Project Aggregation

Air & Waste Management Association
Louisiana Section

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Overview

• Regulatory Timeline
• Project Aggregation Proposed Rule 2006
• Project Aggregation Final Rules 2009/2018
  ➢ Definition/Criteria
  ➢ Examples
• Project Emissions Accounting
Regulatory Timeline

- 6/02: Proposed Rule
  NSR Improvements: Aggregation Debottlenecking Project Netting

- 9/06: Final Rule
  - NSR Improvements: Aggregation Debottlenecking Project Netting

- 1/09: EPA extends stay of effective date of final rule 12 months

- 2/09: EPA stays effective date of final rule 3 months

- 5/09: EPA proposed to revoke final aggregation rule

- 3/10: EPA extends comment period while litigation is pending

- 5/10: Administration Change
  Presidential Memorandum to Streamline permitting/reduce regulatory burden

- 1/17: Completes reconsideration
  Lifts administrative stay
  November 15, 2018 Effective date

- 11/18: Proposed rule updates to Project Emissions Accounting

- 8/19: Spiritenv.com
Initial Proposal 2006

• Previously, project aggregation based on the United States Environmental Protection Agency ("US EPA") letters and memos.
• Intent was to define "technical dependence" and "economic dependence" by regulation.
• Universally apply terms and reduce subjective nature of the aggregation test; "bright line" test.
• Requested comments on what project timelines could be presumed separate projects.
Final Rule 2009/2018

• Decided regulatory “bright lines” should not be adopted. Too prescriptive.
• 2009 final rule to clarify interpretation of project aggregation. No regulatory language actually changed.
• So why are we talking about this??

• Project aggregation describes the process of grouping together **multiple, nominally-separate but related**, physical changes or changes in the method of operation into one physical or operational change, or “project”.

• Physical or operational changes that are “substantially related”.

- Activities that have a substantial technical or economic relationship.
- Indicators include projects that occur close in time and are functionally interconnected.
Substantially Related Example

• Installation of burners on a utility boiler
  &
• Required modification to the air handling system to avoid severe impairment when operating the new burners

Technically Related
Substantially Related Example

• Installation of a process heater to make a new product

&

• Installation of a tank to hold the new product

Technically Related
Substantially Related Example

• Auto manufacturer modifies a boiler &
• Change made in the coating line

Not Necessarily Technically Related

• Retrofit boiler for higher pressure steam for steam pump elsewhere.
• Coating line may use heat from boiler but not necessarily the higher pressure steam.
Evaluating Project Aggregation

• **Timing Indicators**
  - Changes separated by three (3) or more years are not “substantially related” (Maybe 🧐).
  - A source does not have to group changes based on timing alone.

• **Application of funding (i.e., same capital improvement project).**

• **Business unit interactions.**

• **Changes are not required to be aggregated simply because they support the plant’s overall basic purpose.**
Evaluating Project Aggregation

• **Timing**: Time between multiple minor source applications
  - 1993 3M-Maplewood letter: “EPA will closely scrutinize minor source permit applications that occur over a short time period (e.g. one [1] year or 18 months) and which would otherwise be subject to major NSR if their emissions were aggregated”
Evaluating Project Aggregation

2007 letter (Pennsylvania Department of Environmental Protection regarding United Refinery), US EPA determined:

- Projects conducted over more than five (5) years, directly impacting multiple emission units, and were a single, on-going project based on:
  - Modifications that were related to an overall goal of “ultimate compliance with the Tier 2 gasoline standards”
  - Knowledge of the overall goal prior to the multiple modifications (“the overall scope of the project was known in 2002” and financially planned for)
  - Successive modifications were dependent on previous modifications (i.e., one [1] project affected by another)
Evaluating Project Aggregation

If a project is defined as one (1) project, can manage timelines and funding using multi-phase permitting:

One (1) project spread over many years:

• Each phase may have different “commence construction” dates
• Each phase may have different authorized emissions

Watch changes in non-attainment status (may require re-evaluation of the whole project)
Evaluating Project Aggregation

• **Application of funding**: Financial ties between projects.
  - Can go all the way up to holding company
  - Are there financial dependencies between the projects?
  - May have to research contracts, etc.
Evaluating Project Aggregation

- **Business unit interactions:**
  - Is each project economically viable long-term as a "stand-alone"?
  - Are production projections dependent on each other?
  - Are shutdowns planned so one (1) unit operates while the other is down to protect financials?
Evaluating Project Aggregation

2013 letter (EPA to J.R. Simplot Company Sulfuric Acid Plant)

• Project included adding control due to consent decree requirements.
• Projects also included an increase in production from two separate units to offset the cost of controls.
• Indicator was multiple minor modification applications within a short period of time.
Evaluating Project Aggregation

2013 letter (EPA to J.R. Simplot Company Sulfuric Acid Plant)

- EPA’s own analysis of the economics:
  - Sulfuric acid produced at the two units is the same product and fed to shared tankage, thus commingled.
  - Simplot coordinates shutdown for unit #300 and #400 for turnarounds each year so that at least one plant is operating at all times.
  - Therefore an increase in production at one plant must be seen as an increase in production that supports an overall increase in commingled downstream operations.
Supporting Plant’s Overall Basic Purpose

- 1993 3M-Maplewood letter:
  “These emissions and thereby modifications cannot be presumed to be independent given the plant’s overall basic purpose to support a variety of research and development activities”

- US EPA had concern that this was not an appropriate criterion for aggregating projects.

- Projects that serve the overall basic purpose of the plant but are unrelated should not be aggregated.
Project Aggregation Example

Two (2) units at a single site

Olefins Unit
Olefin 1 & 2
(Project No. 1 to increase production of Olefin 1)

Olefin 1
Sold to Off-site Buyer

Polymer 2 Unit
Olefin 2
(Project No. 2 to increase production)

Off-site Olefin 2
Project Aggregation Example

Example: Two (2) units at a single site

- Should the projects be aggregated? No
- Project 1 – Increases Olefin 1 production; 100% sold to offsite buyer; Olefin 2 is not affected
- Project 2 – Increases Polymer 2 production through an increase in offsite Olefin 2 purchases
US EPA’s “Project Emissions Accounting” ("PEA") proposed rule (8/2019):

- Step 1 of the New Source Review ("NSR") major modification analysis now clarifies the use of emission increases and decreases.
- US EPA plans to take comments on the interaction of PEA and project aggregation during this rulemaking.
- Codifying regulatory language to be consistent.
- States are not required to wait for the final rule effective date (Louisiana in the process of making changes).
QUESTIONS?

W. Scott Hyden
Program Director – Air Quality

shyden@spiritenv.com
(281) 664-2840