



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
RESEARCH TRIANGLE PARK, NC 27711

JUN 29 2010

OFFICE OF  
AIR QUALITY PLANNING  
AND STANDARDS

**MEMORANDUM**

**SUBJECT:** Guidance Concerning the Implementation of the 1-hour NO<sub>2</sub> NAAQS for the Prevention of Significant Deterioration Program

**FROM:** Stephen D. Page, Director *Stephen Page*  
Office of Air Quality Planning and Standards

**TO:** Regional Air Division Directors

On January 22, 2010, the Environmental Protection Agency (EPA) announced a new 1-hour nitrogen dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (hereinafter, either the 1-hour NO<sub>2</sub> NAAQS or 1-hour NO<sub>2</sub> standard) of 100 parts per billion (ppb), which is attained when the 3-year average of the 98th-percentile of the annual distribution of daily maximum 1-hour concentrations does not exceed 100 ppb at each monitor within an area. EPA revised the primary NO<sub>2</sub> NAAQS to provide the requisite protection of public health. The final rule for the new 1-hour NO<sub>2</sub> NAAQS was published in the Federal Register on February 9, 2010 (75 FR 6474), and the standard became effective on April 12, 2010. EPA policy provides that any federal Prevention of Significant Deterioration (PSD) permit issued under 40 CFR 52.21 on or after that effective date must contain a demonstration of source compliance with the new 1-hour NO<sub>2</sub> standard.

EPA is aware of reports from stakeholders indicating that some sources—both existing and proposed—are modeling potential violations of the 1-hour NO<sub>2</sub> standard. In many cases, the affected units are emergency electric generators and pump stations, where short stacks and limited property rights exist. However, larger sources, including coal-fired and natural gas-fired power plants, refineries, and paper mills, could also model potential violations of the new NO<sub>2</sub> NAAQS.

To respond to these reports and facilitate the PSD permitting of new and modified major stationary sources, we are issuing the attached guidance, in the form of two memoranda, for implementing the new 1-hour NO<sub>2</sub> NAAQS under the PSD permit program. The guidance contained in the attached memoranda addresses two areas. The first memorandum, titled, “General Guidance for Implementing the 1-hour NO<sub>2</sub> National Ambient Air Quality Standard in Prevention of Significant Deterioration Permits, Including an Interim 1-hour NO<sub>2</sub> Significant Impact Level,” includes guidance for the preparation and review of PSD permits with respect to the new 1-hour NO<sub>2</sub> standard. This guidance memorandum sets forth a recommended interim 1-hour NO<sub>2</sub> significant impact level (SIL) that states may consider when carrying out the required

PSD air quality analysis for NO<sub>2</sub>, until EPA promulgates a 1-hour NO<sub>2</sub> SIL via rulemaking. The second memorandum, titled “Applicability of Appendix W Modeling Guidance for the 1-hour NO<sub>2</sub> National Ambient Air Quality Standard,” includes specific modeling guidance for estimating ambient NO<sub>2</sub> concentrations and determining compliance with the new 1-hour NO<sub>2</sub> standard.

This guidance does not bind state and local governments and the public as a matter of law. Nevertheless, we believe that state and local air agencies and industry will find this guidance useful when carrying out the PSD permit process. We believe it will provide a consistent approach for estimating NO<sub>2</sub> air quality impacts from proposed construction or modification of NO<sub>x</sub> emissions sources. For the most part, the attached guidance reiterates existing policy and guidance, but focuses on how this information is relevant to implementation of the new 1-hour NO<sub>2</sub> NAAQS.

Please review the guidance included in the two attached memoranda. If you have questions regarding the general implementation guidance contained in the first memorandum, please contact Raj Rao ([rao.raj@epa.gov](mailto:rao.raj@epa.gov)). If you have questions regarding the modeling guidance in the second memorandum, please contact Tyler Fox ([fox.tyler@epa.gov](mailto:fox.tyler@epa.gov)). We are continuing our efforts to address permitting issues related to NO<sub>2</sub> and other NAAQS including the recently-signed 1-hour sulfur dioxide NAAQS. We plan to issue additional guidance to address these new 1-hour standards in the near future.

Attachments:

1. Memorandum from Anna Marie Wood, Air Quality Policy Division, to EPA Regional Air Division Directors, “General Guidance for Implementing the 1-hour NO<sub>2</sub> National Ambient Air Quality Standard in Prevention of Significant Deterioration Permits, Including an Interim 1-hour NO<sub>2</sub> Significant Impact Level” (June 28, 2010).
2. Memorandum from Tyler Fox, Air Quality Modeling Group, to EPA Regional Air Division Directors, “Applicability of Appendix W Modeling Guidance for the 1-hour NO<sub>2</sub> National Ambient Air Quality Standard” (June 28, 2010).

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Office of Air Quality Planning and Standards**  
**Research Triangle Park, North Carolina 27711**

**June 28, 2010**

**MEMORANDUM**

**SUBJECT:** General Guidance for Implementing the 1-hour NO<sub>2</sub> National Ambient Air Quality Standard in Prevention of Significant Deterioration Permits, Including an Interim 1-hour NO<sub>2</sub> Significant Impact Level

**FROM:** Anna Marie Wood, Acting Director /s/  
Air Quality Policy Division

**TO:** Regional Air Division Directors

**INTRODUCTION**

We are issuing the following guidance to explain and clarify the procedures that may be followed by applicants for Prevention of Significant Deterioration (PSD) permits and permitting authorities reviewing such applications to properly demonstrate that proposed construction will not cause or contribute to a violation of the new 1-hour nitrogen dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (hereinafter, either the 1-hour NO<sub>2</sub> NAAQS or 1-hour NO<sub>2</sub> standard) that became effective on April 12, 2010. EPA revised the primary NO<sub>2</sub> NAAQS by promulgating a 1-hour NO<sub>2</sub> NAAQS to provide the requisite protection of public health. Under section 165(a)(3) of the Clean Air Act (the Act) and sections 52.21(k) and 51.166(k) of EPA's PSD regulations, to obtain a permit, a source must demonstrate that its proposed emissions increase will not cause or contribute to a violation of any NAAQS.

This guidance is intended to: (1) explain the recommended procedures for stakeholders to follow to properly address concerns over high preliminary modeled estimates of ambient NO<sub>2</sub> concentrations that suggest potential violations of the new 1-hour NO<sub>2</sub> standard under some modeling and permitting scenarios; (2) help reduce the burden of modeling for the hourly NO<sub>2</sub> standard where it can be properly demonstrated that a source will not have a significant impact on ambient 1-hour NO<sub>2</sub> concentrations; and (3) identify approaches that allow sources and permitting authorities to mitigate, in a manner consistent with existing regulatory requirements, potential modeled violations of the 1-hour NO<sub>2</sub> NAAQS, where appropriate. Accordingly, the techniques described in this memorandum may be used by permit applicants and permitting authorities to configure projects and permit conditions in order to reasonably conclude that a proposed source's emissions do not cause or contribute to modeled 1-hour NO<sub>2</sub> NAAQS violations so that permits can be issued in accordance with the applicable PSD program requirements.

This guidance discusses existing provisions in EPA regulations and previous guidance for applying those provisions but focuses on the relevancy of this information for implementing the

new NAAQS for NO<sub>2</sub>. Importantly, however, this guidance also sets forth a recommended interim 1-hour NO<sub>2</sub> significant impact level (SIL) that EPA will use for implementing the federal PSD program, and that states may choose to rely upon to implement their PSD programs for NO<sub>x</sub> if they agree that these values represent *de minimis* impact levels and incorporate into each permit record a rationale supporting this conclusion. This interim SIL is a useful screening tool that can be used to determine whether or not the emissions from a proposed source will significantly impact hourly NO<sub>2</sub> concentrations, and, if significant impacts are predicted to occur, whether the source's emissions "cause or contribute to" any modeled violations of the new 1-hour NO<sub>2</sub> NAAQS.

## BACKGROUND

On April 12, 2010, the new 1-hour NO<sub>2</sub> NAAQS became effective. EPA interprets its regulations at 40 CFR 52.21 (the federal PSD program) to require permit applicants to demonstrate compliance with "any" NAAQS that is in effect on the date a PSD permit is issued. (See, e.g., EPA memo dated April 1, 2010, titled "Applicability of the Federal Prevention of Significant Deterioration Permit Requirements to New and Revised National Ambient Air Quality Standards.") Due to the introduction of a short-term averaging period for the 1-hour NO<sub>2</sub> NAAQS, we anticipate that some stationary sources with relatively short stacks may experience increased difficulty demonstrating that emissions from new construction or modifications will not cause or contribute to a violation of the 1-hour NO<sub>2</sub> NAAQS.

We are responding to reports from stakeholders which indicate that some sources, existing and proposed, are modeling high hourly NO<sub>2</sub> concentrations showing violations of the 1-hour NO<sub>2</sub> NAAQS—based only on the source's projected emissions of NO<sub>x</sub> under some modeling and permitting scenarios. We find that, in many cases, the modeled violations are resulting from emissions at emergency electric generators and pump stations, where short stacks and limited property rights exist. In other cases, the problem may occur during periods of unit startup, particularly where controls may initially not be in operation. Finally, certain larger sources, including coal-fired and natural gas-fired power plants, refineries, and paper mills could also experience problems in meeting the new 1-hour NO<sub>2</sub> NAAQS using particular modeling assumptions and permit conditions.

We believe that, in some instances, the projected violations result from the use of maximum modeled concentrations that do not adequately take into account the form of the 1-hour standard, and are based on the conservative assumption of 100% NO<sub>x</sub>-to-NO<sub>2</sub> conversion in the ambient air. To the extent that this is the case, it may be possible to provide more accurate projections of ambient NO<sub>2</sub> concentrations by applying current procedures which account for the statistical form of the 1-hour NO<sub>2</sub> standard, as well as more realistic estimates of the rate of conversion of NO<sub>x</sub> emissions to ambient NO<sub>2</sub> concentrations. See EPA Memorandum from Tyler Fox, Air Quality Modeling Group, to EPA Regional Air Division Directors, "Applicability of Appendix W Modeling Guidance for the 1-hour NO<sub>2</sub> National Ambient Air Quality Standard" (June 28, 2010) for specific modeling guidance for estimating ambient NO<sub>2</sub> concentrations consistent with the new 1-hour NO<sub>2</sub> NAAQS. In addition, where short stacks are currently being used, or are under design, it may be possible to lessen the source's air quality impacts without improper dispersion by implementing "good engineering practice" (GEP) stack heights to

increase the height of existing or designed stacks to avoid excessive concentrations due to downwash, as described in the guidance below.

It is EPA's expectation that the guidance in this memorandum and available modeling guidance for NO<sub>2</sub> assist in resolving some of the issues arising from preliminary analyses that are reportedly showing potential exceedances of the new 1-hour NO<sub>2</sub> NAAQS that would not be present under more refined modeling applications. In addition, the techniques described in this memorandum may also help avoid violations of the standard through design of the proposed source or permit conditions, consistent with existing regulatory requirements, which enable the source to demonstrate that its proposed emissions increase will not cause or contribute to a modeled violation of the 1-hour NO<sub>2</sub> standard. Moreover, the interim 1-hour NO<sub>2</sub> SIL that is included in this guidance will provide a reasonable screening tool for efficiently implementing the PSD requirements for an air quality impact analysis.

The following discussion provides guidance concerning demonstrating compliance with the new NAAQS and mitigating modeled violations using air quality-based permit limits more stringent than what the Best Available Control Technology provisions may otherwise require, air quality offsets, the use of GEP stack heights, possible permit conditions for emergency generators, and an interim 1-hour NO<sub>2</sub> SIL.

#### **AIR-QUALITY BASED EMISSIONS LIMITATIONS**

Once a level of control required by the Best Available Control Technology provisions is proposed by the PSD applicant, the proposed source's emissions must be modeled at the BACT emissions rate(s) to demonstrate that those emissions will not cause or contribute to a violation of any NAAQS or PSD increment. EPA's 1990 Workshop Manual (page B.54) describes circumstances where a source's emissions based on levels proposed through the top-down process may not be sufficiently controlled to prevent modeled violations of an increment or NAAQS. In such cases, it may be appropriate for PSD applicants to propose a more stringent control option (that is, beyond the level identified via the top-down process) as a result of an adverse impact on the NAAQS or PSD increments.

#### **DEMONSTRATING COMPLIANCE WITH THE NEW NAAQS & MITIGATING MODELED VIOLATIONS WITH AIR QUALITY OFFSETS**

A 1988 EPA memorandum provides procedures to follow when a modeled violation is identified during the PSD permitting process. See Memorandum from Gerald A. Emison, EPA OAQPS, to Thomas J. Maslany, EPA Air Management Division, "Air Quality Analysis for Prevention of Significant Deterioration (PSD)." (July 5, 1988). In brief, a reviewing authority may issue a proposed new source or modification a PSD permit only if it can be shown that the proposed project's emissions will not "cause or contribute to" any modeled violations.

To clarify the above statement, in cases where modeled violations of the 1-hour NO<sub>2</sub> NAAQS are predicted, but the permit applicant can show that the NO<sub>x</sub> emissions increase from the proposed source will not have a significant impact *at the point and time of any modeled violation*, the permitting authority has discretion to conclude that the source's emissions will not

contribute to the modeled violation. As provided in the July 5, 1988, guidance memo, in such instances, because of the proposed source's *de minimis* contribution to any modeled violation, the source's impact will not be considered to cause or contribute to such modeled violations, and the permit could be issued. This concept continues to apply, and the significant impact level (described further below) may be used as part of this analysis. A 2006 decision by the EPA Environmental Appeals Board (EAB) provides detailed reasoning that demonstrates the permissibility of finding that a PSD source would not be considered to cause or contribute to a modeled NAAQS violation because its estimated air quality impact was insignificant at the time and place of the modeled violations.<sup>1</sup> See *In re Prairie State Gen. Co.*, 13 E.A.D. \_\_\_, \_\_\_, PSD Appeal No. 05-05, Slip. Op. at 137-144 (EAB 2006)

However, where it is determined that a source's impact does cause or contribute to a modeled violation, a permit cannot be issued without some action taken to mitigate the source's impact. In accordance with 40 CFR 51.165(b)<sup>2</sup>, a major stationary source or major modification (as defined at §51.165(a)(1)(iv) and (v)) that locates in an NO<sub>2</sub> attainment area, but would cause or contribute to a violation of the 1-hour NO<sub>2</sub> NAAQS anywhere may "reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient [NO<sub>2</sub>] impact where the major source or major modification would otherwise cause or contribute to a violation ...." An applicant can meet this requirement for obtaining additional emissions reductions by either reducing its emissions at the source, e.g., promoting more efficient production methodologies and energy efficiency, or by obtaining air quality offsets (see below). See, e.g., *In re Interpower of New York, Inc.*, 5 E.A.D. 130, 141 (EAB 1994).<sup>3</sup> A State may also provide the necessary emissions reductions by imposing emissions limitations on other sources through an approved State Implementation Plan (SIP) revision. These approaches may also be combined as necessary to demonstrate that a source will not cause or contribute to a violation of the NAAQS.

Unlike emissions offset requirements in nonattainment areas, in addressing the air quality offset concept, it may not be necessary for a permit applicant to fully offset the proposed emissions increase if an emissions reduction of lesser quantity will mitigate the adverse air quality impact on a modeled violation. ("Although full emission offsets are not required, such a source must obtain emission offsets sufficient to compensate for its air quality impact where the violation occurs." 44 FR 3274, January 16, 1979, at 3278.) To clarify this, the 1988 guidance memo referred to above states that:

offsets sufficient to compensate for the source's significant impact must be obtained pursuant to an approved State offset program consistent with State Implementation Plan (SIP) requirements under 40 CFR 51.165(b). Where the source is contributing to an

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<sup>1</sup> While there is no 1-hour NO<sub>2</sub> significant impact level (SIL) currently defined in the PSD regulations, we believe that states may adopt interim values, with the appropriate justification for such values, to use for permitting purposes. In addition, we are recommending an interim SIL as part of this guidance for implementing the NO<sub>2</sub> requirements in the federal PSD program, and in state programs where states choose to use it.

<sup>2</sup> The same provision is contained in EPA's Interpretative Ruling at 40 CFR part 51 Appendix S, section III.

<sup>3</sup> In contrast to Nonattainment New Source Review permits, offsets are not mandatory requirements in PSD permits if it can otherwise be demonstrated that a source will not cause or contribute to a violation of the NAAQS. See, *In re Knauf Fiber Glass, GMBH*, 8 E.A.D. 121, 168 (EAB 1999).

existing violation, the required offset may not correct the violation. Such existing violations must be addressed [through the SIP].

In addition, in order to determine the appropriate emissions reductions, the applicant and permitting authority should take into account modeling procedures for the form of the 1-hour standard and for the appropriate NO<sub>x</sub>-NO<sub>2</sub> conversion rate that applies in the area of concern. As part of this process, existing ambient ozone concentrations and other meteorological conditions in the area of concern may need to be considered. Note that additional guidance for this and other aspects of the modeling analysis for the impacts of NO<sub>x</sub> emissions on ambient concentrations of NO<sub>2</sub> are addressed in EPA modeling guidance, including the June 28, 2010, Memorandum titled, "Applicability of Appendix W Modeling Guidance for the 1-hour NO<sub>2</sub> National Ambient Air Quality Standard."

### **"GOOD ENGINEERING PRACTICE" STACK HEIGHT & DISPERSION TECHNIQUES**

If a permit applicant is unable to show that the source's proposed emissions increase will not cause or contribute to a modeled violation of the new 1-hour NO<sub>2</sub> NAAQS, the problem could be the result of plume downwash effects which may cause high ambient concentrations near the source. In such cases, a source may be able to raise the height of its existing stacks (or designed stacks if not yet constructed) to a GEP stack height of at least 65 meters, measured from the ground-level elevation at the base of the stack.

While not necessarily totally eliminating the effects of downwash in all cases, raising stacks to GEP height may provide substantial air quality benefits in a manner consistent with statutory provisions (section 123 of the Act) governing acceptable stack heights to minimize extensive concentrations due to atmospheric downwash, eddies or wakes. Permit applicants should also be aware of the regulatory restrictions on stack heights for the purpose of modeling for compliance with NAAQS and increments. Section 52.21(h) of the PSD regulations currently prohibits the use of dispersion techniques, such as stack heights above GEP, merged gas streams, or intermittent controls for setting NO<sub>x</sub> emissions limits or to meet the annual and 1-hour NAAQS and annual NO<sub>2</sub> increments. However, stack heights in existence before December 31, 1970, and dispersion techniques implemented before then, are not affected by these limitations. EPA's general stack height regulations are promulgated at 40 CFR 51.100(ff), (gg), (hh), (ii), (jj), (kk) and (nn), and 40 CFR 51.118.

a. *Stack heights:* A source cannot take credit for that portion of a stack height in excess of the GEP height when modeling to develop the NO<sub>x</sub> emissions limitations or to determine source compliance with the annual and 1-hour NO<sub>2</sub> NAAQS. It should be noted, however, that this limitation does not limit the actual height of any stack constructed by a new source or modification.

The following limitations apply in accordance with §52.21(h):

- For a stack height less than GEP, the actual stack height must be used in the source impact analysis for NO<sub>x</sub> emissions;

- For a stack height equal to or greater than 65 meters, the impact on NO<sub>x</sub> emission limits may be modeled using the greater of:
  - A *de minimis* stack height equal to 65 meters, as measured from the ground-level elevation at the base of the stack, without demonstration or calculation (40 CFR 51.100(ii)(1));
  - The refined formula height calculated using the dimensions of nearby structures in accordance with the following equation:

**GEP = H + 1.5L**, where H is the height of the nearby structure and L is the lesser dimension of the height or projected width of the nearby structure (40 CFR 51.100(ii)(2)(ii)).<sup>4</sup>

- A GEP stack height exceeding the refined formula height may be approved when it can be demonstrated to be necessary to avoid “excessive concentrations” of NO<sub>2</sub> caused by atmospheric downwash, wakes, or eddy effects by the source, nearby structures, or nearby terrain features. (40 CFR 51.100(ii)(3), (jj), (kk));
- For purposes of PSD (and NO<sub>x</sub>/NO<sub>2</sub>), “excessive concentrations” means a maximum ground-level concentration of NO<sub>2</sub> due to NO<sub>x</sub> emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum NO<sub>2</sub> concentration experienced in the absence of such effects and (a) which contributes to a total NO<sub>2</sub> concentration due to emissions from all sources that is greater than the annual or 1-hour NO<sub>2</sub> NAAQS or (b) greater than the PSD (annual) increment for NO<sub>2</sub>. (40 CFR 51.100(kk)(1)).

Reportedly, for economic and other reasons, many existing source stacks have been constructed at heights less than 65 meters, and source impact analyses may show that the source’s emissions will cause or contribute to a modeled violation of the annual or 1-hour NO<sub>2</sub> NAAQS. Where this is the case, sources should be aware that they can increase their stack heights up to 65 meters without a GEP demonstration.

- b. *Other dispersion techniques*: The term “dispersion technique” includes any practice carried out to increase final plume rise, subject to certain exceptions (40 CFR 51.100(hh)(1)(iii), (2)(i) – (v)). Beyond the noted exceptions, such techniques are not allowed for getting credit for modeling source compliance with the annual and 1-hour NO<sub>2</sub> NAAQS and annual NO<sub>2</sub> increment.

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<sup>4</sup> For stacks in existence on January 12, 1979, the GEP equation is  $GEP = 2.5 H$  (provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation for NO<sub>x</sub> (40 CFR 51.100(ii)(2)(i))

## **OPERATION OF EMERGENCY EQUIPMENT & GENERAL STARTUP CONDITIONS**

In determining an emergency generator's potential to emit, existing guidance (EPA memo titled "Calculating Potential to Emit (PTE) for Emergency Generators," September 6, 1995) allows a default value of 500 hours "for estimating the number of hours that an emergency generator could be expected to operate under worst-case conditions." The guidance also allows for alternative estimates to be made on a case-by-case basis for individual emergency generators. This time period must also consider operating time for both testing/maintenance as well as for emergency utilization. Likewise, existing EPA policy does not allow NO<sub>x</sub> emissions to be excluded from the source impact analysis (NAAQS and increments) when the emergency equipment is operating during an emergency. EPA provides no exemption from compliance with the NAAQS during periods of emergency operation. Thus, it is not sufficient to consider only emissions generated during periods of testing/maintenance in the source impact analysis.

If during an emergency, emergency equipment is never operated simultaneously with other emissions units at the source that the emergency equipment will back up, a worst-case hourly impact analysis may very well occur during periods of normal source operation when other emissions units at the facility are likely to be operating simultaneously with the scheduled testing of emergency equipment. To avoid such worst-case modeling situations, a permit applicant may commit to scheduling the testing of emergency equipment during times when the source is not otherwise operating, or during known off-peak operating periods. This could provide a basis to justify not modeling the 1-hour impacts of the emergency equipment under conditions that would include simultaneous operation with other onsite emissions units. Accordingly, permits for emergency equipment may include enforceable conditions that specifically limit the testing/maintenance of emergency equipment to certain periods of time (seasons, days of the week, hours of the day, etc.) as long as these limitations do not constitute dispersion techniques under 40 CFR 51.1(hh)(1)(ii).

We also note that similar problems associated with the modeling of high 1-hour NO<sub>2</sub> concentrations have been reported to occur during startup periods for certain kinds of emissions units—often because control equipment cannot function during all or a portion of the startup process. EPA currently has no provisions for exempting emissions occurring during equipment startups from the air quality analysis to demonstrate compliance with the NAAQS. Startup emissions may occur during only a relatively small portion of the unit's total annual operating schedule; however, they must be included in the required PSD air quality analysis for the NAAQS. Sources may be willing to accept enforceable permit conditions limiting equipment startups to certain hours of the day when impacts are expected to be lower than normal. Such permit limitations can be accounted for in the modeling of such emissions. Applicants should direct other questions arising concerning procedures for modeling startup emissions to the applicable permitting authority to determine the most current modeling guidance.

## SCREENING VALUES

In the final rule establishing the hourly NO<sub>2</sub> standard, EPA discussed various implementation considerations for the PSD permitting program. 75 FR.6474, 6524 (Feb. 9, 2010). This discussion included the following statements regarding particular screening values that have historically been used on a widespread basis to facilitate implementation of the PSD permitting program:

We also believe that there may be a need to revise the screening tools currently used under the NSR/PSD program for completing NO<sub>2</sub> analyses. These screening tools include the significant impact levels (SILs), as mentioned by one commenter, but also include the significant emissions rate for emissions of NO<sub>x</sub> and the significant monitoring concentration (SMC) for NO<sub>2</sub>. EPA intends to evaluate the need for possible changes or additions to each of these important screening tools for NO<sub>x</sub>/NO<sub>2</sub> due to the addition of a 1-hour NO<sub>2</sub> NAAQS. If changes or additions are deemed necessary, EPA will propose any such changes for public notice and comment in a separate action. 75 FR 6525.

EPA intends to conduct an evaluation of these issues and submit our findings in the form of revised significance levels under notice and comment rulemaking if any revisions are deemed appropriate. In the interim, for the reasons provided below, we recommend the continued use of the existing significant emissions rates (SER) for NO<sub>x</sub> emissions as well as an interim 1-hour NO<sub>2</sub> SIL that we are setting forth today for conducting air quality impact analyses for the 1-hour NO<sub>2</sub> NAAQS. As described in the section titled Introduction, EPA intends to implement the interim 1-hour NO<sub>2</sub> SIL contained herein under the federal PSD program and offers states the opportunity to use it in their PSD programs if they choose to do so. EPA is not addressing the significant monitoring concentrations in this memorandum.

## SIGNIFICANT EMISSIONS RATE

Under the terms of existing EPA regulations, the applicable significant emissions rate for nitrogen oxides is 40 tons per year. 40 CFR 52.21(b)(23); 40 CFR 51.166(b)(23). The significant emissions rates defined in those regulations are specific to individual pollutants but are not differentiated by the averaging times of the air quality standards applicable to some of the listed pollutants. Although EPA has not previously promulgated a NO<sub>2</sub> standard using an averaging time of less than one year, the NAAQS for SO<sub>2</sub> have included standards with 3-hour and 24-hour averaging times for many years. EPA has applied the 40 tons per year significant emissions rate for SO<sub>2</sub> across all of these averaging times. Until the evaluation described above and any associated rulemaking is completed, EPA does not believe it has cause to apply the NO<sub>2</sub> significant emissions rate any differently than EPA has historically applied the SO<sub>2</sub> significant emissions rate and others that apply to standards with averaging times less than 1 year.

Under existing regulations, an ambient air quality impact analysis is required for “each pollutant that [a source] would have the potential to emit in significant amounts.” 40 CFR 52.21(m)(1)(i)(a); 40 CFR. 51.166(m)(1)(i)(a). For modifications, these regulations require this analysis for “each pollutant for which [the modification] would result in a significant net

emissions increase.” 40 CFR.52.21(m)(1)(i)(b); 40 CFR.51.166(m)(1)(i)(b). EPA construes this regulation to mean that an ambient impact analysis is not necessary for pollutants with emissions rates below the significant emissions rates in paragraph (b)(23) of the regulations. No additional action by EPA or permitting authorities is necessary at this time to apply the 40 tpy significant emissions rate in existing regulations to the hourly NO<sub>2</sub> standard.

### **INTERIM 1-HOUR NO<sub>2</sub> SIGNIFICANT IMPACT LEVEL**

A significant impact level (SIL) serves as a useful screening tool for implementing the PSD requirements for an air quality analysis. The primary purpose of the SIL is to serve as a screening tool to identify a level of ambient impact that is sufficiently low relative to the NAAQS or PSD increments such that the impact can be considered trivial or *de minimis*. Hence, the EPA considers a source whose individual impact falls below a SIL to have a *de minimis* impact on air quality concentrations that already exist. Accordingly, a source that demonstrates that the projected ambient impact of its proposed emissions increase does not exceed the SIL for that pollutant at a location where a NAAQS or increment violation occurs is not considered to cause or contribute to that violation. In the same way, a source with a proposed emissions increase of a particular pollutant that will have a significant impact at some locations is not required to model at distances beyond the point where the impact of its proposed emissions is below the SILs for that pollutant. When a proposed source’s impact by itself is not considered to be “significant,” EPA has long maintained that any further effort on the part of the applicant to complete a cumulative source impact analysis involving other source impacts would only yield information of trivial or no value with respect to the required evaluation of the proposed source or modification. The concept of a SIL is grounded on the *de minimis* principles described by the court in *Alabama Power Co. v. Costle*, 636 F.2d 323, 360 (D.C. Cir. 1980); See also *Sur Contra La Contaminacion v. EPA*, 202 F.3d 443, 448-49 (1<sup>st</sup> Cir. 2000) (upholding EPA’s use of SIL to allow permit applicant to avoid full impact analysis); *In re: Prairie State Gen. Co.*, PSD Appeal No. 05-05, Slip. Op. at 139 (EAB 2006)

EPA has codified several SILs into regulations at 40 CFR 51.165(b). EPA plans to undertake rulemaking to develop a 1-hour NO<sub>2</sub> SIL for the new NAAQS for NO<sub>2</sub>. However, EPA has recognized that the absence of an EPA-promulgated SIL does not preclude permitting authorities from developing interim SILs for use in demonstrating that a cumulative air quality analysis would yield trivial gain. Response to Comments, Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers in Diameter (PM<sub>2.5</sub>), pg. 82 (March 2008) [EPA-HQ-OAR-2003-0062-0278].

Until such time as a 1-hour NO<sub>2</sub> SIL is defined in the PSD regulations, we are herein providing a recommended interim SIL that we intend to use as a screening tool for completing the required air quality analyses for the new 1-hour NO<sub>2</sub> under the federal PSD program at 40 CFR 52.21. To support the application of this interim SIL in each instance, a permitting authority that utilizes this SIL as part of an ambient air quality analysis should include in the permit record the analysis reflected in this memorandum and the referenced documents to demonstrate that an air quality impact at or below the SIL is *de minimis* in nature and would not cause a violation of the NAAQS.

Using the interim 1-hour NO<sub>2</sub> SIL, the permit applicant and permitting authority can determine: (1) whether, based on the proposed increase in NO<sub>x</sub> emissions, a cumulative air quality analysis is required; (2) the area of impact within which a cumulative air quality analysis should focus; and (3) whether, as part of a cumulative air quality analysis, the proposed source's NO<sub>x</sub> emissions will cause or contribute to a modeled violation of the 1-hour NO<sub>2</sub> NAAQS.

In this guidance, EPA recommends an interim 1-hour NO<sub>2</sub> SIL value of 4 ppb. To determine initially whether a proposed project's emissions increase will have a significant impact (resulting in the need for a cumulative air quality analysis), this interim SIL should be compared to either of the following:

- The highest of the 5-year averages of the maximum modeled 1-hour NO<sub>2</sub> concentrations predicted each year at each receptor, based on 5 years of National Weather Service data; or
- The highest modeled 1-hour NO<sub>2</sub> concentration predicted across all receptors based on 1 year of site-specific meteorological data, or the highest of the multi-year averages of the maximum modeled 1-hour NO<sub>2</sub> concentrations predicted each year at each receptor, based on 2 or more, up to 5 complete years of available site-specific meteorological data.

Additional guidance will be forthcoming for the purpose of comparing a proposed source's modeled impacts to the interim 1-hour NO<sub>2</sub> SIL in order to make a determination about whether that source's contribution is significant when a cumulative air quality analysis identifies violations of the 1-hour NO<sub>2</sub> NAAQS (i.e., "causes or contributes to" a modeled violation).

We derived this interim 1-hour NO<sub>2</sub> SIL by using an impact equal to 4% of the 1-hour NO<sub>2</sub> NAAQS (which is 100 ppb). We have chosen this approach because we believe it is reasonable to base the interim 1-hour NO<sub>2</sub> SIL directly on consideration of impacts relative to the 1-hour NO<sub>2</sub> NAAQS. In 1980, we defined SER for each pollutant subject to PSD. 45 FR 52676, August 7, 1980 at 52705-52710. For PM and SO<sub>2</sub>, we defined the SER as the emissions rate that resulted in an ambient impact equal to 4% of the applicable short-term NAAQS. The 1980 analysis focused on levels no higher than 5% of the primary standard because of concerns that higher levels were found to result in unreasonably large amounts of increment being consumed by a single source. Within the range of impacts analyzed, we considered two factors that had an important influence on the choice of *de minimis* emissions levels: (1) cumulative effect on increment consumption of multiple sources in an area, each making the maximum *de minimis* emissions increase; and (2) the projected consequence of a given *de minimis* level on administrative burden. As explained in the preamble to the 1980 rulemaking and the supporting documentation,<sup>5</sup> EPA decided to use 4% of the 24-hour primary NAAQS for PM and SO<sub>2</sub> to define the significant emissions rates (SERs) for those pollutants. It was noted that, at the time, only an annual NO<sub>2</sub> NAAQS existed. Thus, for reasons explained in the 1980 preamble, to define the SER for NO<sub>x</sub> emissions we used a design value of 2% of the annual NO<sub>2</sub> NAAQS. See 45 FR 52708. Looking now at a short-term NAAQS for NO<sub>2</sub>, we believe that it is reasonable as an interim approach to use a SIL value that represents 4% of the 1-hour NO<sub>2</sub>

<sup>5</sup> EPA evaluated *de minimis* levels for pollutants for which NAAQS had been established in a document titled "Impact of Proposed and Alternative De Minimis Levels for Criteria Pollutants"; EPA-450/2-80-072, June 1980.

NAAQS. EPA will consider other possible alternatives for developing a 1-hour NO<sub>2</sub> SIL in a future rulemaking that will provide an opportunity for public participation in the development of a SIL as part of the PSD regulations.

Several state programs have already adopted interim 1-hour NO<sub>2</sub> SILs that differ (both higher and lower) from the interim value being recommended herein. The EPA-recommended interim 1-hour NO<sub>2</sub> SIL is not intended to supersede any interim SIL that is now or may be relied upon to implement a state PSD program that is part of an approved SIP, or to impose the use of the SIL concept on any state that chooses to implement the PSD program—in particular the ambient air quality analysis—without using a SIL as a screening tool. Accordingly, states that implement the PSD program under an EPA-approved SIP may choose to use this interim SIL, another value that may be deemed more appropriate for PSD permitting purposes in the state of concern, or no SIL at all. The application of any SIL that is not reflected in a promulgated regulation should be supported by a record in each instance that shows the value represents a *de minimis* impact on the 1-hour NO<sub>2</sub> standard, as described above.

In the event of questions regarding the general implementation guidance contained in this memorandum, please contact Raj Rao ([rao.raj@epa.gov](mailto:rao.raj@epa.gov)).

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
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**June 28, 2010**

**MEMORANDUM**

**SUBJECT:** Applicability of Appendix W Modeling Guidance for the 1-hour NO<sub>2</sub> National Ambient Air Quality Standard

**FROM:** Tyler Fox, Leader  
Air Quality Modeling Group, C439-01

**TO:** Regional Air Division Directors

**INTRODUCTION**

On January 22, 2010, EPA announced a new 1-hour nitrogen dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (1-hour NO<sub>2</sub> NAAQS or 1-hour NO<sub>2</sub> standard) which is attained when the 3-year average of the 98th-percentile of the annual distribution of daily maximum 1-hour concentrations does not exceed 100 ppb at each monitor within an area. The final rule for the new 1-hour NO<sub>2</sub> NAAQS was published in the Federal Register on February 9, 2010 (75 FR 6474-6537), and the standard became effective on April 12, 2010 (EPA, 2010a). This memorandum clarifies the applicability of current guidance in the *Guideline on Air Quality Models* (40 CFR Part 51, Appendix W) for modeling NO<sub>2</sub> impacts in accordance with the Prevention of Significant Deterioration (PSD) permit requirements to demonstrate compliance with the new 1-hour NO<sub>2</sub> standard.

**SUMMARY OF CURRENT GUIDANCE**

While the new 1-hour NAAQS is defined relative to ambient concentrations of NO<sub>2</sub>, the majority of nitrogen oxides (NO<sub>x</sub>) emissions for stationary and mobile sources are in the form of nitric oxide (NO) rather than NO<sub>2</sub>. Appendix W notes that the impact of an individual source on ambient NO<sub>2</sub> depends, in part, “on the chemical environment into which the source’s plume is to be emitted” (see Section 5.1.j). Given the role of NO<sub>x</sub> chemistry in determining ambient impact levels of NO<sub>2</sub> based on modeled NO<sub>x</sub> emissions, Section 5.2.4 of Appendix W recommends the following three-tiered screening approach for NO<sub>2</sub> modeling for annual averages:

- Tier 1 - assume full conversion of NO to NO<sub>2</sub> based on application of an appropriate refined modeling technique under Section 4.2.2 of Appendix W to estimate ambient NO<sub>x</sub> concentrations;
- Tier 2 - multiply Tier 1 result by empirically-derived NO<sub>2</sub>/NO<sub>x</sub> ratio, with 0.75 as the annual national default ratio (Chu and Meyer, 1991); and

- Tier 3 - detailed screening methods may be considered on a case-by-case basis, with the Ozone Limiting Method (OLM) identified as a detailed screening technique for point sources (Cole and Summerhays, 1979).

Tier 2 is often referred to as the Ambient Ratio Method, or ARM. Site-specific ambient NO<sub>2</sub>/NO<sub>x</sub> ratios derived from appropriate ambient monitoring data may also be considered as detailed screening methods on a case-by-case basis, with proper justification. Consistent with Section 4.2.2, AERMOD is the current preferred model for “a wide range of regulatory applications in all types of terrain” for purposes of estimating ambient concentrations of NO<sub>2</sub>, based on NO<sub>x</sub> emissions, under Tiers 1 and 2 above. We discuss the role of AERMOD for Tier 3 applications in more detail below.

### APPLICABILITY OF CURRENT GUIDANCE TO 1-HOUR NO<sub>2</sub> NAAQS

In general, the Appendix W recommendations regarding the annual NO<sub>2</sub> standard are also applicable to the new 1-hour NO<sub>2</sub> standard, but additional issues may need to be considered in the context of a 1-hour standard, depending on the characteristics of the emission sources, and depending on which tier is used, as summarized below:

- Tier 1 applies to the 1-hour NO<sub>2</sub> standard without any additional justification;
- Tier 2 may also apply to the 1-hour NO<sub>2</sub> standard in many cases, but some additional consideration will be needed in relation to an appropriate ambient ratio for peak hourly impacts since the current default ambient ratio is considered to be representative of “area wide quasi-equilibrium conditions”; and
- Tier 3 “detailed screening methods” will continue to be considered on a case-by-case basis for the 1-hour NO<sub>2</sub> standard. However, certain input data requirements and assumptions for Tier 3 applications may be of greater importance for the 1-hour standard than for the annual standard given the more localized nature of peak hourly vs. annual impacts. In addition, use of site-specific ambient NO<sub>2</sub>/NO<sub>x</sub> ratios based on ambient monitoring data will generally be more difficult to justify for the 1-hour NO<sub>2</sub> standard than for the annual standard.

While Appendix W specifically mentions OLM as a detailed screening method under Tier 3, we also consider the Plume Volume Molar Ratio Method (PVMRM) (Hanrahan, 1999a) discussed under Section 5.1.j of Appendix W to be in this category at this time. Both of these options account for ambient conversion of NO to NO<sub>2</sub> in the presence of ozone, based on the following basic chemical mechanism, known as titration, although there are important differences between these methods:



As noted in Section 5.1.j, EPA is currently testing the PVMRM option to determine its suitability as a refined method. Limited evaluations of PVMRM have been completed, which show encouraging results, but the amount of data currently available is too limited to justify a designation of PVMRM as a refined method for NO<sub>2</sub> (Hanrahan, 1999b; MACTEC, 2005). EPA is currently updating and extending these evaluations to examine model performance for

predicting hourly NO<sub>2</sub> concentrations, including both the OLM and PVMRM options, and results of these additional evaluations will be provided at a later date. A sensitivity analysis of the OLM and PVMRM options in AERMOD has been conducted that compares modeled concentrations based on OLM and PVMRM with Tiers 1 and 2 for a range of source characteristics (MACTEC, 2004). This analysis serves as a useful reference to understand how ambient NO<sub>2</sub> concentrations may be impacted by application of this three-tiered screening approach, and includes comparisons for both annual average and maximum 1-hour NO<sub>2</sub> concentrations.

Key model inputs for both the OLM and PVMRM options are the in-stack ratios of NO<sub>2</sub>/NO<sub>x</sub> emissions and background ozone concentrations. While the representativeness of these key inputs is important in the context of the annual NO<sub>2</sub> standard, they will generally take on even greater importance for the new 1-hour NO<sub>2</sub> standard, as explained in more detail below. Recognizing the potential importance of the in-stack NO<sub>2</sub>/NO<sub>x</sub> ratio for hourly NO<sub>2</sub> compliance demonstrations, we recommend that in-stack ratios used with either the OLM or PVMRM options be justified based on the specific application, i.e., there is no “default” in-stack NO<sub>2</sub>/NO<sub>x</sub> ratio for either OLM or PVMRM.

The OLM and PVMRM methods are both available as non-regulatory-default options within the EPA-preferred AERMOD dispersion model (Cimorelli, *et al.*, 2004; EPA, 2004; EPA, 2009). As a result of their non-regulatory-default status, pursuant to Sections 3.1.2.c, 3.2.2.a, and A.1.a(2) of Appendix W, application of AERMOD with the OLM or PVMRM option is no longer considered a “preferred model” and, therefore, requires justification and approval by the Regional Office on a case-by-case basis. While EPA is continuing to evaluate the PVMRM and OLM options within AERMOD for use in compliance demonstrations for the 1-hour NO<sub>2</sub> standard, as long as they are considered to be non-regulatory-default options, their use as alternative modeling techniques under Appendix W should be justified in accordance with Section 3.2.2, paragraph (e), as follows:

- “e. Finally, for condition (3) in paragraph (b) of this subsection [preferred model is less appropriate for the specific application, or there is no preferred model], an alternative refined model may be used provided that:
- i. The model has received a scientific peer review;
  - ii. The model can be demonstrated to be applicable to the problem on a theoretical basis;
  - iii. The data bases which are necessary to perform the analysis are available and adequate;
  - iv. Appropriate performance evaluations of the model have shown that the model is not biased toward underestimates; and
  - v. A protocol on methods and procedures to be followed has been established.”

Since AERMOD is the preferred model for dispersion for a wide range of application, the focus of the alternative model demonstration for use of the OLM and PVMRM options within AERMOD is on the treatment of NO<sub>x</sub> chemistry within the model, and does not need to address basic dispersion algorithms within AERMOD. Furthermore, items i and iv of the alternative

model demonstration for these options can be fulfilled in part based on existing documentation (Cole and Summerhays, 1979; Hanrahan, 1999a; Hanrahan, 1999b; MACTEC, 2005), and the remaining items should be routinely addressed as part of the modeling protocol, irrespective of the regulatory status of these options. The issue of applicability to the problem on a theoretical basis (item ii) is a case-by-case determination based on an assessment of the adequacy of the ozone titration mechanism utilized by these options to account for NO<sub>x</sub> chemistry within the AERMOD model based on “the chemical environment into which the source’s plume is to be emitted” (Appendix W, Section 5.1.j). The adequacy of available data bases needed for application of OLM and PVMRM (item iii), including in-stack NO<sub>2</sub>/NO<sub>x</sub> ratios and background ozone concentrations, is a critical aspect of the demonstration which we discuss in more detail below. It should also be noted that application of the OLM or PVMRM methods with other Appendix W models or alternative models, whether as a separate post-processor or integrated within the model, would require additional documentation and demonstration that the methods have been implemented and applied appropriately within that context, including model-specific performance evaluations which satisfy item iv under Section 3.2.2.e.

Given the form of the new 1-hour NO<sub>2</sub> standard, some clarification is needed regarding the appropriate data periods for modeling demonstrations of compliance with the NAAQS vs. demonstrations of attainment of the NAAQS through ambient monitoring. While monitored design values for the 1-hour NO<sub>2</sub> standard are based on a 3-year average (in accordance with Section 1(c)(2) of Appendix S to 40 CFR Part 50), Section 8.3.1.2 of Appendix W addresses the length of the meteorological data record for dispersion modeling, stating that “[T]he use of 5 years of NWS [National Weather Service] meteorological data or at least 1 year of site specific data is required.” Section 8.3.1.2.b further states that “one year or more (including partial years), up to five years, of site specific data . . . are preferred for use in air quality analyses.” Although the monitored design value for the 1-hour NO<sub>2</sub> standard is defined in terms of the 3-year average, this definition does not preempt or alter the Appendix W requirement for use of 5 years of NWS meteorological data or at least 1 year of site specific data. The 5-year average based on use of NWS data, or an average across one or more years of available site specific data, serves as an unbiased estimate of the 3-year average for purposes of modeling demonstrations of compliance with the NAAQS. Modeling of “rolling 3-year averages,” using years 1 through 3, years 2 through 4, and years 3 through 5, is not required. Furthermore, since modeled results for NO<sub>2</sub> are averaged across the number of years modeled for comparison to the new 1-hour NO<sub>2</sub> standard, the meteorological data period should include complete years of data to avoid introducing a seasonal bias to the averaged impacts. In order to comply with Appendix W recommendations in cases where partial years of site specific meteorological data are available, while avoiding any seasonal bias in the averaged impacts, an approach that utilizes the most conservative modeling result based on the first complete-year period of the available data record vs. results based on the last complete-year period of available data may be appropriate, subject to approval by the appropriate reviewing authority. Such an approach would ensure that all available site specific data are accounted for in the modeling analysis without imposing an undue burden on the applicant and avoiding arbitrary choices in the selection of a single complete-year data period.

The form of the new 1-hour NO<sub>2</sub> standard also has implications regarding appropriate methods for combining modeled ambient concentrations with monitored background

concentrations for comparison to the NAAQS in a cumulative modeling analysis. As noted in the March 23, 2010 memorandum regarding “Modeling Procedures for Demonstrating Compliance with PM<sub>2.5</sub> NAAQS” (EPA, 2010b), combining the 98<sup>th</sup> percentile monitored value with the 98<sup>th</sup> percentile modeled concentrations for a cumulative impact assessment could result in a value that is below the 98<sup>th</sup> percentile of the combined cumulative distribution and would, therefore, not be protective of the NAAQS. However, unlike the recommendations presented for PM<sub>2.5</sub>, the modeled contribution to the cumulative ambient impact assessment for the 1-hour NO<sub>2</sub> standard should follow the form of the standard based on the 98<sup>th</sup> percentile of the annual distribution of daily maximum 1-hour concentrations averaged across the number of years modeled. A “first tier” assumption that may be applied without further justification is to add the overall highest hourly background NO<sub>2</sub> concentration from a representative monitor to the modeled design value, based on the form of the standard, for comparison to the NAAQS. Additional refinements to this “first tier” approach based on some level of temporal pairing of modeled and monitored values may be considered on a case-by-case basis, with adequate justification and documentation.

## **DISCUSSION OF TECHNICAL ISSUES**

While many of the same technical issues related to application of Appendix W guidance for an annual NO<sub>2</sub> standard would also apply in the context of the new 1-hour NO<sub>2</sub> standard, there are some important differences that may also need to be considered depending on the specific application. This section discusses several aspects of these technical issues related to the new 1-hour NO<sub>2</sub> NAAQS, including a discussion of source emission inventories required for modeling demonstrations of compliance with the NAAQS and other issues specific to each of the three tiers identified in Section 5.2.4 of Appendix W for NO<sub>2</sub> modeling.

### **Emission Inventories**

The source emissions data are a key input for all modeling analyses and one that may require additional considerations under the new 1-hour NO<sub>2</sub> standard is the source emissions data. Section 8.1 of Appendix W provides guidance regarding source emission input data for dispersion modeling and Table 8-2 summarizes the recommendations for emission input data that should be followed for NAAQS compliance demonstrations. Although existing NO<sub>x</sub> emission inventories used to support modeling for compliance with the annual NO<sub>2</sub> standard should serve as a useful starting point, such inventories may not always be adequate for use in assessing compliance with the new 1-hour NO<sub>2</sub> standard since some aspects of the guidance in Section 8.1 differs for long-term (annual and quarterly) standards vs. short-term ( $\leq 24$  hours) standards. In particular, since maximum ground-level concentrations may be more sensitive to operating levels and startup/shutdown conditions for an hourly standard than for an annual standard, emission rates and stack parameters associated with the maximum ground-level concentrations for the annual standard may underestimate maximum concentrations for the new 1-hour NO<sub>2</sub> standard. Due to the importance of in-stack NO<sub>2</sub>/NO<sub>x</sub> ratios required for application of the OLM and PVMRM options within AERMOD discussed above, consideration should also be given to the potential variability of in-stack NO<sub>2</sub>/NO<sub>x</sub> ratios under different operating conditions when those non-regulatory-default options are applied. We also note that source emission input data recommendations in Table 8-2 of Appendix W for “nearby sources” and “other sources” that

may be needed to conduct a cumulative impact assessment include further differences between emission data for long-term vs. short-term standards which could also affect the adequacy of existing annual NO<sub>x</sub> emission inventories for the new 1-hour NO<sub>2</sub> standard. The terms “nearby sources” and “other sources” used in this context are defined in Section 8.2.3 of Appendix W. Attachment A provides a more detailed discussion on determining NO<sub>x</sub> emissions for permit modeling.

While Section 8.2.3 of Appendix W emphasizes the importance of professional judgment by the reviewing authority in the identification of nearby and other sources to be included in the modeled emission inventory, Appendix W establishes “a significant concentration gradient in the vicinity of the source” under consideration as the main criterion for this selection. Appendix W also indicates that “the number of such [nearby] sources is expected to be small except in unusual situations.” See Section 8.2.3.b. Since concentration gradients will vary somewhat depending on the averaging period being modeled, especially for an annual vs. 1-hour standard, the criteria for selection of “nearby” and “other” sources for inclusion in the modeled inventory may need to be reassessed for the 1-hour NO<sub>2</sub> standard.

The representativeness of available ambient air quality data also plays an important role in determining which nearby sources should be included in the modeled emission inventory. Key issues to consider in this regard are the extent to which ambient air impacts of emissions from nearby sources are reflected in the available ambient measurements, and the degree to which emissions from those background sources during the monitoring period are representative of allowable emission levels under the existing permits. The professional judgments that are required in developing an appropriate inventory of background sources should strive toward the proper balance between adequately characterizing the potential for cumulative impacts of emission sources within the study area to cause or contribute to violations of the NAAQS, while minimizing the potential to overestimate impacts by double-counting of modeled source impacts that are also reflected in the ambient monitoring data. We would also caution against the literal and uncritical application of very prescriptive procedures for identifying which background sources should be included in the modeled emission inventory for NAAQS compliance demonstrations, such as those described in Chapter C, Section IV.C.1 of the draft *New Source Review Workshop Manual* (EPA, 1990), noting again that Appendix W emphasizes the importance of professional judgment in this process. While the draft workshop manual serves as a useful general reference regarding New Source Review (NSR) and PSD programs, and such procedures may play a useful role in defining the spatial extent of sources whose emissions may need to be considered, it should be recognized that “[i]t is not intended to be an official statement of policy and standards and does not establish binding regulatory requirements.” See, Preface.

Given the range of issues involved in the determination of an appropriate inventory of emissions to include in a cumulative impact assessment, the appropriate reviewing authority should be consulted early in the process regarding the selection and proper application of appropriate monitored background concentrations and the selection and appropriate characterization of modeled background source emission inventories for use in demonstrating compliance with the new 1-hour NO<sub>2</sub> standard.

### **Tier-specific Technical Issues**

This section discusses technical issues related to application of each tier in the three-tiered screening approach for NO<sub>2</sub> modeling recommended in Section 5.2.4 Appendix W. A basic understanding of NO<sub>x</sub> chemistry and “of the chemical environment into which the source’s plume is to be emitted” (Appendix W, Section 5.1.j) will be helpful for addressing these issues based on the specific application.

#### Tier 1:

Since the assumption of full conversion of NO to NO<sub>2</sub> will provide the most conservative treatment of NO<sub>x</sub> chemistry in assessing ambient impacts, there are no technical issues associated with treatment of NO<sub>x</sub> chemistry for this tier. However, the general issues related to emission inventories for the 1-hour NO<sub>2</sub> standard discussed above and in Attachment A apply to Tier 1.

#### Tier 2:

As noted above, the 0.75 national default ratio for ARM is considered to be representative of “area wide quasi-equilibrium conditions” and, therefore, may not be as appropriate for use with the 1-hour NO<sub>2</sub> standard. The appropriateness of this default ambient ratio will depend somewhat on the characteristics of the sources, and as such application of Tier 2 for 1-hour NO<sub>2</sub> compliance demonstrations may need to be considered on a source-by-source basis in some cases. The key technical issue to address in relation to this tier requires an understanding of the meteorological conditions that are likely to be associated with peak hourly impacts from the source(s) being modeled. In general, for low-level releases with limited plume rise, peak hourly NO<sub>x</sub> impacts are likely to be associated with nighttime stable/light wind conditions. Since ambient ozone concentrations are likely to be relatively low for these conditions, and since low wind speeds and stable atmospheric conditions will further limit the conversion of NO to NO<sub>2</sub> by limiting the rate of entrainment of ozone into the plume, the 0.75 national default ratio will likely be conservative for these cases. A similar rationale may apply for elevated sources where plume impaction on nearby complex terrain under stable atmospheric conditions is expected to determine the peak hourly NO<sub>x</sub> concentrations. By contrast, for elevated sources in relatively flat terrain, the peak hourly NO<sub>x</sub> concentrations are likely to occur during daytime convective conditions, when ambient ozone concentrations are likely to be relatively high and entrainment of ozone within the plume is more rapid due to the vigorous vertical mixing during such conditions. For these sources, the 0.75 default ratio may not be conservative, and some caution may be needed in applying Tier 2 for such sources. We also note that the default equilibrium ratio employed within the PVMRM algorithm as an upper bound on an hourly basis is 0.9.

#### Tier 3:

This tier represents a general category of “detailed screening methods” which may be considered on a case-by-case basis. Section 5.2.4(b) of Appendix W cites two specific examples of Tier 3 methods, namely OLM and the use of site-specific ambient NO<sub>2</sub>/NO<sub>x</sub> ratios supported by ambient measurements. As noted above, we also believe it is appropriate to consider the

PVMMRM option as a Tier 3 detailed screening method at this time. The discussion here focuses primarily on the OLM and PVMMRM methods, but we also note that the use of site-specific ambient NO<sub>2</sub>/NO<sub>x</sub> ratios will be subject to the same issues discussed above in relation to the Tier 2 default ARM, and as a result it will generally be much more difficult to determine an appropriate ambient NO<sub>2</sub>/NO<sub>x</sub> ratio based on monitoring data for the new 1-hour NO<sub>2</sub> standard than for the annual standard.

While OLM and PVMMRM are both based on the same simple chemical mechanism of titration to account for the conversion of NO emissions to NO<sub>2</sub> (see Eq. 1) and therefore entail similar technical issues and considerations, there are some important differences that also need to be considered when assessing the appropriateness of these methods for specific applications. While the titration mechanism may capture the most important aspects of NO-to-NO<sub>2</sub> conversion in many applications, both methods will suffer from the same limitations for applications in which other mechanisms, such as photosynthesis, contribute significantly to the overall process of chemical transformation. Sources located in areas with high levels of VOC emissions may be subject to these limitations of OLM and PVMMRM. Titration is generally a much faster mechanism for converting NO to NO<sub>2</sub> than photosynthesis, and as such is likely to be appropriate for characterizing peak 1-hour NO<sub>2</sub> impacts in many cases.

Both OLM and PVMMRM rely on the same key inputs of in-stack NO<sub>2</sub>/NO<sub>x</sub> ratios and hourly ambient ozone concentrations. Although both methods can be applied within the AERMOD model using a single “representative” background ozone concentration, it is likely that use of a single value would result in very conservative estimates of peak hourly ambient concentrations since its use for the 1-hour NO<sub>2</sub> standard would be contingent on a demonstration of conservatism for all hours modeled. Furthermore, hourly monitored ozone concentrations used with the OLM and PVMMRM options must be concurrent with the meteorological data period used in the modeling analysis, and thus the temporal representativeness of the ozone data for estimating ambient NO<sub>2</sub> concentrations could be a factor in determining the appropriateness of the meteorological data period for a particular application. As noted above, the representativeness of these key inputs takes on somewhat greater importance in the context of a 1-hour NO<sub>2</sub> standard than for an annual standard, for obvious reasons. In the case of hourly background ozone concentrations, methods used to substitute for periods of missing data may play a more significant role in determining the 1-hour NO<sub>2</sub> modeled design value, and should therefore be given greater scrutiny, especially for data periods that are likely to be associated with peak hourly concentrations based on meteorological conditions and source characteristics. In other words, ozone data substitution methods that may have been deemed appropriate in prior applications for the annual standard may not be appropriate to use for the new 1-hour standard.

While these technical issues and considerations generally apply to both OLM and PVMMRM, the importance of the in-stack NO<sub>2</sub>/NO<sub>x</sub> ratios may be more important for PVMMRM than for OLM in some cases, due to differences between the two methods. The key difference between the two methods is that the amount of ozone available for conversion of NO to NO<sub>2</sub> is based simply on the ambient ozone concentration and is independent of source characteristics for OLM, whereas the amount of ozone available for conversion in PVMMRM is based on the amount of ozone within the volume of the plume for an individual source or group of sources. The plume volume used in PVMMRM is calculated on an hourly basis for each source/receptor

combination, taking into account the dispersive properties of the atmosphere for that hour. For a low-level release where peak hourly NO<sub>x</sub> impacts occur close to the source under stable/light wind conditions, the plume volume will be relatively small and the ambient NO<sub>2</sub> impact for such cases will be largely determined by the in-stack NO<sub>2</sub>/NO<sub>x</sub> ratio, especially for sources with relatively close fence-line or ambient air boundaries. This example also highlights the fact that the relative importance of the in-stack NO<sub>2</sub>/NO<sub>x</sub> ratios may be greater for some applications than others, depending on the source characteristics and other factors. Assumptions regarding in-stack NO<sub>2</sub>/NO<sub>x</sub> ratios that may have been deemed appropriate in the context of the annual standard may not be appropriate to use for the new 1-hour standard. In particular, it is worth reiterating that the 0.1 in-stack ratio often cited as the “default” ratio for OLM should not be treated as a default value for hourly NO<sub>2</sub> compliance demonstrations.

Another difference between OLM and PVMRM that is worth noting here is the treatment of the titration mechanism for multiple sources of NO<sub>x</sub>. There are two possible modes that can be used for applying OLM to multiple source scenarios within AERMOD: (1) apply OLM to each source separately and assume that each source has all of the ambient ozone available for conversion of NO to NO<sub>2</sub>; and (2) assume that sources whose plumes overlap compete for the available ozone and apply OLM on a combined plume basis. The latter option can be applied selectively to subsets of sources within the modeled inventory or to all modeled sources using the OLMGROUP keyword within AERMOD, and is likely to result in lower ambient NO<sub>2</sub> concentrations in most cases since the ambient NO<sub>2</sub> levels will be more ozone-limited. One of the potential refinements in application of the titration method incorporated in PVMRM is a technique for dynamically determining which sources should compete for the available ozone based on the relative locations of the plumes from individual sources, both laterally and vertically, on an hourly basis, taking into account wind direction and plume rise. While this approach addresses one of the implementation issues associated with OLM by making the decision of which sources should compete for ozone, there is only very limited field study data available to evaluate the methodology.

Given the importance of the issue of whether to combine plumes for the OLM option, EPA has addressed the issue in the past through the Model Clearinghouse process. The general guidance that has emerged in those cases is that the OLM option should be applied on a source-by-source basis in most cases and that combining plumes for application of OLM would require a clear demonstration that the plumes will overlap to such a degree that they can be considered as “merged” plumes. However, much of that guidance was provided in the context of applying the OLM method outside the dispersion model in a post-processing mode on an annual basis. The past guidance on this issue is still appropriate in that context since there is no realistic method to account for the degree of plume merging on an hourly basis throughout the modeling analysis when applied as a post-processor. However, the implementation of the OLM option within the AERMOD model applies the method on a source-by-source, receptor-by-receptor, and hour-by-hour basis. As a result, the application of the OLMGROUP option within AERMOD is such that the sources only compete for the available ozone to the extent that each source contributes to the cumulative NO<sub>x</sub> concentration at each receptor for that hour. Sources which contribute significantly to the ambient NO<sub>x</sub> concentration at the receptor will compete for available ozone in proportion to their contribution, while sources that do not contribute significantly to the ambient NO<sub>x</sub> concentration will not compete for the ozone. Thus, the OLMGROUP option

implemented in AERMOD will tend to be “self-correcting” with respect to concerns that combining plumes for OLM will overestimate the degree of ozone limiting potential (and therefore underestimate ambient NO<sub>2</sub> concentrations). As a result of these considerations, we recommend that use of the “OLMGROUP ALL” option, which specifies that all sources will potentially compete for the available ozone, be routinely applied and accepted for all approved applications of the OLM option in AERMOD. This recommendation is supported by model-to-monitor comparisons of hourly NO<sub>2</sub> concentrations from the application of AERMOD for the Atlanta NO<sub>2</sub> risk and exposure assessment (EPA, 2008), and recent re-evaluations of hourly NO<sub>2</sub> impacts from the two field studies (New Mexico and Palaau) that were used in the evaluation of PVMRM (MACTEC, 2005). These model-to-monitor comparisons of hourly NO<sub>2</sub> concentrations show reasonably good performance using the "OLMGROUP ALL" option within AERMOD, with no indication of any bias to underestimate hourly NO<sub>2</sub> concentrations with OLMGROUP ALL. Furthermore, model-to-monitor comparisons based on OLM without the OLMGROUP option do exhibit a bias to overestimate hourly NO<sub>2</sub> concentrations. We will provide further details regarding these recent hourly NO<sub>2</sub> model-to-monitor comparisons at a later date.

## SUMMARY

To summarize, we emphasize the following points:

1. The 3-tiered screening approach recommended in Section 5.2.4 of Appendix W for annual NO<sub>2</sub> assessments generally applies to the new 1-hour NO<sub>2</sub> standard.
2. While generally applicable, application of the 3-tiered screening approach for assessments of the new 1-hour NO<sub>2</sub> standard may entail additional considerations, such as the importance of key input data, including appropriate emission rates for the 1-hour standard vs. the annual standard for all tiers, and the representativeness of in-stack NO<sub>2</sub>/NO<sub>x</sub> ratios and hourly background ozone concentrations for Tier 3 detailed screening methods.
3. Since the OLM and PVMRM methods in AERMOD are currently considered non-regulatory-default options, application of these options requires justification and approval by the Regional Office on a case-by-case basis as alternative modeling techniques, in accordance with Section 3.2.2, paragraph (e), of Appendix W.
4. Applications of the OLM option in AERMOD, subject to approval under Section 3.2.2.e of Appendix W, should routinely utilize the “OLMGROUP ALL” option for combining plumes.
5. While the 1-hour NAAQS for NO<sub>2</sub> is defined in terms of the 3-year average for monitored design values to determine attainment of the NAAQS, this definition does not preempt or alter the Appendix W requirement for use of 5 years of NWS meteorological data or at least 1 year of site specific data.

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## ATTACHMENT A

### Background on Hourly NO<sub>x</sub> Emissions for Permit Modeling for the 1-hour NO<sub>2</sub> NAAQS

#### Introduction

The purpose of this attachment is to address questions about availability of hourly NO<sub>x</sub> emissions for permit modeling under the new NO<sub>2</sub> NAAQS. It summarizes existing guidance regarding emission input data requirements for NAAQS compliance modeling, and provides background on the historical approach to development of inventories for NO<sub>2</sub> permit modeling and computation of hourly emissions appropriate for assessing the new 1-hour NO<sub>2</sub> standard. Although the NAAQS is defined in terms of ambient NO<sub>2</sub> concentrations, source emission estimates for modeling are based on NO<sub>x</sub>.

Under the PSD program, the owner or operator of the source is required to demonstrate that the source does not cause or contribute to a violation of a NAAQS (40 CFR 51.166 (k)(1) and 40 CFR 52.21 (k)(1)) and/or PSD increments (40 CFR 51.166 (k)(2) and 52.21 (k)(2)). However, estimation of the necessary emission input data for NAAQS compliance modeling entails consideration of numerous factors, and the appropriate reviewing authority should be consulted early in the process to determine the appropriate emissions data for use in specific modeling applications (see 40 CFR 51, Appendix W, 8.1.1.b and 8.2.3.b)

#### Summary of Current Guidance

Section 8.1 of the *Guideline on Air Quality Models*, Appendix W to 40 CFR Part 51, provides recommendations regarding source emission input data needed to support dispersion modeling for NAAQS compliance demonstrations. Table 8-2 of Appendix W provides detailed guidance regarding the specific components of the emission input data, including the appropriate emission limits (pounds/MMBtu), operating level (MMBtu/hr), and operating factor (e.g., hr/yr or hr/day), depending on the averaging time of the standard. Table 8-2 also distinguishes between the emission input data needed for the new or modified sources being assessed, and “nearby” and “other” background sources included in the modeled emission inventory.

Based on Table 8-2, emission input data for new or modified sources for annual and quarterly standards are essentially the same as for short-term standards ( $\leq 24$  hours), based on maximum allowable or federally enforceable emission limits, design capacity or federally enforceable permit conditions, and the assumption of continuous operation. However, there are a few additional considerations cited in Appendix W that could result in different emission input data for the 1-hour vs. annual NO<sub>2</sub> NAAQS. For example, while design capacity is listed as the recommended operating level for the emission calculation, peak hourly ground-level concentrations may be more sensitive than annual average concentrations to changes in stack parameters (effluent exit temperature and exit velocity) under different operating capacities. Table 8-2 specifically recommends modeling other operating levels, such as 50 percent or 75 percent of capacity, for short-term standards (see footnote 3). Another factor that may affect maximum ground-level concentrations differently between the 1-hour vs. annual standard is

restrictions on operating factors based on federally enforceable permit conditions. While federally enforceable operating factors other than continuous operation may be accounted for in the emission input data (e.g., if operation is limited to 8 am to 4 pm each day), Appendix W also states that modeled emissions should not be averaged across non-operating time periods (see footnote 2 of Table 8-2).

While emission input data recommendations for “nearby” and “other” background sources included in the modeled emission inventory are similar to the new or modified source emission inputs in many respects, there is an important difference in the operating factor between annual and short-term standards. Emission input data for nearby and other sources may reflect actual operating factors (averaged over the most recent 2 years) for the annual standard, while continuous operation should be assumed for short-term standards. This could result in important differences in emission input data for modeled background sources for the 1-hour NO<sub>2</sub> NAAQS relative to emissions used for the annual standard.

### **Model Emission Inventory for NO<sub>2</sub> Modeling**

For the existing annual NO<sub>2</sub> NAAQS, the permit modeling inventory has generally been compiled from the annual state emission inventory questionnaire (EIQ) or Title V permit applications on file with the relevant permitting authority (state or local air program). Since a state uses the annual EIQ for Title V fee assessment, the state EIQ typically requires reporting of unit capacity, total fuel combusted, and/or hours of operation to help verify annual emissions calculations for fee accuracy purposes. Likewise, Title V operating permit applications contain all of the same relevant information for calculating emissions. While these emission inventories are important resources for gathering emission input data on background sources for NAAQS compliance modeling, inventories which are based on actual operations may not be sufficient for short-term standards, such as the new 1-hour NO<sub>2</sub> NAAQS. However, appropriate estimates of emissions from background sources for the 1-hour NO<sub>2</sub> standard may be derived in many cases from information in these inventories regarding permitted emission limits and operating capacity.

Historically, it has not been a typical practice for an applicant to use the EPA’s national emission inventory (NEI) as the primary source for compiling the permit modeling inventory. Since the emission data submitted to the NEI represents annual emission totals, it may not be suitable for use in NAAQS compliance modeling for short-term standards since modeling should be based on continuous operation, even for modeled background sources. Although the NEI may provide emission data for background sources that are more appropriate for the annual NO<sub>2</sub> standard, the utility of the NEI for purposes of NAAQS compliance modeling is further limited due to the fact that additional information regarding stack parameters and operating rates required for modeling may not be available from the NEI. While records exist in the NEI for reporting stack data necessary for point source modeling (i.e., stack coordinates, stack heights, exit temperatures, exit velocities), some states do not report such information to the NEI, or there are may be errors in the location data submitted to the NEI. Under such conditions, default stack information based upon SIC is substituted and use of such data could invalidate modeling results. Building locations and dimensions, which may be required to account for building downwash influences in the modeling analysis, may also be missing or incomplete in many cases.

A common and relatively straightforward approach for compiling the necessary information to develop an inventory of emissions from background sources for a permit modeling demonstration is as follows, patterned after the draft *New Source Review Workshop Manual* (EPA, 1990). The applicant completes initial modeling of allowable emission increases associated with the proposed project and determines the radii of impact (ROI) for each pollutant and averaging period, based on the maximum distance at which the modeled ambient concentration exceeds the Significant Impact Level (SIL) for each pollutant and averaging period. Typically, the largest ROI is selected and then a list of potential background sources within the ROI plus a screening distance beyond the ROI is compiled by the permitting authority and supplied to the applicant. The applicant typically requests permit applications or EIQ submittals from the records department of the permitting authority to gather stack data and source operating data necessary to compute emissions for the modeled inventory. Once the applicant has gathered the relevant data from the permitting authorities, model emission rates are calculated. While this approach is fairly common, it should be noted that the draft workshop manual “is not intended to be an official statement of policy and standards and does not establish binding regulatory requirements” (see, Preface), and the appropriate reviewing authority should be consulted early in the process regarding the selection of appropriate background source emission inventories for the 1-hour NO<sub>2</sub> standard. We also note that Appendix W establishes “a significant concentration gradient in the vicinity of the source” under consideration as the main criterion for selection of nearby sources for inclusion in the modeled inventory, and further indicates that “the number of such [nearby] sources is expected to be small except in unusual situations.” See Section 8.2.3.b.

As mentioned previously, modeled emission rates for short-term NAAQS are computed consistent with the recommendations of Section 8.1 of Appendix W, summarized in Table 8-2. The maximum allowable (SIP-approved process weight rate limits) or federally enforceable permit limit emission rates assuming design capacity or federally enforceable capacity limitation are used to compute hourly emissions for dispersion modeling against short-term NAAQS such as the new 1-hour NO<sub>2</sub> NAAQS. If a source assumes an enforceable limit on the hourly firing capacity of a boiler, this is reflected in the calculations. Otherwise, the design capacity of the source is used to compute the model emission rate. A load analysis is typically necessary to determine the load or operating condition that causes the maximum ground-level concentrations. In addition to 100 percent load, loads such as 50 percent and 75 percent are commonly assessed. As noted above, the load analysis is generally more important for short-term standards than for annual standards. For an hourly standard, other operating scenarios of relatively short duration such as “startup” and “shutdown” should be assessed since these conditions may result in maximum hourly ground-level concentrations, and the control efficiency of emission control devices during these operating conditions may also need to be considered in the emission estimation.

### **Emission Calculation Example**

The hourly emissions are most commonly computed from AP-42 emission factors based on unit design capacity. For a combustion unit, the source typically reports both the unit capacity and the actual total amount of fuel combusted annually (gallons, millions of cubic feet

of gas, etc.) to the permitting authority for the EIQ. Likewise, Title V operating permit applications will contain similar information that can be used to compute hourly emissions.

For example, assume you are modeling an uncontrolled natural gas package boiler with a design firing rate of 30 MMBtu/hr. The AP-42 emission factor for an uncontrolled natural gas external combustion source (AP-42, Section 1.4) for firing rates less than 100 MMBtu/hr is 100 lbs. NO<sub>x</sub>/10<sup>6</sup> SCF natural gas combusted. The hourly emission rate is derived by converting the emission factor expressed in terms of lbs. NO<sub>x</sub>/10<sup>6</sup> SCF to lbs. NO<sub>x</sub>/MMBtu. The conversion is done by dividing the 100 lbs. NO<sub>x</sub>/10<sup>6</sup> SCF by 1,020 to convert the AP-42 factor to lbs. NO<sub>x</sub>/MMBtu. The new emission factor is now 0.098 lbs. NO<sub>x</sub>/MMBtu.

For this example, the source has no limit on the hourly firing rate of the boiler; therefore, the maximum hourly emissions are computed by multiplying the design firing rate of the boiler by the new emission factor.

$$E_{hourly} = 0.098 \text{ lbs/MMBtu} \times 30 \text{ MMBtu/hr} = 2.94 \text{ lbs/hr}$$

Thus 2.94 lbs/hr represents the emission rate that would be input into the dispersion model for modeling against the 1-hour NO<sub>2</sub> NAAQS to comport with emission rate recommendations of Section 8.1 of Appendix W.

It is important to note that data derived for the annual state emission inventory (EI) is based on actual levels of fuel combusted for the year, and is therefore different than how allowable emissions are computed for near-field dispersion modeling. For the annual EI report, a source computes their annual emissions based upon the AP-42 emission factor multiplied by the actual total annual throughput or total fuel combusted.

In the 30 MMBtu/hr boiler example, the annual NO<sub>x</sub> emissions reported to the NEI is computed by:

$$E_{annual} = (\text{AP-42 emission factor}) \times (\text{total annual fuel combusted})$$

$$E_{annual} = (100 \text{ lbs}/10^6 \text{ SCF}) \times (100 \times 10^6 \text{ SCF/yr}) = 10,000 \text{ lbs. NO}_x/\text{yr or } 5 \text{ tons NO}_x/\text{yr}$$



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Re: SOI Comments on EPA Region 10's Proposed Minor Source Permit for the Kulluk Drill Ship -- Alaska Outer Continental Shelf Air Quality Control Minor Permit Approval to Construct No. R10OCS-AK-07-01(Revised)

Dear Mr. Mahar:

Shell Offshore Inc. ("SOI") is pleased to submit these comments in support of EPA Region 10's revised Outer Continental Shelf ("OCS") minor source air permit for the Kulluk drill ship, noticed for public comment beginning February 25, 2008 ("Proposed Permit"). The Proposed Permit governs SOI's future exploratory operations in the Beaufort Sea utilizing the Kulluk.<sup>1</sup> As the permittee, SOI is uniquely able to provide information and perspective on the nature of its operations as they relate to various aspects of the Proposed Permit, and has an indisputable interest in the terms and conditions of the Proposed Permit.

SOI believes that the conditions in Region 10's Proposed Permit, as well as the analyses in the Supplemental Statement of Basis for the Proposed Permit, are sensible and fair. SOI believes that the conditions in the Proposed Permit will allow SOI to explore for vital natural resources, and to do so in a socially and environmentally responsible way. SOI further believes that the terms of the Proposed Permit would be consistent with SOI's commitment to corporate responsibility.

SOI commends Region 10 for properly limiting its consideration of comments to the following subjects: (i) EPA's "stationary source" determination; (ii) EPA's ambient impact analysis; and (iii) new or revised permit terms or conditions, specified in Section 4.0 of the Supplemental Statement of Basis. When the Environmental Appeals Board ("EAB") issued a remand order for the permit issued to SOI on June 12, 2007, the EAB instructed Region 10 to conduct a narrow inquiry to address specific deficiencies in the original permit. *In re Shell Offshore Inc.*, 13 E.A.D. at \_\_, slip op. at 5 (Sept. 14, 2007).

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<sup>1</sup> At SOI's request, EPA has suspended processing of the permit governing SOI's exploratory operations utilizing the Frontier Discoverer drill ship, in light of SOI's decision not to seek to operate the Frontier Discoverer in the Alaska OCS during the 2008 open water season.

Region 10 should therefore reject any comments that seek to re-open issues that were resolved in the EAB remand order, and **any** extraneous comments that would distract Region 10 from its otherwise focused inquiry.

SOI supports Region 10's finding in the Supplemental Statement of Basis that SOI's planned wells in the Beaufort Sea OCS are not "contiguous or adjacent properties." See 40 C.F.R. 50.166(b). SOI commends Region 10 for its thoughtful and thorough analysis of the relevant EPA guidance documents, and for identifying the appropriate factors to consider in reaching its conclusion. **SOI believes** that Region 10 properly applied these factors to the specific **factual** circumstances of SOI's planned development, and correctly determined that the planned wells are neither contiguous nor adjacent.

In addition to these general comments, the remainder of this comment document focuses on specific issues in the permit about which SOI has **specialized** knowledge or a particularized interest.

#### PERMIT COVER PAGE

SOI requests that **the Final Permit** include on the **cover page**, on a new page two of the permit, or in the **Final Permit cover letter**, contact information for the relevant party (or parties) at EPA **Region 10** for matters relating to the **Final Permit**, including a physical address, a mailing address, an email address, **facsimile** and telephone numbers.

### SECTION 1. TERMS AND CONDITIONS

#### DEFINITIONS

#### Condition 1. Definitions; Condition 2. Authorizations/Emission Unit Inventory and Description

##### Condition 1.1, Proposed Permit at 4

EPA should **clarify** that SOI may identify a number of wells in advance of a given season for potential **drilling** during that season, and that SOI ultimately may select among those wells in drilling during that season. Given the uncertainties surrounding the timing of the open water season or other issues, SOI will not always be able to predict how many or which wells it will drill during any given season, but SOI will have identified a set of prospective wells. The wells ultimately drilled during that season will be a subset of those previously identified wells. Thus, any one or more of those prospective wells **identified** or "selected" in advance of the drilling season may ultimately become a "Planned Well" when drilled.

In addition to providing an explanation to this effect in its Response to Comments, EPA should clarify Condition 1.1, which **defines "Planned Well," as follows (added text underlined)**:

"A Planned Well is a well, selected from among prospective wells that are identified in advance of the drilling **season**, that is drilled to collect discrete **information** from a specific prospect."

##### Condition 1.3, Proposed Permit at 4

The definition of “Replacement Well” should be modified slightly to clarify that such a well is intended to “replace” the original Planned Well and to obtain the same discrete information that SOI intended to obtain from the original Planned Well. Condition 1.3 should be modified to read as follows (added text underlined; deleted text in strikethrough):

“A Replacement Well is a well drilled near a Planned Well that has been plugged and abandoned without being drilled to its intended depth. The Replacement Well collects is intended to collect, from an alternate location, the same discrete information ~~from a specific prospect from an alternate location~~ originally sought from drilling of the Planned Well.”

**Condition 1.4, Proposed Permit at 4; Condition 2.3, Proposed Permit at 5.**

As currently drafted, the definition of “Drill Site” in Condition 1.4 appears inconsistent with the language of Condition 2.3, defining initial and final operation at each Drill Site. The definitions in Condition 2.3 appear to comport more precisely with the regulatory definition of an OCS Source, which encompasses vessels only when they are “permanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing or producing resources therefrom . . . .” *See* 40 C.F.R. § 55.2. Until the Kulluk’s anchoring process is complete, it is not “attached” to the seabed, nor is it being “used for the purpose of exploring” the seabed. Thus, the definition of Drill Site, as well as the terms of Condition 2.3, should reflect that the Kulluk is operating as an OCS Source only when the Kulluk is anchored in a manner sufficient to permit the proposed operations – *i.e.*, the Kulluk is attached to all of the anchors in the relevant anchor pattern (discussed below), all of which are also attached to the seabed.

Thus, the definition of Drill Site should specify both (i) that the Kulluk is attached to its anchors, and (ii) that those anchors are attached to the seabed. There may be instances – for example, in the event of a heavy ice incursion – during which the Kulluk would cease exploratory drilling operations, untether from its anchors, and move off from a “Drill Site” location, leaving its anchors in place, with the intent of returning after the ice had retreated to reconnect to its anchors and reinitiate drilling operations at that same Drill Site location. The Kulluk would not be an OCS Source, nor should it be considered to be occupying a “Drill Site,” during any such interim periods when it is not “attached” to the seabed for the purpose of exploration.

In addition, EPA should make clear that the “initial” and “final” operation of the Kulluk, as defined in Sections 2.3, is intended to describe not only the very first and very last of the Kulluk’s operations at a given Drill Site, but also any “temporary” cessation of operations prior to final completion of operations at a Drill Site in order to move off of the Drill Site (e.g., due to ice incursions), and any re-initiation of operations at that Drill Site during the same season after the Kulluk has moved off of the Drill Site (e.g., due to

ice incursions) and then returned to resume operations. In other words, for purposes of calculating the **number of days during which** the Kulluk has drilled at a single drill site for purposes of compliance with Condition 15, there may be more than one “initial operation” time and more than one “final” operation time for each Drill Site within a given drilling season. Thus, any **interim** periods during which the Kulluk has disconnected from or raised anchors, (e.g., to leave the site during ice incursions) should not be considered to be included within the periods of operation bounded by Conditions 2.3.a and 2.3.b. nor should any such periods be included in calculating the number of days during which the Kulluk has drilled at a single drill site for purposes of compliance with Condition 15.

SOI anticipates two anchor patterns that will allow it to safely commence OCS exploration activities. For drilling of mud cellars, SOI anticipates **being able to initiate operations with eight** of its twelve anchors **attached** to both the Kulluk and the seabed. Subsequently, after operations have commenced, the additional four anchors would be added. For all other exploratory operations, SOI will begin operations only after all twelve of the Kulluk’s anchors are set and the Kulluk is attached to those anchors.

Thus, with respect to drilling of mud cellars, the definition of Drill Site should be revised to reflect that the Kulluk is occupying a Drill Site when it has a minimum of eight anchors to which it is attached, and which are attached to the seabed. For purposes of other exploratory activities, the **definition of Drill Site should be revised to reflect the fact that the Kulluk is occupying a Drill Site when it is attached to all twelve anchors and all twelve of those anchors are attached to the seabed.** In addition, Conditions 2.3.a and 2.3.b should **be revised to reflect definitions of initial and final operation consistent with these anchor patterns.**

Finally, EPA should change the reference to the “seafloor” so that the Proposed Permit instead refers to the “**seabed,**” consistent with the language of 40 C.F.R. § 55.2, which defines “OCS Source” in terms of vessels permanently or temporarily attached to the “seabed.”

The definition of “Drill Site” in Condition 1.4 should be modified, therefore, to read as follows (added text underlined; deleted text in strikethrough):

“A Drill Site is a location on the surface of the water occupied by the Kulluk, ~~and from this location where~~ the Kulluk is permanently or temporarily attached to the seabed floor and erected thereon and used for the purpose of exploring resources therefrom. The Kulluk is said to be occupying a Drill Site when it is attached to at least one of the anchors in the applicable anchor pattern and those anchors are is attached to the seabed floor. For purposes of drilling mud cellars, the applicable anchor pattern consists of a minimum of eight anchors. For purposes of other operations, the applicable anchor pattern consists of twelve anchors.”

Condition 2.3.a. should be modified to read as follows (added text underlined; deleted text in strikethrough):

“The initial operation of the Kulluk during any given operational period within a season at each Drill Site is defined as the completion of (i) the setting of the Kulluk’s last anchor in the applicable anchor pattern on the seabed floor and (ii) the Kulluk’s connection to all anchors in the pattern. For purposes of drilling mud cellars, the applicable anchor pattern consists of eight anchors. For purposes of other operations, the applicable anchor pattern consists of twelve anchors. More than one initial operation may occur at each Drill Site within a given drilling season if drilling is interrupted and resumed there.”

Condition 2.3.b. should be modified to read as follows (added text underlined; deleted text in strikethrough):

“The final operation of the Kulluk during any given operational period within a season at each Drill Site is defined as when the Kulluk’s intentionally disconnects from one of its anchors in the applicable anchor pattern or removes one of its last anchors is removed in the relevant anchor pattern from the seabed floor. For purposes of drilling mud cellars, the applicable anchor pattern consists of eight anchors. For purposes of other operations, the applicable anchor pattern consists of twelve anchors. More than one final operation of the Kulluk may occur at each Drill Site within a given season if drilling is interrupted and resumed there.”

**OWNER REQUESTED LIMITS RENDERING PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REVIEW UNNECESSARY**

The heading preceding Condition 8 should be revised to clarify that the governing regulations expressly permit SOI to adopt Owner Requested Limits and thereby obtain a minor source permit. It is well established that a source that would otherwise exceed the 250 tpy threshold and be subject to PSD requirements may exempt itself from regulation as a major source by “requesting the permitting authority to impose a permit restriction on the source’s capacity to emit.” *In re Shell Offshore Inc.*, 13 E.A.D. at \_\_, slip op. at 13 (Sept. 14, 2007). Indeed, a number of North Slope air permit holders, including the North Slope Borough for its Barrow Thermal Oxidation System (Permit No. AQ0831MSS01), have air permits that include Owner Requested Limits in order to avoid classification either as a major source or a minor source. Thus, the heading preceding Condition 8 should be modified to read as follows (added text underlined):

“Owner Requested Limits Rendering Prevention of Significant Deterioration (PSD) Review Unnecessary Pursuant to 40 C.F.R. § 52.21 and 18 Alaska Admin. Code 50.508(5).”

**Condition 8. Nitrogen Oxides (NOx) Emission Limitation.**

**Condition 8.2, Proposed Permit at 11**

EPA should specify that the calculations and record-keeping requirements of this Condition must be completed within three business days after the end of the week. Providing for notice within three business days provides ample expedience for purposes of any EPA response relating to these aspects of the permit and addresses the practical and feasibility concerns arising out of an obligation to prepare and submit reports to EPA during shift changes, holidays or weekend periods. Condition 8.2 should therefore be modified to read as follows (added text underlined):

“No later than 3 business days after the end of the week, the permittee **shall calculate and record** the Rolling 52-week NOx Emissions for an Exploratory Operation by adding the most recent **Weekly NOx Emissions** to the preceding 51 Weekly NOx Emissions.”

**Condition 8.3.a, Proposed Permit at 11**

As drafted, Condition 8.3.a provides for a reporting year from December 1<sup>st</sup> of one year through November 30<sup>th</sup> of the following year. In order to provide consistency with other reporting requirements and maintain a more predictable and manageable reporting regime, SOI requests that EPA provide for reporting based on the calendar year. Thus, the second sentence of Condition 8.3.a should be revised to read as follows (added text underlined; deleted text in strikethrough):

“The permittee shall report to EPA a summary of Rolling 52-week NOx Emissions annually to EPA. The report shall be submitted no later than February 1<sup>st</sup> ~~December 31~~ for the time period beginning January 1<sup>st</sup> ~~December 1~~ (of the ~~previous calendar year~~) and ending November 30 ~~December 31<sup>st</sup>~~ of the preceding year.”

**Condition 8.3.b, Proposed Permit at 12**

EPA should specify that the reporting requirement of this Condition must be completed within three business days after the end of the week. Providing for notice within three business days provides ample expedience for purposes of any EPA response relating to these aspects of the permit and addresses the practical and feasibility concerns arising out of an obligation to prepare and submit reports to EPA during shift changes, holidays or weekend periods. Thus, Condition 8.3.b should be revised to read as follows (added text underlined):

“The permittee shall report to EPA any exceedance of Condition 8 within 3 business days of identification.”

**Condition 9. Source Group-Specific NOx Emission Factors**

**Condition 9.1.b.(ii)(A), Proposed Permit at 15**

This condition refers only to 2007 emissions and should therefore be updated because the permit no longer is addressing 2007 emissions. This condition should be further revised to account for the possibility that SOI may obtain new stack test results in the future. Thus, this condition should be revised to read as follows (deleted text in strikethrough):

“New emissions factors based upon stack testing conducted in 2007, or based on more recent testing conducted subsequent to the permit issue date, shall be utilized to calculate all emissions ~~generated during 2007.~~”

**Condition 9.2.b., Proposed Permit at 15**

SOI requests that its submission of the emission test report and the new proposed emission factor provided for in this Condition be due within 30 days of completion of testing, rather than within 15 days of completion of the testing. Fifteen days is an extremely short time period for SOI’s emission testing firm to move from completion of the testing through the entire QA/QC process, and then to prepare a draft test report, which SOI must then review and submit to EPA. Because **once** the new emission factor is approved, Condition 9.1.b(ii) applies that new emission factor retroactively, beginning with the day that the stack testing used to develop the emission factor was performed, the results of the process will not be affected by allowing SOI a more adequate time period during which to complete these items. Thus, SOI requests that EPA modify the first sentence of Condition 9.2.b to provide (added text underlined; deleted text in strikethrough):

“Within ~~15~~ 30 days of completing the testing, the permittee shall submit to EPA a new emission factor for approval.”

Condition 10. Sulfur Dioxide (SO<sub>2</sub>) Emission Limitation

*Condition 10.b., Proposed Permit at 17*

EPA should specify that the reporting requirement of this Condition must be completed within three business days after the end of the week. Providing for notice within three business days provides ample expedience for purposes of any EPA response relating to these aspects of the permit and addresses the practical and feasibility concerns arising out of an obligation to prepare and submit reports to EPA during shift changes, holidays or weekend periods. Thus, SOI requests that Condition 10.b. be modified to read as follows (added text underlined):

“Within 3 business days of identification, report to EPA any instance of a liquid fuel with sulfur content greater than 0.19 percent by weight being combusted in any emission unit on the Kulluk or a support vessel.”

STANDARDS FOR FUEL BURNING EQUIPMENT

Condition 13. Particulate Matter

*Condition 13.3.b., Proposed Permit at 20*

EPA should specify that the reporting requirement of this Condition must be completed within three business days after the end of the week. Providing for notice within three business days provides ample expedience for purposes of any EPA response relating to these aspects of the permit and addresses the practical and feasibility concerns arising out of an obligation to prepare and submit reports to EPA during shift changes, holidays or weekend periods. Thus, SOI requests that Condition 13.3.b be modified to read (added text underlined):

“Within 3 business days of identification, report to EPA any instance of a liquid fuel with sulfur content greater than 0.05 percent by weight being combusted in Unit K-8, K-9, K-10, K-13, K-14.”

*Condition 13.4.c.(ii) and Condition 13.4.d.(i), Proposed Permit at 21*

Condition 13.4.c.(ii) requires Shell to calculate and record each main driver engine’s preceding 3-hour average operating load every 15 minutes. Condition 13.4.d.(i) requires Shell to report to EPA a summary of these 3-hour time periods in which each main driver engine emitted, on average, particulate matter greater than 0.05 gr/dscf as determined using the EPA-approved correlation.

These provisions could create a situation in which a single elevated 15-minute reading could trigger multiple (as many as twelve) overlapping elevated three-hour readings, which in turn could lead to a single elevated reading being multiple-counted as a series of as many as twelve separate violations of the restrictions set forth in this Condition.

EPA should therefore clarify that reporting pursuant to 13.4.d.(i) and determining compliance with the three hour average limitation of Condition 13 are based on eight specific three-hour periods per day, e.g., 12:01 a.m. to 3:00 a.m.; 3:01 a.m. to 6:00 a.m.; 6:01 a.m. to 9:00 a.m.; etc., similar to the EPA ambient monitoring reporting requirements. Condition 13 should be revised to read as follows: (added text underlined; deleted text in strikethrough):

**“Particulate Matter.** The permittee shall not cause or allow particulate matter emitted from fuel-burning equipment to exceed; 0.05 grains per cubic foot of exhaust gas, corrected to standard conditions and averaged over any of the following three hour periods ~~hours, 0.05 grains:~~ 12:01 a.m. to 3:00 a.m.; 3:01 a.m. to 6:00 a.m.; 6:01 a.m. to 9:00 a.m.; 9:01 a.m. to 12:00 noon; 12:01 p.m. to 3:00 p.m.; 3:01 p.m. to 6:00 p.m.; 6:01 p.m. to 9:00 p.m.; 9:01 p.m. to 12:00 midnight.”

To conform to the new Condition 13 requirement, Condition 13.4.d.(i) should be revised to read as follows: (added text underlined; deleted text in strikethrough):

“The **permittee** shall report annually to EPA a summary of those 3-hour time periods, specified in Condition 13 above, during which an engine **emitted**, on average, particulate matter in concentrations **in excess** of the 0.05 **gr/dscf** as determined using the EPA-approved correlation.”

Finally, Condition 13.4.d.(ii) should be revised to cover the calendar year. This condition provides for annual reporting, but again provides **for that annual** reporting to cover a 12 month period running from December 1 through **November 30**, rather than covering the calendar **year**. In order to provide consistency **with other** reporting requirements and maintain a more predictable and manageable reporting **regime**, SOI requests that EPA provide for reporting based **on the calendar year**. This provision should be revised to read as follows: (added text underlined; deleted text in strikethrough):

“The report shall be submitted no later than February 1<sup>st</sup> ~~December 31~~ for the time period January 1<sup>st</sup> through December 31<sup>st</sup> of the preceding year ~~beginning December 1~~ ~~(of the previous calendar year) and ending November 30.”~~

AMBIENT AIR QUALITY PROTECTION (NO<sub>2</sub>, PM<sub>10</sub> AND SO<sub>2</sub>)

**Conditions 17.3, 18.3, and 19.3, Proposed Permit at 22; Condition 20.3 Proposed Permit at 23**

With respect to each of these four Conditions, EPA should specify that the permittee must provide notice within three business days of identifying any specified exceedance. Providing for notice within three business days provides ample expedience for purposes of any EPA response relating to these aspects of the permit and addresses the practical and feasibility concerns arising out of an obligation to prepare and submit reports to EPA during shift changes, holidays or weekend periods.

**Conditions 18.1 and 18.2, Proposed Permit at 22**

These Conditions reference a misidentified emissions unit. The Kulluk Emergency Electrical Generator Engine is misidentified in the permit as Unit K-4. It should be identified as Unit K-7. Thus, in Conditions 18.1 and 18.2, EPA should delete references to Unit K-4. These Conditions should be revised to reference Unit K-7.

**GENERALLY APPLICABLE REQUIREMENTS**

**Condition 21, Proposed Permit at 23**

This Condition incorrectly references 18 AAC 50.110 as the source of the Alaska ambient air quality standards. This should be revised to reference 18 AAC 50.010, which contains those standards.

**Condition 26, Proposed Permit at 23**

Condition 26 should be revised to include an introductory paragraph that clarifies the procedures that would apply to EPA's reopening of the permit to terminate, revise, or revoke and reissue it. The recommended language affords to SOI a process for reopening this permit equivalent to the process that applies to a federal operating permit under EPA's regulations. *See* 40 C.F.R. §§ 71.7(f), (g). The Kulluk Minor Permit is the first OCS permit of its kind and it is important for EPA to make clear that, in the event the Agency believes cause exists to terminate, revise, or revoke and reissue this permit, EPA does not intend to afford SOI lesser procedural protections during operations under this permit than would be afforded the holder of an on-shore Part 71 operating permit. Thus, SOI recommends that Condition 26 be revised as follows (added text underlined):

**26. Permit Revision, Termination and Reissuance.** This permit may be terminated, revised, or revoked and reissued by EPA for cause. Proceedings to reopen this permit for cause shall follow the same procedures as applied to the issuance of this initial permit and shall affect only those parts of the permit for which cause to reopen exists. EPA may reopen this permit for cause upon providing a notice of EPA's intent and a statement of reasons to SOI at least 30 days in advance of the date that the permit is to be

reopened, and EPA shall provide SOI an opportunity for comment on EPA's proposed action and an opportunity for a hearing, except that EPA may provide a shorter time period in the case of an emergency. Cause exists to terminate, revise, or revoke and reissue this permit under the following circumstances:

Although Condition 26.1 needs no revision, Condition 26.2 and Condition 26.3 should be revised to conform to the Alaska permit regulations. The Alaska regulations provide that revision, termination, or reissuance of a permit is only necessary where there is a violation of a "material" permit term: "after 30 days' written notice to the permittee, the department (1) may modify, or revoke and reissue a construction, operating, or minor permit if the department finds that . . . (B) the permittee has violated . . . a **material** term or condition of a permit, approval, or acceptance issued under this chapter." 46 AAC 46.14.280(a) (emphasis added). The corresponding on-shore regulations appropriately establish a materiality threshold for actionable permit violations, which should be reflected in this OCS permit. Thus, SOI recommends that Condition 26.2 and 26.3 be revised as follows (added text underlined; deleted text in strikethrough):

26.2 Materially ~~in~~accurate statements were made in establishing the terms or conditions of this permit;

26.3 The permittee fails to comply with any material condition of this permit; or

Finally, Condition 26.4 should be revised as indicated to make it parallel with the introductory language of Condition 26. Thus, SOI recommends that Condition 26.4 be revised as follows (added text underlined; deleted text in strikethrough):

26.4 This permit must be terminated, revised, or revoked ~~and~~ reissued to assure compliance with Clean Air Act Requirements.

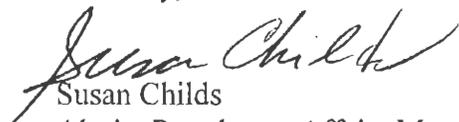
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SOI appreciates EPA's efforts in responding to these and other comments submitted on the Proposed Permit. SOI remains available to provide EPA any information relevant to EPA's response efforts or its processing of the Proposed Permit. Thank you.

Sincerely,

  
Susan Childs  
Alaska Regulatory Affairs Manager

Cc: Paul Smith, Shell  
Jeffrey Walker, Minerals Management Service, Alaska Region  
Don Perrin, Alaska Department of Natural Resources  
Johnny Aiken, NSB Planning Department

**Shell Exploration & Production, Inc.**

3601 C Street, Suite 1000

Anchorage, Alaska 99503

Tel 907.770.3700

Fax 907.646.7135

Internet <http://www.shell.com>

January 4, 2010

The Honorable Gina McCarthy  
Assistant Administrator for Air and Radiation  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator McCarthy and Deputy Administrator Janet McCabe,

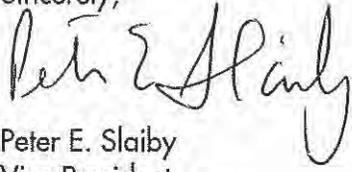
I want to thank you again for meeting with me in mid-December regarding Shell's pending air permit applications for exploration drilling in the Chukchi Sea and the Beaufort Sea and our follow-up phone calls.

As we discussed, in order to mobilize for the 2010 drilling season, Shell must have usable air permits in early 2010. I am advised that the revised draft Chukchi permit will be published on January 11, 2010, for a 35-day public comment period. A date for publication of the draft Beaufort permit has not been set, but I am hopeful that will occur in early February. Given this challenging status report, I have three requests.

- First, I ask that the Chukchi air permit be finalized within 10 days of the close of the comment period. This is reasonable if EPA will dedicate staff to evaluate and respond to comments as they are filed and if EPA will utilize the Shell expertise to assist in this preparation.
- Second, in anticipation that the Chukchi air permit will be appealed to the Environmental Appeals Board (EAB), I ask that both EPA Region 10 and EPA's Office for Air and Radiation submit written requests to the EAB to set an expedited schedule for resolving the appeal.
- Third, I ask that a firm date for publication of the draft Beaufort air permit be set and that the EPA commit to a clear and expeditious schedule for finalizing that permit and moving it through the EAB process.

I appreciate the time and attention that you and Region 10 staff have given to date. I am hopeful that EPA will agree to move deliberately in the next weeks as requested above.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter E. Slaiiby". The signature is written in a cursive style with a large, looped initial "P".

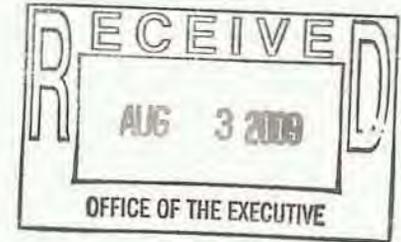
Peter E. Slaiiby  
Vice President  
Shell Alaska

Cc: Janet McCabe, Deputy Administrator, Environmental Protection Agency

Congress of the United States  
Washington, DC 20510

July 30, 2009

Ms. Michelle Pirzadeh  
Acting Regional Administrator  
U.S. Environmental Protection Agency, Region 10  
1200 6<sup>th</sup> Avenue  
Seattle, Washington 98104



Dear Michelle:

We are writing about the air permits needed for certain offshore oil and gas exploration activities in the Chukchi Sea and Beaufort Sea off Alaska. We are keenly interested in seeing that this exploration activity goes forward in a timely and environmentally sound manner.

We are fully aware of the work that you and your staff have done to date on these time critical permits. We are writing to encourage you to make these air permits a high priority in the weeks ahead; and to offer any assistance you may need to ensure that the permits are issued this fall. Failure to issue air permits in 2009 will jeopardize the exploration activity that is planned for 2010.

Offshore oil and gas must play a significant role in meeting the nation's domestic energy needs in the decades to come. Resources off the coast of Alaska are potentially significant and therefore, are a potentially long-term domestic supply resource. We must explore for and develop the Chukchi and Beaufort Seas resources in an environmentally safe and sustainable manner; and we must allow that exploration work to proceed without bureaucratic impediments.

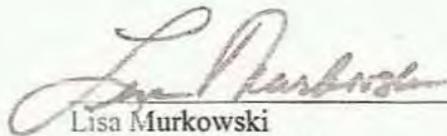
We are concerned about the timetable that Region 10 has for the two air permits needed for the 2010 exploration plans. To the extent that failure to prioritize is the issue, we urge you to reassess. To the extent that lack of resources in Region 10 is contributing to delay, we want to work with you to resolve this issue. It is critical that Region 10 have the requisite staff and staff time necessary to complete the permits this year.

We understand that the applicant has taken significant and important measures to reduce its operational impact. Specifically, the applicant has agreed to operate only one drilling rig in each of the areas and has agreed to modify the drilling rig equipment at a cost of \$25 million to reduce its air emissions impacts. We understand these decisions were made as a result of meetings with your staff and at their request. Again, we are pleased that EPA is working cooperatively with the applicant in this manner.

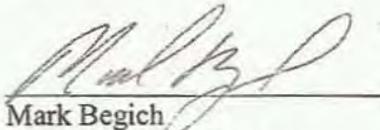
If we need to identify additional resources, either from other federal agencies or from the State of Alaska Department of Environmental Conservation, we stand ready to assist.

We look forward to hearing from you in the very near future about how you plan to move forward in order to issue the two air permits this year. Thank you in advance for your prompt attention to this matter.

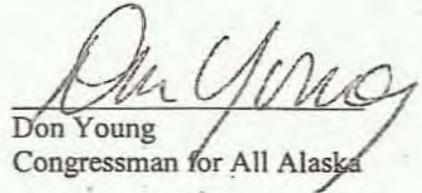
Sincerely,



Lisa Murkowski  
United States Senator



Mark Begich  
United States Senator



Don Young  
Congressman for All Alaska

cc. Larry Hartig-Alaska Department of Environmental Conservation  
Elizabeth Craig-Deputy Assistant Administrator for Air Quality  
U.S. Environmental Protection Agency