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Memorandum

Date: January 2, 2020

To: Air Quality Bureau Permitting Staff and Regulated Community

From: Ted Schooley, Permit Programs Manager, Air Quality Bureau

Subject: What is Creditable for Potential Emission Rate Calculations?
New Source Performance Standard OOOOa & Heater Treater Example

Overview

Within New Mexico regulations, the definition of potential emission rate (PER) requires that limitations on the capacity of a source to emit a regulated air contaminant be enforceable by the Department before the reductions can be considered part of the physical or operational design. (20.2.72.7.Y & 20.2.73.7.O NMAC) An entity is subject to New Source Performance Standard (NSPS) OOOOa (40 CFR §§ 60.5360a – 60.5432a) if it owns/operates one of 10 specifically listed components (referred to as affected facilities): 1) A single well, 2) a centrifugal compressor, 3) a reciprocating compressor, 4) a pneumatic controller, 5) a storage vessel, 6) a process unit, 7) a sweetening unit, 8) a pneumatic pump, 9) fugitive-emission-collecting components at a well site, 10) or fugitive-emission-collection components at a compressor station. (40 CFR 60.5365a). A control device or configuration required by NSPS OOOOa for an "affected facility" may not be used to reduce the PER for equipment that is not an affected facility.

Example

The design of a facility includes a proposal to hard-pipe the VOC emissions from a heater treater directly into the OOOOa-affected storage vessel emissions stream to the associated control device. In doing so, the company desires to claim the same 95% emissions reduction for the heater treater that OOOOa affords the storage vessel emissions.

NSPS OOOOa requires that "storage vessel affected facilities" reduce VOC emissions by 95%. The specific control requirements are outlined in 40 CFR 60.5395a(b). If a company chooses to route the gas emissions from its heater treaters via a closed-vent system to a OOOOa control

device for the storage vessel affected facilities, the reduction would not be creditable for the heater treater PER calculations.

In order to treat that configuration as part of the physical design for PER calculations, it would have to be enforceable. So, while the closed vent system and the control device may be built to enforceable standards (40 CFR 60.5411a and 60.5412a respectively), the fact remains that only certain components are required to vent to them: centrifugal compressors (40 CFR 60.5380a), reciprocating compressors (40 CFR 60.5385a), pneumatic pumps (40 CFR 60.5393a) and the aforementioned storage vessels (40 CFR 60.5395a(b)(1).) If an inspector found any of these components deviating from that configuration, they could assess a violation by pointing to the associated regulation and have legal recourse. This is the definition of enforceable.

The Department recognizes that a hard-piped configuration implies a degree of permanency, but this is not the test of “physical design” for PER purposes. The difficulty of rerouting is not a factor. The relevant question is whether the Department could in some way penalize a deviation from the configuration. In this example, detaching the heater treater from the closed-vent system – whether it is easy or hard to do – has no legal ramification, which means it was strictly voluntary. The enforceability requirement guards against manipulation of the PER calculation process by ensuring that any creditable configuration cannot be altered without repercussions.

The requirement to submit a notice of intent (NOI) for such modifications under 20.2.73.200.A(2) NMAC does not create enforceability for configurations not enforceable under other regulations. The PER of a facility can only include pollutant control reductions that are directly subject to federal or state requirements. The fact that failing to notify the Department when a previously declared configuration is modified could result in an enforcement action does not create ‘enforceability’ for PER calculations. In such a scenario, the violation is a failure to report, which exists independently of any design requirements that may be found in other statutes or regulations.

Merely connecting to something for which design parameters exist, i.e. a closed-vent system, does not transmit enforceable standards to the connecting component. *Potomac Electric Power Co. v. Environmental Protection Agency*, 650 F.2d 509 (1981). The enforceability policy is component-specific. Because there is no requirement in NSPS OOOOa to reduce emissions from equipment that does not meet one of the definitions of affected facilities, the Department considers the control of emissions from the heater treater to be non-enforceable (in this example, under OOOOa), voluntary control even when using the closed-vent system required for storage vessel affected facility emission reductions.

There are other scenarios in which this same concept would apply, such as controlling truck loading emissions and emissions from vapor recovery tower and vapor recovery units which have met the process verses control guidelines. Although a given configuration may not be enforceable for PER calculation, if it is later written into a permit, from that point forward there could be enforceability because a deviation would violate the permit conditions. Review the calculation-instruction section in the NOI form for information on representing voluntarily controlled emissions in an NOI.