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New Source Review/Clean Air Act: March 13th U.S. Environmental Protection Agency Memorandum Addressing Project Emissions Accounting Under New Source Review Preconstruction Permitting

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The United States Environmental Protection Agency (“EPA”) Administrator E. Scott Pruitt issued a March 13th guidance memorandum titled:

Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program (“Memorandum”)

The *Memorandum* states it is being issued pursuant to the Administration’s mandate to “streamline” regulatory permitting requirements for manufacturing and to simplify the Clean Air Act New Source Review (“NSR”) process.

The Clean Air Act NSR regulations require new major stationary sources and major modifications at existing major sources to obtain a permit prior to beginning construction. The NSR process is quite complex and can involve significant time and expense. As a result, a key issue is under what circumstances NSR is triggered.

The *Memorandum* states that EPA in its assessment of the NSR programs identified certain regulations and associated agency policies that “have been sources of confusion and uncertainty.” It focuses on what it characterizes as an element that has given rise to uncertainty among both permitting authorities and stakeholders. The question addressed is:

. . . whether emissions decreases from a proposed project at an existing major stationary source may be taken into account under Step 1 of the major modification applicability process in the EPA NSR regulations.

The *Memorandum* states as its purpose the conveyance of EPA’s interpretation that:

. . . its current NSR regulations provide that emissions decreases as well as increases are to be considered at Step 1 of the NSR applicability process, provided they are part of the a single project.

EPA states that it has previously indicated that the relevant provisions of the NSR regulations preclude the consideration of emissions decreases at Step 1. However, the March 13th *Memorandum* outlines reasons the agency will “no longer apply any such interpretation reflected in prior statements on this issue.”

The components of the March 13th *Memorandum* include:

- Background (NSR)
- Relevant Clean Air Act and Regulatory Provisions
- EPA’s Interpretation of the NSR Applicability Provisions

[A copy of the *Memorandum* can be downloaded here.](#)