

**Subpart W Quarterly Stakeholder Conference Call
April 21, 2016**

ATTENDEES

EPA: Dan Schultheisz, Phil Egidi, Tony Nesky (ORIA)
Sue Stahle, Emily Seidman (OGC)

Environmental/Tribal Groups: Sarah Fields, Uranium Watch; Aaron Mintzes, Earthworks

Industry: Scott Bakken, Energy Fuels

Other Government: John Saxton, Carol Moyer (NRC)

UPDATE

Dan Schultheisz began the call by introducing himself as the new manager for the rulemaking (202-343-9349, Schultheisz.daniel@epa.gov). Reid Rosnick retired in March. Dan apologized for the technical difficulties that resulted in postponing the call from April 7. The passcode for the conference line was inactivated when Reid retired, which was not anticipated. The new passcode will be 2023439765, followed by #. The next call will be back on the normal schedule (first Thursday of the month), and will take place on July 7.

Dan then discussed the status of the Subpart W rulemaking. A draft rulemaking package, which includes drafts of the preamble/rule, Background Information Document/Economic Impact Analysis, and Response to Comments, is being reviewed by the Agency workgroup. We are hoping to have workgroup agreement that the package is ready for OMB review by the end of May. The package would be reviewed by OAR and the Office of Policy before transmittal to OMB, which might take several weeks. OMB review could be short, or it could take up to 90 days as allotted. There are always a lot of rules that go over to OMB at the end of a fiscal year and the end of administration, and it is possible that OMB may decline to review the rule. If they do review it, EPA hopes to answer any questions they have in short order, and get the rule out before the end of the current administration.

DISCUSSION

Sarah Fields: What can you tell us about the final rule? It seems that you are not making any statements whatsoever about the proposed rules. In previous calls and correspondence, Reid was not willing to discuss how these issues are being resolved, e.g., compliance with the Clean Air Act and the monitoring requirements. Are you going to be as close-mouthed? You have released rules before they are in the Federal Register.

Dan: Yes, I have the same limitations as Reid in what I can say about the final rule. Until it is signed by the Administrator, no decisions are final. Changes could occur based on workgroup comments, senior management review, or OMB review. We will post the rule on our website when it is signed by the Administrator, as we have in the past. It may take a couple of weeks

after that for it to appear in the Federal Register. We will address the legal issues that you raised in the rule and the response to comments, and those will be published on the website.

Aaron Mintzes: Thank you for hosting this call. My question is procedural. You mentioned OMB review. My recollection is that Reid said that this is a Tier 3 rule, and that you don't have to send it to OMB. Are you planning to send it to OMB anyway?

Dan: Yes, as a Tier 3 rule, it is not necessarily required to go through OMB review. However, OMB reviewed the proposed rule, and it is likely to want to see how some issues were resolved in the final rule. Also, we identified this as a significant rulemaking because it raises novel legal, policy, or technical questions. As a legal matter, this rule is the first review by EPA of a pre-1990 NESHAP under Section 112(q) of the 1990 Clean Air Act Amendments. For that reason alone, we anticipate that OMB will take an interest in this rule. Sue Stahle may have something to add.

Sue Stahle: Yes, because this is the first review of this kind being done by EPA, it does raise a novel legal issue. While it may not be necessary to undergo full OMB review, it's likely to be presented to OMB to provide that opportunity. They may surprise us, and decline. The program office makes the decision on whether it will need to go to OMB.

Dan: At the very least, we would expect to provide some briefings for OMB. If OMB decides that the review can be limited, we would certainly view that favorably. At this point in the final year of an administration, there are many rules that will be demanding OMB's attention. We would prefer not to get caught up in that.

Aaron: Can you explain more about this Clean Air Act review?

Sue: Section 112(q) of the 1990 Clean Air Act Amendments requires EPA to review, and if appropriate, revise NESHAPs that were promulgated before passage of the amendments. This will be the first review done by EPA under this provision.

Aaron: Why is this the first one? Is this supposed to be a periodic review?

Sue: The requirement is to review, and if appropriate, revise the rule within 10 years of the passage of the Amendments. That means the revision should have been complete by 2000. EPA did not review the rule during that time. We are reviewing it now as part of a settlement agreement. It is a one-time review, so it is not something that has to be done at specified time intervals, as may be the case under other sections of the CAA.

Sarah: Are there other NESHAPs that require review? I know that Subpart B (radon in underground uranium mines) is exempted from this review requirement. There have been so many enforcement issues with Subpart W since 1989, and I was wondering whether EPA has considered reviewing Subpart B.

Sue: Yes, there are some exemptions from the requirement to review under CAA Section 112(q). I know Subpart B is one, but don't have them handy right now. The decision to review would be up to the program office, but OGC would provide the legal support.

Dan: I am not aware that Subpart B has been considered for review.

No Further Comments

Next Call: Thursday, July 7, 2016 at 11 AM Eastern Time.

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