SSM and NSR: The Boys are Back in Town

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Agenda

- SSM – History, status, and expected actions
- NSR – Recent EPA actions
SSM SIP Call

- EPA published the final rule on June 12, 2015
  - Granted a 2011 Sierra Club Petition
- 36 states, including Florida, directed to revise their SIPs by November 22, 2016
SSM SIP Call

- EPA included a revised SSM Policy
  - No automatic or discretionary exemptions
  - Allows work practice standards, if the state considers 7 criteria
  - Allows enforcement discretion, but cannot bar EPA action or citizen suits
  - No more affirmative defenses
SSM SIP Call – Litigation

- 19 states, including Florida, and several industry petitioners, challenged EPA’s SIP Call in the DC Circuit
- Sierra Club and others intervened in support of EPA
SSM SIP Call – Litigation

- **Status:**
  - Case briefed in 2016, and oral argument was set for May 8, 2017
  - Order on April 24th postponing oral argument, and placing case in abeyance
    - Oct 16, 2018 EPA Status Report -- EPA is continuing review of SIP Call, and partially granting Texas’ Petition for Reconsideration
SSM SIP Call – Florida’s Rules

  - Excess emissions during startup, shutdown, malfunction, boiler cleaning, and load change
  - Approved by EPA in 1982
  - Only applies to SIP limits (e.g., 62-296), not NSPS or NESHAP limits
Despite persuasive comments, EPA concluded that Florida’s rules:
- Create impermissible automatic exemptions
- Are not part of a specific SIP limit
- Are not directly enforceable against the source

EPA provided no evidence of NAAQS issues
SSM SIP Call – FL SIP Revision

- DEP revised Rule 62-210.700
  - Added sunset date of May 22, 2020, and new Rule 62-210.710
- Submitted SIP revision on November 22, 2016, which remains pending before EPA
- Continuing work on revisions to Chapter 62-296
SSM SIP Call

What happens next?

Main options:

- Restart litigation
- EPA action on SIP Call and policy
- EPA action on individual state SIP submittals
- DEP rulemaking regarding Chapter 62-296, and updated SIP submittal
SSM – What Should Sources Do?

- Identify SIP limits in permits
- Assess how often the unit relies on SSM rules
  - For which pollutants
  - Are there control equipment restrictions
  - Are there monitoring challenges
- Participate in any rule and SIP revisions
- Prepare for potential permit revisions
NSR – Recent EPA Actions

- Dec 7, 2017 – Memo regarding Actual-to-Projected-Actual Applicability test
  - Source can manage post-project emissions to avoid applicability
  - EPA will not second-guess pre-project projections
  - EPA can enforce, however, if project actually causes a significant increase
NSR – Recent EPA Actions

- Jan 25, 2018 – Memo reversing “Once in, Always in” policy for NESHAPs

- March 13, 2018 – Memo regarding Project Emissions Accounting (step 1)
  - Allows consideration of project decreases in step 1, when source determines significant emissions increases
  - Step 2 involves contemporaneous, facility-wide increases and decreases
NSR – Recent EPA Actions

▪ April 30, 2018 – Memo regarding “Common Control”
  ▪ Aggregate facilities when one entity can dictate compliance (more than merely influence)
  ▪ Previously, EPA used a support or dependency analysis

▪ Sept 4, 2018 – Draft Memo regarding Adjacency of facilities
  ▪ Focus solely on proximity, not functional interrelatedness
NSR – Recent EPA Actions

▪ Nov 9, 2018 – Draft Policy regarding “Ambient Air”
  ▪ To exclude an area, allows “measures, which may include physical barriers, that are effective in deterring or preventing access”
  ▪ Previously, only excluded an area when public was precluded by a fence or other physical barrier

▪ Nov 15, 2018 – Final action regarding Project Aggregation
  ▪ Must aggregate projects if “substantially related”
    ▪ Presumed not, if greater than 3 years apart
  ▪ Distinct from the April 30 facility-aggregation memo