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Subject: EPA's comments on IDEQ SIP Submittals

Hi. Thank you for a very productive discussion on March 7. Attached are our follow-up comments and suggestions for the rules for nonmetallic mineral processing plans, facility emissions caps, and sulfur content in fuels. Please let us know if you have questions about any of the comments and suggestions. We will also follow up with you about the process for withdrawing the three current SIP submittals. We look forward to continuing to work with you on these rules as you move forward with the rule revisions.

Thanks again,
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Comments and suggestions on “parked” IDEQ SIP submittals

Rules for Control of Nonmetallic Mineral Processing Plants

On its face, the Nonmetallic Mineral Processing Plants (NMPP) rules (Sections 790 through 799) appear to be an alternative to the Permit to Construct rules (Sections 200 through 222). However, IDEQ indicates that the plants subject to the NMPP rules would never actually be subject to permit to construct requirements and IDEQ has indicated it does not believe the NMPP rules need to be submitted as part of the SIP.

There is no language in the NMPP rules that legally precludes NMPP's from using the NMPP rules if they are in fact subject to the permit to construct requirements. To the contrary, the definition of a NMPP in Section 011.03 specifically states that the equipment can be located anywhere, including at other sources which would clearly be subject to permit to construct requirements, including potentially to major PSD/NSR requirements. Given the current definition of a NMPP and language in the NMPP rule, EPA does not see how the rule would not grant relief from the requirement for a permit to construct for some NMPP's.

EPA recommends that IDEQ revise the rule to add a provision similar to the language in the minor NSR exemption provisions (e.g., 58.01.01.220.01(b)) to simply ensure that the permit by rule can only be used for NMPP's that are not part of a new major facility or proposed major modification. Such a provision would ensure that the permit by rule only applies to NMPP's that are, in fact, minor sources/modifications and as such, this permit by rule would be adequate for EPA to propose to approve as an alternative to case-by-case minor NSR for NMPP's.

While it is possible that IDEQ could revise the rule to restrict where a NMPP can be located and then submit an explanation as to how the NMPP rules work sufficient to demonstrate that the NMPP rules are not needed to be in the SIP as an alternative to the permit to construct rules for NMPP's subject to NMPP rules. To make such a demonstration, IDEQ would need to revise the rule and then demonstrate three things:

- (1) The NMPP rules can only be used by stand-alone NMPP's and not NMPP's that are associated with, or part of, any other source (such as a hot-mix asphalt plant) where there could be sources of emissions other than those associated with a NMPP.
- (2) The current permit to construct rules (major and minor) exclude fugitive emissions from counting towards applicability for this source category, and it is highly unlikely that there would be sufficient non-fugitive emissions from this source category alone to exceed the major or minor permitting thresholds.
- (3) The provision in the NMPP rules that restricts operation of an NMPP to no more than 12 months at any site ensures that any internal combustion engines remain classified as non-road engines rather than as stationary engines.

We believe that such changes would result in narrowing the applicability of the rule to the point that it would not have as much value as a true permit by rule alternative for this source category.

Facility Emissions Cap (FEC)

These provisions (Sections 176 through 181) are very innovative, but ultimately not approvable as currently drafted. The FEC is a combination of a minor source plant-wide applicability limit (PAL), a flexible minor source operating permit, and a mechanism for pre-approving modifications. But it fails to include adequate safeguards to prevent major modifications from escaping PSD/NSR review (e.g., there is no limitation on the amount of increase allowed under the "growth component") nor that changes made under the "growth component" remain consistent with the dispersion modeling used to establish the FEC (specifically, the rule fails to include the necessary replicable procedures to allow for completely unfettered changes to be made in the future that are different than what was identified when the FEC was established).

Three changes to the rule language can fix these problems and make this rule something that Region 10 would be willing to propose for approval. However, as we discussed, we may need to get input from other EPA Regions on the draft rule language as part of EPA's SIP consistency process.

- (1) In order to ensure that the facility continues to be a non-major source after the operational variability component and the growth component are added to the baseline actual emissions, the annual facility wide emissions limit should be in the form of a potential to emit limit and be set at a value that is less than the applicable major source threshold. (Note that if the facility is currently a non-major source and will become major as a result of the proposed growth, then it can get a PAL under the major source permitting rules.)
- (2) The operational variability component needs to ensure that the level of increase for pollutants that don't have a SER (i.e., the second provision of the definition) also restricts the increase to no more than the facility's PTE for that pollutant.
- (3) The provisions in section 181 that allow for limited changes that were not specifically included in the original modeling for the growth component need to be strengthened such that they are similar to EPA's concept of an approved replicable methodology (see 40 CFR Part 70). Specifically, since the FEC is revisited every 5 years, the rule could simply require that the impact analysis for such changes during the 5-year duration of the permit be done using the same exact modeling as was done to establish the FEC but with the addition of the emissions from the heretofore un-modeled changes. That will ensure that the public has had the opportunity to review and comment on the modeling analysis (model parameters, meteorological data, background data, etc.) that was both used to establish the FEC and would be used during the 5-year duration of the FEC to review the impact of any additional changes. If the FEC is then re-established for a new 5 year period, a new modeling analysis, using newer models, databases, background values, etc., would be used.

Rules for Sulfur Content in Fuels

The exemption provision in Section 725.05 is too broad for approval as a Director's discretion provision, especially the "or other means" language and the fact that the rule includes no provisions for the approval process. This provision could be made approvable either of two ways:

- (1) By turning it into a simple alternative compliance option – e.g., installation of a SO₂ control device which reduces hourly controlled emissions to less than maximum hourly emissions from combusting complying fuels, along with appropriate testing and monitoring requirements for the control device (or devices); or
- (2) By tightening up the Director’s discretion provision to clearly indicate that the alternative to using complying fuels is the installation of SO₂ controls along with clear criteria of how equivalent emissions would be demonstrated. The provision would further state that the demonstration would be made in an application for a Tier II operating permit and the appropriate monitoring, recordkeeping, and reporting requirements for the particular control device would be established in the Tier II operating permit.

For option (1), no case-by-case approvals would be needed, but IDEQ would need to draft rule language sufficient to ensure compliance under the allowed control techniques. For option (2), a case-by-case approval would be needed but it would allow IDEQ to establish source-specific compliance conditions in permits rather than in the rule.

In both cases, we suggest re-labeling this provision as an alternative rather than an exemption, since the clear intent is to ensure that emissions are no greater than they would be when burning complying fuels.