

# Regulatory Update

Presented at the Coal-fired APC Environmental Seminar

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June 2018

**AECOM**

## Outline

- Introduction
- Air Regulations
- Waste Regulations
- Water Regulations



## Power Generating Industry

- Recent quote from Bill Johnson, CEO of TVA to *Power* magazine

“The past **5** years have had more change and uncertainty than the **35** before them together.”



## Coal

- Despite the president's effort to reduce regulatory burden on the coal industry, coal-fired facilities continue to be retired



## Coal

- There are forces in play independent of regulation:
    - Low natural gas prices
    - Lower prices of renewable energy technologies
    - Customer demand for renewable energy
    - Lower electric demand due to increased efficiencies
    - Age of coal-fired facilities
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## Air Regulation



## Air - Status of Repeal Efforts

- The March 2017 Presidential Executive Order directed the EPA to review and revise or rescind regulations of GHG (predominately CO<sub>2</sub>) emissions from power plants



## Air - Status of Repeal Efforts

– The main target of this order was the Clean Power Plan

- The CPP was intended to regulate CO<sub>2</sub> from electric generating units
- First national standards that address carbon emissions from power plants
- State-specific CO<sub>2</sub> reduction goals





## Air - Status of Repeal Efforts

- The EPA now contends the CPP exceeded the EPA's statutory authority
    - The CPP CO<sub>2</sub> emission guidelines expected measures to be applied beyond the 'fenceline' of the electricity generator
    - EPA argued the health benefits of the CPP rule were overstated because ancillary benefits from areas not specifically regulated by CPP were counted
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## Air - Status of Repeal Efforts

- The EPA is planning to repeal CPP
- However, there is an ongoing challenge against the CPP from a group of 20+ states (West Virginia v EPA)
- What happens if the court rules before EPA finalizes the proposed repeal of CPP?



## Air - Status of CPP Repeal Efforts

- If the Court upholds key parts of the CPP (because parts of rule *do not* overstep authority) before EPA can repeal the CPP (because rule *do* overstep authority), then the EPA effort to repeal CPP will be undercut
  - EPA has asked the Court to hold off on ruling
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## Air - CPP Repeal without Replacement Option

- If EPA repeals CPP without having a replacement rule
    - Litigation from states and non-governmental organizations can be expected
  
    - The next administration could propose its own rules to regulate GHG from power generators
  
  - These two outcomes are negative for the current administration, therefore it is likely a replacement rule will be proposed at the time of CPP repeal
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## Air - CPP Repeal with Replacement Option

- If EPA repeals CPP with having a replacement rule – what could the replacement rule look like?
    - Most likely narrow in scope
    - Less aggressive GHG reduction targets
    - Site-specific requirements (there will be no expectation for efforts beyond the fenceline)
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## Air – Recent Actions

- Actual-to-Project-Actual Applicability Test Memo
  - Project Emission Accounting Memo
  - One-in-Always-in Memo
  - Source Aggregation Guidance
  - Ambient Air Guidance
  - PM<sub>2.5</sub> and Ozone SIL Guidance
  - Project Emissions Accounting Rule
  - Project Aggregation Reconsideration
  - Routine Maintenance, Repair and Replacement
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## Air – Cross-State Air Pollution Rule Update

- The EPA issued a memo to Regional Air Division Directors to provide information on the Interstate Transport State Implementation Plan Submissions



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
RESEARCH TRIANGLE PARK, NC 27711

MAR 27 2018

OFFICE OF  
AIR QUALITY PLANNING  
AND STANDARDS

### MEMORANDUM

**SUBJECT:** Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)

**FROM:** Peter Tsirigotis  
Director

A handwritten signature in black ink, appearing to read "P. Tsirigotis".

**TO:** Regional Air Division Directors, Regions 1–10

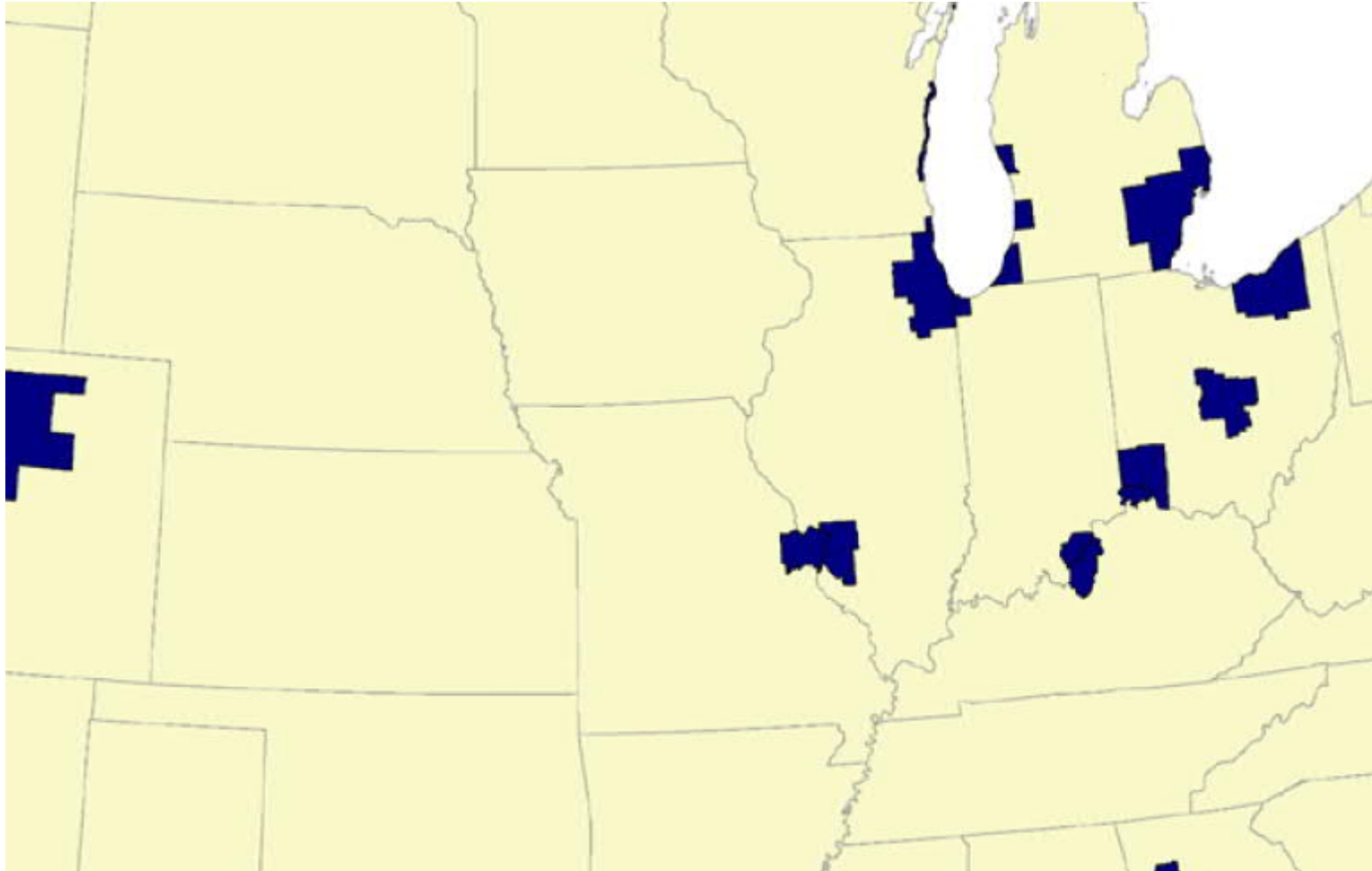
## Air – Cross-State Air Pollution Rule Update

– A March 27, 2018, EPA memo specified

- Air quality modeling results for ozone in 2023
  - Ozone concentrations at potential nonattainment and maintenance sites for the 2015 ozone NAAQS
  - Upwind state contribution data at the maintenance sites
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## Air – Nonattainment Area Designations for 2015 Ozone

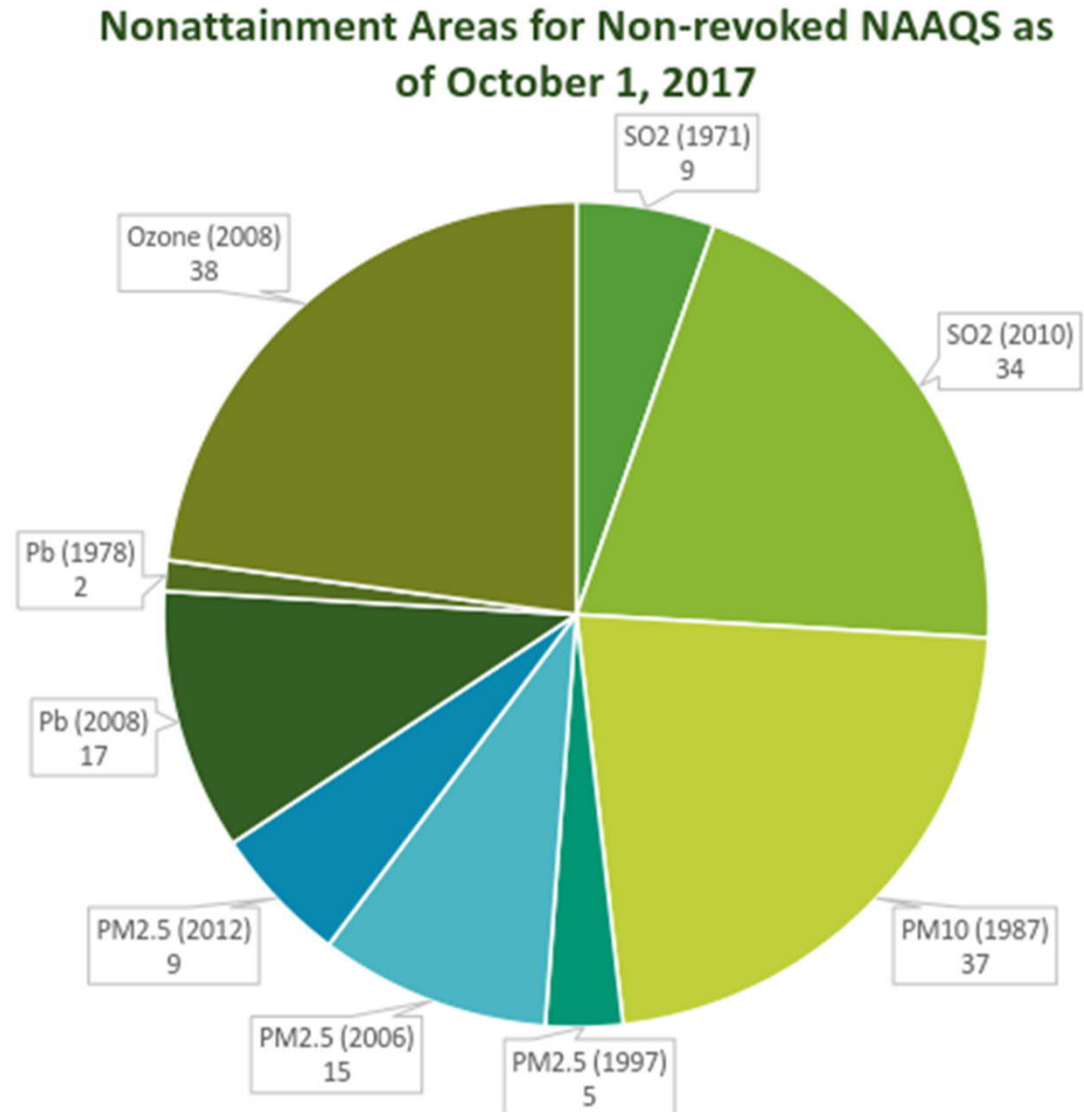


## Air – Cross-State Air Pollution Rule Update

- States can use data from the memo to
    - Develop implementation plans so states do not contribute significantly to nonattainment of the 2015 ozone standards in other states
    - Complete good neighbor transport actions for the 2015 ozone NAAQS
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## Air – Cross-State Air Pollution Rule Update

- EPA has stated reducing the number of nonattainment areas is a priority goal



## Air – Cross-State Air Pollution Rule Update

- States' redesignation request must meet minimum requirements
    - Demonstrate air quality has attained NAAQS
    - Demonstrate pollution reductions are due to enforceable measures
    - Develop a 10-yr maintenance plan
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## Air - Once in Always in

- In the 1990's EPA was promulgating the first national emission standards for hazardous air pollutants (NESHAPs)
  - The “Once in Always in” memo was issued in 1995 by the EPA in response to questions from the regulated community
  - Facilities that are major sources of HAP on the “first compliance date” of a relevant MACT standard are required to comply **permanently** with the MACT standard
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## Air - Once in Always in

- If a major source took a federally enforceable HAP limit **prior** to a MACT first compliance date, it would be an area source, subject only to applicable Area Source NESHAPs
  - Why is this important?
    - Area source requirements are less stringent than major source requirements
    - Some area sources are not subject to any requirements while major sources in the same industry are subject
    - Once subject to MACT, **always** subject to MACT to prevent backsliding from MACT control levels, even if potential emissions are less than major levels at some point in the future
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## Air - Once in Always in

- In 2018 new guidance issued and it supersedes the 1995 memo
  - Once in always in policy immediately withdrawn
  - Major HAP sources may become an area source when the source takes an enforceable HAP limit below major levels
  - Once the HAP limit is effective, source is no longer subject to the major source NESHAP but could be subject to an area source NESHAP
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## Air - Once in Always in

- If planning to opt out of major source NESHAP standard, consider implications of change
    - Facilities that are not major and have Title V only because of once in always in may be able to get out of Title V Permitting
    - Removing emission controls may affect non-HAP pollutants (VOC and PM) and trigger NSR permitting due to emissions increase
    - Removing emission controls may affect HAP emissions and again trigger NSR
    - Work with your state permitting authority
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## Air - Once in Always in

- How do I take a HAP limit to be an area source?
  - In Missouri – Revise Construction Permit(s)
  - Missouri prefers to revise construction permits when there is a physical change to the emission unit
  - Missouri permitting regulations are currently under review; a lower emission limit could be anticipated in a revised rule
  - St. Louis County issues permits on individual emission units and could be reopened to set HAP limits
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## Air - Once in always in

- How do I get a HAP limit to be an area source?
  - In Missouri – Revise Operating Permit
  - Convert to an Intermediate (synthetic minor) permit if both HAP and criteria pollutants can be limited to below major source thresholds
  - Revise the Part 70 Permit to limit HAP to less than 10/25 tpy if the facility remains major for non-HAP pollutants
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## Air – MATS Related Pending Legislation

- In March 2018, US House approved the SENSE bill allowing exemptions from MATS (Senate has not yet voted)
  - Power generators that burn coal refuse have stated they cannot meet the limits of MATS
  - Less stringent standards for HCl and SO<sub>2</sub> for power plants that burn coal refuse
  - Most coal refuse-to-energy plants are in Pennsylvania

MATS Limits	HR1119 (SENSE) Limits
New Unit 0.01 lb HCl/Mwh	New Unit 0.02 lb HCl/Mwh
Existing Unit 0.02 lb HCl/Mwh	Existing Unit 0.02 lb HCl/Mwh
New Unit 1.0 lb SO <sub>2</sub> /Mwh	New Unit 1.5 lb SO <sub>2</sub> /Mwh
Existing Unit 1.5 lb SO <sub>2</sub> /Mwh	Existing Unit 1.5 lb SO <sub>2</sub> /Mwh

## Air – NSR Project Projected Actual

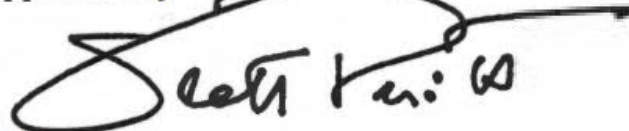
- In December 2017, EPA issued guidance memo on New Source Review applicability

December 7, 2017

### MEMORANDUM

**SUBJECT:** New Source Review Preconstruction Permitting Requirements: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability

**FROM:** E. Scott Pruitt



**TO:** Regional Administrators

## Air – NSR Project Projected Actual

- The EPA will not second guess the operators post-project emission
  - EPA *may* pursue enforcement where a source has failed to perform a required pre-project applicability analysis
  - The court decision does not *compel* the EPA to pursue enforcement in such situations
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## Air – NSR Project Netting

- In March 2018, EPA issued guidance memo on New Source Review pre-construction permitting at existing major stationary sources

March 13, 2018

**MEMORANDUM**

**SUBJECT:** Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program

**FROM:** E. Scott Pruitt

**TO:** Regional Administrators

In accordance with presidential priorities for streamlining regulatory permitting requirements for manufacturing, and in line with my prior recognition that “opportunities exist to simplify” the New Source Review process and thereby “achieve meaningful NSR reform,”<sup>1</sup> the

## Air – NSR Project Netting

- Project emissions decreases can be accounted for when determining if the project by itself will result in a significant emissions increase during Step 1 of the NSR process
  - Previously the EPA interpretation was that emissions decreases could not be considered in Step 1 – EPA will no longer apply this interpretation
  - Proposed rule to codify this interpretation is expected this fall
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## Air – Expected Actions

- Reconsideration of Project Aggregation - Summer 2018
  - Ambient Air – guidance on definitions of “general public”, “access” and “building” - Spring 2018
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## CCR Management Regulation



## Coal Combustion Residuals Management

- The 2015 rule regulates the disposal of CCR as a non-hazardous solid waste under Subtitle D of RCRA
  - Rule determined which disposal structures could remain open and which must close
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## Coal Combustion Residuals Management

- In 2017 the rule was reconsidered
- In March 2018 EPA proposed significant changes



## Coal Combustion Residuals Management – Proposed Changes

- After obtaining EPA approval – states can operate CCR permit programs instead of federal regulations
  - State rules must be as protective as the federal rule
  - Allow alternative risk-based groundwater protection standards for constituents that do not have established maximum contaminant levels instead of using background levels
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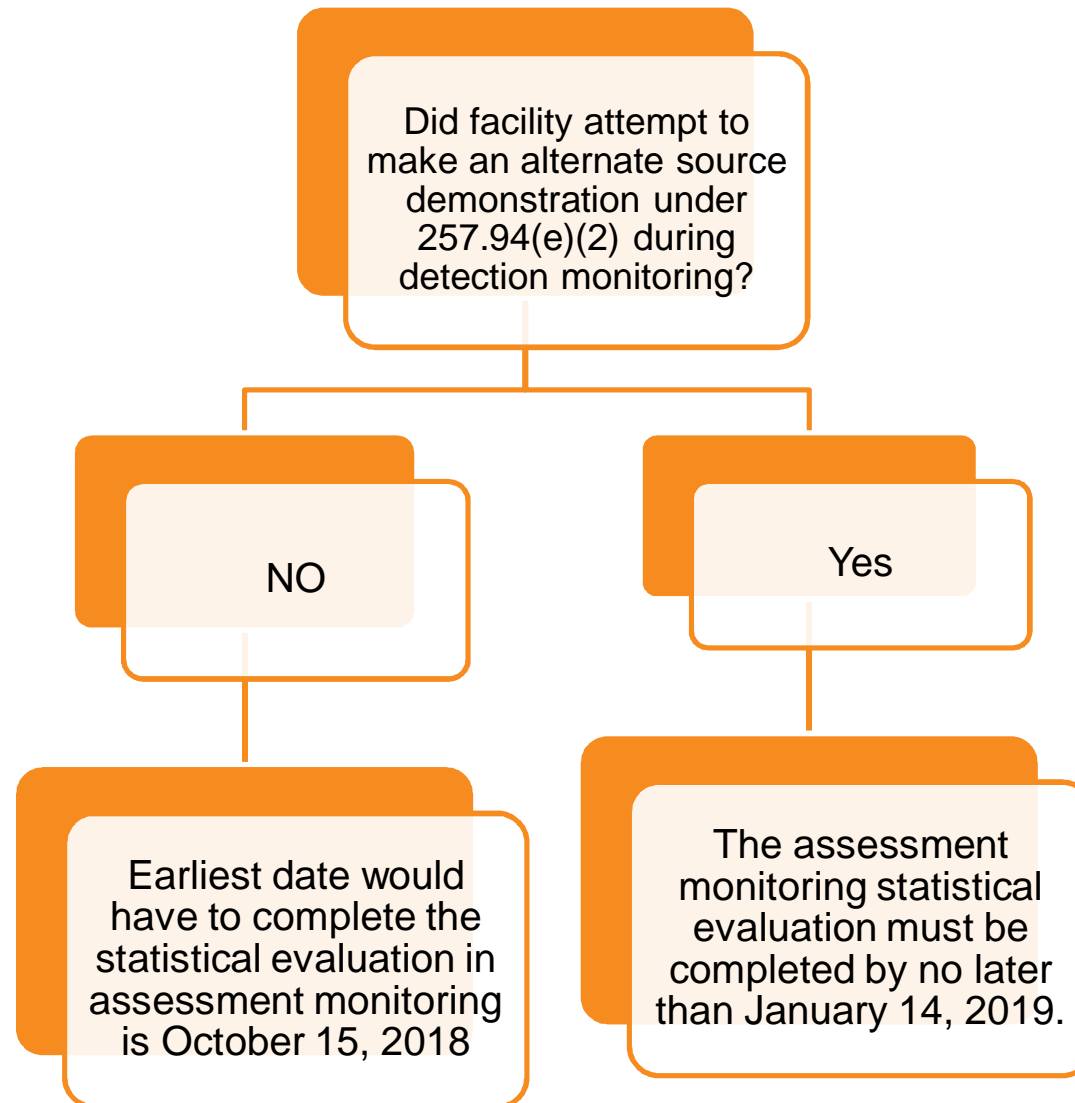
## Coal Combustion Residuals Management – Proposed Changes

- Cover vegetation limited to 12-inches in height and clarification of woody vegetation maintenance
  - Allow alternative requirements on how facilities respond to releases
  - Adds Boron to the list of constituents that trigger assessment monitoring
  - Allow the use of coal ash in the construction of cover systems
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## Coal Combustion Residuals Management – Proposed Changes

- Estimated to save the utility sector up to \$100 million annually in compliance costs
  - There will be a second proposed rule to further amend the 2015 CCR rule
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## CCR Management – Statistical Evaluation



## Effluent Limitations Guidelines Rule





## Effluent Limitations Guidelines Rule – Steam Electric Power Generating

- In 2015 the ELG established new or additional requirements for coal-fired power plants' wastewater streams
- Prohibited off-site discharges of fly ash and bottom ash transport water and flue-gas mercury control wastewater



## Effluent Limitations Guidelines Rule – Steam Electric Power Generating

- Treatment limits for metals including mercury, arsenic, lead, chromium, cadmium and selenium
- The earliest original compliance date is November 1, 2018



## Effluent Limitations Guidelines Rule – Steam Electric Power Generating

- In 2017 EPA paused future compliance dates and will reconsider the 2015 rule
  - May 2018 EPA announced it will potentially revise effluent limitations and pretreatment standards for bottom ash transport water and flue gas desulfurization waste water
  - Proposed rule by December 2018
  - Final rule by December 2019
  - Earliest compliance date is now November 2020
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## Regulations

- Environmental regulations of various media (air, solid waste and water) are interconnected
- Requirements need to be considered together when planning a compliance strategy



# Thank You!

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