

WESTERN STATES AIR RESOURCES COUNCIL



August 3, 2007

Air and Radiation Docket and Information Center
U.S. Environmental Protection Agency
Mail Code 6102T
1200 Pennsylvania Ave., NW
Washington DC 20460

Attn: Docket ID No. EPA-HQ-OAR-2006-0888

Dear Sir or Madam:

The Western States Air Resources (WESTAR) Council, an association of 15 western state air quality managers, appreciates the opportunity to comment on the Proposed Rule titled Prevention of Significant Deterioration New Source Review: Refinement of Increment Modeling Procedures, published on June 6, 2007. WESTAR's concerns about the ineffectiveness of the PSD program as the primary tool for managing air quality in attainment areas are well known to EPA. In May 2005, WESTAR provided 14 "Recommendations for Improving the Prevention of Significant Deterioration (PSD) Program" to EPA, several of which are cited in EPA's proposal. We welcome EPA's proposed rule as an important first step in reforming PSD.

WESTAR's comments are organized to follow the outline of EPA's proposal, with specific references to our May 2005 recommendations. While we recognize that the scope of this rulemaking is limited to the refinement of modeling procedures, our expectation is that EPA will address other important deficiencies in the current PSD program in subsequent rulemaking. WESTAR's comments on this proposal assume, based on the discussion in subsection C. of the Background section of the preamble that EPA will follow this rule with a separate rulemaking to address additional concerns that WESTAR and others have raised. Quoting from WESTAR's letter to Jeffrey Holmstead transmitting our recommendations:

"The enclosed recommendations represent a unanimous agreement between all of the state and federal land management agency participants, an agreement

500 Union Street, Suite 640, Seattle, WA 98101 (206)254-9142

achieved by carefully balancing the needs of the participating agencies over the past 18 months. Implementing these recommendations will improve the effectiveness and efficiency of the PSD program to protect air quality in attainment areas and in the nation's parks and wilderness areas. We encourage EPA to consider these recommendations in total, thereby maintaining the balance represented in the recommendation package."

In summary, we urge EPA to respond to all of WESTAR's May 2005 PSD reform recommendations promptly in future rulemaking.

General Comments

WESTAR strongly supports EPA's efforts in this rulemaking to provide permitting authorities with broad discretion in the choice of analytical tools to evaluate increment consumption, provided that EPA implements these rules in such a way that the rigor of the increment analysis increases the closer an area is to exceeding an increment, or in instances where an increase in emissions is likely to impact air quality related values (AQRV) in a Class I area. WESTAR's recommendations sought to balance flexibility with clarity -- allowing permitting authorities the flexibility to choose the most appropriate analytical methods to fit the circumstances while ensuring that in all cases, increments and AQRVs will be protected.

In our May 2005 PSD reform proposal, WESTAR recommended two basic approaches to strike an appropriate balance between flexibility and the clarity that a specific set of requirements would offer. In several of our recommendations, we suggested a tiered approach, where the rigor of the analysis would be tied to the conditions in the area -- how close the area is to an increment violation or the condition of AQRVs in areas that would be significantly impacted by a proposed new source. We also suggested limiting a permitting authority's choices to an approved menu of options. In the absence of provisions like these, EPA should identify standards of reliability, consistency, and representativeness to, as we requested in our recommendations, "clarify and articulate methods and procedures for implementing PSD program activities."

Comments on Section II: Background

Footnote 4 on page 31377 describes how significant impact levels (SIL) are currently being used to define the extent of the impact area where an increment analysis must be performed, but there is no commitment on EPA's part to adopt the SILs, as specifically recommended by WESTAR in Recommendation 1: "WESTAR recommends that EPA promulgate the significant impact levels for Class I, II, and III areas that are contained in EPA's 1996 proposed PSD rule." EPA should adopt the significant impact levels as originally proposed in 1996. Doing so would provide permitting authorities with clear and unambiguous authority to

implement the SILs as regulatory thresholds.

EPA's characterization of a four step approach to increment analyses as an "approach that has generally been used in States and EPA Regional Offices" is not accurate. While it is true that some permitting authorities use this approach, others do not.

We understand that this rulemaking is limited to increment modeling procedures, but as we have noted, the level of refinement of the procedures addressed in this rulemaking should be tied to the condition of the airshed, and the condition of the airshed in many cases is driven by non-major, area and mobile sources. We reiterate our view that to be effective, the overall program must address all sources that contribute to significant deterioration through the implementation of an integrated air quality management program that includes, but is not limited to major new sources. WESTAR urges EPA to address these related elements of the PSD program promptly in future rulemaking.

Comments on Section IV: Proposed Clarifications Regarding the Effect of the Draft New Source Review Workshop Manual

In 1990, EPA issued the draft New Source Review Workshop Manual without intending to establish final agency policy. WESTAR believes that whenever EPA intends to establish policy that binds permitting agencies to a specific set of requirements or procedures, such requirements should be adopted through formal rulemaking. Accordingly, we agree with EPA's proposal to clarify that the guidance provided in the Manual is not binding.

Comments on Section V: Proposed Refinements to Increment Modeling Procedures

Section A. This section describes the emission sources that are to be included in a PSD increment consumption analysis. Subsection 1 describes the emissions that are to be included in an increment consumption analysis, and subsection 2 describes how emissions from sources with variances are treated in subsequent increment consumption modeling. WESTAR supports EPA's proposal to clarify that all sources (excluding specific, categorical exceptions) are to be considered in increment consumption analyses.

This section addresses how states that have not historically included mobile sources in their increment analyses are not expected to revisit prior increment assessments, but instead are only expected to include these sources in future assessments. We concur with this approach, and recommend that EPA expand on this approach to address other situations where new information would change past increment assessments. In our May 2005 recommendations¹, WESTAR

¹ Recommendation 11 from Recommendations for Improving the Prevention of Significant Deterioration Program,

expressed an interest in encouraging improvements in technology and technical approaches to emissions measurement and modeling, but noted that under the current rules states may be discouraged from implementing these new tools retroactively for fear that sources will be unfairly penalized. Expanding on the approach outlined by EPA related to the inclusion of mobile source emissions in increment assessments to address the types of situations described in our May 2005 recommendations would significantly mitigate our concerns.

EPA needs to acknowledge in regulation that the reviewing authority may exclude emissions that have an inconsequential impact on the increment analysis. EPA should allow reviewing authorities the ability to establish de minimus size thresholds, and/or exclude source categories, that they deem to have inconsequential impacts.

Finally, WESTAR as an organization has no comment on the issue of emissions from sources with variances. WESTAR believes that this is an important issue that should be addressed in EPA's regulation. However we did not develop a position on this issue in our May 2005 recommendations and will not be able to do so by the comment deadline. EPA should expect comments on this issue from individual members of WESTAR.

Section B. This section describes how emissions are estimated for use in cumulative increment analyses. The underpinnings of EPA's proposal are summarized in subsection 1, wherein EPA compares the difference in rigor needed to estimate emissions for increment consumption analyses versus that needed for an analysis used to determine compliance with a NAAQS. WESTAR agrees with EPA's summary. Our May 2005 recommendations were in large part based on the notion that the rigor of the analysis should be proportional to risk that an increment will be violated or that there could be an adverse AQRV impact. WESTAR supports EPA's proposal to give reviewing authorities discretion in choosing the most appropriate emissions estimates, provided that the choice is justified based on standards of reliability, consistency, and representativeness of the data.

1. Data and Calculation Methods Used to Establish Actual Emissions

EPA proposes to give permitting authorities discretion in choosing the most appropriate method for estimating baseline and current emissions subject to a "general standard of sufficiency." WESTAR's recommendation is to limit a permitting authority's choices to a menu of permissible options, coupled with a set of guiding principles that would be used by the permitting agency to inform the choice. In effect, WESTAR's proposal would establish in advance those choices that meet a standard of sufficiency, providing permitting authorities with both a measure of clarity and flexibility. WESTAR supports EPA's proposal with the following

caveat. If EPA chooses not to provide a list of permissible options and guiding principles as we have suggested, EPA must promptly follow through on their intention to establish general standards of sufficiency that will guide permitting authorities in identifying methods that are reliable, consistent, and representative, and to ensure consistency, EPA must rigorously oversee the implementation of these standards. WESTAR urges EPA to collaborate with permitting authorities on the development of these standards.

In our May 2005 recommendations², WESTAR noted the important role that air quality monitoring can play in situations where representative data are available, and asked EPA to explicitly acknowledge air monitoring as a legitimate tool to complement PSD modeling. The role of air monitoring should be included in any guidance that identifies a “general standard of sufficiency” for data and calculation methods.

2. Time Period of Emissions Used To Model Pollutant Concentrations

EPA proposes to adopt a new definition of “actual emissions” specific to PSD increment calculations. We concur with the discussion in the preamble related to this issue, and, with the inclusion of the clarifying language related to “units” and “emission units” discussed below, we concur with the proposed regulatory language for 40 CFR Part 52.21(b)(21)(i) and (f). The potential risks associated with calculation error in other regulatory programs such as NAAQS impact assessments and applicability determinations warrant a more rigorous analytical approach than what is typically warranted in estimating emissions for the purpose of assessing increment impacts. Accordingly, WESTAR supports EPA’s proposal to adopt a definition of actual emissions specific to PSD increment calculations.

3. Actual Emission Rates Used to Model Short-Term Increment Compliance

WESTAR concurs with EPA’s proposal to “give the reviewing authority discretion to use available data to achieve equitable treatment across sources and consistency in the analysis”, but in the interest of consistency and fairness between permitting agencies, we reiterate our recommendation to limit agencies to a permissible menu of options. By way of explanation, on page 31390 under “Proposed Action”, EPA proposes to add a provision that “...allows permitting authorities to use their discretion to use data that promotes consistency in the analysis and does not bias the analysis in favor of one group of sources over another” (emphasis added). We believe that consistency is important both within a permitting authority jurisdiction as well as across jurisdictions. For that reason, we recommend EPA limit the choices available to a permitting authority, either through a menu of permissible options or a similar mechanism.

² Recommendation 12 from Recommendations for Improving the Prevention of Significant Deterioration Program, Western States Air Resources Council, May 2005

Comments on Proposed PART 51 Amendments, § 51.166(f)(1) and § 52.21(f)(1)

EPA's proposed description for calculating actual emissions in 40 CFR 51.166(f)(1) and 40 CFR 52.21(f)(1) appears to refer only to stationary sources. In both (f)(1) sections, the term "unit" is undefined and is used in an analogous manner to "emissions unit." However, it appears that EPA intended for the (f)(1) descriptions to include mobile and area sources based on the reference to (f)(1) in 40 CFR 51.166(b)(13) and 52.21(b)(13). We request that EPA clarify in section (f) that the actual emissions may include area, mobile and stationary source components. We also request that EPA include an additional subsection, (f)(viii), that allows the reviewing authority to exclude emissions that in their judgment, would have an inconsequential impact on the increment analysis.

We urge EPA to work with the states and other interested parties as this proposal and any subsequent proposals and guidance are developed. If you have any questions, please do not hesitate to contact Dan Johnson, WESTAR Executive Director, at 206-254-9145, djohnson@westar.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Gustafson", followed by a long horizontal line extending to the right.

Brian Gustafson, President
Western States Air Resources Council