

Fugitive Emissions/Clean Air Act: U.S. Environmental Protection Agency Proposed Rule Addressing New Source Review Regulations



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10/18/2022

The United States Environmental Protection Agency (“EPA”) is proposing revisions to the Clean Air Act’s New Source Review (“NSR”) permitting regulations.

The proposed rule would require that owners and operators of existing industrial facilities classified as “major sources” include fugitive emissions in the process of determining whether a physical or operational change at the facility is a major modification. A major modification at a facility triggers NSR.

The Clean Air Act NSR constitutes a preconstruction permitting program that establishes and documents air pollution emission limits from “major” sources of air pollution. The NSR program includes two permitting programs:

- Nonattainment
- Prevention of Significant Deterioration

Nonattainment NSR applies in nonattainment areas where air quality is classified as failing to meet the National Ambient Air Quality Standards (“NAAQS”) for one or more criteria pollutants regulated under the Clean Air Act. This program is intended to allow construction of new or modified sources of air pollution in areas while still making progress toward NAAQS.

Prevention of Significant Deterioration (“PSD”) applies in attainment areas. Such areas are classified as meeting the NAAQS. PSD review and permitting is intended to allow construction of new or modified sources of air pollution in these areas while protecting (i.e., not significantly degrading) air quality.

The NSR program is triggered by new major sources of air pollution in existing major sources that are making a significant modification.

Fugitive emissions are defined by the Clean Air Act as to include those “emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.”

EPA in 2008 had required that owners/operators of facilities only in specific industrial source categories include fugitive emissions when determining whether a change was a major modification. The identified source categories included petroleum refineries, large fossil-fired steam electric plants, and Portland cement plants, etc.

If not included in these specified industrial source categories, fugitive emissions were not required to be counted toward major modification threshold.

EPA is proposing to repeal the 2008 rule. If finalized, it would require all existing major stationary sources to count fugitive emissions toward the emissions total used to determine whether a change at the source constitutes a “major modification.”

EPA received a 2009 Petition for Reconsideration of the 2008 rule from the Natural Resources Defense Council. As a result, EPA stayed the 2008 rule’s effectiveness and later amended portions of the NSR regulations to reflect the prior requirements. The federal agency states that it is bringing closure to the reconsideration proceeding by its proposal to fully repeal the 2008 rule.

A link to the proposed rule can be found [here](#).