

# **New Source Review Updates and Issues**

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# Updates

- NSR 1 and SIPs
- RMRR and appeal to the Supreme Court
- Alternative applicability test for EGUs
- NOx increment alternatives
- Ethanol plant major source status
- Indian lands
- IGCC and BACT
- Duke Energy and the Supreme Court

# NSR 1 and SIPs

- December 31, 2002 rule revisions
  - 10-year baseline
  - Actual-to-future-actual applicability test
  - Clean units, Pollution Control Projects
- Court decision June of 2005
  - Vacated Clean units and PCPs
  - Directed EPA to issue guidance on record keeping
- SIPs were due January 2006

# NSR 1 and SIPs

- The Court decision:  
<http://pacer.cadc.uscourts.gov/docs/common/opinions/200506/02-1387a.pdf>
- The NACAA menu of options:  
<http://www.4cleanair.org/InnovationDetails.asp?innoid=3>

# Routine Maintenance Repair and Replacement Rule

- This is the Equipment Replacement Rule
  - 20 % cost test
  - Stayed by the Court December of 2003
  - Vacated by the Court March of 2006
  - Petition to the Supreme Court Nov of 2006
  - The Supreme Court has not yet ruled on whether it will grant the petition

# Routine Maintenance Repair and Replacement Rule

- Court decision on this rule:  
[http://members.4cleanair.org/rc\\_files/3321/EquipmentRepDecision.pdf](http://members.4cleanair.org/rc_files/3321/EquipmentRepDecision.pdf)
- EPA's petition to the Supreme Court:  
[http://members.4cleanair.org/rc\\_files/3704/certpetitionEPAERP.pdf](http://members.4cleanair.org/rc_files/3704/certpetitionEPAERP.pdf)
- States' opposition to this petition:  
[http://members.4cleanair.org/rc\\_files/3826/ERP%20Brief%20in%20Opposition%20for%20Respondents\\_1.pdf](http://members.4cleanair.org/rc_files/3826/ERP%20Brief%20in%20Opposition%20for%20Respondents_1.pdf)

# Alternative Applicability Test for Electric Generating Units

- Concept proposed by EPA October 2005
- Applicability test would be the NSPS max hourly emissions test rather than the PSD TPY test
- Public hearing held December 2005
- EPA has yet to propose regulatory language

# Alternative Applicability Test for Electric Generating Units

- EPA's proposed rule:  
<http://www.epa.gov/fedrgstr/EPA-AIR/2005/October/Day-20/a20983.htm>
- NACAA testimony:  
<http://rapca.org/publications/Testimony/NSRfinalreviewed%20EGU%20TESTIMONY12-8.pdf>

# NOx Increment Alternatives

- Three options proposed February of 2005:  
<http://www.epa.gov/nsr/documents/NO2Preamble02-14-05.pdf>
- NACAA comments:  
[http://members.4cleanair.org/rc\\_files/1663/NoxIncrementsComments.pdf](http://members.4cleanair.org/rc_files/1663/NoxIncrementsComments.pdf)
- EPA affirmed existing increment system September of 2005:  
<http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-20110.pdf>

# Ethanol Plant Major Source Status

- February of 2006 EPA proposed to revise the definition of "chemical process plants" to exclude ethanol plants—this would raise the major source threshold from 100 TPY to 250 TPY for NSR:  
<http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06-2148.pdf>
- NACAA comments:  
[http://members.4cleanair.org/rc\\_files/3402/ethanolcomment-lthd.pdf](http://members.4cleanair.org/rc_files/3402/ethanolcomment-lthd.pdf)

# Indian Lands

- August of 2006 EPA proposal for NSR on Indian Lands:  
<http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06-6926.pdf>
- January of 2007 reopening for comment:  
[http://www.epa.gov/nsr/documents/20070131\\_tribal\\_comment\\_reopen.pdf](http://www.epa.gov/nsr/documents/20070131_tribal_comment_reopen.pdf)
- NACAA comments:  
<http://members.4cleanair.org/files/japIndianlandsNSRcommentwithBB22.pdf>

# IGCC and BACT

- EPA letter issued in December of 2005 stating that BACT analysis did not have to consider ICGG:  
[http://members.4cleanair.org/rc\\_files/3107/igccbact12-13-05.pdf](http://members.4cleanair.org/rc_files/3107/igccbact12-13-05.pdf)
- October of 2006 settlement agreement that the December letter was not an agency final action:  
[http://members.4cleanair.org/rc\\_files/3635/IGCC-BACT\\_Settlement\\_10-06.pdf](http://members.4cleanair.org/rc_files/3635/IGCC-BACT_Settlement_10-06.pdf)

# Duke Energy and the Supreme Court

- November of 2006 the Supreme Court heard oral arguments on two issues:
  - Did the 4<sup>th</sup> Circuit Court decision violate section 307 of the Act?
  - Does the Clean Air Act require the NSPS test for modifications of EGUs?
- A decision is expected some time this Spring

# Duke Energy and the Supreme Court

- Case background:  
[http://rapca.org/publications/NSR\\_Duke/NSR\\_Duke\\_Energy\\_case.htm](http://rapca.org/publications/NSR_Duke/NSR_Duke_Energy_case.htm)
- NACAA amicus brief:  
[http://rapca.org/publications/NSR\\_Duke/STAP\\_PA%20ALAPCO.pdf](http://rapca.org/publications/NSR_Duke/STAP_PA%20ALAPCO.pdf)
- Oral arguments:  
[http://rapca.org/publications/NSR\\_Duke/SupremeCourtDukeEnergy05-848.pdf](http://rapca.org/publications/NSR_Duke/SupremeCourtDukeEnergy05-848.pdf)

# Issues

- NSR 1 and record keeping
- Ozone SIP phase 1 court decision
- Ozone SIP phase 2 reconsideration
- Debottlenecking, aggregation, and project netting proposal
- PM2.5 new source review

# NSR 1 and Record Keeping

- EPA's rule requires a company keep records on a modification only when they determine there exists a "reasonable possibility that [the] project . . . may result in a significant emissions increase."

# NSR 1 and Record Keeping

- The court reasoned that, “EPA has failed to explain how, absent recordkeeping, it will be able to determine whether sources have accurately concluded that they have no ‘reasonable possibility’ of significantly increased emissions.....EPA needs to explain how its recordkeeping and reporting requirements allow it to identify such sources.”

# NSR 1 and Record Keeping

- The Court then concluded, “Because EPA has failed to explain how it can ensure NSR compliance without the relevant data, we will remand for it either to provide an acceptable explanation for its ‘reasonable possibility’ standard or to devise an appropriately supported alternative.”

# NSR 1 and Record Keeping

- The NACAA menu of options gives regulatory language for requiring record keeping for source modifications:  
<http://www.4cleanair.org/PSDFinal.pdf>
- The easiest option to require record keeping for modifications that would be subject to NSR if the actual-to-potential test were in effect

# Ozone SIP Phase 1 Court Decision

- The U.S. Court of Appeals for the D.C. Circuit Court issued a decision rejecting EPA's classification of certain 8-hour ozone nonattainment areas under subpart 1. It also rejected EPA's treatment of NSR, contingency measures, section 185 penalties and conformity because the court concluded that withdrawing any of these measures from a SIP “would constitute impermissible backsliding.”  
<http://members.4cleanair.org/files/DCCircuitCourtdecision122206.pdf>

# Ozone SIP Phase 1 Court Decision

- The basic premise is that if you were classified nonattainment for the 1-hr standard and would still be subject to the subpart 2 requirement of the act (i.e. ozone > the one-hr standard or > 0.09 ppm eight hour, then you should continue to be subject to the requirements of subpart 2
- EPA is considering its response options (March 22 deadline)

# Ozone SIP Phase 2 Rule

- EPA finalized their ozone SIP Phase 2 rule November 2005 [http://members.4cleanair.org/rc\\_files/3064/05-22698.pdf](http://members.4cleanair.org/rc_files/3064/05-22698.pdf)
- Under the existing regulatory structure of section VI, major new sources and major modifications located in nonattainment areas for which the attainment date has not yet passed may avoid the requirement to comply with LAER and obtain source-specific offsets if the new emissions will not interfere with an area's ability to reach attainment by its attainment date

# Ozone SIP Phase 2 Reconsideration

- NACAA submitted comments on EPA's reconsideration stating its opposition to the Phase 2 Rule provision allowing exemption of sources from nonattainment NSR requirements under Appendix S  
<http://members.4cleanair.org/files/ReconsiderationnoticecommentsFINALlthd.pdf>

# Debottlenecking, Aggregation, and Project Netting Proposal

- Debottlenecking: EPA is proposing that emissions from the unchanged portions of the facility be excluded from the NSR applicability test if those emissions have already been taken into account (e.g., if the excluded portions are already covered by an air quality permit). The proposal takes comment on how best to structure these safeguards.

# Debottlenecking, Aggregation, and Project Netting Proposal

- Aggregation: EPA is proposing to clarify how NSR applies when multiple projects are implemented at a facility. EPA proposes to clarify that two (or more) projects must be considered together for NSR applicability (i.e., “aggregated”) if one of them is dependent upon another. The rule will provide more clarity about how dependence will be determined.

# Debottlenecking, Aggregation, and Project Netting Proposal

- Project Netting: Currently, the netting calculation for a project involves a facility-wide analysis of emissions increases and decreases over a five-year period. EPA is proposing to eliminate the need for a facility-wide netting analysis if the net effect of the project itself does not result in a significant increase.

# Debottlenecking, Aggregation, and Project Netting Proposal

- NACAA commented that EPA should have consulted with state and local agencies before proposing its debottlenecking rules, known as NSR IV. The associations also stated that EPA should have assessed the environmental impacts of the changes in accord with Executive Order 12866, should have included record-keeping and reporting requirements in the proposed rule, and should propose regulatory language for Appendix S conforming to these changes for public comment rather than finalizing them without opportunity for comment.

# Debottlenecking, Aggregation, and Project Netting Proposal

- NACAA opposed the legal causation method of calculating emissions for debottlenecked and changed units, and also advocated significant changes in the aggregation proposal. The associations also recommended retention of the current method for figuring NSR project netting.

# Debottlenecking, Aggregation, and Project Netting Proposal

- EPA proposal:  
<http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-15248.pdf>
- NACAA comment:  
<http://www.4cleanair.org/Documents/DebottleneckingwithJPBO1113pm.pdf>

# PM2.5 New Source Review

- September 2005 proposed SIP implementation rule  
[http://members.4cleanair.org/rc\\_files/1404/PM25\\_impl\\_rule\\_and\\_preamble\\_090805.pdf](http://members.4cleanair.org/rc_files/1404/PM25_impl_rule_and_preamble_090805.pdf)
- EPA meeting on PM2.5 issues December 2005  
[http://members.4cleanair.org/rc\\_files/3217/STAPPA%20ALAPCO%20meeting%20notes%20112905%20-final.pdf](http://members.4cleanair.org/rc_files/3217/STAPPA%20ALAPCO%20meeting%20notes%20112905%20-final.pdf)
- NACAA testimony  
<http://rapca.org/publications/Testimony/FinaltestimonyimplementationruleNSR11302005.pdf>

# PM<sub>2.5</sub> New Source Review

- Issues
  - PM precursors: SO<sub>2</sub>, NO<sub>x</sub>, VOCs, and Ammonia
  - Classification of areas
  - Major source thresholds
  - Significant emission rates for both direct and precursor emissions
  - Offset ratios
  - Preconstruction monitoring

# PM<sub>2.5</sub> New Source Review

- Issues
  - Interim issues between finalization of SIP guidance and approval of state plans
    - Continue use of PM<sub>10</sub> as surrogate
    - Update Appendix S
    - EPA could change and delegate *40 CFR part 52.21*
  - Regulatory flexibility for rural transport areas

# PM2.5 New Source Review— NACAA Comments

- Support regulation of precursors, with flexibility for states on ammonia and VOCs
- Recommended thresholds for direct PM emissions of 10-50 TPY (depending on classification of area)
- Recommend significant emissions rate (for modifications) of 10 TPY (direct PM) and 40 TPY (precursors)

# PM2.5 New Source Review— NACAA Comments

- Recommend inclusion of condensables, with rule definition and test method
- Recommend promulgation of a PM<sub>2.5</sub> increment system
- Recommend development of modeling guidance, especially for precursors
- Recommend development of significant impact (ambient) levels

# PM2.5 New Source Review— NACAA Comments

- Preconstruction monitoring may be necessary, especially around CAFOs
- Recommend flexibility in offset ratios, especially if precursor emissions are offset by ground-level direct PM reductions
- Recommend that interpollutant trading require modeling for benefit
- Continue to use PM<sub>10</sub> as surrogate

# Conclusions

- There are a lot of unsettled NSR issues
- The Duke Energy Supreme Court case could change NSR dramatically. Our largest sources of emissions could potentially be allowed to increase annual emissions without going through NSR. How do you run an effective PSD program under such conditions?

# Conclusions

- States and locals need to stay focused on good controls. Good BACT/LAER installations are preferable to detailed permit restrictions
- The best time to install good controls is at the time of source installation/modification
- The only way to control air pollution is to control air pollution