



# NSR Settlements



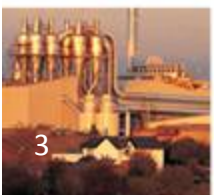
# NSR - Settlements

- This session will discuss:
  - purpose and meaning of settlement agreements and the types of settlement agreements
  - relationship between Consent Decrees and Title V applicable requirements
  - roles of EPA and the State



# NSR - Settlements

- Purpose and meaning of settlement agreements (i.e., consent decrees):
  - To deter illegal conduct
  - To mutually resolve alleged violations
  - Return facilities to compliance



# NSR – Claim-specific Settlements

## ■ Elements of the settlement:

### – Injunctive relief

- Identifies technology to be installed
- Program of compliance to be implemented

### – Schedules for injunctive relief

- Complete construction
- Compliance dates
- Note: All violating units must install, maintain and operate pollution control technology





# NSR – Claim-specific Settlements

## – Unit-specific emission limitations

- All violating units must achieve BACT/LAER-equivalent emission rates
  - Short term limits:
    - » e.g., 3-hour and 7-day average
    - » May exclude startup, shutdown and malfunctions, provided that there is a long-term rate
    - » Note: All emissions from the unit must be counted against an emission limitation
  - Long term limits:
    - » 30-day rolling average, including startup and shutdown
    - » Malfunction excluded only if meets force majeure requirements



# NSR – Claim-specific Settlements

## – Offsets/Credits

- Always prohibit the use of emission reductions from settlement to be used as offsets
- Generally prohibit the use of emission reductions from settlement to be used as credits
  - Exception – complying unit to complying unit

## – Allowances

- Utilities required to surrender all SO<sub>2</sub> and/or NO<sub>x</sub> allowances not needed for plant/system



# NSR – Claim-specific Settlements

- Monitoring to ensure benefits
  - Continuous Emission Monitoring (e.g., NO<sub>x</sub>, SO<sub>2</sub>, PM, Hg CEMS, COMS)
  - A core requirement of all NSR settlements
- Recordkeeping and Periodic Reporting
  - Actual annual emissions
  - Compliance with CD terms and emission limits



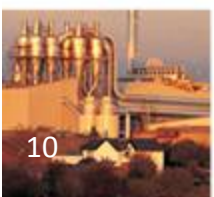
# NSR – Claim-specific Settlements

- Compliance requirements continue post-CD
  - Apply non-Title V federally-enforceable permit or SIP revision to incorporate CD requirements (i.e., establish applicable requirements)
  - Apply for a new (or amended) Title V operating permit to include applicable requirements
- Civil penalties, including stipulated penalties
- SEPs and/or Environmentally Beneficial Projects
  - Environmental neutrality policy, especially with regard to CD modifications
- Covenants
  - Past release for violating unit(s) only



## NSR – Claim-specific Settlements

- CD does not terminate until all applicable permits issued:
  - Conditional termination of enforcement through this Consent Decree, after [the company]. . . has obtained all the final permits required by Section XVI ([Title V] Permits) of this Consent Decree covering both Unit 1 and Unit 2 that include as federally enforceable permit terms, all of the Unit performance and other requirements specified in this Consent Decree



# NSR – Claim-specific Settlements

## – Miscellaneous

### • **GENERAL PROVISIONS**

This Consent Decree is not a permit. Compliance with the terms of this Consent Decree does not guarantee compliance with all applicable federal, state, or local laws or regulations. The emission rates and removal efficiencies set forth herein do not relieve [the company] from any obligation to comply with other state and federal requirements under the Clean Air Act, including [the company's] obligation to satisfy any State modeling requirements set forth in the SIP.

# NSR – Global Settlements

- Elements of a global settlement
  - In addition to the foregoing elements of a claim-specific settlement:
    - All units must be controlled to BACT-equivalent levels and/or touched
    - The percentage of units to BACT-levels and the units to be controlled are determined, inter alia, in reference to:
      - The strength of the case
      - The emissions profile of the units



# NSR – Global Settlements

- Must achieve system-wide reductions (e.g., unit-specific emission rate and tonnage cap)
- Establish system-wide cap or annual limits (e.g., 12-month or 365-day rolling average emission rate, annual tonnage cap)
- Relief must match release

# NSR – Settlements

- State role
  - States are encouraged to participate in all federal enforcement actions
  - Benefits to state to act on application from Defendant(s):
    - Secures emission benefits
    - Limits can go into BACT/RACT/LAER Clearinghouse as part of an enforceable permit

