indiana Gas & Electric Co. (SIGECO)
 - Southern Co, (Alabama Power and Georgia Power)
 - Tampa Electric Co. (TECO)
 - TVA (Administrative Order)
 - Duke Energy
 - East Kentucky Power Cooperative

Additional Issues (but no time)

- Major Coal-fired Power Plant Permits to Install
 - Thoroughbred Energy Campus (Kentucky)
 - Prairie State Energy Campus (Illinois)
 - Tucson Electric Power (Arizona)
 - MidAmerican Energy (Iowa)
 - Centennial Power (Montana)
 - Omaha Public Power (Nebraska)
- 94 Planned Plants, 62 GW Power, \$ 72 Billion Investment