

**MEMORANDUM**

**Subject:** Prevention of Significant Deterioration (PSD) Refinements of Increment Modeling Procedures Final Agency Review (FAR)

**From:** Bharat Mathur, Acting Administrator  
Region 5

**To:** Wanda Farrar  
OAR Steering Committee Representative

Region 5, as sub-lead for new source review, provided the draft final rules for PSD Refinement of Increment Modeling Procedures to the Regional Offices with the opportunity to concur, non-concur, or concur with comments on the draft final rulemaking. Attached are comments we received from Regions 1, 2, 5, 6, 7, 8, 9, and 10. Regions 2, 8, 9, and 10 non-concur with comments on the draft final rulemaking. The non-concur positions reflect those of their respective Regional Administrator. Regions 1, 5, 6, and 7 provided comments but did not take a position on the draft final rulemaking. These positions reflect those of their respective Division Director. All submitted regional comments are attached.

In summary, the following are the issues raised by Regions that non-concur on this draft final rulemaking. These issues were also raised by Regions that did not provide an official position on this rulemaking.

- **Annual average emission rates are inappropriate for short term increment calculations.** Use of annual average emissions will underestimate the amount of short term increment consumed.
- **Time periods used to define baseline emissions.** Regions believe the proposed approach is inappropriate and could lead to gaming the increment calculation.
- **Use of proprietary models.** Allowing the use of proprietary models without requiring that the computer code be disclosed for both the reviewing agency and the public could erode the credibility of the agency's permitting actions.
- **Allowing sources to model using allowable emissions instead of actual emission rate.** Allowable emissions must not be used for increment expansion;

otherwise the source would take artificial credit for emissions that it did not actually emit.

- **Conflict with 40 CFR Part 51, Appendix W.** The preamble and regulatory language of this rulemaking conflict with 40 CFR Part 51, Appendix W. This rulemaking should specify which parts of Appendix W are being addressed. Otherwise, any part of Appendix W would be unjustifiably superseded.
- **Removal of 1990 Draft Workshop Manual as guidance.** If the Agency eliminates the manual as a statement of EPA guidance on how to conduct BACT and air quality analyses under PSD, it will create a vacuum that will leave each PSD applicant and each permitting agency with an opportunity to devise its own protocol; there will be no chance for national consistency, no reliable benchmark for a court to determine if an analysis is adequate and less certainty for applicants when they present a protocol to a permit authority. Although the rule claims to retain those elements from the Workshop Manual that have since been incorporated into other policy documents, there are elements of the Workshop Manual that do not appear elsewhere and are central to calculating an increment. The EAB has relied on the NSR Workshop Manual as a touchstone against which to weigh permitting matters, as have Courts. Identifying the Manual as no longer even representing an authoritative interpretation of EPA regulations completely undermines this history and will undermine the concept of due process for applicants and the public alike, since they will have no idea what the reviewing agency, the EAB or a Court will use as criteria to determine the adequacy of a BACT determination (for example).
- **Discretion in emission calculation methodology.** The rule allows the use of different emission calculation methodologies at the permitting authority's discretion. This may result in inconsistent methods for determining increment consumption. This also undermines consultation with EPA Regional Offices on the advisability of allowing a particular methodology. Direction and guidance should be provided by EPA.

Attachments

cc: Regional Air Division Directors