To: Rao, Raj[Rao.Raj@epa.gov]
Cc: Chapman, Apple[Chapman.Apple@epa.gov]
From: Dykes, Teresa
Sent: Wed 2/28/2018 2:39:45 PM
Subject: FW: Project Netting Guidance

Raj- OECA would like to see if a clarification can be made to the memo. We have briefed this up through our AA- and they agree that a clarification would be helpful. Will you please let me know ASAP if this can be accommodated? We have to get back to Susan B. Apple is traveling- so I am following up on this. Thanks Raj.

The use of "any" emission decreases in the draft would include any decreases from a new unit's PTE- and that decrease is no longer required to be enforceable per the draft. The regs however use "PTE" for new units, and that would require the decrease be enforceable. OECA would like a clarification regarding the decreases to say that "with respect to any emission decreases at an existing unit that are taken account of at Step 1, the source…" and add a footnote that stresses that the PTE requirements for units defined as new units still apply. Re: 52.21(r)(6) applies only to sources uses the PAE applicability method- and now EPA is implying that those MRR requirements are to situations when the hybrid test is used.

Terri Dykes

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Begin forwarded message:

From: "Traylor, Patrick" <traylor.patrick@epa.gov>
Date: February 26, 2018 at 5:58:20 PM MST
To: "Dykes, Teresa" <Dykes.Teresa@epa.gov>

Subject: Re: Project Netting Guidance

I think it makes sense to explore a clarification. I can't imagine that the intent of the guidance is to allow unenforceable decreases in PTE—which would be contrary to the plain language of the regulations. More likely is an oversight in the very limited case in which a newish unit has decreased emissions in a project. So I wouldn't think a clarification would be controversial.

Patrick Traylor

Deputy Assistant Administrator

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On Feb 26, 2018, at 2:33 PM, Dykes, Teresa <Dykes.Teresa@epa.gov> wrote:

> Patrick- Adjusting a "New" units PTE with revised enforceable limits is not what is intended according to underlined sentence below- that is on pg. 8 of the draft.
>
> *Further, in the September 2006 proposal, EPA had proposed to adopt regulatory language that specified, for the purposes of what was then termed "project netting," that emissions "[d]ecreases must be creditable according to all the requirements of paragraph (b)(3)" of 40 CFR § 52.21, or "otherwise enforceable as a practical matter." See 71 Fed. Reg. 54252. Having reviewed the considerable number of comments that EPA received on this particular issue, in which objections were raised to EPA's adopting what amounted to "synthetic minor-like" requirements at Step 1, the Agency no longer believes that such requirements are either necessary or appropriate. As has been explained, project emissions accounting does not constitute "netting" as that term, and that concept, have generally been understood. Rather, accounting for emissions decreases at Step 1 of the NSR applicability analysis gives effect to the fundamental requirement, expressed by the court in New York, that for a particular change to trigger NSR, that change – standing alone – must result in an increase in "actual emissions." 413 F.3d at 40.*

At the same time, the 2002 NSR Reform rule has already implemented, as part of its adoption of provisions addressing the use of the "projected actual emissions" methodology, provisions pertaining to the tracking, documenting, and, as necessary, the reporting of post-project emissions increases. See, e.g., 40 CFR § 52.21(b)(41), § 52.21(r)(6). With the understanding that a source must comply with those same requirements with respect to <u>any</u> emissions decreases that are taken account of at Step 1, <u>the source will not be obligated either to establish that the decrease is creditable or that it is enforceable as a practical matter</u>.

The use of "any" decreases includes any decreases from a new unit's PTE- and that decrease is no longer required to be enforceable. Granted- this is a limited subset of situations. If you want the position taken as you outlined in your note (and maintain that enforceability is still needed with regard to PTE)- it may be worthy of an additional sentence or clarification that "with respect to any emission decreases <u>at an existing unit</u> that are taken account of at Step 1, the source…" and add a footnote that stresses that the PTE requirements for units defined as new units still apply. Re: 52.21(r)(6) applies only to sources uses the PAE applicability method- and now EPA is implying that those MRR requirements are to situations when the hybrid test is used.

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