New Source Review (NSR) Update
Briefing for Acting Administrator Wheeler
11/19/18

Completed Actions

Guidance: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability under NSR

- Issued December 7, 2017
- EPA will not "second guess" NSR applicability analyses that comply with the procedural requirements of the regulations
- EPA intends to focus on the level of actual emissions during the 5- or 10- years recordkeeping or reporting period after the project to determine whether to exercise its enforcement discretion

Guidance: Reclassification of Major Sources as Area Sources under Section 112 of the CAA

- Issued January 25, 2018
- Withdrew the 1995 memo that established the "once in always in" policy under section 112
- Developing a rulemaking taking comment on adding regulatory text to reflect the revised interpretation

Guidance: Project Emissions Accounting Under the NSR Preconstruction Permitting Program

- Issued March 13, 2018
- Clarifies that the current NSR regulations provide for the accounting of both emissions increases and decreases in step 1 of the NSR applicability process
- Rulemaking to codify the guidance underway

Guidance: Significant Impact Levels for Ozone and Fine Particles

- Issued April 17, 2018
- Guidance and supporting documents recommend SILs for ozone and fine particle pollution that may be used in the PSD permitting program
- Permitting authorities may use the recommended values in the guidance to help determine whether a proposed PSD source or modification causes or contributes to a violation of the corresponding NAAQS or PSD increments

Guidance: Source Aggregation - Common Control and Adjacency Criteria

- **Common Control:** Issued two letters on April 30, 2018 (Meadowbrook) and October 16, 2018 (Ameresco) concerning "common control" aspect of source aggregation
- Meadowbrook clarified that "common control" is based on the ability to dictate (not just influence) relevant activities that could impact applicability or compliance; Ameresco further clarified that just because two companies share control over one limited aspect of operations does not mean that the entirety of their otherwise separate operations must be considered a single source
- **Adjacency:** Additional guidance on the concept of "adjacency" for all industries other than oil and gas under development; provides interpretation of adjacent for all industries other than oil and gas that only considers physical proximity (no functional interrelatedness)
- Informal comment period on draft guidance ended on October 10, 2018; final expected December 2018

Affordable Clean Energy Rule NSR Applicability Test

- Affordable Clean Energy (ACE) rule proposal issued August 21, 2018
- Proposed revisions to NSR program to establish a new applicability test for EGU
- Proposed test based on <u>hourly</u> emissions rates before proceeding to the <u>annual</u> emissions test

Final Action: Project Aggregation Reconsideration
- Completed November 7, 2018
- Finalizes the 2010 reconsideration rule and lifts the stay of the 2009 final rule on project aggregation

Guidance: Revised Policy on Exclusions from "Ambient Air"
- Posted for informal 30-day comment period on November 8, 2018
- Replaces the policy requiring a "fence or physical barrier" with "effective measures"

Ongoing Actions

Project Emissions Accounting Rule
- Rulemaking to codify the guidance issued on March 13, 2018
- Proposal scheduled for February 2019; final by December 2019

Guidance: "Routine Maintenance, Repair and Replacement"
- Guidance reaffirming EPA's policy that RMRR determinations are based on whether the activity is "routine within the industry"

Guidance: "Begin Actual Construction"
- Guidance on the what types of preparatory non-emitting activities sources may begin prior to obtaining a PSD permit for a proposed project

Treatment of Biogenic CO_2 from Biomass Combustion:
- Policy statement on Forest Biomass issued by Administrator Pruitt on April 23, 2018
- EPA's policy in forthcoming regulatory actions will be to treat biogenic CO_2 emissions resulting from the combustion of biomass from managed forests at stationary sources for energy production as carbon neutral

Potential Future Actions

Deliberative Process / Ex. 5