

McIlvaine Company Hot Topic Hour

Impact of Ambient Air Rules for PM2.5 and Ozone

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New Source Review (“NSR”) Background

- NSR is a permitting program that applies when a source is constructed or modified.
- NSR consists of three distinct programs: nonattainment NSR; prevention of significant deterioration (“PSD”); and minor NSR.

NSR Background (cont.)

- Applicability of nonattainment NSR
 - Nonattainment areas
 - New major sources/modifications to existing major sources
 - Significant net emissions increase

NSR Background (cont.)

- Implications of triggering nonattainment NSR
 - Lowest Achievable Emissions Rate (“LAER”)
 - Emission reduction credits (“ERCs”)

Federal NSR Requirements for PM2.5

- On May 16, 2008, the Environmental Protection Agency (“EPA”) promulgated “Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers (PM2.5),” 73 *Fed. Reg.* 28321 (the “Federal PM2.5 NSR Rule”).
- The Federal PM2.5 NSR Rule became effective on July 15, 2008.

Federal PM2.5 NSR Rule (cont.)

- The Federal PM2.5 NSR Rule establishes requirements for states for implementing NSR for PM2.5 (including PM2.5 precursors: SO₂, NO_x, VOC, and ammonia).
- The Federal PM2.5 NSR Rule identifies a significant emissions rate for PM2.5 of 10 tons per year (“tpy”).

PM2.5 in Pennsylvania

- Nonattainment areas include (based on 1997 PM2.5 NAAQS):
 - **Philadelphia area:** Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties
 - **Pittsburg area:**
 - Beaver, Butler, Washington, and Westmoreland Counties
 - Allegheny, Armstrong, Greene, and Lawrence Counties (partial-county designation)
- Electricity generation sector produces a majority of PA's PM2.5 emissions

PA's Implementation of NSR for PM2.5

- In February, 2010, the Commonwealth of Pennsylvania proposed to amend its NSR regulations to incorporate the requirements under the Federal PM2.5 NSR Rule.
- PA's proposed PM2.5 NSR regulations are *more stringent* than the Federal PM2.5 NSR Rule.

PA's Proposed PM2.5 NSR Amendments

- Consideration of fugitive emissions in determining potential to emit (e.g., emissions from material transfer/handling activities, storage piles, parking lots and paved/unpaved roads, etc.)
 - Possible meaningful implications for coal-fired power plants
 - Imprecise calculation methods

PA's Proposed PM_{2.5} NSR Amendments

- Aggregation of de minimis emission increases over 10-year contemporaneous period
- Concept first introduced as part of PA's NSR program to address NO_x and VOC in ozone nonattainment areas

PA's Proposed PM_{2.5} NSR Amendments

- Application of NSR to PM_{2.5} precursors
 - Will each pollutant be evaluated individually for major source determinations/evaluation of emission increases?

Potential Challenges for Major Sources in PA's Nonattainment Areas

- Interference with business; discouragement of new projects/efficiency enhancements
 - Compliance costs; ERCs for PM_{2.5} are extremely expensive and scarce (if available at all)
 - Delays resulting from NSR permitting process

Potential Industry Impacts Beyond NSR Implementation

- Regulating PM2.5 in air toxics (diesel particulates) context (e.g., New Jersey)
 - Sources include industry and utility sources, manufacturing and commercial sources, mobiles sources, and construction equipment

EPA's Proposed Rule to Reduce Interstate Transport of PM_{2.5} and Ozone

- On August 2, 2010, EPA issued the proposed "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone," 75 *Fed. Reg.* 45210 (the "Proposed Transport Rule").
- The Proposed Transport Rule would replace the Clean Air Interstate Rule ("CAIR").

EPA's Proposed Rule to Reduce Interstate Transport of PM2.5 and Ozone (cont.)

- If finalized, the Proposed Transport Rule would:
 - apply to EGUs in 32 states;
 - restrict SO₂ and NO_x emissions which affect downwind states' ability to attain/maintain compliance with the PM_{2.5} and Ozone NAAQS; and
 - implement an allowance-based trading program, based on state-level emissions budgets.

EPA's Proposed Rule to Reduce Interstate Transport of PM_{2.5} and Ozone (cont.)

- Possible implications for affected EGUs

Questions?

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