New Source Review/Minor Sources: U.S. Environmental Protection Agency Proposed Rule to Streamline State and Local Permitting Process



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The United States Environmental Protection Agency ("EPA") proposed a rule to:

… streamline the New Source Review ("NSR") permitting process for minor sources by eliminating the minimum federal regulatory requirements for public participation.

The proposed rule is stated to make decisions about public participation requirements for State and local minor NSR programs to be turned over to the respective State and local air agencies.

This is stated to align EPA's regulations with what it characterizes as the "best reading of the Clean Air Act."

The stated purpose is to reduce administrative burden and "responsibly speed up permitting, supporting American economic development and energy dominance."

The focus is to revise the public participation regulatory requirements for sources subject to Clean Air Act NSR programs approved in the State Implementation Plans ("SIPs").

The Clean Air Act imposes on the states the primary responsibility for ensuring attainment and maintenance of Clean Air Act National Ambient Air Quality Standards ("NAAQS") once EPA has established them. Each state is therefore required to formulate, subject to EPA approval, an implementation plan (i.e., SIP) designed to achieve each NAAQS.

States are given broad discretion in formulating a SIP. Nevertheless, the SIP must contain the measures and actions the state proposes to undertake to attain each NAAQS. These measures or actions must be enforceable through state regulations and typically include emission limits applicable to certain types of stationary sources.

The states are generally free to make their own choices as to how they will attain the NAAQS through their SIPs. However, the SIP (including revisions) must be reviewed and approved by EPA to determine that the criteria set forth in Section 110 of the Clean Air Act are met. Such review would include revisions to the SIP.

EPA states that in the proposed rule that state and local air quality regulatory authorities determine, pursuant to the CAA, whether, when, and to what extent public participation in minor NSR programs is necessary to assure the NAAQS are achieved. The proposed rule is stated to provide state and local air agencies with greater discretion to identify the requisite level of public participation that is appropriate in

their minor NSR programs, which regulate individual authorizations to construct minor stationary sources and minor modifications to existing stationary sources.

The proposed rule does not address NSR review involving a preconstruction permitting program regarding air pollution emission limits from “major” sources of air pollution. The NSR regulations addressing these major sources involve:

- Nonattainment
- Prevention of Significant Deterioration

The NSR program involving new major sources and existing major sources that are making significant modifications are not addressed by the proposed rule.

The proposed rule is stated to relate specifically to EPA’s minimum requirements for approving state and local minor NSR programs to become part of a SIP. These programs are described as applying to proposed new “minor” stationary sources and “minor” modifications to existing stationary sources, and to propose decisions to authorize their construction.

New stationary sources are described as considered “minor” if they do not have the potential to emit air pollutants in an amount equal to or exceeding the “major source” statutory threshold within parts C and D of Clean Air Act Title I. Modifications in existing stationary sources are considered “minor” if they do not increase emissions by an amount equal to or exceeding the significant emission rates in NSR regulations. Modifications of existing minor stationary sources are considered “minor” if they do not increase emission by an amount equal to or exceeding the “major source” statutory thresholds within C and D of Title I of the Clean Air Act.

A copy of the proposed rule can be found here.