



K&L GATES

PBI Pipeline & Midstream Seminar 2018: Air Update

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AGENDA

- Background
- Federal Updates
 - Obama EPA Rules
 - Trump EPA Deregulatory Actions
- Pennsylvania Updates
 - New General Permits for Oil and Gas Facilities
 - Rescission of PADEP “Single Source Determination” Guidance

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Background

COMMON SOURCES OF AIR EMISSIONS IN THE MIDSTREAM SECTOR

- **Fugitive emissions from piping or tank leaks**
 - **Volatile organic compounds (“VOCs”)**
 - Contributes to ozone formation (together with NO_x).
 - Includes certain hazardous air pollutants (“HAPs”).
 - **Methane**
 - A greenhouse gas.
- **Pigging operations**
 - VOCs, methane.
- **Compressor station engines**
 - NO_x, CO, PM.

STATE AND FEDERAL AIR PERMITS

- **Complex interplay of federal and state law**
- **Federal Clean Air Act (“CAA”)**
 - Requires permits for “major sources” of air emissions.
 - Key question: what constitutes a single “source.”
- **Pennsylvania Air Pollution Control Act (“APCA”)**
 - Requires permits for all “air contamination sources,” unless an exemption applies.
 - Plan approvals v. operating permits.
 - Major v. minor source permits.

DO YOU NEED AN AIR PERMIT FOR THAT?

- Hydraulic fracturing?
- Unconventional well site operations?
- Pipelines?
- Compressor station?
- Processing facility?

DO YOU NEED AN AIR PERMIT FOR THAT?

- Hydraulic fracturing?
 - Unconditionally exempt from permit requirements.
- Unconventional well site operations?
 - Conditionally exempt if certain criteria are met. If not, use GP-5A.
- Pipelines?
 - Generally not the pipeline itself. Pigging operations – it depends.
- Compressor station?
 - Yes. Obtain coverage under GP-5 or individual permit.
- Processing facility?
 - Yes. Obtain coverage under GP-5 or individual permit.

CLEAN AIR ACT § 111

■ Clean Air Act § 111(b)

- Requires that EPA promulgate standards of performance for ***new sources*** in particular categories that cause or contribute significantly to air pollution.
- Referred to as New Source Performance Standards (“NSPS”).

■ Clean Air Act § 111(d)

- Authorizes EPA to promulgate rules that require ***states*** to promulgate similar performance standards for ***existing sources*** in the same categories.
- Referred to as “emission guidelines.”

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Federal Updates

2012 – EPA “QUAD-O” RULES

- NSPS – 40 C.F.R. Part 60 Subpart OOOO
 - Applicable to new and modified sources.
 - Regulates emissions from:
 - Hydraulic fracturing operations - requires “green completions” at natural gas wells.
 - Compressors and pneumatic controllers in the production & processing segments.
 - Storage vessels in the production, processing, transmission, and storage segments.
 - Leaking components at processing plants.
 - Directly regulates VOCs.
 - Achieves reductions in GHGs as a “co-benefit.”

2016 – EPA “QUAD-OA” RULES

- Builds on Quad-O rules.
- Applicable to new and modified sources.
- Directly regulates VOC *and methane*.
- Imposes requirements on additional sources, including natural gas compressor stations.
 - Quarterly leak detection and repair (“LDAR”) for gathering/boosting stations and transmission compressor stations.

2016 – CONTROL TECHNIQUE GUIDELINES (“CTGS”) FOR THE OIL AND GAS INDUSTRY

- EPA recommendations for controlling VOC emissions from ***existing*** oil and gas facilities.
- Apply only to facilities in ozone non-attainment areas.
 - Includes all of Pennsylvania.
- Triggers an obligation for states to develop and submit rules for existing sources.
 - Due within 2 years (October 2018).

NEW ADMINISTRATION



2017-2018 – RECONSIDERATION OF QUAD-OA

- April 2017:
 - EPA grants industry petition for reconsideration of Quad-Oa.
- June 2017:
 - EPA stays components of Quad-Oa.
- July 2017:
 - D.C. Circuit vacates 3 month stay.
 - Rationale: petition did not meet requirements for mandatory reconsideration, so stay was not authorized under CAA §307.
- September 2018:
 - EPA proposes significant revisions to Quad-Oa.
 - EPA proposes to allow operators to comply with Pennsylvania state requirements to satisfy Quad-Oa obligations.

2018 – RECONSIDERATION OF CTGS

- March 2018:
 - EPA proposes to withdrawal its CTGs for the Oil and Gas Industry.
 - Would eliminate the requirement for Pennsylvania to develop rules for existing sources.
 - PaDEP submitted comments opposing EPA's proposed withdrawal of the CTGs.

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Pennsylvania Updates

WOLF ADMINISTRATION



PADEP FRAMEWORK FOR METHANE REDUCTIONS FROM THE OIL AND GAS INDUSTRY

- Announced in January 2016.
- Four components:
 - Issue a new general permit for well pads.
 - Revise the current general permit (GP-5) for compressor stations and processing facilities.
 - Develop regulations for existing sources.
 - Establish BMPs, including LDAR requirements, to reduce fugitive methane emissions from production, gathering, processing and transmission facilities (including pipelines).

NEW GENERAL PERMITS

- Finalized in June 2018.
- GP-5
 - For Natural Gas Compression Stations, Processing Plants, and Transmission Stations.
- GP-5A
 - For Unconventional Natural Gas Well Site Operations and Remote Pigging Stations.

GP-5

- New version of existing general permit.
- Scope expanded to cover compressor stations along *transmission* lines.
- Now includes provisions that *directly* regulate methane emissions.
- More stringent in many respects than both federal rules and prior GP-5.
- Requires quarterly LDAR inspections.

GP-5A

- New general permit for unconventional well sites.
- Also covers remote pigging operations.
- Only need coverage if don't meet Exemption 38 criteria (which were retained in modified form).
- Directly regulates methane emissions.
- Requires quarterly LDAR inspections (with possibility of reduction to semiannually).

RESCISSION OF “SINGLE SOURCE DETERMINATION” GUIDANCE

- PaDEP rescinded this guidance concurrently with issuance of the new GPs.
- Reason – to bring consistency with 2016 EPA regulations on the same subject.
- Impact – PaDEP should treat oil and gas facilities as separate sources more frequently than under rescinded guidance.
 - Only aggregate emissions from sources within $\frac{1}{4}$ mile of one another, and only if they share equipment.
 - Fewer sources required to obtain major source permits.

SINGLE SOURCE DETERMINATIONS

- Longstanding EPA Regulations – 3 requirements:
 - (1) Same industrial grouping (same two digit SIC code).
 - (2) Common control.
 - (3) Contiguous or **adjacent** properties.

- Past EPA Guidance:
 - Consider “functional interrelatedness” / “functional interdependence” in determining adjacency.

- *Summit Petroleum v. EPA* (6th Cir. 2012):
 - Do not consider “functional interrelatedness” – only distance.

SINGLE SOURCE DETERMINATIONS

- PaDEP Guidance (2012):
 - Sources are “adjacent” if within ¼ mile.
 - Beyond ¼ mile, determine on a case-by-case basis.

- EPA Rules (2016):
 - Sources are adjacent if:
 - They are located on surface sites that are located within 1/4 mile of one another; and
 - They share equipment.
 - Incorporated by reference in Pennsylvania rules.

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QUESTIONS?

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