

ELI Community Lawyering for Environmental Justice
Part 9: Air Permitting

New Source Review: What's the Big Deal?

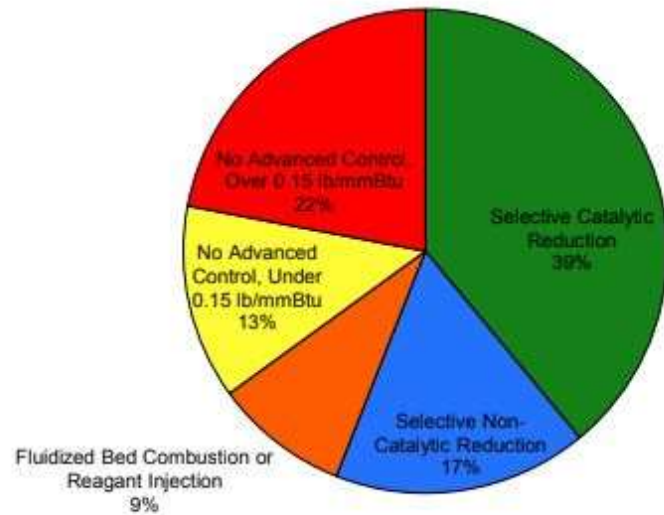
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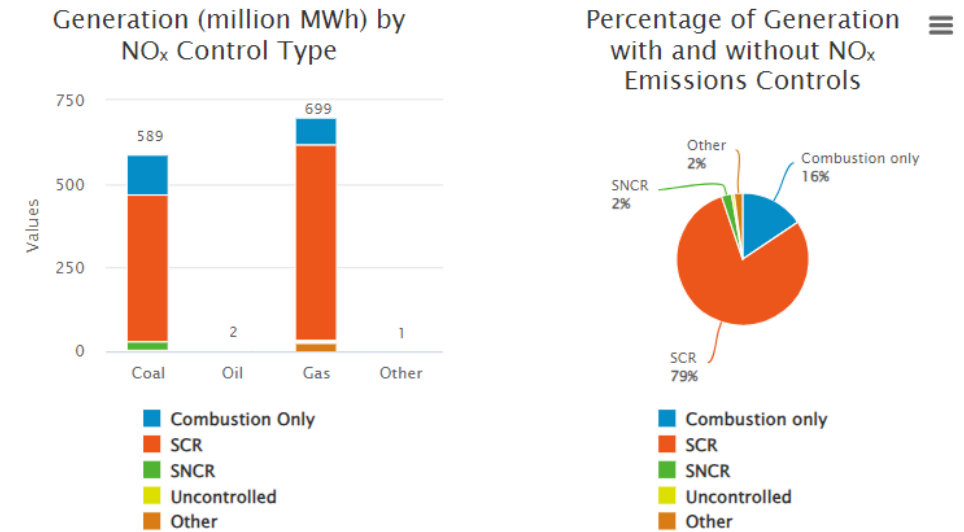
April 11, 2024

NOx Control at Power Plants

Nitrogen Oxide Controls for 2017 ARP/CSAPR Coal Units by Percentage of Units



NO_x Emissions Controls in CSAPR NO_x Annual Program, 2022



Notes:

- To more easily see all layers on the chart, try turning off some categories by clicking items in the legend.
- Due to rounding, percentages shown may not add up to 100%.
- "SCR" refers to selective catalytic reduction; "SNCR" fuel refers to selective non-catalytic reduction; "Combustion Only" refers to low NO_x burners, combustion modification/fuel reburning, and/or overfire air; and "Other" fuel refers to units that burn fuels such as waste, wood, petroleum coke, or tire-derived fuel.
- "Other fuel units" include units that combusted primarily wood, waste, or other non-fossil fuel (which also boost mercury and HCl removal by ACI and DSI).

EPA, 2023
Last Updated: 08/2023

What does it mean for emissions to increase?

Clean Air Act, 42 U.S.C. § 7411(a)(4)

“The term ‘modification’ means any physical change in, or change in the method of operation of, a stationary source which *increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted*”

40 C.F.R. § 50.165

NNSR triggered for modifications when there is a “significant” emission increase, which is defined with reference to emission rates in cumulative **tons per year**.

Hourly vs. Annual Emission Increases

April 2007

- Between 1988 and 2000 Duke Energy upgrades or replaces 28 boilers first installed between 1940 and 1975
- Avoids NSR pre-construction permitting by arguing no hourly emission increase (even if upgraded plants were running significantly more, thereby increasing annual emissions)
- Clinton EPA files enforcement action that eventually goes all the way to Supreme Court, which finds EPA's use of cumulative, annual emissions instead of hourly is reasonable – *EDF v. Duke Energy*, 549 U.S. 561, 570 (April 7, 2007)

May 2007

- Bush EPA proposes to use hourly trigger instead of annual, 72 Fed. Reg. 26202 (May 8, 2007) – never finalized

August 2018

- Trump EPA slips in change to hourly trigger in its Affordable Clean Energy proposed rule for greenhouse gas emissions from power plants – this part of the proposal was dropped from the final rule.

What to Watch For

OPINION

THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

Bring the Clean Air Act into the 21st century

BY THOMAS HOCHMAN, OPINION CONTRIBUTOR - 03/12/24 6:00 PM ET

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Legislation to weaken & worsen clean air safeguards—allowing massive increases in dangerous air pollution & amnesty from pollution controls—often casts itself duplicitously as ‘modernizing’ the Clean Air Act. thehill.com/opinion/452737...

So here. 1/



From thehill.com

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What to Watch For, cont.



Statement from EPA Administrator Michael S. Regan on EPA's approach to the power sector

February 29, 2024

Contact Information

EPA Press Office (press@epa.gov)

WASHINGTON – EPA Administrator Michael S. Regan issued the following statement today on EPA's approach to the power sector:

"As EPA works towards final standards to cut climate pollution from existing coal and new gas-fired power plants later this spring, the Agency is taking a new, comprehensive approach to cover the entire fleet of natural gas-fired turbines, as well as cover more pollutants including climate, toxic and criteria air pollution," said Administrator Regan.

"This stronger, more durable approach will achieve greater emissions reductions than the current proposal. EPA proposals on criteria pollutants and air toxics also will help address local air quality impacts to better protect vulnerable frontline communities. This comprehensive approach to reducing climate and air pollution will also consider flexibilities to support grid operators and will recognize that ongoing technological innovation offers a wide range of decarbonization options. EPA will immediately begin a robust stakeholder engagement process, working with workers, communities with environmental justice concerns, and all interested parties to help create a more durable, flexible, and affordable proposal that protects public health and the environment."

Google these loopholes later!

- Demand Growth Exclusion
- Project Emissions Accounting
- Title V “applicable requirements” rule
- Significant Impact Level guidance

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Questions?
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