

# EPA Seeking To Push States to 'Aggregate' Drilling Facilities' Emissions

EPA is quietly drafting guidance to encourage states to better "aggregate" emissions from oil and gas facilities to assess whether they are major pollution sources, after an earlier Obama administration decision to revoke a Bush-era policy allowing disaggregation failed to result in any major permitting changes, sources say.

EPA air chief Regina McCarthy and other agency headquarters officials have been meeting with some states to solicit their input in preparation for issuing the guidance, state sources say. But some Western states are already criticizing EPA's move and say their existing permit programs are sufficiently rigorous.

Officials from at least one Western state -- Wyoming -- recently gave McCarthy and other top EPA officials a tour of an oil and gas site in part to defend the state's existing permitting practices.

At issue is when emissions from often sprawling oil and gas operations must be aggregated, or added together, for permitting purposes. Aggregation is a major issue for the industry because adding together the emissions means that the combined activities could exceed the Clean Air Act minor source permit limit, requiring more onerous major source permits. Disaggregation can reduce total facility emissions and allow minor source permits.

EPA has long used a three-factor approach to determine when to aggregate emissions from sources for the purposes of air act permitting requirements: whether activities are under control of the same person, whether activities belong to the same industrial grouping, and whether activities are contiguous or adjacent.

But in 2007, former Bush EPA acting air chief William Wehrum issued a policy memo saying the distance between sources at oil and gas facilities -- such as wells -- should be a key factor for determining whether to aggregate emissions.

In September, McCarthy revoked Wehrum's memo, saying it attempted to "simplify" the permitting analysis. "In practice, however, I find individual facts warrant a close examination" of all three criteria EPA should use, not just an emphasis on distance, McCarthy wrote.

Activists have long criticized the Wehrum memo, saying the inter-dependency of oil operations is more important than proximity in determining whether wells should be grouped together. But industry argues that grouping widely dispersed sources is unfair and defies common sense. Industry tried to downplay the impact of McCarthy's Sept. 22 memo when it was issued.

Now some sources say that almost 10 months later, the Obama EPA is dissatisfied that it has prompted few, if any, changes in how states aggregate oil and gas industry emissions.

One state source says aggregation is difficult to apply consistently, given the industry's complexity. For example, many oil and gas activities have "multiple users and buyers of the same product from each well" and often a well and pipeline that feeds it have different owners, so "trying to define a facility boundary is complicated," the source says.

Another state source says EPA's criteria "weren't created with this complex and unique industry in mind. It works well for facilities that kind of stand by themselves," but questions arise with oil and gas facilities connected by pipelines. "The question is, where do you stop?"

**The industry source says despite McCarthy's memo, state permitting practices have not changed.** "Gina's memo fell into the black hole," the source says. "People are still constructing these wells" and not aggregating, so facilities are avoiding the emissions threshold trigger for Clean Air Act new source review (NSR) permits.

The source notes a real tension among states on the issue because they want to promote oil and gas development while avoiding onerous NSR requirements, which include mandates to analyze and install best available control technology (BACT), along with additional modeling and monitoring requirements.

Additionally, beginning Jan. 2, 2011, many oil and gas facilities will be subject to first-time carbon dioxide (CO<sub>2</sub>) and other greenhouse gas (GHG) permit limits, the source adds. Some facilities will likely exceed the thresholds set out in EPA's "tailoring" rule to limit permitting because the GHG emitted most is methane, which is 20 times more potent than CO<sub>2</sub>, and the tailoring rule regulates GHGs based on potency, the source adds.

"If states have to permit [oil and gas] through NSR, that could basically stop future development in its tracks because it takes forever to get . . . a permit, and if they have to do CO<sub>2</sub> next year, that will take even longer. Yes, states want to protect [air quality] but they also want the development." Further, the source notes many states do not have the resources to process so many additional NSR permits, which can take several years.

A New Mexico source says that while the state undertook a broad review of aggregation last year, the McCarthy memo "hasn't changed anything in terms of what we've permitted. It hasn't caused a compressor station or a gas plant to all of a sudden . . . aggregate with other things. . . . We're continuing to issue permits based on what we think is appropriate, case-by-case."

But an environmentalist says that oil and gas facilities are major sources of air pollution and need strict air permits. The source says EPA intervention is necessary because parts of the country "are just getting drilled to death, and we have this tool to reduce air pollution and states are thumbing their noses at it."

**As a result of the lack of changes to state oil and gas permitting,** sources say EPA's pending guidance will aim to boost aggregation.

But the Wyoming source says state officials recently sought to convince McCarthy, EPA Region VIII Administrator James Martin and other key agency officials that the state's existing permitting approach is adequate.

The EPA officials June 21 toured a Wyoming oil and gas development. During the visit, the source says, state officials also pressed their point on aggregation and urged EPA to consider different requirements for the West, where there can be miles between different sources. The state wanted to make sure "our concerns are understood because the guidance may not have the perspective of how the West does permitting for oil and gas." Eastern states with oil and gas facilities are generally located closer together, the source says. The aggregation question may not be answered the same way in the East as in the West, the source adds.

Wyoming requires minor sources of oil and gas production to meet "presumptive BACT" that includes installation of pollution controls to reduce emissions during development and operations, according to the state source. "In Wyoming, we have minor source BACT and a lot of time we use presumptive BACT because it allows construction to take place before the permit" is finalized, the source explains.

But the environmentalist criticizes Wyoming's approach because it only applies to new sources, rather than existing sources, a loophole the source says exacerbates the state's severe wintertime ozone violations attributable to emissions from the sector.

At the same time, an EPA Region VIII spokesman downplays the focus of the Wyoming trip on aggregation, noting it was one of a dozen topics discussed. An EPA headquarters air office spokesman declined to discuss the guidance or whether the trip was centered on aggregation, saying the meeting "was a long time in the works" and not "connected directly to anything."

**Meanwhile, environmentalists say they will soon file suit against EPA for failing to take over** a Colorado-issued permit it previously objected to due to concerns over the handling of aggregation.

EPA Administrator Lisa Jackson last October objected to an air permit Colorado issued to Kerr McGee/Anandarko, agreeing with activists that the state did not meet "requirements regarding the need to aggregate interrelated pollutant emitting activities and to appropriately define the source being permitted."

Environmentalists in January filed a 60-day notice-of-intent to sue EPA for failing to take over the permit, and a source says formal legal action is imminent to try to hold EPA's feet to the fire on the issue. They also filed a similar complaint against a New Mexico facility that EPA is reviewing.

Meanwhile, a Colorado source says the state will soon respond to EPA's objections in the permit, declining to elaborate on the aggregation issue while the response is in the works. -- *Dawn Reeves*

