Project Emissions Accounting/Clean Air Act: Environmental Defense Fund Files Judicial Challenge to U.S. Environmental Protection Agency Withdrawal of Proposed New Source Review Revision



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The Environmental Defense Fund, Environmental Integrity Project, Natural Resources Defense Council, and Sierra Club (collectively, "EDF") filed in the United States Court of Appeals for the District of Columbia Circuit an August 18 Petition for Review the United States Environmental Protection Agency's ("EPA") withdrawal of the proposed rule styled:

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Regulations Related To Project Emissions Accounting ("Proposed Rule").

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

EPA's decision to withdraw the Proposed Rule is found at 90 Fed. Reg. 342060 (July 21, 2025).

The Proposed Rule would have revised Clean Air Act New Source Review ("NSR") Preconstruction Permitting which encompasses both the Prevention of Significant Deterioration and Nonattainment programs.

The focus of the Proposed Rule was Project Emission Accounting ("PEA"). PEA is the analysis used to determine whether a facility must undertake NSR Permitting.

Industry had 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 facilities' medication.

Environmental organizations had 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.

EPA stated in part in announcing the withdrawal that "state and industry commenters" had expressed concern that the proposed definition of "project" could lead to more uncertainty in permitting decisions rather than improve clarity. It also argued that there was insufficient evidence to indicate that aggregation concerns warrant making such changes to the NSR program.

A copy of the EDF Petition can be found here.