

Issue: Regional Position on Refinements of Increment Modeling Procedures Final Agency Review for the Final Rule

Background

On August 5, 2008, OAQPS will host the Final Agency Review for the Final Rule, PSD NSR: Refinements of Increment Modeling Procedures. The proposed rulemaking was published on June 6, 2007. The Regions received the draft final rule on July 17, 2008. The issues associated with this rulemaking date back to 1999 when Region 8 commented on a North Dakota power plant permit. The Regional office modeling staff have been involved in discussions on these issues since 2004. As lead Region, Region 5 submitted collective comments on the proposed rule and will need to represent the regional office position on the FAR call on August 5.

Region 5 Issues of Concern

OAQPS has revised several of its proposed positions in the draft Notice of Final Rulemaking in response to comments received on the proposed rulemaking. However, Region 5's comments on the NPR still remain. In particular, the draft Final Rulemaking does not address our comments on the methodology allowed for estimating emissions. The rulemaking's stated purpose was to clarify increment modeling procedures, but for several issues, it removes clear recommendations from previous guidance and standard practices and simply gives individual States broad discretion.

Below is a summary of the main topics in the NFR and the Region 5 position. Nearly all Regional Offices made similar comments on these two issues.

Actual Emissions Rates Used to Model Short-term Increment Compliance

- **Current PSD guidance:** Use maximum short-term average emission rates to model for short-term increment compliance.
- **NFR:** Suggests using "best judgment," which would include allowing annual emissions to be used for modeling short-term (3-hour or 24-hour) averages. (e.g. use total annual emissions divided by 365 days instead of the maximum actual 24-hour average emission value.)
- **OAQPS rationale:** Maximum short-term actual emissions can be difficult to generate. Requiring each source to model their maximum emissions at the same time is unrealistically conservative. This approach allows States to use their best professional judgment.
- **Region 5 Comments:** Dividing annual emissions by a short-term averaging time period does not provide a representative short-term emission rate for most sources. Sources typically have varying operating levels throughout the year which result in periods of low emissions and periods of high emissions. The single annual emission

value cannot express whether a source tends to have a steady emission rate most of the time, or very high normal emissions offset by intermittent shutdowns or operating load reductions. Using annual emissions smooths out the actual emission peaks and valleys and could result in the modeling significantly underestimating the actual maximum short-term impacts for many source categories. That means that compliance with the short-term PSD increments cannot be assured. If the data is available from a source, EPA should require the use of maximum actual short-term emissions. Where maximum actual short-term emissions data is not available, EPA should develop guidance and methods for estimating emissions that can be used consistently across the states. The States' experiences and best professional judgment would be useful in helping develop such procedures.

Time Period of Emissions Used to Model Pollutant Concentrations

- **Current PSD Guidance:** Emissions must be representative of "normal" baseline period operations. Calculate base year emission rates using the 2-year period prior to the baseline date. Alternative years can be allowed when "catastrophic" events make the prior two years' emission values unreasonable for PSD evaluation.
- **NFR:** The Rulemaking references EPA's 2002 change to the way emissions can be generated for PSD applicability, which does not require a justification for not selecting the 2-year period prior to baseline date. It notes that the 2002 change in definition has caused confusion among applications on what the appropriate approach is for determining the baseline period emissions. The NFR approach for emissions used for increment consumption is similar to the 2002 definition in that it would allow the use of any 2-year period considered representative of baseline date operations, but the NFR requires that the 2-year period selected is shown to be representative of "normal" baseline period operations.
- **OAQPS rationale:** This will allow sources flexibility to use data from the years most representative of "normal" operations.
- **Region 5 comments:** The nature of the PSD applicability analysis and the increment assumption analysis are distinct from each other. The applicability test is used to compare baseline and current year emission changes to see if the applicant is subject to PSD. For those sources that are subject to PSD, the applicant must then use modeling to show that the ambient impacts from all increment consuming sources will stay below the increment thresholds, considering current emissions compared to the emissions during the baseline period. It is important that the baseline emissions used for increment consumption modeling be representative of operations during the baseline period (i.e., 2 year period prior to baseline year). Historically, sources could argue for alternative emissions if operations during the baseline period were unusual, for example, a labor strike. However, the proposed approach for generating increment consumption emissions allows too much discretion. It would encourage "shopping" for a favorable 2-year period. Such shopping would cast doubt on whether the modeling truly gives a reliable, conservative analysis of the increment consumption. EPA should clarify the definition of

“normal” and provide guidance on what is needed to justify use of an alternative time period for increment consumption emissions.

Final Clarification Regarding the Effect of the Draft NSR Workshop Manual

- **Current Guidance:** The NSR Workshop Manual was developed in 1990. It was never finalized as official EPA guidance but has been heavily relied on for the last 18 years for information on how to conduct PSD air quality analyses.
- **NFR:** The final rule states that the Workshop Manual cannot be relied on as final agency policy, except for those provisions that have been acted on in formal notices, actions, etc. It notes that from the Workshop Manual does not reflect or establish a final statement of EPA policy or an authoritative interpretation of EPA regulations.
- **Comments:** This issue is of concern to many Regional Offices, as well as OECA. Region 5 did not formally comment on this issue. However, vacating the workbook in this manner, without any replacement, is problematic. The NSR Workshop Manual has been a clear, concise reference for both reviewers and permit applicants. If the Agency eliminates the manual as a statement of EPA guidance on how to conduct BACT and air quality analyses under PSD, it will create a vacuum that will leave each PSD applicant and each permitting agency with an opportunity to devise its own protocol; there will be no chance for national consistency, no reliable benchmark for a court to determine if an analysis is adequate and less certainty for applicants when they present a protocol to a permit authority. The Agency and the EAB already acknowledge that the NSR Workshop Manual is not a binding, final Agency action. However, the EAB has relied on the NSR Workshop Manual as a touchstone against which to weigh permitting matters, as have Courts. Identifying the Manual as no longer even representing an authoritative interpretation of EPA regulations completely undermines this history and will undermine the concept of due process for applicants and the public alike, since they will have no idea what the reviewing agency, the EAB or a Court will use as criteria to determine the adequacy of a BACT determination (for example).

Known Regional positions to date:

Region 5 requested responses from the Regions by COB July 28, 2008. It is our preliminary understanding that Regions 9 and 10 may nonconcur. Region 8 has recommended to its RA that they abstain with comments that point to Region 8's public record on these modeling issues from our dealings with the State of North Dakota. Several Regions indicated their RAs may seek to have hallway conversations on this topic during the Budget meetings in Washington D.C. on July 27 or July 28.

Regional Recommendation:

The concerns noted above are significant enough to support nonconcurrency. In the alternative, ARD/ORC would recommend the Region abstain.