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## Technical Focus, Energy & Environmental Committee Meetings

June 2-3, 2015  
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# MINUTES

TUES-WED June 2-3, 2015

### TECHNICAL FOCUS GROUP SESSION

**Jason Philpott, Eastman Chemical Company**, Technical Committee Chairman

Instrumented and Actuated Systems – *Moderator*, **Denis Oravec**, AAI-JMP Engineering

Control systems have evolved from painted equipment pictures on walls with gauges and dials with many operators to processor driven instruments and displays with fewer operators.

**Mark Bitto** of ABB, Inc. reported on improving operator's effectiveness. One of the issues is that the control room is often a mix of several generations of control systems. As experienced operators retire, new operators get inundated with the amount of data that gets generated in modern control systems. Every portion of the control system now generates data from the sensor to the transmitter to the controller to the historian generates data. It is estimated that \$20 billion is lost annually from abnormal incidents. Nearly 80% of these incidents were avoidable.

There are also safety incidents that must be considered. The operator is inundated with displays, keyboards, alarms, etc. Out of all of this, the operator has to try to focus on what is important and make appropriate decisions.

The 4 pillars of operator effectiveness include ergonomics, plant system integration, human interface, and operator competence. In today's power house, every part of the system has a microprocessor. Vertical integration of these systems is needed to allow the operator to look at one central window for the presentation of the data. All of the alarm and event lists are directed to this central window. The graphic interface needs to minimize the stress on the operator. Within 2 strokes, the operator should be able to pull up what is needed. Today's systems allow more different people to access the information that is important to them (i.e. management, operators, engineers, maintenance, etc.). Each of these types of personnel will have their own security profiles for what they can see or do with the information. The goal is to convert data to information to situational awareness.

Operator interface design should provide the most efficient way to detect and correct abnormal situations. Formerly, a lot of color was used on displays. This was confusing. Now a gray background is used with color only for abnormal conditions. Trend lines are included so that an operator can see the direction of the trend towards some limit. Diagnostic detail is now available at various levels. Levels include overall surveillance, process surveillance, subsystem detail, and diagnostic detail. Alarm management is another major issue for the modern plant. With so many measurements that can be "alarmed", the number of alarms has reached a saturation level. The number of alarms per day for power plants is up to 2000 (more than 1 per minute). With this level of



alarms, the operator is constantly addressing alarm acknowledgments and not operating the plant. Advance alarm handling and analysis can filter the alarms and display the data to provide focus on the sensitivity and priority of the alarms. This allows the alarms to be grouped appropriately.

With today's system, a lot more data is available. This feature allows for asset management and optimization. For example, rather than a fixed schedule for motor maintenance, a run schedule could be used that directs maintenance after so many hours of motor operation. This data is now available in the control system. Maintenance requirements can be directed to the appropriate person(s) so that corrective action can be taken. The goal is to resolve maintenance issues before failure.

Cyber security needs to be imbedded into the system. User authentication, role based access, event logging, backup, firewalls, antivirus, host hardening, etc. all need to be part of the system. The control system can be used as a training tool. A training console can be included that simulates plant operation so that operators can become familiar with the plant. Ergonomic design of the control room should be aimed at reducing operator stress. Ergonomics can be personalized for the individual operator. In one gas plant, compressor trips were a problem. With the alarm filter system, the number of alarms was reduced from 300 in a 10 minute period down to 3. The number of compressor trips was reduced from 27 down to 7, with a savings of \$2 million/yr. With the event system, it is possible to create reports that provide information about how many systems are in manual or how many times a system went to manual.

**Mark Bitto** then reported on condition monitoring of rotating equipment. Condition monitoring aims to identify issues before failure. Predictive monitoring is a means to accomplish this. Seemingly random failures do have some tell-tale signatures. For rotating machinery, vibrations tend to be the first sign of an issue. Major causes of vibration include wear and abuse, maintenance, design issues, bearings, and abnormal operation. Degradation starts out slowly, but then can proceed rapidly to the point of failure if not addressed. Assets should be prioritized so that high value assets have more sophisticated monitoring systems. These systems can be integrated with the control system. The vibration data needs to be analyzed so that a root cause of the vibration can be determined. With proper maintenance, the life of the equipment can be increased as well as the maintenance cost reduced.

**Eric Hallman** of Cargill Incorporated reported on control and instrumentation considerations when converting to natural gas. In response to the Industrial Boiler MACT rule, many plants are converting to natural gas firing. With the focus on the boiler, the control systems seem to be left for last, when perhaps they should have been considered more up front. For Cargill, one division had 7 boilers, 3 of which were coal fired. For the size and type of these units, it was decided to convert the coal units to gas. Over the years, a number of different control configurations were involved with these plants. Environmental monitoring requirements need to be considered when the control system is being modified. With the new regulation, continuous emissions monitoring systems are now required for most units.

The operation of the boiler will be impacted by the emissions. For CO control, oxygen measurement will control the air flow. An oxygen monitoring and control system is a requirement if a CO CEMS is not in use. This system has to now record the information and put it in a format that is reportable to the EPA. With the advances in control systems, fewer operators are being deployed, putting more responsibility on the role of the operator. The need for training of the operators is increasing. While



certification requirements have not necessarily increased, the increased complexity of the control system requires more training to understand the underlying concept.

With the complexity of the systems, it is getting harder to run plants in manual. A unit with an ultra low NOx burner would have a very difficult time being run in manual. Sensor failure can upset a control system. Training and experience are the necessary tools to function with these new systems. With the EPA declaring that there are no malfunctions, the operating envelope is being reduced.

With the emissions controls as well as burner controls, the system gets more complicated and more expensive. These systems have to be engineered so as to fit in with the existing equipment and master controls. As a burner is required to operate with lower and lower NOx emissions, the operating conditions get closer to the flammability limits. This could cause a flame out. After the flame out, fuel can build up in the unit with the risk of an explosion upon relight. Safety instrumented systems are impacting the control system requirements. Higher level safety systems (safety integrity level or SIL) require more redundancy in measurements and controls, which, in turn, drives up cost. It is important to stay engaged in the process of purchasing and installing the control system.

## **GOVERNMENT AFFAIRS SESSION**

**Anthony Reed, Archer Daniels Midland Co.,** *Government Affairs Committee Chairman*

**Salo Zelermyer** of Bracewell & Giuliani LLP noted that the government is in the sprint to the summer recess (i.e. the end of June). The President is looking to his legacy issues. For the Republicans, there are many Senators and Representatives that are lining up to run for the presidency in 2016. With the Republicans in charge of both Houses, there has been somewhat of a “return to order” in that bills are moving through both Houses in a more “normal manner”. Senator Murkowski has taken over the Energy Committee and is planning an energy bill. It will still be difficult to get an actual law due to the potential for a presidential veto, which would require a substantial majority to override.

On the House side, a bill called the “architecture of abundance” is being debated. There is an infrastructure title, a diplomacy title, an efficiency title, and an accountability title. The infrastructure title covers a number of issues related to energy infrastructure, including pipelines and permitting. The diplomacy title covers the potential for gas exports. LNG export licenses continue to be approved, however slowly. A proposed measure would require DOE to act within 30 days. Oil exports are not currently in the bill. The efficiency title covers FERC reform and DOE efficiency standards.

On the Senate side, a bill with similar titles is being considered. The Senate issues are not necessarily the same as the House. Some elements of the Quadrennial Energy Review are being put into the bill. Chairman Murkowski has made a serious effort to encourage bipartisan support. In the aggregate, there are now about 100 different proposals, including oil exports. There has been some debate over PURPA reform. PURPA has been eliminated in those areas that are covered by an open market structure for electricity. For regulated regions, there is still a requirement to purchase power from a qualified facility in those areas. It was suggested that a modest bullet list be prepared for these bills for the members to comment on in order for CIBO to develop a focus for comments.

The Waters of the United States rule has been finalized. Speaker Boehner has condemned the rule. The House has passed some legislation to undue that rule. There has been legislative activity on the Clean Power Plan to delay implementation and allow states to opt out of the plan. There is also a



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Senate proposal to change the authority to use Section 111 of the CAA. Some states have pledged not to submit a plan. Other states have required review before any submittal of a plan. On renewable standards, there is not likely to be a reform requirement in these proposals. There are proposals on the ozone NAAQS. Whether they will get attached to an energy bill remains to be seen.

## **ENERGY SESSION**

**Frederick (Fred) P. Fendt, The Dow Chemical Company**, Energy Committee Chairman  
**Robin Mills Ridgway, Purdue University**, Energy Committee Vice-Chairman

The Energy white paper that was prepared by Bracewell & Giuliani LLP was briefly reviewed. The basic message is that we encourage Congress to actually do an energy bill. It is important to include and consider thermal energy. Energy diversity is important and "all of the above" should really mean "all of the above". Unnecessary regulations increase energy costs and hurt domestic competitiveness. A more descriptive list of items that are being considered in the Senate and House bills should be developed so that we can prepare comments appropriately.

The energy assessment and tune up deadline is still Jan. 31, 2016. Most states are holding to that date, although some are granting extensions. Care needs to be taken with what goes into the formal energy assessment report. It should be noted that any report that is connected with a Title V permit could be discoverable by someone outside the company. There could be confidential information that should not be disclosed. Or there is the risk that a list of energy saving projects could be used by someone to challenge the company's interest in energy efficiency. Dow has 97 facilities that needed some kind of assessment. At the moment, the number of opportunities for real savings has been small. Others have seen some savings. Most of the plants have enough capacity that no one process uses 20% of the steam output. That has allowed the assessment to be limited to the boiler system.

Citizens Energy hired an A/E to do the assessment. They sell their steam and, thus, did not have to include customer systems in their assessment. University of Notre Dame completed their assessment last summer. It covered stuff that they were already doing. Tate and Lyle completed their assessment. They did not uncover anything new. They are preparing their report. LyondellBasell Industries had been doing their own energy assessments. This work just formalized for compliance. Grain Processing Corporation completed on plant in May and will finish another this summer. Verso hired an A/E for their plants. Cargill Incorporated did its conversion to gas and will be doing the assessments. Barr Engineering Company has helped some companies with their assessments. They keep the documentation separate from the report. Minnesota Power has not done their reports, but has done some projects which they hope to use in their assessments. Georgia Pacific has an energy reduction program. E.I. DuPont de Nemours & Co. is in the middle of doing their assessments. Eastman Chemical Company has been named Energy Star Partner by EPA for 4 years in a row. With a certified program, they don't really need another report. They are planning to do a short version for completeness. Bunge North America Inc. is working on their assessments. Alcoa, Inc. just finished their assessment. The draft report is done. **Bob Bessette** noted that we are going to set up a Fuels Subcommittee. A sign-up sheet for those with interest was sent around.

## **ENVIRONMENTAL COMMITTEE SESSION**

**Stephen (Steve) Gossett, Eastman Chemical Company**, Environmental Committee Chairman  
**Robert (Rob) Kaufmann, Koch Companies Public Sector, LLC**, Environmental Committee, Vice-Chairman



**Amy Marshall** of AECOM Environment reported on the Echo Database. EPA is requiring reporting on an electronic reporting basis. This does not mean sending a report to EPA by email. E-reporting means using EPA's Central Data Exchange (CDX) to submit compliance information. Some rules already require this type of reporting. As time goes on, more compliance reporting will be done using the E-reporting system. The first rule to contain electronic reporting was the NSPS for coal preparation systems that was published in 2009. E-reporting for MACT/NSPS began on January 1, 2012. As rules get revised, they will include E-reporting.

EPA makes several claims several benefits, including cost reduction for future section 114 information collection requests. The concern is that it provides the public with "quicker and easier access to information. Currently states are not "plugged in" to the EPA system and still require paper reports. EPA is taking a "phased approach" to E-reporting. Every time EPA sends out a template there is only a 90 day transition period to switch from paper to E-reporting. The electronic reporting tool (ERT) is a Microsoft Access application that generates an electronic report that can be used in the CDX. At this time the number of test methodologies are limited.

It takes time to learn the system. It doesn't accommodate all test methods. It still has bugs and will crash. Confidential business information (CBI) must be mailed in separately. A paper copy will still be required in most cases. There is a compliance and emissions data reporting interface (CEDRI). WebFIRE is an Oracle database that currently stores submitted test reports. Industrial Boiler MACT will require reporting through the CDX to CEDRI. The report will be put into WebFIRE so that the public (eNGOs) can access this data. The Enforcement and Compliance History Online (ECHO) contains all of the compliance and enforcement data for a plant. Anyone can go to this website and put in their home address and find out what facilities are nearby and which ones have had violations. In addition, permit data, inspection findings, violations, enforcement actions, and penalties are listed.

There is a means to report data errors, but it is extremely difficult to use. When your annual air emissions data is reported, this is uploaded into the National Emissions Inventory. The 2011 NEI will be used to perform the National Air Toxics Assessments (NATA). This web site (ECHO) is available to the public and can be used to find facilities with violations.

**Rob Kaufmann**, Koch Companies Public Sector, LLC, and Jay Hoffman, Trinity Consultants Inc. reported on the various NAAQS rules. The 2008 ozone standard of 75 ppb recently went through non-attainment designations. There were 227 counties in 46 areas that were in non-attainment. Most of these were in California, the I-95(East Coast) corridor, Atlanta, Chicago, Dallas, and Houston. The 2008 implementation rule has been issued and will be used as a template for the 2015 proposed rule (no yet issued). A non-attainment area must conduct a new RACT analysis, even for sources that already have RACT limits. The 2015 ozone standard is expected to come out in the range of 65 - 70 ppb. The rule is expected to be signed by Oct. 1, 2015.

This will greatly increase the number of non-attainment areas. Getting permits in a non-attainment area is much more difficult. States are still preparing SIPs for the 2008 standard and now will be required to prepare SIPs for the proposed 2015 standard. The new time line will run out to 2037 for the most serious non-attainment areas. Once an area is designated as a non-attainment area, it is immediately subject to New Source Review issues. Designations are scheduled for Oct. 2018. A project that was going through a PSD review during the designation period would end up redoing the



PSD. Also, these levels are getting close to the background level. The estimated designation levels get to the point that nearly the whole country would be in non-attainment if the designation was 60 ppb.

For PM2.5, the standard was reduced in 2012. The designations are modest at the moment. Permitting has an issue concerning increments that are allowed under modeling. In the implementation rule, there has been a change to precursor (SO<sub>2</sub>, NO<sub>x</sub>, VOC, and ammonia) policy. Under sub part 1, VOC and ammonia are not presumptive precursors. Under sub part 4, these would be required to be included. This impacts the modeling for PSD permits. For SO<sub>2</sub>, the standard was changed in 2010. The number of non-attainment areas is small (localized problem). The modeling guidelines have been a problem.

For the large utility sources, designations will be based on modeling. EPA must complete all designations by the end of 2020. There was a court settlement with the Sierra Club to set these dates. Some states may appeal. Exceptional events (like wildfires) will be considered in a revised proposal this fall. The final SSM SIP call rule has been issued. The exception for emissions limits during start up, shut down, and malfunction have been stripped out of state plans. EPA has claimed that there are no malfunctions. Affirmative defense has been thrown out by the court. This rule will likely be litigated. The DC Circuit Court threw out the Significant Impact Levels (SILs) and the significant emissions rates (SERs). There is a new term for precursors called MERPs (modeling emission rates for precursors). There is ongoing work to fix some of the problems with the models. There is a suggestion to drop CALPUFF. There are new default options for low wind conditions. Appendix W is expected to come out in June. Complex terrain is still an issue.

**Scott Darling** of Alcoa, Inc. noted that we talked with the Midwest Ozone Group (MOG) on the ozone NAAQS. We have committed to do some work on the solid fuel boilers in the MACT database in the form of modeling to show the small contribution to ozone. The database is getting old and needs to be updated. Based on estimates received, the cost to update the database is \$35 K, presuming that WVU does the work. This update only addresses the MACT database. There is the entire emissions inventory on gas fired units. **John C. deRuyter**, E.I. DuPont de Nemours & Co. suggested that some structure be put on the project. **Bob Bessette** indicated that CIBO members would be checked first and then the trade associations would be checked to help us. It was moved, seconded, and voted unanimously to approve the expenditure for this purpose.

**Carlos Szembek** of Environmental Resources Management reported on EMVAP for Air Dispersion Modeling. EPRI funded an initiative to use a Monte Carlo approach for time varying emissions. The 1 hour standard poses problems for the current models. The Emissions Variability Processor (WMVAP) was developed to address the issue. EPA requires the worst case emissions on the worst 1 hour and continuous operation. Modeling maximum emissions rates against probabilistic standards yields very conservative results. Emission rate variability shows a large variation over the course of the year. Intermittent sources present modeling challenges. EMVAP can be used with a prescribed distribution of variable emission rates and then use Monte Carlo simulation to estimate the coincident meteorological data. The AERMOD can be used with a 1 g/sec emission rate. Then the EMVAP model assigns an emission rate randomly from the distribution.

Up to several thousand runs can be made. Each run has a downstream emission impact. From this distribution, the 98<sup>th</sup> percentile can then be assessed such that a more likely impact of the downstream concentration can be obtained. In an example case, AERMOD was run in 2 ways using



the maximum hourly emissions and the actual hourly emissions from 2002 - 2006. Hourly ambient temperature and velocity data are used. The exit velocity and emission rate were estimated with error bands. The monitored data was at 250 mg/m<sup>3</sup>. The run with the actual emission data was slightly lower. The extreme model case was more than double the actual. The two EMVAP cases with 50% and 95% emission distribution showed slightly higher than actual for the 50% and somewhat higher, but way less than, the more than double of the actual average.

EPA has suggested an alternative approach to ratio the 99<sup>th</sup> percentile to the peak and multiplying by the critical value. The critical value is the constant 1 hour value that results in NAAQS compliance. If this is done and combined with EMVAP a more realistic, long term average rate could be generated. In another approach, the critical value and the next two lower bins could be used to create 3 levels down to the top 25% of the emissions data. The critical value would represent the max emissions. The next would represent the top 5%, the next would represent the top 15%. Over the course of the year these would set an average limit that would be useful.

**Ann McIver** of Citizens Thermal gave the water rules update. On May 27<sup>th</sup> the US EPA and the Army Corp of Engineers issued the final definition of the Waters of the US. This rule is a definition rule. This clarifies the scope of the Waters of the US. The rule interprets the Clean Water Act to cover those waters that require protection. These could be chemical, physical, or biological impacts (emphasis on the word "or"). Tributaries that are characterized by beds and banks and high water marks are jurisdictional. If the water in question does not have beds, banks, and high water marks, they are excluded, but there are exceptions. Waters located within 100 ft are considered to be neighboring and are jurisdictional. Significant nexus basically includes the water shed as the region.

There are 5 specific types of waters that are jurisdictional. Waters with the 100 year flood plain or within 4000 ft. of the high tide mark are jurisdictional. Puddles are exempt as are swimming pools. Waste treatment systems, cooling ponds, constructed ponds, and ornamental waters are exempted. However, new structures will have to get Corp approval, which is slow.

**Gary Merritt** of InterPower/AhlCon Partners, L.P. pointed out that the coal combustion residual rule should become the final rule in mid June. CCRs are not being classified as hazardous wastes. Duke pleaded guilty to criminal violations for the impoundment spill and paid a fine of \$106 million.

**John C. deRuyter**, E.I. DuPont de Nemours & Co. reviewed the Boiler MACT compliance concerns. The major remaining issues include start up and shut down, oxygen trim systems, and the timing of the final rule. **Amy Marshall** reviewed the history of startup definitions. The current rule has 2 definitions. The first definition states that start up ends when steam or electricity is produced. The second definition states that start up ends 4 hours after useful thermal energy is produced. The EPA does not want to drop the first definition because they had a problem in the MATS rule with some units relying on an earlier definition and then having a problem with a revised definition. Right now, they are carrying both definitions.

CFBs will have a problem with both definitions. An additional problem would be that all control systems have to be in operation within one hour from switching from clean fuel to the solid fuel. Timing is becoming an issue as the compliance date is Jan. 31, 2016. A meeting was held with EPA to review some of these issues. For useful thermal energy, a "for its intended purpose" was



requested. Startup considerations include acid dew point, oxygen levels, the 1 hour requirement for ESPs, and manufacturer's recommendations.

There is also an issue with the electronic reporting requirement for all CEMs data and operating parameter data during start up and shut down. EPA is looking for data for their 8 year review. For the automatic trim system, there are times when the system is in manual. The issue is whether this constitutes a reportable incident. A proposed guidance approach has been suggested. This would state that such conditions are recognized and are not a reportable incident. Opacity is an operating parameter limit and not an emission limit. If monitoring an operating limit is to be used for compliance, a request must be made. The current writing would make this a "rule making" and require notice and comment, etc. A revised writing has been proposed so as to not trigger this requirement.

The final rule may not ready before the 4<sup>th</sup> quarter. For some units, this might cause a problem in that the unit may choose different compliance options depending upon the final rule. In those situations, a letter can be submitted with a plan and options. Whatever is in the plan that is indicated to be done before the compliance date must then be done. A brief review around the group indicated that a mix of conversions to gas and upgrades to DSI systems are the main compliance approaches. Most members are in the midst of their energy assessments and tune ups.

**Lisa Jaeger** of Bracewell & Giuliani LLP reported on the litigation status of the Boiler MACT rules. The NHSM case went to oral argument on May 11. Key issues were the definition of discard, the CAA standards, and sewage sludge exemption. Environmentalists argued that "discard" should take its ordinary meaning. Tires and on spec oil were used as examples. EPA argued that "discard" means the material has not become part of the waste disposal problem. Therefore tires from a collection program are not "discarded". The court seemed to lean towards EPA's view. Industry argued that transfer should not trigger RCRA regulation. EPA argued that transfer raises concerns. The sewage sludge exemption was removed from the rule. The court appeared to side with EPA. Environmentalists argued that processing of waste should not be considered as converting a waste to a non-waste.

Relative to the other BACT/Area Source/CISWI cases will go to oral argument by the fall. On the CAA 112(c)(6) claim. EPA claims to have met its requirement to regulate 90% of the major HAPs. EPA gave notice in 1998 listing its notice. Use of surrogates has been legal. There are other means to change the rules. EPA responded to the court with all of the things that they have done. A final rule was signed on May 22. It has been published in the federal register today. Environmentalists have until August 3<sup>rd</sup> to respond. If there is no filing, the rule will stand as is.

In the RICE MACT, the court threw out the 100 hour exemption for back up generation for demand response on the grounds that EPA did not provide sufficient analysis on grid reliability. The rest of the rule remains in place. The PVC MACT case was decided on May 29<sup>th</sup>. The industry complaint was that the rule governed the production of PVC. Some issues are being reconsidered. The court upheld the rule on the grounds that no irreparable harm was demonstrated. The arguments revolved around water discharge limits, process vents, and monitoring and reporting requirements.

Relief valves are now covered as emissions incidents and monitoring of these valves is now required. The judge providing the opinion appears to have glossed over some of the finer points of



the law. One issue that was declared was that the authority for monitoring was from Section 114 and therefore did not need to address cost. There is also the chromium MACT rule and the Off-site Waste and Recovery Operations MACT. These will be continued to be monitored.

In the MATS rule, the case is in abeyance pending the Supreme Court ruling on MATS. EPA has issued the proposed rule to remove affirmative defense from the rule. The issue that got to the Supreme Court was the consideration of cost for the MATS rule. The EPA's own analysis was that the cost would greatly exceed the benefits. However, the MATS rule is a special case because of the way EGUs were added to the MACT listing. A decision will come in June.

**Lisa Jaeger** reported on the rest of the litigation and regulatory activities. There are a few other court cases that are being monitored. Depending upon the results of the Boiler MACT cases, there will be another 6 court cases on MACT issues. There are several GHG cases in play. The Nebraska vs. EPA case was dismissed. The Murray cases went to oral argument in April. The West Virginia case argues that Section 321(a) requires the EPA to conduct continuing evaluations on potential loss of jobs or employment. EPA has tried to get the case dismissed, but has failed. The DC Circuit Court has two Murray cases: settlement agreement and lack of authority including writ of prohibition. Since the rule is a proposed rule, the first step will be to determine whether or not the court has jurisdiction. The next problem is that there is a discrepancy in the rule provisions. Of course, EPA claims authority to "correct" the discrepancy. Industry wants Congress to do the correction. The two major rules are now at OMB. EPA would like to issue these rules before these court cases are finalized.

There is also the de minimis threshold rule. The current trigger for PSD permitting is 75,000 ton/yr of CO<sub>2</sub>. In the House Committee on Natural Resources, there have been hearings on the Endangered Species Act relative to the GHG NSPS rule. EPA made some remarks on NSPS, but not on the existing units proposed rule. There is a House bill called the Ratepayer Protection Act. This bill would require judicial review of any final rule before requiring compliance. States should be able to opt out these rules if the state determines there will be a negative impact. Senator McConnell has issued a "Just Say No Letter" telling states to refuse to submit SIPs for the Clean Energy Plan.

A Supreme Court decision in March held that an agency "interpretive rule" is not subject to notice and comment. However, an agency must provide more "substantial justification" for findings that underlay contrary prior policy. This ruling means that such justification would be considered when the interpretive rule is challenged. The statement indicated that "agency deference" has gone too far. A rule has the force of law. An interpretive rule does not.

There is another case of FERC vs. Electric Power Supply Association. The issues are whether the FERC reasonably concluded that it has authority to regulate rules used by operators of wholesale electricity markets to pay for reduction in electricity consumption and to recoup those payments. Also, the district court erred in finding against FERC.

On the Revised Draft Guidance for the CEQ NEPA, the request has been to withdraw the guidance. There is a migratory bird treaty act rule permitting rule that is going to be proposed. The social cost of carbon is being challenged. The Clean Water Act Effluent Guidelines has a case. The 316(b) rule has been challenged. Oral argument is expected in the fall. The definition of solid waste has a case based on transfer of secondary materials. There is a petition for review on the coal ash



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final rule. There are a number of cases on startup/shutdown/malfunction. The SSM SIP Call has gone out. There are 36 SIPs to be issued.

**Next Technical Focus Group/Environmental & Energy Committee Meetings**  
**TUESDAY & WEDNESDAY, September 15-16, 2015**

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