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## EPA ISSUES NEW GUIDANCE EASING NEW SOURCE REVIEW ANALYSIS

By [Bernadette M. Rappold](#) on March 20, 2018

As part of its growing reinterpretation of Clean Air Act requirements, the U.S. Environmental Protection Agency (EPA) has issued a new guidance (Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program (March 13, 2018) (Guidance)) altering the agency's policy on when preconstruction permits are required under the New Source Review (NSR) program for modifications and construction.

The NSR program requires facilities to obtain a permit before constructing a new major stationary source or undertaking major plant modifications if the changes are predicted to result in a "significant emissions increase." Facilities that exceed the significance threshold are subject to rigorous operational requirements and are generally required to install costly pollution control devices.

Determining whether a project exceeds the threshold requires a two-step analysis. Prior to last week's guidance, Step 1 required facility owners to estimate the emissions increases from the proposed project. If the increases met the threshold, then the owners were to undertake Step 2: an evaluation of whether the project would yield a significant net emissions increase, after consideration of other contemporaneous and creditable emissions increases and decreases across the facility.

Under the Guidance, a facility can consider contemporaneous emissions decreases in Step 1 in a process the EPA calls "project emissions accounting." These decreases need not be enforceable or creditable for consideration in the new Step 1 analysis.

This marks a significant departure from prior practice and raises the possibility that sources may "seek to circumvent NSR by characterizing the proposed project in a way that would separate into multiple projects those activities that, by any reasonable standard, constitute a single project." Guidance at 9. While admitting this possibility and suggesting that another guidance on project aggregation is forthcoming, the EPA states that it "does not interpret its NSR regulations as directing the agency to preclude a source from reasonably defining its proposed project broadly, to reflect multiple activities."

While the guidance appears to be in line with the administration's stated goals, many environmental groups predict that air pollution will increase in its wake.

In an unusual move for an agency where subordinate officers generally issue substantive legal directives like this one, Scott Pruitt, the EPA administrator, issued the Guidance himself - signaling the importance of NSR reform to this administration and potentially raising the stakes for anyone that might seek to change its terms via citizen suit or other means.

*We thank Greenberg Traurig, a leading and respected Philadelphia Law Firm for this important update.*

- Gary R. Brown, P.E.



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