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Beware of Synthetic Minor HAP Limits

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What is a Synthetic Minor Limit?

- The EPA uses the term “synthetic minor limit” to reference operational and emissions limitations established to restrict a source’s PTE for purposes of avoiding applicability of major source PSD and MACT requirements
- Synthetic Minor limits must be “federally enforceable and legally and practicably enforceable by a state or local air pollution control agency.”

Source: John Seitz, Director, Office of Air Quality Planning and Standards, and Robert Van Heuvelen, Director, Office of Regulatory Enforcement, "*Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit*" (Jan. 22, 1996)



What is a Synthetic Minor Limit?

Synthetic minor limit must apply at all times to all actual emissions, and all actual emissions must be considered in determining compliance with the respective limits.

In the Matter Of Cash Creek Generation, LLC, Order on (Title V) Petition No. IV 2010-4(June 22, 2012)



What is a Synthetic Minor Limit?

Permit conditions must account for:

- SSM emissions
- Emissions for “insignificant activities”
- Monitoring, recordkeeping, and reporting to ensure that limits are enforceable as a practical matter.

In the Matter of Hu Hanua Bioenergy Facility, Order on (Title V) Petition No. IX - 2011-1 (Feb. 7, 2014)



What must Synthetic Minor Limits assure?

That the calculation of a source's PTE for HAPs, when considering any federally enforceable physical or operational limitations on the capacity of the source to emit HAPs, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is less than the 10/25 tpy (12 month rolling) major source thresholds.



Risks associated with inadequate Synthetic Minor Limits

Practical Risks –

Years after the fact, source may be required to adopt new operational controls, new recording keeping, add monitoring equipment, etc.

Example – the Hu Honua plant was permitted in 2009 and EPA's ruling overturning the permitting didn't happen until 2014.

Legal Risks –

The source is considered a major source subject to a MACT because its PTE is not adequately limited.



Risks associated with violating a Synthetic Minor Limit

Penalty Exposure

- Under the Federal Civil Penalties Adjustment Act (2015), EPA raised the statutory maximum penalty (per day) to \$93,750.
- In December 2013 EPA adjusted its Clean Air Act Civil Penalty Policy by inflating the policy penalty values by almost 50%.



Risks associated with violating a Synthetic Minor Limit

Injunctive Relief

- EPA policy on violating a PSD Synthetic Minor Limit:
EPA should take the position that a source's synthetic minor limit does not effectively limit the source's potential emissions when evidence indicates that the source has knowingly or regularly violated (or currently regularly violates) the limit. Thus, the source cannot simply claim that it has a limit that restricts its potential emissions; obviously this is not the case if the source's actual emissions have exceeded that limit.
- EPA has never adopted a formal policy on violation of a HAP Synthetic Minor Limit – but . . .



Synthetic Minor Limit

Region 5 has adopted an enforcement position in a number of actions that violation of a HAP Synthetic Minor Limit triggers the “Once In, Always In” MACT policy claiming the source is now a major source and subject to the applicable major source MACT. (Names are being withheld to protect the innocent.)



Take-aways

- A source may desire and MDEQ may require, when the opportunity arises, to enhance permit conditions to assure they cannot be attacked as not adequately limiting PTE.
- In some instances, conditions necessary to assure compliance with a Synthetic Minor HAP limit may be as onerous as compliance with MACT requirements.
- Sources should place a premium on assuring compliance with HAPs limits and maintaining the monitoring and recordkeeping necessary to demonstrate that compliance.



Questions?

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