

NTAA / EPA Tribal Air Call Minutes

October 10, 2007

3:00 pm – 4:00 pm EST

(866) 299-3188

Conference code – 919 541 5624#

EPA Attendees: Sara Barthlomew, Darrel Harmon, Tami Laplante, Angel McCormick, Laura McKelvey, Mike Papp, Charlene Spells, Mike Trutna

Tribal Attendees: Kevin Greenleaf, Stephen Hartsfield, Milly Holly, Mel Joseph, Dan Katlin, Sam Kitto, Charles J Lippert, Justin Raglin, Lisa Riner, Bill Thompson, Marleen Thompson, Brandy Toft, Joy Wiecks, Maureen Zeise

EPA Contractor: Beth Friedman, EC/R, Inc.

Wildland and Prescribed Fires. Charlene Spells briefed the Workgroup on the status of the Agency's Interim Fire Policy. The Interim Policy is on a tight schedule to be finalized by July 2008. The intent is to address agricultural burning to augment the existing policy on wildland and prescribed fires. Changes in related programs such as the PM NAAQS, Regional Haze, Exceptional Events, and Conformity Rule make this an optimal time to coordinate efforts on the policy. EPA is also responding to direction from the Office of Management and Budget to develop guidance using an open and transparent process.

There was a conference call to start the discussion on September 20, and EPA is looking for input on the next call on October 18 (2:00 pm to 3:30 pm, EST; (866) 299-3188 [code 919 541 4048#]). In particular, they are looking for feedback on the 10-year old policy in terms of what is working and what is not. This is the first of several calls. Because of the extent of interest, calls are currently planned to ensure that all interested parties can participate. *You can also email your comments to Charlene (spells.charlene@epa.gov). Laura McKelvey will send the group a reminder about the October 18 call.*

Flexible Air Permitting Rule. Mike Trutna briefed the Workgroup on the recently proposed flexible air permitting rule. The rule was proposed on September 12 and comments are due by November 13. However, EPA is considering a request to extend the comment period for 60 days. The proposal addresses clarifications and revisions to the minor NSR program, Title V permitting, and major NSR. Laura noted that this rule is separate from the PSD increment modeling rule where the comment period has closed, but EPA is still consulting with the Tribes.

Mike explained that a flexible air permit is one that allows for upfront approval of subsequent changes without further review. The permit identifies all applicable requirements and contains permit terms that assure compliance with all of these requirements. There are several permitting approaches available to implement this concept. These include:

- Advance approval under minor NSR
- Green groups under major NSR
- Alternative operating scenarios

- Approved replicable methodologies (ARMs)
- Non-applicability approaches (e.g., establish boundary conditions to avoid PSD by putting a plant-wide applicability limit (PAL) in the permit).

The permit that incorporates any or some combination of these approaches establishes the architecture for their implementation and includes all of the applicable requirements (e.g., MACT, NSPS, NSR).

This program was developed based on several years of pilot program experience in developing flexible air permits. In August 2000, EPA developed a draft policy, but realized that information on the effectiveness of the pilots was needed. This resulted in a 2002 reports analyzing six pilots that proved the program achieved as good as or better environmental protection as the traditional approach. They found 30 to 85 percent additional emissions reductions from the pilot sources that were specifically evaluated. Pilot sources relied upon the flexibility in their permits and made frequent changes over the life of their permits. The permitting authorities faced greater startup costs associated with developing the pilot approaches, but these were offset within 2 to 3 years by the lower administrative costs (e.g., fewer permit revisions). The pilots also provided greater information to the public and permitting authority than available under traditional approaches. For example, sources provided more detail on operating conditions and emissions at the site to set and implement boundary conditions such as plant-wide emission caps.

EPA believes that proposal of the flexible air permitting mechanism is needed to facilitate mainstream use of the techniques included in the proposal. Most of these techniques can be applied with existing regulations and policy, although some States may need to seek additional capabilities to implement them all. The exception is the Green Group concept, which presumptively would be implemented through changes to the major NSR rules (parts 51 and 52).

Mike emphasized that permitting authorities would not be required to issue flexible air permits to any source that asks for one. For example, a permitting authority can deny a flexible permit to any source that is a “bad actor” or if there are other concerns about the ability and intent of the source to properly maintain its permit conditions.

There are three dimensions to the proposal. First, it is a clarification to the existing program structure that encourages permitting authorities to use advance approval techniques in minor NSR permits. Such advance approval could include identifying categories of changes that would be allowed under an emissions cap contained in the permit. Such a cap would be based on analysis showing that the level of the cap does not contribute to changes in the violation of the ambient standard. If it is also designed to serve as a PAL (plant-wide limit that the source agrees to meet for a 10-year period) or PTE limit restricting source emissions to levels below those qualifying it as a major source, then major NSR would not apply to changes achieved under the limit.

Second, the title V program (parts 70 and 71) would be used to define and clarify alternative operating scenarios (modes of operation and their associated applicable requirements) and ARMs (formulas or protocols in permits that can be used to establish new compliance

conditions such as the operating temperature of a control device). Mike pointed out that minor NSR advance approvals could be incorporated into a title V permit, so long as any other applicable requirements (e.g., MACT) are addressed as well.

Third, Green Groups are a specific form of advance approval under major NSR. A Green Group would be a complement to a PAL. Instead of a plant-wide limit, a Green Group is based on a portion of the plant that goes through major NSR (and is ducted to a common air pollution control device that must meet BACT or LAER, as applicable) and is subject to a limit that is restricted to a level determined to be protective of the applicable national ambient air quality standards and the increments established to protect visibility and other air quality values. This part of the proposal presumptively would require a rule change to implement.

The role of public review in assessing the impacts of downstream changes under a flexible air permit was discussed. Mike said that public review is not eliminated, but, instead, it is done upfront during the permit review process that establishes the flexible air permitting approach(es). During this process, the permitting authority has an obligation to ensure that the public understands worst case outcomes of various operating scenarios for example and the type of changes that would be allowed over the life of the permit. The Workgroup noted that this process does not allow for the public to change its mind about impacts or allow for groups that were not part of the original discussion to participate as the source implements its approved changes. This could include new residents in the area or even new Tribal air programs that come on line after the permit is issued. Mike noted that he believed most, if not all, of the pilot permits had 5-year durations (i.e., the title V permitting cycle), and the title V renewal process provided an opportunity to raise concerns. He added that the permitting authority has the ability to enhance public participation procedures in the way it holds meetings, sets review periods, and accepts public comments. Some of the pilot sources encountered significant early opposition from environmental groups and the public, but by the end of the process these concerns were resolved with a high degree of satisfaction.

Clearly, an issue the Tribes might consider in their comments on this rule is permit duration, which may be an issue for minor NSR permits awarded to minor sources in the absence of an ongoing title V operating permit. On the other hand, the source invests in the flexible process to obtain certainty in operations. If the period is too short, they will not be willing to participate. Mike noted that the proposal includes a 10-year duration for Green Group permits, which is consistent with certain other NSR programs (e.g., PALs). He added that adding a limit to the minor NSR advance approval would require rulemaking under a separate package to implement.

Another related issue is one of surveillance and oversight. To the extent there is uncertainty in how authorized changes are being implemented, then the longer duration of the permit causes more concern. The Workgroup also noted that it is already difficult to track sources. They often request notifications from their States about certain source activities, but those agencies are so overwhelmed that the information is often not provided. Laura suggested that a possible comment would be to encourage the States to actively involve the Tribes in reviewing and tracking these permits. Mike noted that the pilots sources, under the advance approval of minor NSR, were often required to give the States advance notice of at least the

additions of new emissions units. This type of information could be made available to the Tribes.

The Workgroup asked if any of the pilots had longer than 5-year duration. Since all of them were believed to be implemented via title V operating permits, the public would have an opportunity to raise concerns every 5 years. The ability to address these concerns will depend on how relevant the concerns are to the particular applicable requirement of concern. Several of the pilot permits have already gone through their first title V renewal cycle.

The Workgroup agreed that additional discussion on this proposal would be useful. They suggested that it this should include an example of a pilot permit. This call is tentatively scheduled for Thursday, November 1.

Office of Atmospheric Programs. The Climate Change group is developing a workshop for early December in RTP to talk about adaptation. They want to know if there is interest in this topic from Indian Country and if they want to be involved in developing an agenda. *Send Laura or Steve an email if you are interesting in participating.*

Tribal Consultation Policy. Input was requested on the policy as well as the OAQPS strategic plan. Are these documents on target? *Please give Laura your feedback by the end of October or early November.*

PSD Increment Modeling. EPA is still taking Tribal comment on this rule and is in the process of setting up a consultation approach. A letter will be going out to Tribal leaders to see if they need more information. EPA will be meeting with the Class I area Tribes and would welcome additional participation. *There will be a call on October 11 at 4:00 pm EST to discuss some of the critical public comments that have already been received on the rule.*

Next Tribal Air Call. As discussed above, a follow-up call to discuss flexible air permits is tentatively scheduled for November 1. The next regularly scheduled Workgroup call is November 7. PM2.5 significant impacts will be discussed.

Same call in number. Agenda is currently being developed and will be posted on the OAR Tribal website and the Yahoo NTAA Tribal Listserve. Times are as follows:

Eastern Standard Time 3:00 – 4:00 pm
Central Standard Time 2:00 – 3:00 pm
Mountain Standard Time 1:00 – 2:00 pm
Pacific Standard Time 12 Noon – 1 00 pm
Alaska Standard Time 11:00 – 12:00 Noon

Any questions or comments please direct them to Tami Laplante, (919) 541-1915, laplante.tami@epa.gov. And please let us know if we've misspelled anyone's name or missed annotating their attendance.