



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Project Emissions Counting/Clean Air Act: Steel Manufacturers Association Comments on U.S. Environmental Protection Agency Proposed New Source Review Revision

07/10/2024

The Steel Manufacturers Association (“SMA”) submitted July 2nd comments to the United States Environmental Protection Agency (“EPA”) addressing the proposed rule styled:

Prevention of Signification Deterioration (PSD) and Nonattainment New Source Review (NNSR): Regulations Related to Project Emissions Accounting. (“Proposed Rule”).

See Docket ID No. EPA-HQ-OAR-2022-0381.

The Proposed Rule is found at 89 Fed. Reg. 36970 (May 3, 2024).

The Proposed Rule would revise Clean Air Act New Source Review (“NSR”) preconstruction permitting which encompasses both the Prevention of Significant Deterioration (“PSD”) and Nonattainment programs.

The focus of the Proposed Rule is Project Emissions Accounting (“PEA”). PEA is the analysis used to determine whether existing facility modifications must undertake NSR permitting.

As is typical, industry and environmental organizations have opposite views on PEA.

Industry has generally taken the position that the Proposed Rule would make it more difficult to net out of NSR. PEA is a key component involved in calculating the net emissions that are derived from a facility’s modification.

Environmental organizations have taken the position that the term “project” should be defined more narrowly. They argue that this is necessary to forestall facilities from aggregating changes with the goal of netting out of NSR review.

The Proposed Rule in fact proposes to arguably narrow the definition of what constitutes a “project”.

The July 2nd SMA comments state that three aspects of the Proposed Rule of particular concern to the organization and its members:

1. The proposed definition of “project” for the purpose of NSR preconstruction permitting.

2. The proposed requirement that emissions decreases projected in step 1 of the NSR applicability determination be legally and practically enforceable.
3. The proposed imposition of substantial new and seemingly unjustified monitoring, record keeping, and reporting requirements.

The detailed components of SMA's comments include:

- EPA's PEA proposal would needlessly negate the benefits of the 2002 NSR Reform Rule (described as EPA's prior revision of the NSR program to better align the agency's regulations with Congress's intent that the Clean Air Act be amended that balances economic and industrial growth with the need to improve and maintain air quality).
- EPA's proposed redefinition of "project" is unworkable and unlawful (arguing that EPA provides no evidence indicating that any sources have selectively aggregated or disaggregated multiple projects such that they were able to avoid major NSR in a manner that is contrary to the intent of the Clean Air Act).
- Additional safeguards against "double counting" of emissions are unnecessary and unwarranted (argues that EPA should refrain from promulgating additional regulatory changes to address a hypothetical potential permit circumvention scenario that permitting agencies are already capable of identifying and preventing).
- Enforceability of emissions decreases (argues that EPA's assertion that the changes are necessary to ensure emission decreases included in the NSR applicability determination will occur and be maintained are without merit).
- EPA's concern about ensuring that Step 1 emissions decreases occur and/or maintain is unsupported and inconsistent with the NSR Program.
- EPA's concern that Clean Air Act Section 110 requires permit conditions to be enforceable is misplaced and inconsistent with case law.
- EPA's proposed enforceability provisions are particularly arbitrary and capricious as applied to replacement units.
- EPA's proposed revisions to its "reasonable possibility" record keeping and reporting regulations are unnecessarily burdensome and unworkable.
- EPA's proposed new record keeping and reporting requirements are unnecessarily burdensome.
- EPA's proposed new record keeping requirements are vague and unworkable.

SMA describes itself as the largest steel trade association in North America in terms of membership, and the primary trade association of electric arc furnace steel producers that make steel products which include carbon, alloy, and stainless steels.

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