

# Key Differences Between EPA and DEC NSR Regulations

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# DEC Options

- Do nothing
- Adopt EPA NSR regulations
- Adopt a State-specific NSR program

# Why Not Adopt the EPA Regulations?

- DEC: EPA NSR regulation is not consistent with the policy objectives of the State as articulated in the ECL
- DEC: EPA regulation does not adequately protect the air resources of the State

# DEC's Stated Objective

- Align Part 231 with EPA NSR regulation in terms of methodology for determining emissions increases
- But exceed minimum federal requirements with more stringent provisions
  - for determining baseline emissions
  - by requiring emissions reductions for PALs
  - by requiring additional monitoring/reporting for insignificant modifications

# An Objective DEC Did Not Mention

- If “potential actual emissions” are used to conclude that a project exceeds the significant project threshold but is below the significant net emissions increase threshold, facility must apply to cap emissions at the value used for potential actual emissions
- This effectively transforms potential actual emissions into potential to emit, the very outcome that EPA’s 2002 NSR reform was designed to fix

# Calculation Methodology Differences

- Baseline period
- Net emissions increase
- Emissions decreases
- Significant source project threshold

# Baseline Period

- EPA: 5 years for EUSGUs/10 years for non-EUSGUs; option of using a different baseline period for each regulated pollutant
- DEC: 5 years for all sources; only one baseline period

# Net Emissions Increase

- EPA: any other increases and decreases that are contemporaneous and otherwise creditable
- DEC: decreases must be ERCs to be counted

# Emissions Decreases

- EPA: emissions decreases can be used to net out of NSR review as long as they remain contemporaneous
- DEC: emission reductions should not be double counted to allow a subsequent project to avoid NSR

# Significant Source Project Threshold

- EPA: 25 TPY for VOCs and  $\text{No}_x$  in moderate nonattainment areas
- DEC: 2.5 TPY threshold retained

# Reasonable Possibility Requirements

- EPA: reasonable possibility requirements limited to projected actual emissions increase that is  $\geq 50\%$  of significant increase threshold by itself or when unrelated, excluded projected actual emissions are added back in
- DEC: reasonable possibility recordkeeping requirements extend to all modifications, no matter how insignificant
- EPA: annual post-project reporting requirements apply only to “reasonable possibility” EUSGUs
- DEC: annual post-project reporting requirements apply to all “reasonable possibility” sources

# Reasonable Possibility Requirements (Cont.)

- DEC: if unrelated, excluded projected actual emissions by themselves equal or exceed significant project threshold, DEC must receive preconstruction notification
- EPA: no equivalent requirement

# PAL Reductions

- DEC: automatic 25% reduction in PAL beginning in year 6
- EPA: no equivalent requirement

# Particulate Matter ERCs

- EPA: particulate matter increases in PM nonattainment areas can be offset by SO<sub>2</sub> and NO<sub>x</sub> ERCs
- DEC: will evaluate EPA 5/8/08 regulation and propose amendments to Part 231 as appropriate

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