Environmental Protection Network

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A Summary of EPN's All-Hands Call:
PSD Permitting and GHG Regulation
Friday, May 21, 2021

Update on EPN

The EPN Board of Directors completed their strategic planning exercise (see **Rob Wolcott's May 20 email**) and voted in favor of focusing our work in the following areas:
- Providing ideas, expertise, and guidance to the new administration as part of the ***Resetting the Course of EPA*** initiative.
- Assessing the EPA budget and other activities, weighing in when needed, and engaging decision-makers directly as well as via Congress, the media, and working with other NGOs.
- Enabling individual members to provide technical assistance to environmental justice communities and NGOs and training to under-resourced local, state, and tribal governments.
- Working with the EPA Alumni Association to provide training and mentoring for EPA staff and managers; convey to underrepresented communities that federal service—specifically working at EPA—is an important, meaningful career path; and reach out to civic organizations to inform people about EPA's role and work.

PSD Permitting and GHG Regulation

Matt Haber and **Seema Kakade*** provided key highlights of their paper, **Revitalizing Greenhouse Gas Permitting Inside a Biden EPA**, which discussed how the Clean Air Act's Prevention of Significant Deterioration (PSD) permitting program provides an opportunity to make rapid improvements on the reduction of greenhouse gases (GHG).

Much of this work began with ***Resetting the Course of EPA*** and thinking about how to go back to basics and have all facilities/emission sources have state-of-the-art Best Available Control Technology (BACT). Many changes over the last 20 years have reduced the effectiveness of New Source Review (NSR), but changing NSR regulations would be a heavy lift. However, a relatively simple non-regulatory measure that EPA could focus on that would have a large impact is improving the effectiveness of BACT determinations.

BACT is the most effective emissions limitation, considering economic, energy, and environmental impacts. It is intended to be technology forcing; however, early on in its implementation, there wasn't much push to investigate best practices or emerging technologies. There were some permitting authorities that did push innovation (New Jersey in 1989, South Coast Air Quality Management District in mid-1980s; the latter sent engineers to Japan to get ideas); there are others as well, but much less investigation of improved emissions reductions technologies since then. Reasons are many, but the big one is that there is lots of pressure to get permits out but little pressure to push modern technology.

Prior to 2010, PSD covered criteria pollutants, but GHGs were not covered. In 2010, after a court ruling, EPA issued the GHG Tailoring Rule requiring application of PSD to GHGs. Since 2011, sources of GHGs have been subject to PSD permitting, and permitting authorities report their BACT determinations to the RACT (Reasonable Achievable Control Technology)/BACT/LAER (Lowest Achievable Emission Rate) clearinghouse (RBLC). EPA put out six helpful white papers on control technologies for six major emission sources.

Matt and Seema reviewed BACT determinations in the RBLC of CO_2-emitting facilities (70 facilities with 240 sources of GHGs) and found that many of the permitting authorities were just going through the motions. At 63 facilities, the local authority determined that there were "no feasible controls." There were a few exceptions that actually included enforceable measures (many GHG reduction measures actually save money by improving the energy efficiency of the process). However, none of the BACT analyses mentioned EPA's technical white papers, and there was no apparent review of any technical papers, GHG control studies, etc, which was surprising and disappointing. For most industrial processes, the end point for GHG reductions is electrification. Good GHG BACT determinations will help move toward that goal.

The recommendations from this analysis are three fold. First, EPA should create and update its technical white papers. This would be an authoritative resource that would be helpful to permit engineers. The papers should be updated yearly as technology moves quickly. Second, EPA regions should engage in more rigorous review of proposed permits, including commenting on permits. Third, efforts should be made to improve RBLC to make it more user-friendly.

The slide deck from Seema's and Matt's presentation can be found **here**.

***Bios**

Matt Haber is a senior engineer for Eastern Research Group (ERG), based near San Francisco. At ERG, he has assisted a wide variety of government and non-profit clients on air quality issues. Prior to joining ERG, Matt served as Deputy Director for the Air Division of EPA Region 9, where he was actively involved in the tasks of developing air pollution control plans, including control strategies, emissions inventories, monitoring, and enforcement. He also managed the Permits Office, where he oversaw permitting by the Region's 44 permitting authorities. He concluded his EPA career as a Senior Advisor to the Air Enforcement Division Director, where he worked on a number of high-profile issues, including New Source Review cases that were part of the National Enforcement Initiatives and enforcement of the North American Emissions Control Area.

Seema Kakade is an Associate Professor and Director of the Environmental Law Clinic at the University of Maryland Carey School of Law. Prior to joining the law school, Seema served as a federal government attorney with the EPA Office of Civil Enforcement and the U.S. Department of Energy, Office of General Counsel. Before her federal government practice, she worked as a research attorney and Co-Director of the India Program at the Environmental Law Institute. She also spent time as a litigation associate in private practice.