

# CURRENTS

A Quarterly Publication of POWER Engineers Environmental **SUMMER 2018**



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# CURRENTS

**SUMMER 2018**

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Special thanks to former Zephyr president, Joe Zupan, as he ends his tenure as longtime Currents editor. Thank you for your guidance and support over the years, Joe, and we wish you all the best in your next adventures.

# LEADERSHIP INSIGHTS



## Introducing POWER Engineers

Rob Reid | Environmental Division Manager

**W**elcome to our first issue of Currents, now as POWER Engineers. You've undoubtedly noticed, Currents has undergone a few changes to reflect the broader perspectives of the combined POWER and Zephyr Environmental Division team. Currents has been in circulation for more than 20 years at Zephyr and it has been our commitment from the start to continue providing this informational and technical resource.

As many of you know, POWER acquired Zephyr on January 7 and I can't say enough good things about our newest colleagues and how delighted we are to have them join our team. From the start, we knew we were a great fit, sharing many of the same business philosophies and culture characteristics: putting the client's needs and success first, an employee-centric

culture, openness, honesty, teamwork and a pride in creating quality work. When you put all those things together, it makes for a successful merging of companies and, most importantly, it adds significant value for you.

*Currents has been in circulation for more than 20 years at Zephyr and it has been our commitment from the start to continue providing this informational and technical resource.*

I am the Environmental Division Manager at POWER. I have been in the environmental consulting business continuously for more than 40 years and I have had the privilege of working with a number of former Zephyr staff with prior companies. Environmental is what I know and love and I'm so excited to see how the combined resources of

POWER and Zephyr will be able to make a big difference to the environmental challenges you face.

Maria Gou, who had ably written this section in the past, is now the Business Unit Director for Air Quality and Related Environmental Services. In the place of her usual column, you'll find a variety of insights from the POWER Environmental and executive team, including Maria herself.

We are confident that you will continue to receive the same great personal service with your same contacts and we look forward to your getting acquainted with other POWER staff and our expanded capabilities.

Sincerely,

A handwritten signature in black ink that reads "Rob R. Reid". The signature is written in a cursive, slightly slanted style.

## About POWER Engineers

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POWER Engineers is a global consulting engineering firm specializing in the delivery of integrated solutions for energy, environmental, food and beverage facilities and federal markets. POWER Engineers offers complete multidisciplinary engineering, environmental and program management services. Founded in 1976, it is an employee-owned company with more than 2,500 employees and 45 offices throughout the United States and abroad.



# EPA Clarifies Emissions Accounting Procedures for Determining NSR Permitting Requirements

**Lou Corio**

Senior Air Quality Scientist

**H**istorically, permitting under the Clean Air Act (CAA) New Source Review (NSR) program—either the Prevention of Significant Deterioration (PSD) or the Nonattainment New Source Review (NNSR) rules—has been a challenge for most permit applicants. EPA recently issued clarifying guidance for conducting NSR program applicability assessments that could embolden more permit applicants to seek to justify their projects as minor modifications, thereby avoiding the significant, potentially project-delaying requirements for obtaining a PSD or NNSR permit.

## **Historical Background**

The NSR permitting process was formalized through regulations promulgated by EPA in August 1980, along with subsequent rule

revisions and interpretive policy and guidance from EPA. Historically, controversy has followed the term “significant emissions increase,” especially regarding the determination of future, post-construction emissions. A project showing a significant emissions increase is categorized as a “major modification,” triggering major NSR requirements.

In July 1996, EPA proposed revisions to the NSR rules, including the procedure for determining whether a proposed project at a major source results in a significant emissions increase. In December 2002, EPA finalized these revisions as part of a suite of NSR rule revisions, known as the “NSR Improvement Rules.” Under the NSR Improvement Rules, a source owner or operator (“source”) could evaluate

**Want to know more about NSR?**

Check out our helpful NSR glossary and timeline. [www.powereng.com/nsr](http://www.powereng.com/nsr)



*A better process. EPA's new clarifying guidance for NSR program applicability may prove to be a significant time and cost savings for permit applicants.*

an emission increase by subtracting actual (i.e., recent past) annual emissions from projected actual (i.e., future) annual emissions, although the approach for determining the latter seemed open to interpretation.

The NSR Improvement Rules also further defined the major modification determination procedure as a two-step process, requiring a showing of 1) a significant emission increase of a regulated NSR pollutant, and 2) a significant net emission increase of that pollutant for a proposed project that is considered a physical change or change in the method of operation of a major source. EPA clarified that any other emissions increases and decreases at the source that are contemporaneous with the proposed project be included in the “net emissions increase” determination under Step 2. Contemporaneous is defined as being in the period between the date five years before construction commences and the date operation commences.

In September 2006, EPA proposed to allow a source to “project net,” i.e., to allow emissions decreases, in addition to emissions increases, associated with a project

to be included under Step 1 of a major modification determination. However, EPA never took final action on that proposal.

#### **Recent EPA Guidance**

In 2017, EPA conducted a review of the agency's implementation of preconstruction permitting requirements under the CAA NSR provisions in accordance with “presidential priorities for streamlining regulatory permitting requirements.” Because of this review, EPA identified various elements of the NSR regulations and associated EPA policies, including those for major modification determinations, that have created uncertainty and confusion for both permit applicants and permitting agencies. To address these findings, EPA issued memoranda on December 7, 2017, and March 13, 2018, clarifying their current understanding of emissions accounting under the NSR regulations for proposed projects at major sources.

In noting ongoing disputes in the U.S. courts in recent NSR enforcement cases, and the resulting uncertainty regarding approaches to assessing NSR applicability, EPA issued the December 7, 2017, memorandum to

provide guidance for sources that have used or intend to use projected actual emissions to determine if resulting emissions increases are “significant.” EPA clarified that when a source performs such a pre-project NSR applicability analysis in accordance with the calculation procedures in the regulations, and follows the applicable recordkeeping and notification requirements, then the source has met the pre-project obligations of the regulations, unless there is a clear error (e.g., the source applies the wrong significance threshold). As stated by the agency, “The EPA does not intend to substitute its judgement for that of the owner or operator by second guessing the owner or operator's emission projections.”

In its March 13, 2017, memorandum, EPA provided clarification regarding the accounting of emissions decreases at a source as part of the major modification assessment process in determining if a project will result in a significant emissions increase. EPA's interpretation of NSR regulations allow a source to “project net,” provided the increase(s) and decrease(s) are part of a single project. For a project

[EPA Clarifies](#) >>> continued on page 8

## Tracking Sage-Grouse Calls for “Dancing in the Dark”

Ben Bainbridge | Biologist

What kind of music do sage-grouse like? The way the males are showing off, maybe a little club music? Perhaps a two-stepping country song so they can grab the best hen for a dance? So, “What kind of music do sage-grouse like?” is not actually the question I was helping to answer at 3 a.m. while trapping greater sage-grouse (*Centrocercus urophasianus*), but it made for good conversation.

In the spring of 2014 and 2015, I was volunteering with a survey for the Idaho Department of Fish and Game (IDFG) with a goal to capture sage-grouse in support of GPS tracking studies. Sage-grouse, both males and females, commonly sleep on or close to their mating grounds during the mating season.

Captured birds were fitted with backpack style GPS transmitters that provided feedback on an individual bird’s movements. Biologists with IDFG and the Bureau of Land Management (BLM) could then follow these birds on seasonal migrations, or monitor females for nesting habitat and nesting success.

Sage-grouse tracking studies like this provide crucial information for the conservation and management of this iconic western bird. On the other hand, sage-grouse trapping just makes for a very interesting night.

I met up with a team of four biologists and

conservation officers (i.e., game wardens) at a BLM fire-crew bunkhouse to plan for the night ahead and grab supplies. My wonderful wife made chocolate chip cookies for the evening, making me a very popular volunteer.

Then we piled into an IDFG truck and headed off into the dark night on the sagebrush sea. Did I mention how dark it is out there? One unlucky biologist sat out in the cold on a special elevated chair in the bed of the truck while using binoculars and a spotlight to see the eye reflection of a resting sage-grouse.

*Apparently, the sound of a truck approaching in the dark scares grouse, but Garth Brooks or Metallica does not.*

Upon finding a bird, the biologist with the spotlight signaled for the truck to drive straight at the bird while the other two biologists got out of the cab and retrieved large hoop nets on 8- to 10-foot-long poles. That was my job in this endeavor.

Here’s where the music comes in—large speakers were taped to the hood of the truck and blasted our music into the night to mask the sound of the approaching truck. The music was left on all night, so we just plugged in an iPhone and set it to shuffle for the night. Apparently, the sound of a truck approaching in the dark scares grouse, but Garth Brooks or Metallica does not.



*Picture perfect. Biologist Ben Bainbridge takes advantage of a photo op with a willing sage-grouse participant.*

My moment of action arrived when the biologist with the spotlight signaled he had found a bird. Wait—scratch that, it’s just a pronghorn. But not too much longer we were on a bird—a mature male. So I hopped out of the truck, grabbed my giant net, and held on to the jukebox on wheels while it drove off through the mature sagebrush toward the blissfully resting rooster.

As the truck got closer, I moved away from the truck, stumbled through the sagebrush and then rushed the formerly sleeping bird with my net held out like Elmer Fudd! All this was done with the music blaring into the night and never turning on the truck’s headlights or my own headlamp. Did I mention how dark it is out there?

Success! Once I netted the bird, I jumped on it like a fumble back in my football days (but careful not to crush it). At this point,



someone killed the music so that the science part of this expedition could begin in earnest.

Extricating seven pounds of angry, flapping, fighting male sage-grouse from a giant net is no small task, but the team persevered. I held the bird like a football with the head tucked back under my right arm, the feet in my right hand, and the wings held in place against my body and with my left hand over the bird's back. Once secured, the bird was fitted with a GPS tracker and measurements such as weight, age, sex and a blood sample from the toe were taken for future study.

Before release, this particular bird was nice enough to sit calmly in my arms for a photo. Releasing this guy was not some

grand finale like you see on the news when someone releases a bald eagle back into the wild. I carefully placed the bird back on the ground and slowly tip-toed back to the truck hoping he wouldn't take flight and fly into a rock, or worse, the side of the truck.

It would be a pretty funny scene to anyone watching from afar—a group of biologists driving and stumbling around in the dark with large nets, no headlights, no discernable pattern, a spotlight moving all around like that giant eye in “Lord of the Rings,” all while blaring random music on the hood of the truck. But hey, it works. And the birds don't seem to care what kind of music we played, although there was better luck with good ol' country music! 🎸



*Flocking around.* Each spring, the sagebrush country of western North America fills with sage-grouse for breeding season. The males proudly display their white chest and head feathers to attract a mate.

## An Iconic Western Bird

13

states populated by sage-grouse at one point, plus 3 Canadian provinces (now occupy only 55% of that area)

16

million population at their peak (now about 500,000)

2010

the year they were listed as a candidate for protection under the Endangered Species Act, now they are considered a “sensitive species” by the Bureau of Land Management and U.S. Forest Service

7

pound males (the largest North American grouse species)

1/2

mile... how far away you can hear their “booming”... when they inflate large air sacks and expel them in a loud popping noise. Males return to the same “leks” every spring, a designated area where they display for females to compete for mating rights.

# NEWS BRIEFS

Stay informed on  
environmental regulatory  
news and updates

## NATIONAL NEWS

### EPA Proposes Cost-Benefit Analysis Reform

On June 13, EPA issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking public comment on whether and how to increase consistency and transparency in considering costs and benefits in the rulemaking process. EPA promulgates regulations under federal environmental statutes such as the Clean Air Act (CAA) and Clean Water Act (CWA). These statutes typically allow considerations for the financial costs when setting pollution standards, but in past rulemaking proceedings these cost analyses have been perceived as inconsistent. EPA is requesting comments regarding these perceived inconsistencies in the rulemaking process, and on how to create a regulatory approach to fix these issues. Public comments were due July 13.

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### New Rules and Alternative Standards Proposed for Addressing Coal Combustion Residuals

Earlier this year, EPA proposed Phase I revisions to the Coal Combustion Residual (CCR) rules (40 CFR Part 257). The three main goals of the proposed revisions are to address items repealed by the

D.C. Circuit regarding: non-groundwater releases of CCR requiring remediation; allowing the use of CCR in constructing final covers for CCR units; and allowing participating states and EPA to allow alternative performance standards to address releases to groundwater from CCR units. EPA anticipates taking action on the proposed rule changes in June 2019. Other potential revisions, should the EPA act on them, will be proposed in a Phase II rulemaking by September 2018 and finalized by December 2019.

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### Additional Air Quality Designations for the 2015 Ozone NAAQS Completed

EPA completed additional 2015 ozone national ambient air quality standards (NAAQS) area designations on April 30, 2018. Approximately 85 percent of the country had previously been designated (as attainment/unclassifiable or unclassifiable) on November 6, 2017. Initial air quality designations have now been completed for most of the United States. The final rule does not include eight counties in the San Antonio, Texas, metropolitan area. EPA will complete the designations for these counties by July 17, 2018. The initial designations are summarized in 40 CFR Part 81 for each state.

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### EPA Issues New Policy on “Common Control” for NSR and Title V Permitting

In a letter dated April 30 to the Pennsylvania Department of Environmental Protection (PADEP), EPA outlined its new policy on determining which facilities or entities should be considered part of the same source for the purposes of New Source Review (NSR) and Title V permits. One of the criteria in the NSR rules stipulates that entities may be considered part of the same source if they are under common control. EPA clarified that the “common control” criteria should be based on the power or authority of one entity to

dictate decisions of the other that could affect the applicability of, or compliance with, relevant air regulatory requirements. Control is established only when an entity has the power to make decisions regarding air emissions-generating activities.

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### New SNURs Requirements Considered for Asbestos Regulation

On June 11, EPA published proposed requirements under the Toxic Substances Control Act's (TSCA) Significant New Use Rule (SNUR) regulating manufacturing (including importing) or processing asbestos for certain uses that the EPA has identified as no longer “ongoing.” This proposed SNUR would require entities that intend to manufacture or process any form of asbestos to notify EPA at least 90 days before commencing such manufacturing (including importing) or processing and obtain approval for such activities. The proposed rule will allow EPA to receive advanced notice of any future manufacturing or processing that may produce changes in human and environmental exposures, and to ensure that an appropriate determination has been issued prior to the commencement of such activities. Comments on the proposed rulemaking are due on August 10, 2018.

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### NGOs Challenge DOI's New Interpretation of “Incidental Take” Migratory Bird Treaty Act

On May 24, multiple environmental organizations collectively filed two complaints in the U. S. District Court for the Southern District of New York seeking to overturn recent legal and policy guidance issued by the U.S. Department of the Interior (DOI) and U.S. Fish and Wildlife Service (USFWS). On December 22, 2017, the DOI issued a Memorandum regarding the Migratory Bird Treaty Act (MBTA) and its applicability to “incidental takings” of migratory birds that could occur during

the development, construction, or operation of otherwise lawful activities. The Memorandum establishes that criminal liability under the MBTA should not be applicable to incidental takes but only apply to actions whose primary purpose is the taking or killing of migratory birds, their nests, or their eggs.

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### **EPA Proposes to Rescind RMP Provisions Amended Under Obama Administration**

On May 30, EPA announced that it is proposing to rescind several key Risk Management Program (RMP) amendments previously adopted on January 13, 2017, as well as modifying provisions related to local emergency coordination and emergency exercises. Most of the provisions the EPA is proposing to rescind with this rulemaking focus on requirements for third-party compliance audits, technology and alternatives analyses for Program 3 processes, and scopes of hazard reviews. Other modifications to the rule under consideration involve adding flexibility for facilities to meet exercise requirements and enhancing security measures. Facilities will be required to provide local response organization(s) with their emergency plan and contact information, and to request an opportunity to meet with the response organization to discuss these materials. Comments on the proposed rule are due on or before July 30.

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### **Aerosol Cans Proposed for Universal Waste Regulations**

In March, EPA proposed adding hazardous waste aerosol cans to the universal waste program. Universal waste is regulated under the Resource Conservation and Recovery Act (RCRA). If the proposal is finalized, managing spent and discarded aerosol cans will be much simpler for all industries, including the retail sector. The collection and recycling of aerosol cans will be encouraged, similar to fluorescent

bulbs, mercury vapor bulbs, and batteries that are currently covered under the universal waste program. The universal waste program eases the regulatory burden of managing certain hazardous wastes to reduce the quantity of these wastes going to municipal solid waste landfills.

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### **OSHA Delays Enforcement of Parts of Beryllium Standard**

On May 9, the Occupational Safety and Health Administration (OSHA) confirmed they will begin enforcing certain requirements of the final rule on occupational exposure to beryllium in general industry, construction, and shipyards. Specifically, enforcement has begun for the permissible exposure limits in the general industry, construction, and shipyard standards; and for general industry only, the exposure assessment, respiratory protection, medical surveillance, and medical removal provisions. However, OSHA will not enforce any other ancillary provisions of the beryllium standards for general industry (29 CFR 1910.1024) until June 25, which OSHA plans to extend to December 12, 2018. Note that OSHA previously proposed removing the ancillary requirements from the beryllium standards for the construction and shipyard industries.

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### **EPA Announces \$15.7M in Supplement Funds for Contaminated Brownfield Site Cleanups Across the U.S.**

On June 7, EPA announced the selection of 33 high-performing Revolving Loan Fund (RLF) grantees located in 20 different states. These states will receive approximately \$15.7 million in supplemental funding to help their communities continue the work to carry out cleanup and redevelopment projects on contaminated brownfield properties. States receiving the highest funding are Maine, Connecticut, New York, Georgia, and Wisconsin. RLF

grant recipients cannot be parties that are potentially liable for the contamination at a brownfield site.

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### **U.S. Fish and Wildlife Service Delisting the Black-Capped Vireo**

The USFWS is removing the black-capped vireo from the Federal List of Endangered and Threatened Wildlife because it has recovered and no longer meets the definition of endangered under the Endangered Species Act. The black-capped vireo was listed endangered by USFWS in 1987 due to habitat loss and nest parasitism. At the time it was listed, there were only an estimated 350 adult birds reported within the known breeding range located within Texas, Oklahoma, and Mexico. Through conservation efforts by state and federal agencies alongside private landowners, the black-capped vireo has made a full recovery with a healthy population and provided habitat.

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### **EPA Proposes Petroleum Refinery Rule Changes**

On April 10, EPA proposed amendments to Refinery MACT 1 and 2 and NSPS Subpart Ja for petroleum refineries. The amendments to Refinery MACT 1 included new requirements for maintenance vents, pressure relief devices (PRDs), delayed coking units (DCUs), fence line monitoring, and flares. The amendments to Refinery MACT 2 addressed continuous compliance alternatives for catalytic cracking units and startup and shutdown provisions for catalytic cracking units and sulfur recovery plants. The NSPS Ja amendments included corrections and clarifications to provisions for sulfur recovery plants, performance testing, and control device operating parameters. Comments were due on May 25.

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**News Briefs** >>> continued on page 8

## STATE NEWS

### CDPHE Working with Industry to Reduce Hydrocarbon Emissions in Colorado

In June, discussions began on developing statewide emission reduction strategies in an effort led by the Colorado Department of Public Health and Environment (CDPHE). The CDPHE is seeking to reduce hydrocarbon emissions in the Denver Metropolitan, Northern Front Range Ozone Non-Attainment Area (DMNFR) to avoid it being reclassified from “moderate” to “serious,” which would drastically reduce major source and major modification permitting thresholds. The resulting CDPHE-driven “Statewide Hydrocarbon Emission Reduction” or “SHER” team has members joining forces from the oil and gas industry, NGOs, and local governments with a goal to develop statewide emission reduction strategies, including potential additional controls in the DMNFR. The SHER team will provide a progress update in January 2019 and present its final recommendations in January 2020.

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### Ozone Designation for San Antonio Expected July 2018

On April 30, EPA completed the 2015 ozone NAAQS area designations for most of the United States. The final rule does not designate eight counties in the San Antonio,

Texas metropolitan area. In the EPA’s March 19 response to Texas’ designation recommendations, EPA stated their intent to designate the San Antonio area counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina and Wilson as attainment/unclassifiable. Additionally, EPA intends to designate all or portions of Bexar County as, at best, unclassifiable. EPA will consider any additional information submitted by Texas before completing the designations for this area. As required by a March 12 District Court order, the eight San Antonio area counties are to be designated by July 17.

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### Maryland to Join the U.S. Climate Alliance

In April, the Maryland General Assembly passed a bill requiring Maryland to join the U.S. Climate Alliance. At the start of this year’s legislative session, Governor Larry Hogan had expressed interest in having Maryland join the Alliance, so he is expected to sign the bill into law this summer. Maryland will join 14 other states and Puerto Rico as Alliance members, agreeing to implement policies that advance the goals of the 2015 Paris Climate Change Agreement. Maryland, on track to meet its own goal of reducing greenhouse gas emissions 20 percent by 2020, is in a strong position to meet the Alliance’s goal of a 26 to 28 percent reduction (below 2005

emission levels) by 2025.

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### PADEP Issues New and Modified General Air Permits for Oil & Gas Facilities

On June 9, PADEP published a notice of issuance in the Pennsylvania Bulletin for the modified GP-5 for Natural Gas Compression Stations, Processing Plants, and Transmission Stations and the new GP-5A for Unconventional Natural Gas Well Site Operations and Remote Pigging Stations. The effective date for both permits is August 8, 2018. Modifications to the GP-5 include electronic submission of certain notifications, reporting requirements for blowdown and venting events, and revised emission limits for stationary natural gas-fired internal combustion engines. The new GP-5A applies to well site facilities that are newly installed or modified after the effective date, and the PADEP Exemption Category No. 38 for such facilities is revised to include a more restrictive site-wide volatile organic compound (VOC) emission limit and a new individual source methane emission limit. The modified GP-5 and new GP-5A permits and supporting documents are available on PADEP’s website.

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involving both existing and new units, this emissions accounting is to be done on a unit type-by-unit type basis.

### Potential Implications

The recent EPA guidance is intended to reduce confusion regarding the proper approach for conducting NSR applicability assessments, while appearing to provide more flexibility to permit applicants in the accounting of emissions changes associated with a proposed project. For

example, in determining if a decrease can be included in Step 1, EPA stated that they will not preclude a source from reasonably defining its proposed project broadly, to reflect multiple activities. Also, EPA said that they do not interpret the existing regulations as requiring that a decrease be creditable or enforceable as a practical matter to be considered in Step 1.

Ultimately, the recent guidance should reduce permit review/approval timeframes for

modifications at major sources, assuming the local regulatory agencies and/or affected public don’t challenge the interpretation and use of this guidance. Regarding the potential for challenges, EPA reminds applicants that the guidance “does not change or substitute for any law, regulation or other legally binding requirement and is not legally enforceable.” Also, EPA still intends to review each permitting project on a case-by-case basis.

## Important Federal NSR Guidance and Its Impact on State Run Preconstruction Permitting Programs

Scott R. Dismukes | Eckert Seamans Cherin & Mellott, LLC

Two recent Environmental Protection Agency (EPA) interpretive memos regarding New Source Review (NSR) source permitting have spurred great interest because they address the scope of information considered in conducting NSR applicability analysis. A December 12, 2017, memo expresses the EPA's intent to restrict enforcement efforts when assessing post-project actual emissions, rather than presuming causation or second-guessing a permittee's own pre-project applicability projections. This memo stands in contrast to a recent Federal Appeals Court decision upholding EPA's authority to take enforcement action with respect to pre-project applicability analysis. Next, EPA's March 13, 2018, memo impacts "emissions netting" with respect to project emissions accounting. While State agency receptivity to these developments remains to be seen, these memos create an opportunity to strategically consider or reconsider the viability of potential projects.

The CAA establishes the NSR permitting program for new major stationary sources and major modifications of existing major sources by requiring permitting prior to commencing construction. This program requires facilities undertaking a physical change or change in the method of operation to estimate expected emission increases from the project to determine

if such increases are significant, thus triggering NSR permitting. Historically, EPA has pursued enforcement based on its evaluation of a project's predicted emission increases rather than actual post-construction emissions and regardless of the permittee's reasonable projections. EPA's December 12, 2017, memo now defers to the permittee's projections and expands their allowable content. Historically, the "Projection" compared past actual emissions (average of 24 consecutive months over prior 10 years)

*Currently, we anticipate a meaningful reduction in federal enforcement actions against preconstruction projections and a similar reduction in scrutiny of post-project emissions.*

with projected future actual emissions following the modification. Since 2002 the NSR regulations have provided that when the projection does not show a significant emission increase, it does not require a permitting action and does not need to be enforceable or receive permit authority review.

EPA's December 12th memo indicates that EPA will not second guess a permittee's projections and, provided they comport with regulatory requirements, they will not presume that emission increases following

the project were caused by the project, and they do not intend to initiate enforcement unless post-project emissions data indicates that a significant net increase occurred.

Projections must consider relevant information such as historical operating data and company's representations, projections of activities and filings with regulatory agencies. Historically, EPA has asserted NSR permitting can be required based on EPA's own projections, regardless of the reasonableness of permittee's projections; and, that the permittee cannot consider an intent to manage emissions post-project. Significantly, the December 12th memo indicates that a permittee can now consider as "relevant information" their intent to manage actual emissions post-project to avoid triggering a significant increase.

EPA's March 13, 2018, memo regarding Project Emissions Accounting further impacts the NSR applicability analysis. Projects not otherwise excluded from NSR applicability (e.g., routine maintenance and repair or an increase in hours of operation not otherwise limited) are required to conduct a two-step analysis to determine whether there is a significant emissions increase. Step 1 analyzes whether there is a significant increase in actual emissions associated with the individual project itself. Historically, "step 1 analysis" only considered emission increases and not associated emission decreases. If step 1

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**Perspective** >>> continued from page 9

suggested a significant increase, then step 2 evaluated whether there would be an associated significant increase for the whole facility.

Only at step 2 could a facility consider creditable decreases of emissions by engaging in netting analysis. The March 13th memo indicates that decreases may be considered in step 1 and are not required to be enforceable or creditable.

Most states require preconstruction permits for both minor and major sources. These memos may significantly change the approach a facility takes in conducting its projections and provides fodder for significant discussion points with the state permitting agency. However, states with EPA approved implementation plans are not required to follow federal guidance.

Currently, we anticipate a meaningful reduction in federal enforcement actions against preconstruction projections and a similar reduction in scrutiny of post-project emissions, given the potential to consider emission reductions in step 1 and to manage post-construction emissions. Whether state permitting agencies adopt these approaches remains to be seen. In that regard, knowing the state program is critical for a facility contemplating a significant project, as is working with a team familiar with the permit writing process and developing a reasoned, well-documented approach to projecting future actual emissions. Permittees should be mindful to not overreach, to avoid risks associated with future changes in administration, and potential subsequent post-project permit challenges by citizen groups. 🐼