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Project Emissions Accounting/Clean Air Act: National Waste & Recycling Association Comments on U.S. Environmental Protection Agency Proposed New Source Review Revision

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The National Waste & Recycling Association (“NWRA”) submitted July 2nd comments to the United State Environmental Protection Agency (“EPA”) addressing the proposed rule styled:

Prevention of Significant Deterioration (PSD) in 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”.

NWRA describes itself as a trade association representing private-sector waste and recycling companies in the United States, and manufacturers and service providers who do business with those companies. The organization’s members are stated to operate in all 50 states and the District of Columbia.

NWRA notes its involvement in reviewing, commenting, and collaborating with EPA in the development of federal rulemakings that affect the municipal solid waste (“MSW”) landfill industry. It espouses a shared goal of:

...promoting clarity, certainty, and consistency across the numerous standards governing the sector.

The organization states that its objective is to ensure that the Proposed Rule is:

- Consistent with that goal.
- Ensures that the NSR air permitting concepts applied to landfill sources are sensible/reflective of the overarching goals of the Clean Air Act.

The NWRA comments contain the following components:

1. Background to the landfill regulations under the Clean Air Act (arguing that the landfill sector is unique both in its operations and emissions and the scope and extent of existing regulatory standards governing such operations and emissions).
2. Application of NSR to MSW landfills (arguing that the nature of landfills and their emissions have made certain NSR concepts difficult to apply to landfills/noting despite the fact that landfill emissions are variable over the life of the landfill, some agencies require that peak emission rates be addressed at the time of permitting).
3. Comments on the Proposed Rule:
 1. Definition of "Project" (concern is expressed that the proposed revision of the term "Project" will tend to overcorrect a perceived problem in a manner that may lead to more confusion and burden than necessary).
 2. Safeguarding against double-accounting (arguing that anticipated emission decrease is driven by declining landfill gas generation rates should be acknowledged and recognized as decreases where warranted).
 3. Enforceability of emission decreases (arguing that it is unnecessary and will unduly burden projects that may otherwise improve operations and efficiency with resulting improvements in facility emission profiles).
 4. Reasonable possibility recordkeeping in reporting (arguing that the proposed recordkeeping is unduly burdensome and not necessary in light of detailed reporting frameworks already imposed upon sources subject to Clean Air Act programs such as NPDES, NESHAP, and Title V Permits).

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