FACT SHEET
Proposed ACE Rule – Permitting Improvements
Under New Source Review Program

- On August 21, 2018, the U.S. Environmental Protection Agency (EPA) proposed the Affordable Clean Energy (ACE) rule which would establish emission guidelines for states to develop plans to address greenhouse gas (GHG) emissions from existing coal-fired power plants.
- The ACE rule would replace the 2015 Clean Power Plan (CPP), which EPA has proposed to repeal because it exceeded EPA's authority. The CPP was stayed by the U.S. Supreme Court and has never gone into effect.
- The proposed ACE rule is informed by the more than 270,000 public comments that EPA received on its December 2017 Advance Notice of Proposed Rulemaking.
- The ACE rule has several components: a determination of the best system of emission reduction (BSER) for GHG emissions from coal-fired power plants, a list of "candidate technologies" states can use when developing their plans, a new preliminary applicability test for determining whether a physical or operational change made to a power plant may be a "major modification" triggering New Source Review, and new implementing regulations for emission guidelines under Clean Air Act section 111(d).

REVISIONS TO NEW SOURCE REVIEW

- Because the ACE rule is expected to promote efficiency improvement projects at power plants, EPA is proposing revisions to the New Source Review (NSR) permitting program to give states the option to adopt into their state implementation plans (SIPs) rules establishing a new preliminary applicability test. Under this new test, sources would first look to see whether a physical or operational change made to an electric utility generating unit (EGU) would result in an increase in that EGU's hourly emissions rate.
- The NSR program generally requires an owner to get a permit before constructing a new stationary source of air pollution or modifying an existing source in such a way as to increase its emissions. Projects that cause a significant increase in emissions may trigger "major NSR," which has more prescriptive modeling and control requirements than sources with smaller emissions.
- Currently, NSR is triggered if a project is predicted to cause a significant net increase in a facility's actual annual emissions. Electric utilities have long observed that this approach can discourage them from investing in beneficial efficiency improvements. This is because such improvements often result in less pollution being emitted per unit of electricity generated, because a more efficient unit is often capable of producing the same amount of electricity that would be generated by a less efficient unit while burning less fuel. At the same time, the more efficient a unit is, the more likely it is to be among those units first dispatched to the electric grid and/or called upon to operate more. As a result, while cleaner, more

efficient units will tend to displace dirtier, less efficient units, one possible consequence for these more efficient units is that they may be predicted to increase their annual emissions. In some circumstances, this predicted increase in annual emissions could potentially prompt some permitting authorities to consider the efficiency improvement project to be a "major modification" triggering NSR.

- Under the proposed ACE rule, states will be called upon to develop plans to establish standards of performance for existing coal-fired power plants that are based on the application of a range of efficiency improvement projects. Were such projects found to trigger major NSR permitting, the consequences would include an increase in the sources' compliance costs and time for project implementation, enormous new permitting burdens on state permitting authorities, and increased costs to consumers. Existing plants might therefore forego investing in efficiency improvement projects, rather than risk triggering NSR by undertaking such projects. Worst case, if compelled to undertake efficiency improvement projects in order to comply with state-developed standards of performance, some existing facilities might choose to shut down altogether, in advance of the end of their expected useful life.
- In the face of this potential Catch-22, EPA is proposing to amend the NSR regulations to include an hourly emissions increase test for modifications at EGUs.
    - The alternative approaches for implementing the hourly emissions test that are being proposed are the same as certain of the alternatives that EPA had proposed in a 2007 Supplemental Notice of Proposed Rulemaking, and on which it has already taken public comment. (https://www.regulations.gov/document?D=EPA-HQ-OAR-2005-0163-0196).
    - EPA is proposing two alternatives for an hourly emissions test based on maximum *achieved* emissions (*i.e.*, what the unit has actually emitted in the past) and one alternative based on maximum *achievable* emissions (*i.e.*, what the unit could have emitted when operating at its maximum capacity).
- Under each of the proposed alternatives, NSR applicability for projects undertaken at an EGU would be determined using a four-step applicability process. (The second step is the proposed new preliminary applicability test; the other three steps are part of the existing process.)
    - (1) Will the project constitute a physical change or change in the method of operation (applying the current major NSR regulations)?;
    - (2) If so, will the change result in an increase the hourly emissions rate of the EGU (based either on the maximum achieved hourly emissions rate (Alternatives 1 and 2 in the proposal) or maximum achievable hourly emissions rate (Alternative 3 in the proposal)?;

- (3) If there is an increase in the unit's hourly emissions rate, is the project also predicted to result in a significant increase in annual emissions (applying the current major NSR regulations)?; and
- (4) If the project is predicted to result in a significant increase in annual emissions, will there also be a significant *net* increase in annual emissions at the major stationary source (applying the current major NSR regulations)?

- These proposed changes could be one tool that states may use to help ensure the efficient and effective implementation of their 111(d) plans. States would have the option (but would not be required) to adopt the hourly test ultimately promulgated as part of the NSR provisions in their SIPs.

HOW TO COMMENT

- Comments on the proposal should be identified by Docket ID No. EPA-HQ-OAR-2017-0355, and may be submitted by one of the following methods:
  - **Online**: Go to https://www.regulations.gov and follow the online instructions for submitting comments to Docket ID No. EPA-HQ-OAR-2017-0355.
  - **Email:** Comments may be sent to a-and-r-Docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2017-0355 in the subject line of the message.
  - **Fax:** Fax your comments to: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2017-0355.
  - **Mail:** Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail Code 28221T, Attention Docket ID No. EPA-HQ-OAR-2017-0355, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
  - **Hand/Courier Delivery:** EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue, NW, Washington, DC 20004, Attention Docket ID No. EPA-HQ-OAR-2017-0355. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.
- For additional information, including the full EPA public comment policy, please visit https://www.epa.gov/dockets/commenting-epa-dockets.

FOR MORE INFORMATION

- Additional fact sheets along with copies of the proposed rule and accompanying Regulatory Impact Analysis are available on EPA's website at https://www.epa.gov/stationary-sources-air-pollution/proposal-affordable-clean-energy-ace-rule