January 23-24, 2014 Rulemaking Team Meeting

* FISCAL
* George/Katie/Jenny/Les (01/24 at 2:30):

A source applies for approval to construct (say Type 2) and it’s approved on January 1.

Because of rule changes that took effect on Feb 1, ***IF*** the source applied after Feb 1 they would need a PSD permit instead of a Type 2 approval.

Later, in June, we discover that the Type 2 approval on Jan 1 was incorrect, it should have been a Type 3 approval. This invalidates the Type 2 approval and puts the source in violation of the Type 3 approval rules.

***IF*** the source were applying for construction approval in June, they’d be subject to PSD. But they really only violated the Type 3 (non-PSD) approval rules. DEQ requires the source to get the proper permit to resolve the violation, which in this case is the Type 3 approval.

Some people would argue that the source has violated PSD, but our rules and enforcement policies don’t support that conclusion.

However, it appears that we can *require* a PSD permit as the corrective action for the Type 3 violation, even though PSD wasn’t actually violated, because it’s within our enforcement powers and discretion. We already have the ability to do this (we just have never had to even think about it until now).

However, because of Katie’s concern, we may have to clarify this somehow. Maybe in the AQ rules, maybe in Div 12, maybe just in enforcement guidance.

So I guess it’s a matter of clarifying in some manner, maybe in the rules, maybe not, what we can already do under certain rare and unusual circumstances.