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Project Emissions Counting/Clean Air Act: Waste-to-Energy Association Comments on U.S. Environmental Protection Agency's Proposed New Source Review Revision

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The Waste-to-Energy Association ("WTEA") submitted July 1st comments to the United States Environmental Protection Agency ("EPA") addressing the proposed rule styled:

Prevention of Significant Deterioration (PSD) and Non-Attainment 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 Signification Deterioration ("PSD") and Non-Attainment 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".

WTEA describes its membership as owning and operating:

...the vast majority of the modern WTE facilities that operate nationwide, safely disposing of over 30 million tons of Municipal Solid Waste ("MSW") annually, while generating 2,500 MW of renewable electricity using modern combustion technology equipped with state-of-the-art emission control systems.

57 of the WTE facilities of the United States are stated to fall under the Large Municipal Waste Combustor source category covered by EPA's review. Further, all WTE facilities are stated to be classified as major sources potentially subject to EPA's NSR requirements.

WTEA initially expresses concern that the Proposed Rule complicates the NSR permitting scheme without achieving meaningful environmental benefits. The organization further argues EPA:

...does not have any compelling evidence of industry misuse of the current regulations and that the proposed amendments undermine the 2020 Project Emissions Accounting rule and reverses EPA's position on denying a petition for reconsideration of that rule.

Specific arguments raised by WTEA include:

- Revisions to the definition of a "project" are vague and complicate compliance (argues EPA should focus on proposing a clarification to the term "change in the method of operation"; language that has led to years of regulatory uncertainty and multiple legal challenges).
- EPA should not specify a project specific time period for changes occurring contemporaneously (it is difficult to assign a prescribed duration for multi-phase projects that occur at major sources/recent experiences with supply disruptions, prolonged elevated interest rates and evolving trade restrictions can impose significant barriers to setting firm [and potentially enforceable] schedule milestones).
- EPA should incorporate flexibility in enforcing emissions decreases (previous NSR rules adoption have not included the legally/practically enforceable requirement due to the potential burden that would be placed on major sources and because EPA did not believe it was necessary to make future projections enforceable to adequately enforce the major NSR requirements).
- Additional reasonable possibility recordkeeping and reporting is unnecessary (agency retains sufficient enforcement authority to ensure compliance with the applicable NSR rules without the need to increase already significant reporting and recordkeeping obligations).

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