

28TH ANNUAL BUSINESS & INDUSTRY'S

# **Sustainability & Environmental, Health and Safety**

**S Y M P O S I U M**

Tuesday & Wednesday, March 26-27, 2019 • Sharonville Convention Center, Cincinnati, Ohio

## **Workshop T**

**Ohio:  
Major Air Permitting,  
Regulatory & Compliance  
Developments**

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**Tuesday, March 26, 2019  
3:30 p.m. to 4:45 p.m.**

## **Biographical Information**

**Maxine D. Dewbury**  
**Environmental Regulatory & Regional HSE Manager**  
**The Procter & Gamble Company**  
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Maxine Dewbury is U.S. Environmental Regulatory and Regional HSE Manager for The Procter & Gamble Company. Maxine has been responsible for U.S. Federal Environmental Regulatory influence, focused on Clean Air Act issues for the past 18 years. In addition to working with trade associations and U.S. EPA on regulations, Maxine is responsible for helping P&G sites and regional resources obtain air permits and meet HSE regulatory requirements.

Prior to this assignment, Maxine has held a variety of positions in her 38 year career with P&G. These include Risk Manager at P&G's Oxnard, California site; Plant Quality Manager at the Flint River, Georgia Pulp Mill; Environmental Manager for the Cellulose & Specialties Division; and several process and project engineering assignments.

Maxine graduated in 1979 from Louisiana Tech University with a B.S. in Chemical Engineering.

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**Michael E. Hopkins, P.E.**  
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Michael Hopkins has been with the Ohio EPA since 1980. He is currently the Assistant Chief, Permitting of the Ohio EPA. His duties include the review and final approval for all air pollution permit-to-install, permit-to-install and operate, and Title V permitting in the State, the development of technical support for air pollution control regulations, litigation support, MACT program support, Tax Program support and general air pollution planning activities. He has been in this position since April 2003. Before this assignment, he was in charge of the Air Quality Modeling and Planning Section with similar duties as above from August 1993 through April 2003. Prior to that assignment, he was in charge of the engineering section of the Ohio EPA Central District Office air program. The engineering section is responsible for reviewing air pollution permit-to-install and permit-to-operate applications for compliance with air pollution regulations, facility inspections, complaint investigations, enforcement case development, policy and rule development, the Emissions Inventory Program, and other related duties in the central Ohio area.

Mr. Hopkins earned his Bachelor's degree in environmental engineering from the Pennsylvania State University. He is a licensed Professional Engineer in the State of Ohio. He is a member of the Air and Waste Management Association, the National Society of Professional Engineers and the Ohio Society of Professional Engineers.

## Biographical Information

**William H. Haak, Founder, Haak Law LLC**  
**Cleveland, Ohio**

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William H. Haak is the Founder of Haak Law LLC ([www.haaklawllc.com](http://www.haaklawllc.com)) – an environmental, health & safety legal and consulting firm based in Cleveland, Ohio. He has nearly 20 years of experience in occupational safety law and worker safety, and 25 years of experience in environmental law (including extensive experience in air pollution control law and multi-media environmental compliance). Mr. Haak practices nationally in the United States and consults globally on all matters related to the EHS field (plus security and crisis management).

Mr. Haak graduated from The University of Akron (Business Finance) and Case Western Reserve University School of Law (J.D. with an emphasis on litigation and trial practice). Following law school, he worked as an Assistant Attorney General in the State of Ohio Attorney General's Environmental Enforcement Section. As counsel to Ohio EPA, Mr. Haak's practice was focused primarily on civil and administrative air pollution control cases. During his time with the Attorney General's Office, Mr. Haak resolved civil environmental enforcement actions resulting in civil penalties totaling approximately \$4 million.

Prior to forming Haak Law LLC, Mr. Haak was Senior EH&S Counsel for General Electric. He supported GE's Appliances and Lighting Businesses, and was engaged in complex air permitting issues for other GE businesses nationwide. Mr. Haak has also been Associate General Counsel – EH&S for Hexion Specialty Chemicals in Columbus, Ohio, and Senior Regulatory Law Counsel for Owens Corning in Toledo, Ohio. He served overseas in the former Soviet Union (Ukraine) as an Environmental Enforcement Specialist with the American Bar Association's Central & East European Law Initiative ("ABA/CEELI").

Haak is a frequent lecturer to attorneys, engineers, and environmental professionals on topics concerning federal and state air pollution law. In addition, he has taught as an adjunct faculty member at the University of Central Florida in Orlando and Columbus State in Columbus, Ohio. From 2005 to 2018, Haak also taught classes focusing on Air Pollution Law and Occupational Safety and Health Law at The University of Toledo College of Law as an Adjunct Professor.

28<sup>nd</sup> Annual

Sustainability and Environmental, Health &  
Safety Symposium

Session T: Ohio – Major Air Permitting,  
Regulatory and Compliance  
Developments  
March 26, 2019

Michael Hopkins, Assistant Chief, Permitting OEPA,  
Division of Air Pollution Control

William H. Haak, Founder, Haak Law LLC

Maxine Dewbury, Regulatory Manager, Procter & Gamble

# Major Air Permitting, Regulatory and Compliance Developments

## Topics:

- Permit Efficiency Improvements
  - Actions Taken
  - Results
  - Plans
- Ozone & PM<sub>2.5</sub> NAAQS Update
- EPA Permit Reform
- USEPA Major Source Enforcement Trends
- USEPA's National Compliance Initiatives

# Ohio Major Air Developments

Session T, 3:30 p.m. to 4:45 p.m.  
March 26, 2019



Michael E. Hopkins, P.E.  
Assistant Chief, Permitting  
Ohio Environmental Protection Agency  
Division of Air Pollution Control  
50 West Town Street, Suite 700  
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# Topics

- Permitting Efficiency Improvements
- Major Project Approach
- Customer Feedback
- Current Status
- What's Next
- Ozone/PM2.5 Attainment Update

# PERMITTING EFFICIENCY IMPROVEMENTS



# Major Efficiency Improvements

- Permit to install and operate program
- Stars2/Air Services
- New permit exemptions – 19 new
- Expanded PBR – 12 new PBRs promulgated
- Developed GP program – 70 available
- PAL permits – issued a few

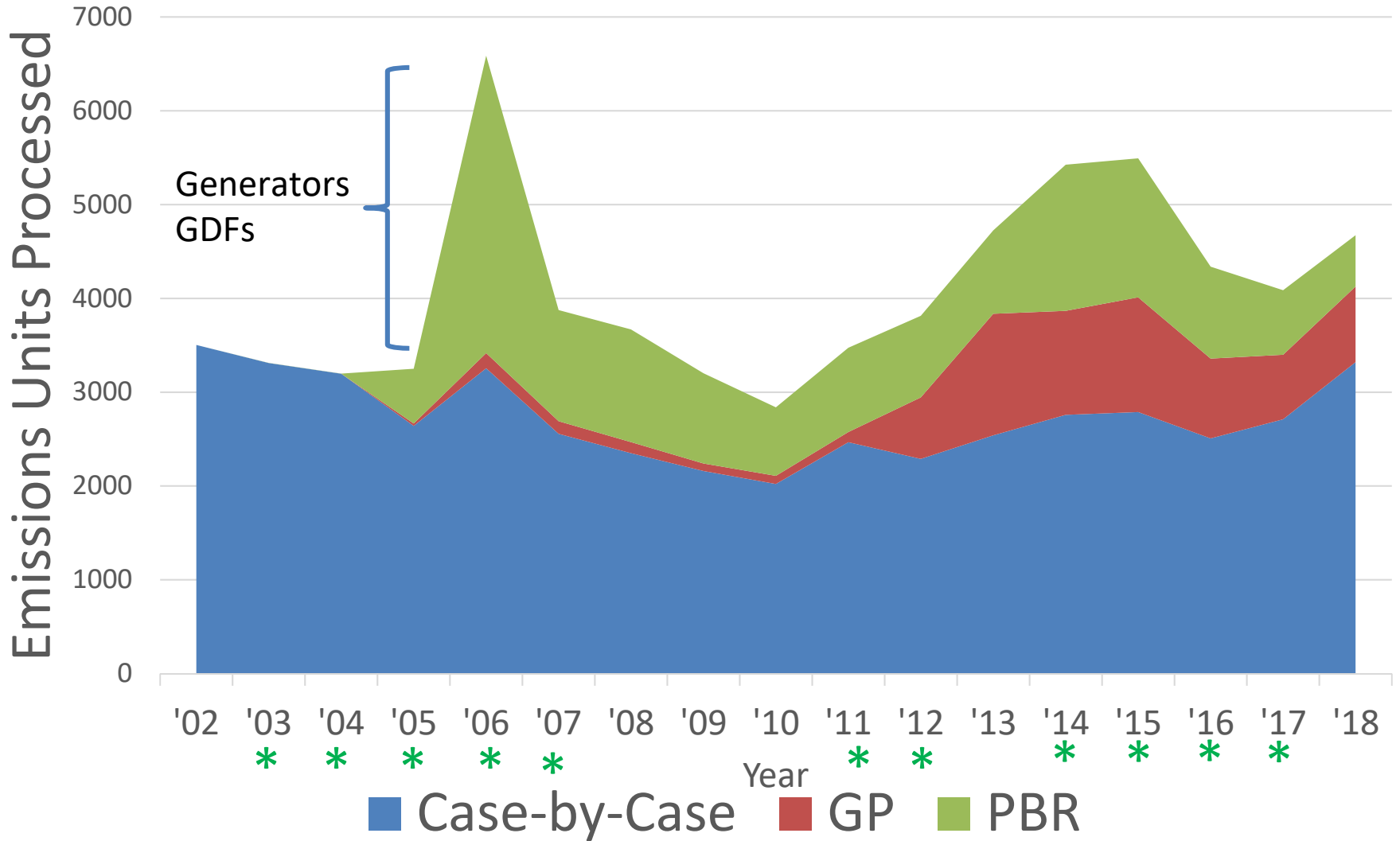
# PBRs, GPs and Exemptions Added

Year	Description
2003	4 PBRs: Injection Compression Molding, Crushing and Screening, Soil-vapor extraction and soil-liquid extraction
2004	14 GPs: Natural Gas Boilers
2005	6 PBRs: Autobody refinishing, 2 GDF, 100 mmBtu NG boilers/heaters, small printing, mid-sized printing
2006	Exemptions: Locomotive engines, dynamometers, mobile vacuum trucks. GP: 2 ready mix concrete
2007	GPs: 2 drycleaner
2011	GPs: 2 aggregate processing, 12 diesel engines, 1 mineral extractions, 2 well site.

# PBRs, GPs and Exemptions Added

Year	Description
2012	3 Digester operations
2014	2 GPs: 2 well site operations (updates)
2015	5 GPs: 2 roadways and parking area, 3 storage pile, 1 tub grinder
2016	16 Exemptions: POTW tanks, powder coating lines, outside stripping/coating, construction activities, building demolition, athletic/racetrack grading, traffic marking, masonry waterproofing/sealing, diesel storage/dispensing, shooting range, annealing, <500 Btu used oil heaters, compost piles, beauty salons, roadway/parking
2017	GPs: 22 Mid-stream compressor equipment

# Installation Emissions Units Processed



\* PBR, GP or exemption added.

# Work Saved Since 2002

- 7,300 emissions units for GPs issued
- 15,750 emissions units for PBRs issued
- $7,300 + 15,700 = 23,000$  EU
- @3 EU per case-by-case permit = 7,600 permits
- Assume 7 hour/case-by-case permit
- ~53,000 man-hour; 25 FTE

# MAJOR PROJECT EXTRA EFFORT

# Major Project Approach

- Extra effort on major projects
- DO/Laa, CO, modeling, consultant, company work as a team
- Weekly calls w Ohio EPA/Company/Consultant
- Continuous communication – identify issues ASAP



# Major Project Approach

- Concurrent terms development
- Concurrent U.S. EPA review
- May charge actual cost
- Must be selective on projects





# Iron Units Example

- New hot briquette iron manufacturer in Toledo
- PSD, modeling, hearing, 13 EUs, multiple rules, citizen comments, U.S. EPA comments
- Kick off meeting June 2017, final permit issued Feb 2018 – 115 calendar days
- Facility currently constructing

*“The air permitting team from OEPA DAPC and the City of Toledo Environmental Services were highly professional and knowledgeable.*

*Their focused, coordinated efforts along with regular communications to our team resulted in an efficient and thorough permitting process.”*

Jason Aagenes, Cleveland-Cliffs  
– Director, Air Regulatory Strategy and Programs



# GENERAL CUSTOMER FEEDBACK

# Customer Feedback

- Final install permit – can do optional feedback survey
- 2017/18 - 233 customers responded
- 98% agreed or strongly agreed that staff were courteous and helpful
- 97% agreed or strongly agreed that their overall experience was positive

# Customer Feedback

- 93% agreed or strongly agreed that they receive their permit in a timely manner
- 88% agreed or strongly agreed that the procedures need to obtain a permit were easy to understand
- 92% agreed or strongly agreed that the terms and conditions are easy to understand

# Personnel Trends

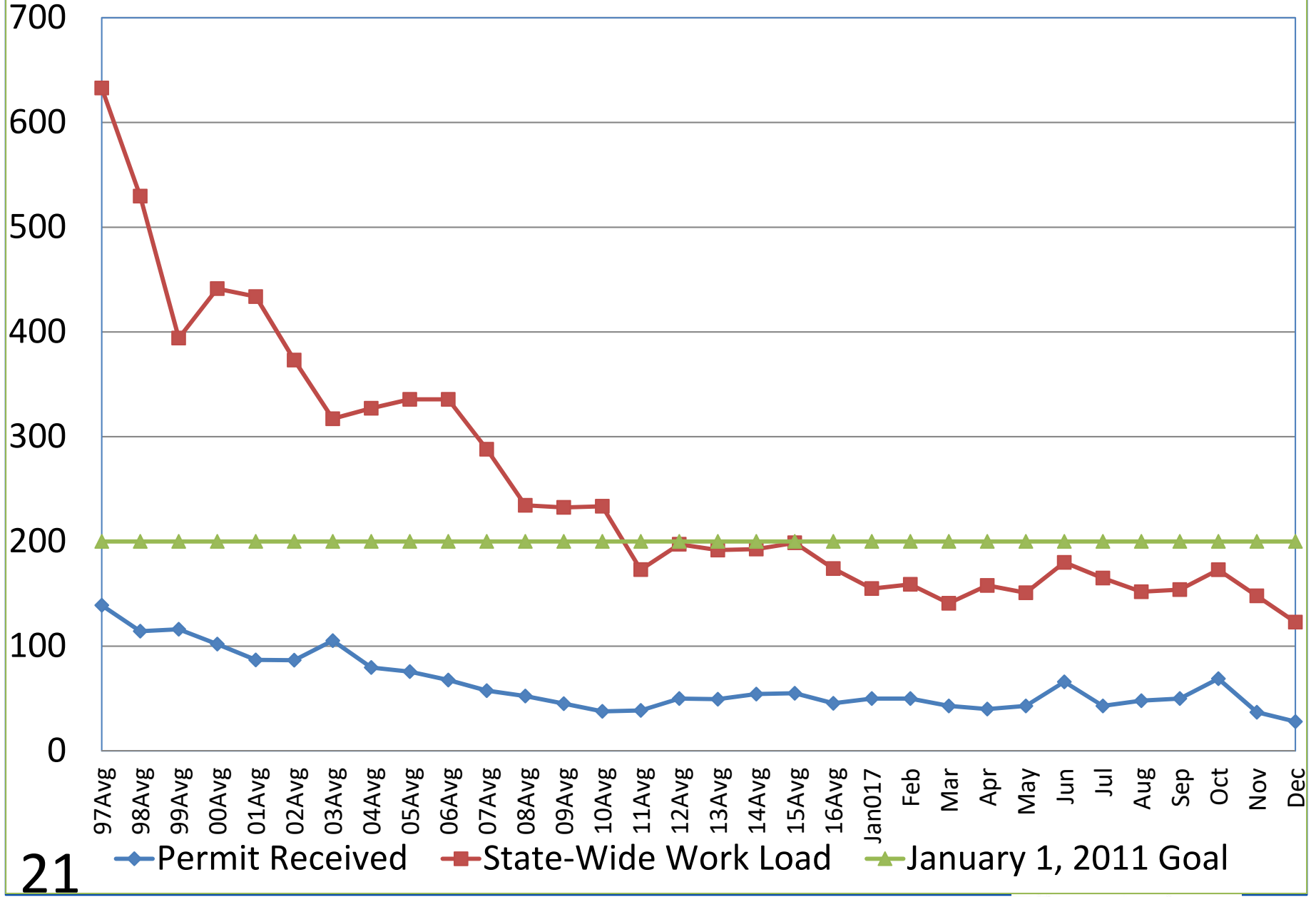
- 2003 - 2017 data
- 220 FTE to 190 FTE – 16% reduction in staffing
- More reductions expected
  - TV fee reductions
  - Possible grant reductions

# CURRENT STATUS

# Current Issues

- Installation permits mostly caught up
  - Few stragglers
- Still have late TV renewals, but close to caught up
- Some late non-TV renewals

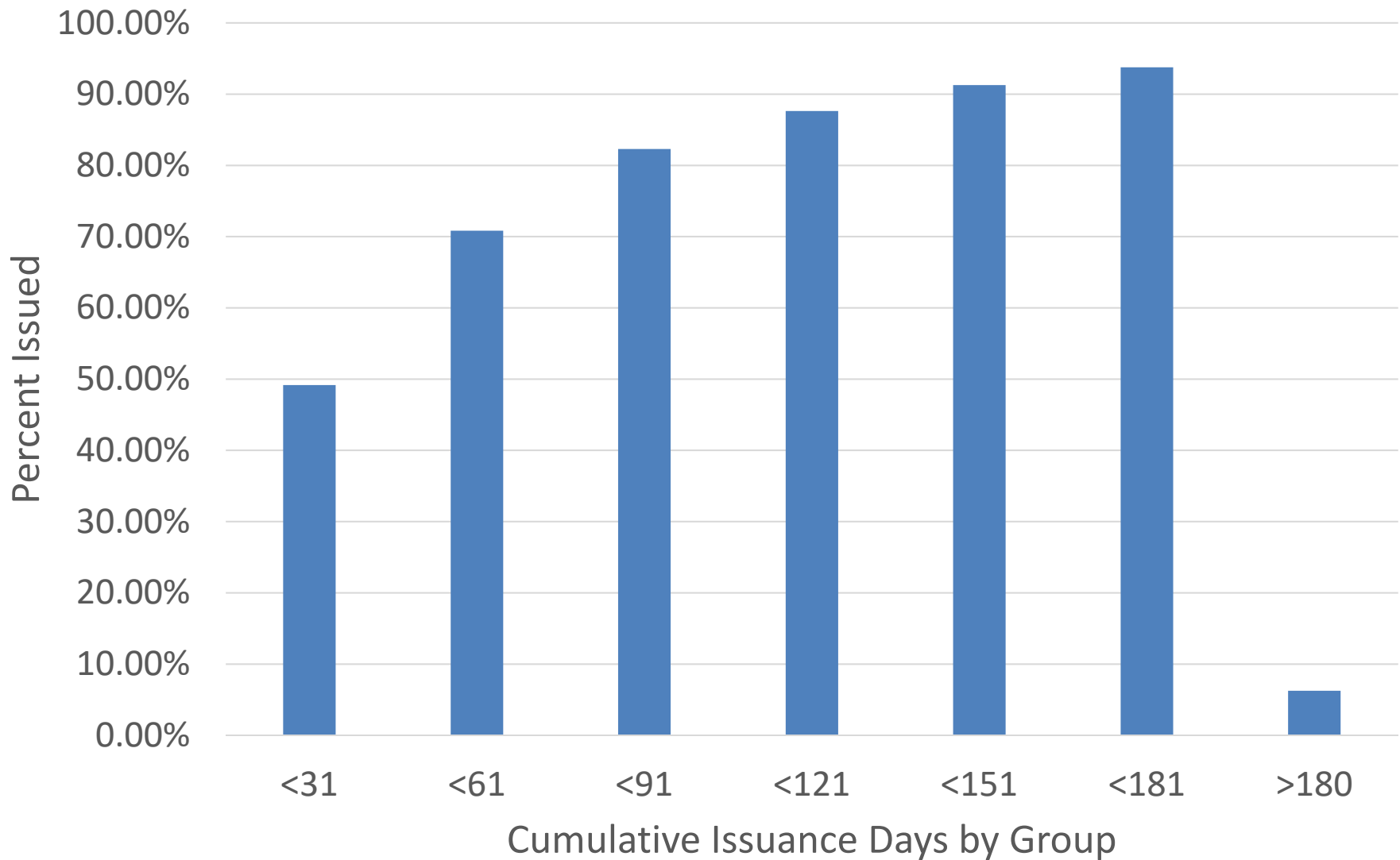
# Air Installation Permit Work Load Trends



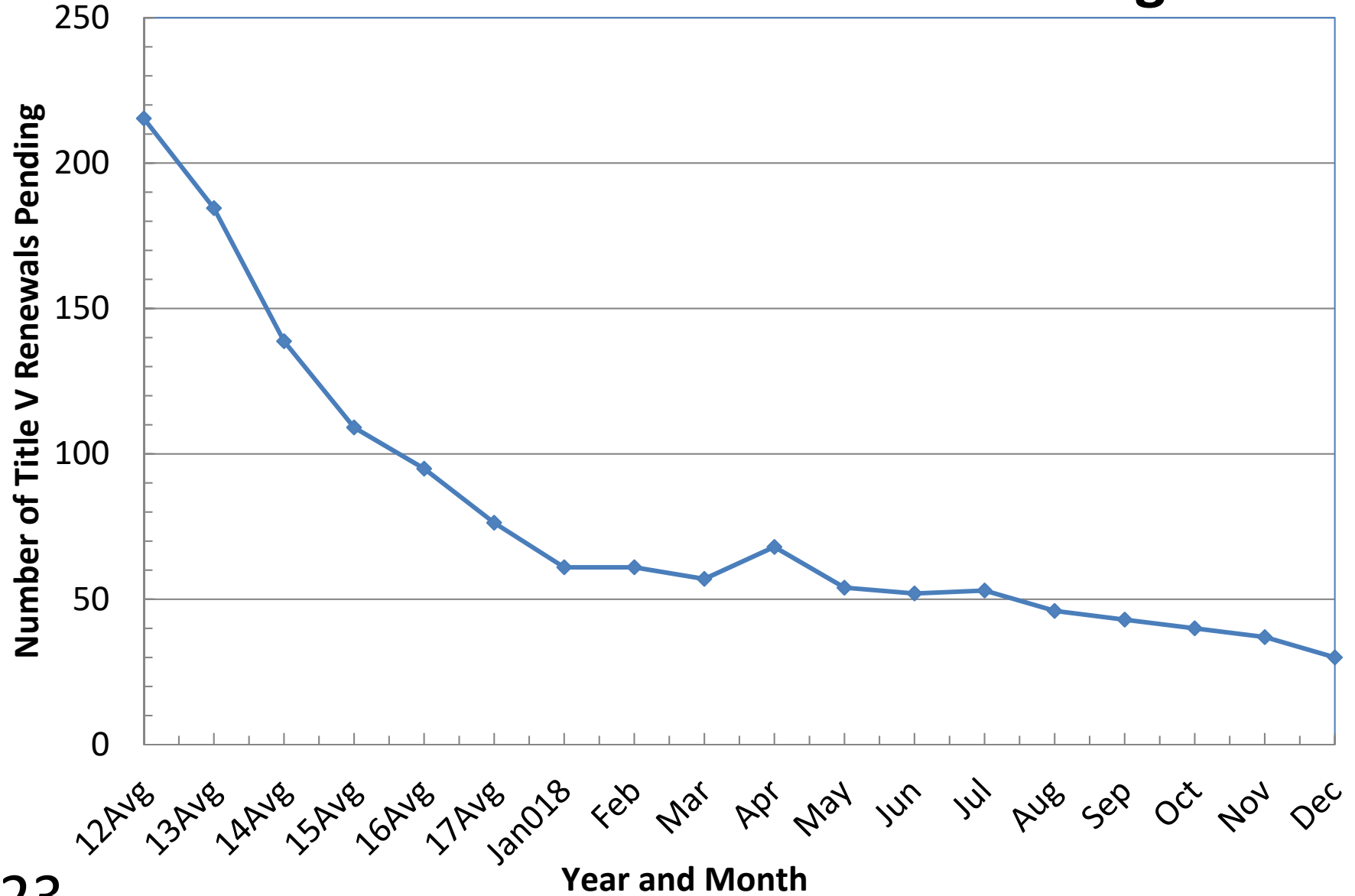
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## 2018 Installation Permit Processing Results

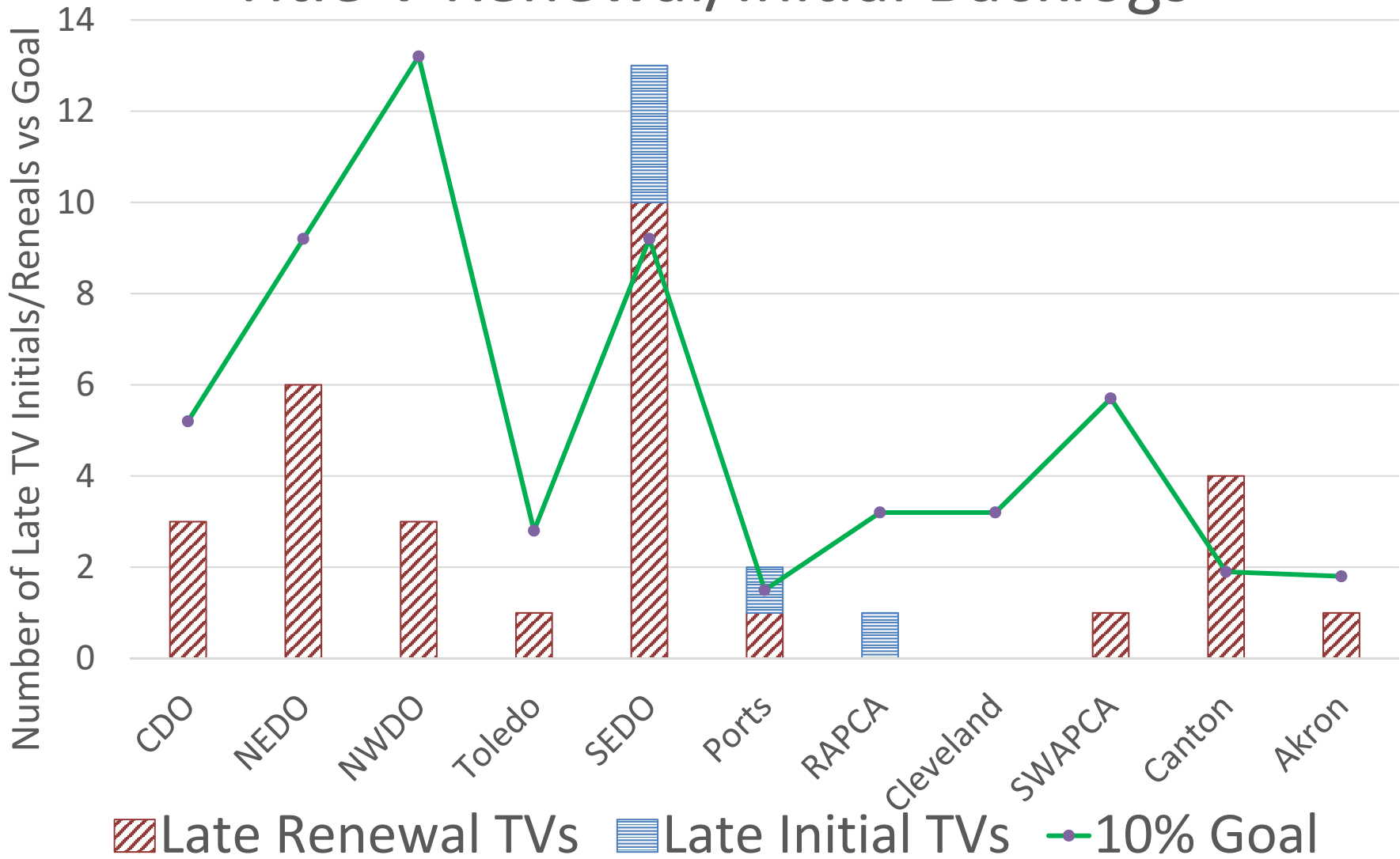


# Title V Late Renewal Permit Backlog



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# Title V Renewal/Initial Backlogs



# What is Next?

- Continuous improvement
- Working on crematory GP
- Need to update other GPs w new BAT/rules
- <10 ton BAT SIP
- Revise well-site GPs w OOOOa?
- Add new exemptions

# Possible New Exemptions

- Issued a bunch of new exemptions in 2016
- Beginning work on new group now
- Just starting rule process – pre-interested party completed
- Draft rules for comment next – summer?

# Possible New Exemptions

- Natural gas transmission valve sites, and metering and regulating sites.
- Portable flares for burning natural gas from maintenance activities at natural gas facilities
- Restaurant grills and ovens used for food preparation
- Portable turbine for power

# Possible New Exemptions

- Small cooling towers
- Temporary fuel burning equipment
- Small woodworking operations
- Battery charging operations
- Also – updating Permit-by-rules

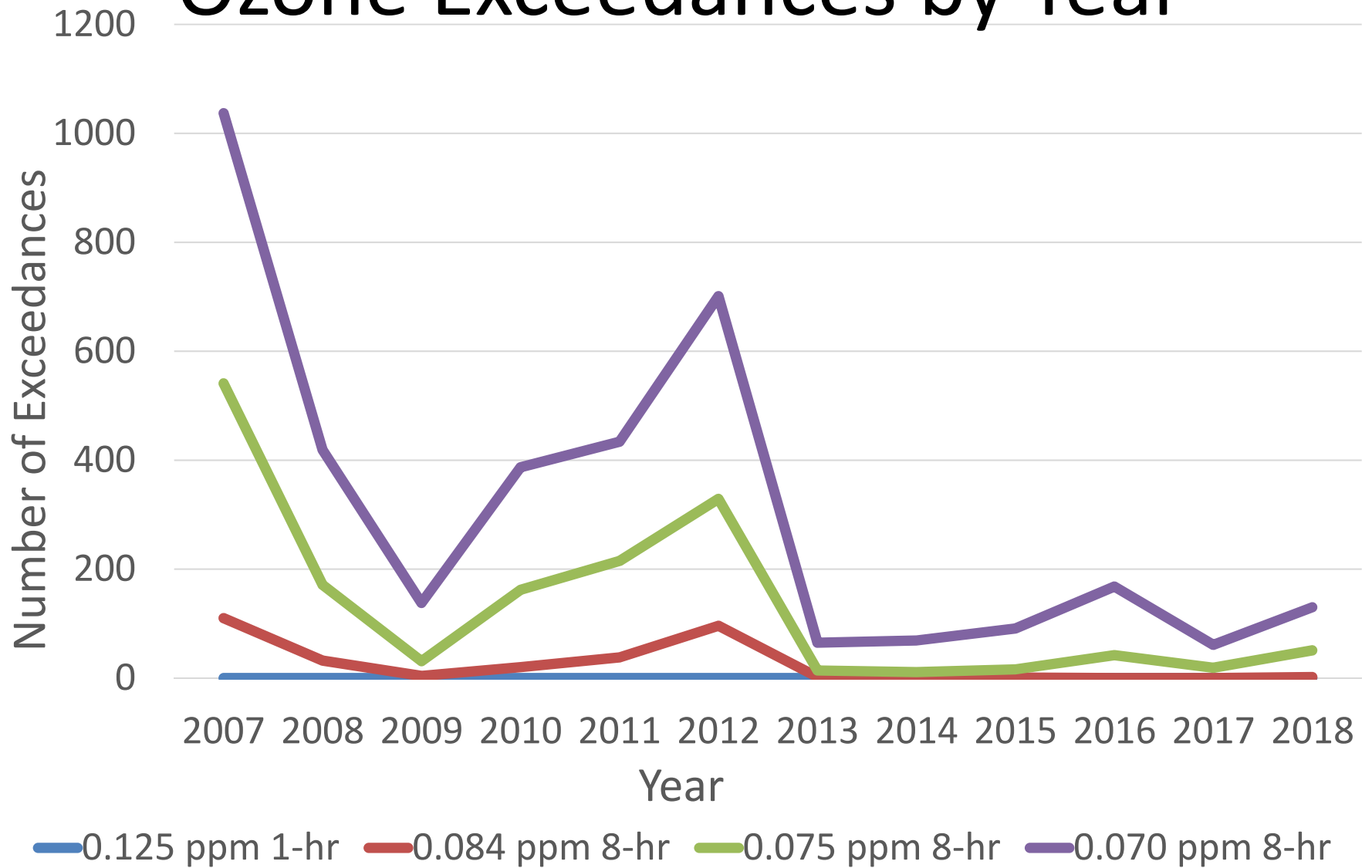
# BAT Exemption

- 2006 SB 265 exempts <10 ton from BAT
- December 2006 placed in rule
- 5 support packages to U.S. EPA
- 11/14/18 proposed approval; 12/14/18 comment period ended
- Expect approval but --- when???

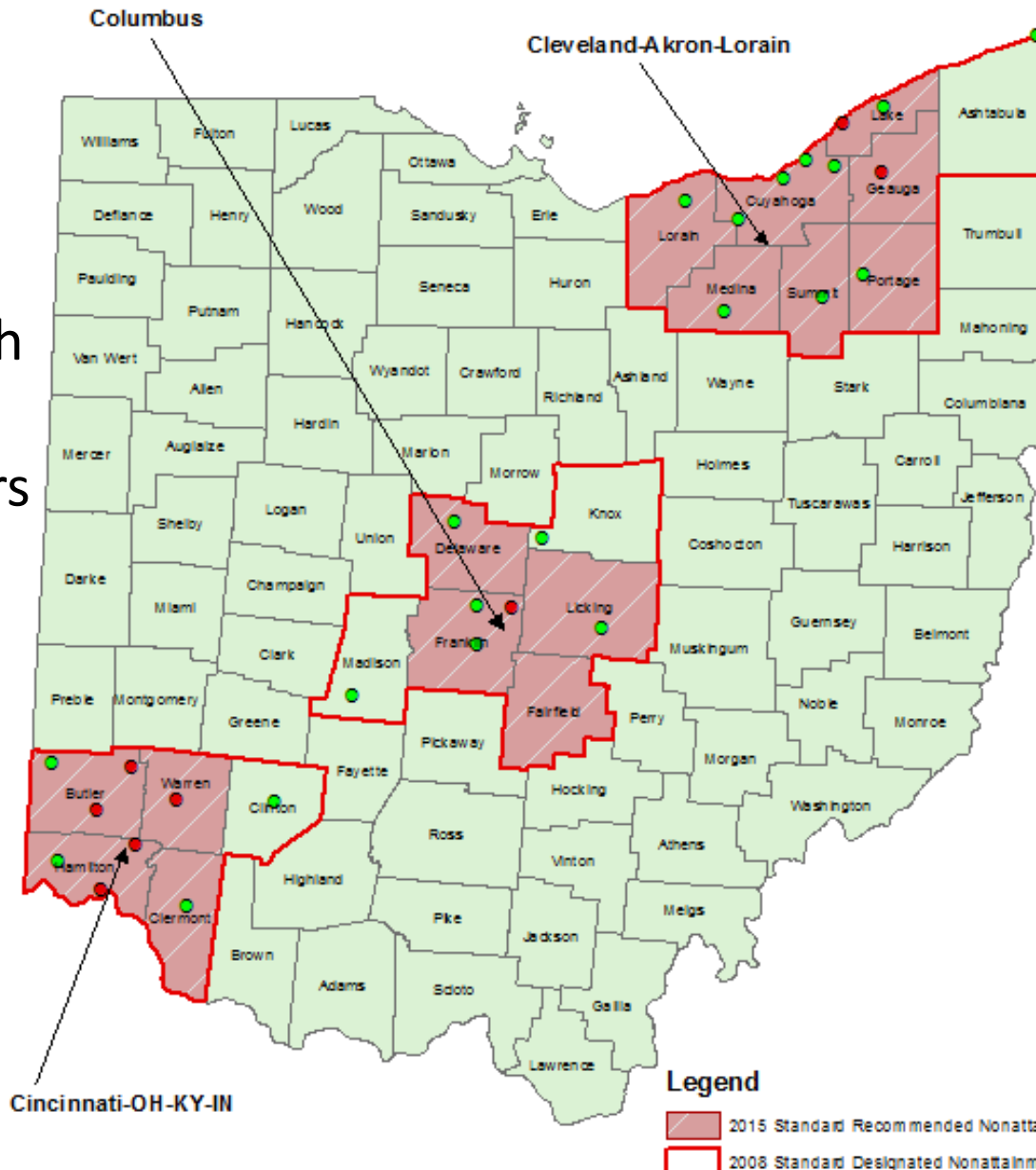


# OZONE NON-ATTAINMENT

# Ozone Exceedances by Year



# 2015 Ozone Standard Designations with 2014-2016 violating monitors



- Legend**
- 2015 Standard Recommended Nonattainment
  - 2008 Standard Designated Nonattainment
  - Monitors violating
  - Monitors not violating

Ohio EPA DAPC Maps Available at:  
<http://www.epa.ohio.gov/dapc/general/naaqs.aspx>

# 2015 Ozone Standard Implementation

- Attainment demonstrations due August 3, 2020.
- Attainment date August 3, 2021....which means 2020 ozone season.

# 2015 Ozone Standard Current Status

- 2016-2018 DV:
  - Dayton area now violates (Montgomery County).
    - Evaluating control strategies.
  - Cincinnati area triggers contingency measures for 2008 ozone standard.
    - Evaluating control strategies.
  - Columbus area in attainment.
    - Preparing redesignation request and maintenance plan.
  - Will existing reductions be enough???

## 2015 Ozone Standard

City	2012-2014 Data (ppb)	2013- 2015 Data (ppb)	2014- 2016 Data (ppb)	2015- 2017 (ppb)	2016-2018 (ppb)
<b>Cleveland</b>	78	73	75	74	75
<b>Columbus</b>	75	71	71	71	69
<b>Cincinnati</b>	75	71	72	73	75
<b>Dayton</b>	72	69	70	70	71

Standard: 70 ppb

# PM2.5 NON-ATTAINMENT

# 2012 PM2.5 Non- Attainment Areas





# 2012 Annual PM2.5 Standard Implementation

- Attainment date December 31, 2021.
  - Attained based on 2015-2017 DV.
  - Redesignation request and maintenance plan submitted July 24, 2018.
  - Should be proposed for approval by U.S. EPA “soon”.

PM2.5 Annual Design Values (ug/m3)  
Standard 12.0 ug/m3

City	12-14	13-15	14-16	15-17	16-18*
Akron	10.7	11.2	11.0	10.2	9.0
Canton	11.7	11.6	10.8	10.1	9.4
Cleveland	12.4	12.4	12.2	11.7	11.1
Columbus	10.8*	10.9*	9.8	8.8	8.8
Cincinnati	11.7	11.2	10.7	11.1	11.5
Dayton	**	**	9.7	8.9	8.4
Steubenville	10.9	10.8	10.1	10.7	9.5
Toledo	10.1	10.1	9.8	9.4	9.2
Youngstown	10.5	10.6	9.6	9.0	8.3

\*Incomplete Data

\*\* Lost site, have a new site, but no 3 yrs. of data yet



# **STARTUP, SHUTDOWN, MALFUNCTION SIP CALL**

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# Startup, Shutdown & Malfunction SIP Call

- U. S. EPA settled lawsuit w Sierra Club - 36 states
- U.S. EPA proposed a “SIP Call” - require states to modify their rules
- Rules previously approved by U.S. EPA
- State rule allow “Director’s discretion”
- U.S. EPA claims citizens suits are prevented

# U.S. EPA SS&M Objections

- Malfunction rule allows director's discretion  
OAC 3745-15-06(C)
- Visible emission rule – exemption during malfunction – 17-07(A)(3)(c); (B)(11)(f)
- Scheduled maint. allows control equip. shutdown – 15-06(A)(3)
- Cement plant NO<sub>x</sub> limit does not apply during SS&M – 14-11(D)

# Startup, Shutdown and Malfunction SIP Call

- Ohio EPA provided detailed response to U.S. EPA on the proposal
- Requested that the Ohio Attorney General appeal SIP Call

# Startup, Shutdown and Malfunction SIP Call

- US EPA went further - proposed to modify Title V to remove SS&M protections in Title V permits.
- US EPA Comment period ended August 15, 2016 - <https://www.gpo.gov/fdsys/pkg/FR-2016-06-14/pdf/2016-14104.pdf>

# Startup, Shutdown and Malfunction SIP Call – State Rule Revision Process

- Several draft of rules sent to stakeholders
- Wide range of comments
- Received comments on “Early Stakeholder Outreach” and “Interested Party” solicitation
- Waiting for resolution from U.S. EPA
- Waiting for resolution from U.S. EPA
- Waiting for resolution from U.S. EPA
- Waiting for resolution from U.S. EPA
- Waiting for resolution from U.S. EPA



# Wrap-up

- Questions???

28<sup>th</sup> Annual

Sustainability, Environmental Health and  
Safety Symposium

Ohio – Major Air Permitting, Regulatory &  
Compliance Developments  
March 26, 2019

Maxine Dewbury

The Procter & Gamble Company

# New Source Review Update

- Background on Need for Reform
  - Guidance Changes
  - Complex, Unworkable Applicability Criteria
  - Enforcement Actions & Settlements
- Previous Federal NSR Reforms
- Recent NSR Reform Actions
- Future Actions

# NSR Guidance and Policy Changes

## Guidance Changes:

- 7/98 NSR Enforcement Policy - retroactive BACT
- 3/98 Debottlenecking Memo - expands EU for control
- 10/98 Debottlenecking Memo - emission increase calc.

## '98 NSR Proposal Preamble Issues:

- Narrows Routine Repair & Replacement exclusion
  - Cannot improve efficiency, reliability or cost effectiveness
- EPA states that “actual to potential” is only permissible method for measuring emission increase at existing facilities
- EPA presumes increases in production are related to any physical change made in last 10 years!

# NEW SOURCE REVIEW BACKGROUND

## 1999 NSR Enforcement Developments:

- 1/99 - EPA's Enforcement Alert
- 4/99 - Region III NOVs to Pulp & Paper mills
- 7/99 - Coal-fired utilities targeted
- 9/99 - Refineries targeted Region VI

## 2000 NSR Enforcement Developments:

- EPA issues NOVs & Administrative Order to Utilities
- EPA issues Detroit Edison Determination
  - multifactor test significantly narrows routine repair & maintenance
- TVA Litigation - EAB decision

# PSD Enforcement Settlements

- Pulp & Paper

- Louisiana Pacific (1993) - \$70 MM + 11.1 Million Penalty
- Weyerhaeuser (1993) - 1.3 Million Penalty
- Georgia Pacific (1996) – \$25 MM + \$6 MM Penalty + 4.25 MM SEP
- Willamette (2000) - \$74 MM + \$11.2MM Penalty + 8MM SEPs
- Boise Cascade, Westvaco and others

- Refining

- Koch Industries (2000) - \$80 MM = \$10 MM Penalty
- BP Amoco (2000) - \$500MM + 10 MM Penalty
- Valero (2005) - \$700 MM + 5.5 MM Penalty and \$5.5 MM SEPs
- Sonoco (2005) - \$284 MM + \$3MM Penalty and \$3.9 MM SEPs
- Shell, Marathon Ashland, ConocoPhillips, Chevron, Citgo, others

# PSD Enforcement Settlements

- Utilities

- VEPCO (2000) - \$1.2 BILLION + \$5.3 MM Penalty + \$13.9 SEPs
- Duke Energy (2000) – \$1.4 Billion + 8.5 MM Penalty
- AEP (2007) - \$ 4.6 Billion +\$15MM Penalty + \$60 MM SEPs
- WEPCO (2003) - \$\$600 MM + \$3.2MM Penalty + \$20 MM SEPs
- First Energy, Illinois Power, S. Indiana G&E, Southern, TECO...

- Others

- Nucor Steel (2000) - \$85 MM + \$9 MM Penalty + \$4 MM HAP CEMs
- ADM (2003) - \$340 MM + \$4.6 MM Penalty + \$6.3 MM SEPs

- Huge Settlement costs to install BACT

- \$25 Million - \$1.4 Billion in Controls
- \$10 Million in penalties

# Previous Policy Changes Contributing to the Need for Reform

## Increasing The Universe of Major Modifications

- Routine Maintenance Repair, Replacement Exclusion
- Actual to Potential Emission Increase Test
  - Any change theoretically increased emissions
    - unless you limited future actual emissions & production
- PTE - Uncontrolled Emissions
- Project Aggregation – Maplewood
- Facility Aggregation – Contiguous



# The Need for Reform

## Primary Industry Concerns:

- Actual to potential accounting for existing sources despite
  - EPA Settlement Agreement with CMA
  - WEPCo Ruling called for use of Actual-to-Future Actual
  - Ohio Edison & Duke Decisions support WEPCo
- Narrowed RMRR exclusion
  - What is Routine?
    - Before 2000, routine activities were regular, customary or standard for the facility or for similar operations
    - Detroit Edison Multi-Factor Test including:
      - » Repair or replacement requires unit shutdown
      - » Repair/replacement allows for less frequent maintenance
      - » Repair/replacement requires off-site materials
      - » Repair/replacement combines several projects that individually would be routine, but become non-routine when combined.
      - » Repair/replacement involves upgraded designs/materials

# NSR Background - The Need for Reform

- **ATP Emission Increase Test & Narrowed RMRR Excl.**
  - Many Small Changes required Federal Permitting
- **Federal Permitting of minor changes**
  - Prevented improvements which would have reduced emissions
  - The cost of BACT on small changes prevented implementation.
- **Complex, Confusing and Inconsistent Interpretations**
  - NSR Permitting (Guidance & Determinations)
    - what is a Facility? (source aggregation – what is contiguous? (5 miles away?) ,
    - what is an emission increase? (ATP, ATFA, Demand Growth Exclusion?)
    - what is a project? (what projects need to be aggregated? Maplewood?)
    - what is RMRR & exempt from permitting?

# NSR Background – The Need for Reform

- 11/98 WEPCo Settlement Meeting -  
EPA admitted: **“NSR is BROKEN!”**
- Effort on NSR Reform began

## Initial effort at NSR Reform

- 2/99 - Stakeholder discussions with States
- 5/99 - Submitted Proposals to STAPPA/ALAPCO.
- 6/99 - STAPPA Response to Proposal
- 6/99 - Began State education effort
- 8/99 - State & Congressional letters influence EPA
- 8/99 - EPA meeting with Multi-Industry Group
- 9/99 - Second EPA/Industry meeting re proposal
- 10/99 - Industry Response to EPA on Proposal

EPA unsupportive of Reform Proposal Developed

## Second Try...

- May, 2001 - the National Energy Policy Report recommended that EPA review NSR impact on investment in new utility & Refinery generation capacity, energy efficiency and environmental protection.
- Leveraged Bush's "90-day Energy Study" ...
- Recommendations due the week of 9/11/01
- Delay in Administration Focus...
- June 13, 2002 Recommendations

# Second Try...

## June 13, 2002 Recommendations:

EPA to finalize reforms for:

- Emission Increase Methodology
- Plantwide Applicability Limits (PALs) Pollution Control & Prevention (PCPs) Projects
- Clean Unit Provisions

EPA to propose changes to address:

- Routine Maintenance, Repair & Replacement
- Debottlenecking
- Aggregation

# The NSR Reforms Promulgated

## Final NSR Reform Rule - 12/31/2002

- Emission Increase Methodology
  - Baseline Actual Emissions
  - Future Actual Emissions
- Flexibility for Clean or Well Monitored Units
  - Plant wide Applicability Limits
  - Clean Unit Provisions
  - Pollution Control & Prevention Projects
- Final Rule – RMRR - 10/27/03
  - The Equipment Replacement Provision (ERP)

# The NSR Reforms after Litigation

## 12/31/02 Final Rule – after litigation

- Emission Increase Methodology - Upheld
  - litigation resulted “reasonable possibility” rqtts if >50% major mod threshold
- Flexibility for Clean or Well Monitored Units
  - ~~Pollution Control & Prevention (PCPs) Projects~~
  - ~~Clean Unit Provisions~~
  - Plant wide Applicability Limits (PALs) (not much help)

## 10 27 03 Final RMRR Rule – Stayed, Vacated

- ~~The Equipment Replacement Provision (ERP)~~

## 9 14 06 Changes Proposed

- Debottlenecking (not Finalized)
- Project Netting (no Action)
- Project Aggregation (Stayed 2 9 09 by Obama Administration)



# Some Remaining Permit Challenges

## Permit Applicability Issues

- Calculating Emission Changes
  - Demand Growth Exclusion
  - Debottlenecking
  - Project Netting (Project Emissions Accounting)
  - Facility Aggregation
  - Project Aggregation
- Routine Maintenance Repair and Replacement
- Flexibility Provisions
  - More Useful PALs

## Additional New Challenges

If you need to get a permit...

- **Modelling Issues**
  - Tighter NAAQS Standards with
  - Conservative Modelling Approaches & Policies
- **Result**
  - Permit Gridlock

# Trump's Memos & Executive Orders

- 1 24 2017 Memo - Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing
  - 3 7 2017 FR notice seeking information on the impact of Federal Permitting and on regs that adversely impact manufacturers.
  - Comments submitted 3 31 17
- 1 30 2017 EO Reducing Regulation and Controlling Regulatory Costs
  - For each new regulation issued, at least two prior regulations should be identified for elimination
  - 2 2 2017 Interim Guidance Issued by OIRA
- 2 24 17 EO Enforcing the Regulatory Reform Agenda
  - Puts Regulatory Reform Task Force structures in place to evaluate existing regulations and make recommendations to identify regulations that:
    - Eliminate jobs or inhibit job creation
    - Are outdated, unnecessary or ineffective
    - Impose costs that exceed benefits
    - Interfere with regulatory reform initiatives and policies
  - April 13, 2017 FR Notice
  - Comments submitted 5 15 2017

# Trump's Memos & Executive Orders

## EPA Objective Permit Reform:

- Clarify and Streamline NSR Program requirements
- Specific Areas
  - Applicability determinations
    - When is a Federal vs State permit needed?
    - Opportunities: RMRR, source/project aggregation, project netting)
  - PSD Permitting Process:
    - Where Federal permits needed, can we clarify, streamline and speed up the Process to obtain them?
    - Opportunity - Air Quality Modelling Requirements
  - After Permits are Issued:
    - Should agencies be second guessed through Title V lookbacks?

# Recent Developments Permit Reform

- October 2017 Title V Permit Petition Process & NSR Lookbacks
- Dec 7, 2017 Scott Pruitt Memo clarifying ATPA Applicability Test in Determining Major Modification Applicability
- May 13, 2018 Scott Pruitt Memo on Project Emissions Accounting
- September 4, 2018 Bill Wehrum Memo on Source Aggregation (Adjacency)
- November 15, 2018 Final Reconsideration Rule - Project Aggregation

# Permit Reform Developments

## Title V NSR Lookback Policy

Sierra Club Petition to PacifiCorp Title V Permit  
(PacifiCorp Hunter, Petition Number VIII-2016-4)

EPA will no longer look back at previous NSR decisions through the Title V Permit Process.

October 2017 – Petition Declined

“EPA has declined in the title V petition context to review the merits of PSD permits issued by the agency or by a permitting authority that has received delegation to implement the EPA’s federal PSD rules..... Because these permitting decisions may be appealed to the EPA’s Environmental Appeals Board, the EPA has concluded that it need not entertain claims that such permits are deficient when raised in a petition to object to a title V permit.”

# Permit Reform Developments-

## 12 7 2017 ATPA Guidance

Dec 7, 2017 Scott Pruitt Memo clarifying Actual to Projected Actual Applicability Test in Determining Major Modification Applicability

### Source Obligations when using ATPA test:

- Prior to beginning construction, the owner must calculate the emissions increase that it projects will be caused by the project and potentially the net emissions increase to determine if NSR permitting is required.
  - For EGUs these projections must be submitted to the agency.
  - Non-EGUs do not need to submit pre-project projections to the agency.
- After implementing the project, when using ATPA used for emission projections, if there was a reasonable possibility that a significant emission increase could occur sources must track emissions for 5 or 10 years following implementation of the project. (10 yrs. if increase in design capacity or PTE)
  - EGUs must report annual emissions to the agency
  - Non-EGUs must report emissions only if a significant emission increase occurs and the projections are different than the pre-project projections.

### DTE Situation:

- Pre-project emissions projections did not show a significant emission increase.
- Post-Project emissions were managed to prevent a significant emission increase.
- EPA Enforcement Actions & Litigation against DTE over projections & approach

# Permit Reform Developments- December 7, 2017 ATPA Guidance

- Following Litigation, on Dec 7, 2017 Scott Pruitt Issued Memo clarifying Actual to Projected Actual Applicability Test in Determining Major Modification Applicability:
  - Where a source projects an insignificant emissions increase, the level of actual emissions after the project governs applicability
  - Projections may reflect the intent to actively manage post-project operations in order to prevent a significant emissions increase from occurring
  - EPA will not second guess NSR applicability analyses that comply with the procedural requirements of the regulations



# Permit Reform Developments - May 13, 2018 Pruitt Memo: Project Emissions Accounting

NSR Applicability - A major modification occurs if:

- Step 1 (Project Netting/Project Emissions Accounting)
  - The project results in significant emissions increase AND
- Step 2 (Contemporaneous Period Netting)
  - The project and other projects in the contemporaneous period result in a significant net emissions increase.

May 13, 2018 Pruitt Memo:

- CAA - NSR was only to apply to changes that increase actual emissions.
- EPA now interprets PSD provisions as providing that any emissions decreases as well as increases that may result from a given proposed project are to be considered at Step 1 of the NSR applicability process in determining whether the proposed project will result in a significant emissions increase.

FR Notice: March 30, 2018, 83 FR 13745

# Permit Reform Developments

## 9/4/18 Wehrum Source Aggregation Memo

What is a Stationary Source?

- Any building, structure, facility or installation that emits or may emit a regulated NSR pollutant.

What is a building, structure, facility or installation?

- All pollutant-emitting activities which:
  - Belong to the same industrial grouping,
  - Are located on one or more ***contiguous or adjacent*** properties, and
  - Are under the control of the same person

# Permit Reform Developments

## 9/4/18 Wehrum Source Aggregation Memo

What is contiguous or adjacent?

- EPA relied in part on whether sources had a functional interrelationship to establish adjacency
- Summit Petroleum 6<sup>th</sup> Circuit Ruling 8/7/12
  - “Adjacent means adjacent”
- EPA Issued Summit Directive
  - 6<sup>th</sup> Circuit Ruling applies OH, MI, KY & TN
  - EPA’s historical functional relationship test applies elsewhere
- DC Circuit Vacated Summit Directive 5 30 14
  - EPA must uniformly apply source aggregation requirements

# Permit Reform Developments

## 9/4/18 Wehrum Source Aggregation Memo

September 4, 2018 Memo Clarifies:

*For purposes of making source determinations for NSR and Title V where operations are not contiguous, EPA interprets **the term “adjacent” to mean physical proximity**. Operations that do not share a common boundary or border, or are otherwise not physically touching each other, will be deemed “adjacent” if the operations are nevertheless nearby. For operations not in physical proximity to each other, the existence of some functional relationship, e.g. through a pipeline, railway, or other dedicated conveyance, shall not be invoked to establish “adjacency”. EPA is not establishing a bright line or specifying a fixed distance, within which two or more operations will be deemed to be in physical proximity and thus, “adjacent”. Permitting authorities will still be responsible for making case-specific determinations...*

# Permit Reform Developments – Project Aggregation

- What is a project?
- When should emissions from multiple projects at a facility be aggregated to determine if they are a major modification?
- In 2006 EPA proposed a rule to clarify these questions.
  - The interpretive rule was finalized January 15, 2009.
  - The rule was stayed & reconsidered.
- 11 15 2018 EPA finalized its reconsideration of the 2009 Project Aggregation Rule.
  - The January 15 2009 Project Aggregation Action Interpretations became effective.

# NSR Updates – Project Aggregation

## 1 15 2009 Rule & 11 15 2018 Final Action

- Criterion for aggregation of projects
  - Projects that are “**substantially related**” should be aggregated
- Substantial relationship
  - Technical or economic interrelationship
    - To be substantially related, there should be an apparent interconnection – either technically or economically – between the physical and/or operational changes, or a complementary relationship whereby a change at a plant may exist and operate independently, however its benefit is significantly reduced without the other activity.
    - The test of a substantial relationship centers around the interrelationship and interdependence of activities , such that substantially related activities are likely to be jointly planned (part of the same capital project or engineering study) and occur close in time and at components that are functionally interconnected
  - Activities at same unit as a previous change are not necessarily aggregated
  - Clarifies that activities that support a sources “overall basic purpose” should not be aggregated unless the projects are substantially related.
    - Addresses the 3M Maplewood memo issue (06/17/1993)

# NSR Updates – Project Aggregation

## 1 15 2009 Rule & 11 15 2018 Final Action

- Timing of activities
  - Closely-timed activities
    - Timing does not decide aggregation, just an indicator
    - Activities at same time (turnaround/outage) are not necessarily aggregated
    - FR preamble distances this rule from the 3M memo
      - USEPA had implied that activities within 12-18 months are related
    - Timing is to be used as indicator for projects that may have been split into multiple smaller projects to avoid/circumvent PSD/NSR
  - Time-based presumption for nonaggregation
    - >3 years apart indicates no substantial relationship
    - Based on times of NSR-avoidance permit issuance (or, if no permit, date construction commences)
    - Will only apply prospectively
    - 3-year presumptive timeframe is rebuttable if evidence of substantial relationship

# Additional Permitting Opportunities

## Applicability Issues

- Actual to Projected Actual Guidance (Could have Accommodated or Demand Growth Exclusion guidance)
- Routine Maintenance Repair & Replacement
- Debottlenecking
- Fugitive Emissions
- Offsets
- PALS

## Streamlining Permit Processes

- Pre Permit Activities (Begin Actual Construction)
  - What can be done before permit is on hand
- Dispersion Modelling Reform
- Ambient Air II



# Ohio: Major Air Permitting *Federal Enforcement Trends*

Session T

March 26, 2019

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# Introduction

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- USEPA major source “enforcement” trends
- The Agency’s National Compliance Initiatives
- The end of USEPA’s NSR compliance initiative
- What does it all mean (*and what might it lead to*)?
- Questions...

# USEPA Enforcement Trends

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- Rebranding USEPA's mission without the "E" word...
- Window dressing or a real change?
- What do the statistics show, broadly?
  - A 50% decline in inspections (for all media) since 2010
    - Inspection drop due in part to pre-Trump budget cuts
    - Inspection drop also due partly to shift to state primacy
  - Civil penalties collected (all media) lowest since 1994
  - Steadiness in criminal investigations, but a decrease in actual charging and sentencing
- Continued emphasis on "cooperative federalism"

# USEPA's Move from "NEIs" to "NCIs"

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- History of prior National Enforcement Initiative Program
  - Introduced 20 years ago
  - Prioritized types of sources and industry sectors
  - As to NSR, focus was on industries as Maxine indicated
  - NEI/NSR focus on utilities began in 1998
- In August 2018, USEPA announces rebranding of NEIs
  - Introduces concept of "National Compliance Initiatives"
  - Emphasizes cooperative federalism
  - NCIs for USEPA FY 2019 retained NSR initiative, but...
  - No NSR-related enforcement reported in first half of FY 2019
- NCIs for 2020-2023 announced in February 2019

# The End of the NSR Initiative...

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- USEPA announces NSR will return to “core” enforcement
- Don’t be confused, it’s not what it sounds like...
- Agency broadly declares “victory” on NSR enforcement
- NSR-related statistics from NEI/NCI-related efforts
  - 91% of glass industry enforced against or investigated
  - 96% of cement industry enforced against or investigated
  - 90% reduction in SOx emissions from utilities
- *“ [T]he Agency believes that this NCI no longer presents a significant opportunity to affect nonattainment areas or vulnerable populations nationwide.”*

# What Does it Mean, and What's Next?

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- The Trump USEPA is making NSR compliance “easier”
  - Changes to guidance around netting
  - Changes to Agency vetting of projections of actual emissions
  - Other reforms mentioned by Maxine...
- As a practical matter, continued NSR enforcement compromised by wholesale changes to USEPA approach
- As the Clean Air Act itself is unchanged, will we see:
  - Increased state and local enforcement?
  - Increased citizen suits?
- Legally, how do changes to USEPA guidance impact citizen suits and likelihood of success?

# Questions?