EPA Administrator issues New Guidance clarifying significant increase determinations for NSR purposes

By Dana P. Stanton

The U.S. Environmental Protection Agency announced that it is changing its long-standing policy about how it evaluates proposed projects that emit air pollutants. In a step towards New Source Review (NSR) reform, on March 13, 2018, EPA Administrator Scott Pruitt issued a memorandum intended to streamline the evaluation process for projects.

New Source Review Two-Step Evaluation Process for New Projects

The NSR program mandates that an air permit be obtained prior to commencing construction of a new facility or a major modification at an existing facility if the project will result in a significant net emissions increase.

The procedure for evaluating whether a proposed project at an existing facility triggers the requirement to obtain an NSR preconstruction permit is a two-step process. Step 1 requires ascertaining whether the project will, by itself, result in a significant increase in air emissions. If the project will not result in a significant increase, an NSR preconstruction permit is not required. However, if a significant increase is projected to occur, Step 2 is necessary. Step 2 includes determining whether the project, combined with other unrelated projects at the facility within the “contemporaneous” period, will result in a significant net emissions increase. Step 2 is often a cumbersome, multi-year process.

Previous EPA guidance had suggested that it was not permissible to take into account any decreases in emissions occasioned by the project when conducting the Step 1 analysis. Projects had to move on to Step 2 before any decreases in emissions could be factored in. Pruitt’s memorandum clarifies that emissions decreases as well as increases are to be considered as part of Step 1, provided they are a result of the project.

Positive Impact of the EPA’s New NSR policy

The Pruitt memorandum acknowledged that the complicated, multi-year Step 2 evaluation has dissuaded companies from undertaking projects at large facilities and thereby prevented environmentally beneficial projects from moving forward.
The new policy will help streamline the permitting process for certain projects. Projects that might benefit from the new policy include switching to cleaner-burning fuels and improving efficiency. The Pruitt guidance recognized that sometimes improving production efficiency can result in reduced emissions, even if production is increased.

The Pruitt memorandum can be found here.

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