

Update on Prevention of Significant Deterioration (PSD) and New Source Review (NSR) Activities

March 23, 2004

Overview – Informational Briefing

- PSD increment tracking policy and technical issues
- Alaska DEC v. EPA Supreme Court Decision
- Upcoming NSR Actions
 - Litigation
 - Reconsideration and Remand
 - Debottlenecking, Aggregation and Allowable PALs
 - Ozone and PM2.5 Implementation

PSD increment tracking policy and technical issues

- WESTAR work groups for technical and policy issues
 - Technical Work Group
 - Emission inventories
 - Point sources
 - Area sources
 - Mobile sources
 - Modeling
 - Meteorological data (Class I and II)
 - Terrain issues
 - Screening techniques
 - Timing of modeling
 - Cumulative effects
 - Federal Land Managers Air Quality Related Values Work Group (FLAG) Report
 - Policy Work Group
 - Possible rule changes to create incentives for periodic reviews by State

PSD increment tracking policy and technical issues

- Definitions
 - Periodic Review (SIP adequacy)
 - Tracking
 - Cause or contribute
 - Increment
 - Actual emissions
 - Adverse AQRV impact
- Emissions Inventory Issues (baseline, short term estimates, limited data)
- Varying methods of analysis of increment consumption
- What happens when increment consumption exceeds the available increment?
- AQRV issues
- Inter-jurisdictional Coordination (States, Tribes, and EPA)

Alaska DEC v. EPA Supreme Court Decision

- **“EPA accordingly reads §§113(a)(5) and 167 to empower the Federal Agency to check a state agency’s unreasonably lax BACT designation”**
- **“The legislative history further suggests that without a federal check, new plants will play one State off against another with threats to locate in whichever State adopts the most permissive pollution controls.”**
- **“The Court agrees with EPA’s reading of the statutory provisions.”**

Alaska DEC v. EPA Supreme Court Decision

- **“Congress vested EPA with explicit and sweeping authority to enforce CAA “requirements” relating to the construction and modification of sources under the PSD program, including BACT. Having expressly endorsed an expansive surveillance role for EPA in two independent CAA provisions, Congress would not have implicitly precluded EPA from verifying a state authority’s substantive compliance with the BACT requirement.”**

Alaska DEC v. EPA Supreme Court Decision

- **“EPA rightly concluded that ADEC’s switch from finding SCR economically feasible in May 1999 to finding SCR economically infeasible in September 1999 had no factual basis in the record.”**
- **We emphasize that today’s disposition does not impede ADEC from revisiting the BACT determination in question. In letters and orders throughout the permitting process, EPA repeatedly commented that it was open to ADEC to prepare “an appropriate record” supporting its selection of Low NOx as BACT”**

NSR Reform – June 2002

Recommendations

- Debottlenecking
- Aggregation
- Allowable PALs

Litigation – December 2002 NSR Rule

- D.C. Court denied request for stay on December 2002 rules (Actual PALs, Clean Units, Pollution Control Projects, Emission Test)
- D.C. Court has named same panel for both cases (Judges Roger, Tatel and Edwards)
- Briefing schedule for December 2002 changes
 - Litigants briefs – May 2004
 - EPA briefs – August 2004
 - Final Briefs – October 2004

Litigation – Equipment Replacement Rule

- D.C. Court granted request for stay on Equipment Replacement Provision.
- Proposed Briefing Schedule for ERP
 - Litigants Briefs – the later of November 2004 or 90 days after publication of EPA Response on Reconsideration
 - EPA Brief – 90 days after Litigants Briefs
 - Final Briefs – 77 days after EPA Briefs

Litigation

- Reconsideration of treatment of fugitive emissions under December 2002 rule
- Reconsideration of ERP
 - Legal Basis
 - 20 percent cutoff
- Court remand of NO₂ increments
 - Proposal – September 2004
 - Promulgation – September 2005

Ozone/PM2.5 Implementation

- Guidance and rules on how new 8-hour ozone and PM2.5 standards should be implemented in nonattainment areas
- NSR Rulemakings
 - Appendix S – “bridge” NSR rule that is in effect until State adopts its rules
 - Transition from 1-hour ozone standard to 8-hour ozone standard
 - Requirements for PM2.5
 - Increment levels
 - Precursor pollutants

State NSR Programs

- EPA (MA, PR, VI)
- Delegated States [CA (mixed), DC, HI, IL, MI, MN, NJ, NV, NY, SD, WA]
- Working on rules or demonstrations [AK, CA, CO, IA, ID, IN, KS, MO, MS, NC, NE, OH, OR, PA, SC, TN, UT, VA, WA, WI, and WVA]
- No action (19 States)