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U.S. Environmental Protection Agency
EPA Docket Center
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Comments on Proposed Rule: Minor New Source Review Program Air Permitting Public Participation Requirements for State Implementation Plans; 91 Fed. Reg. 41,591 (July 7, 2026)

EPA Docket Center:

The National Asphalt Pavement Association (NAPA) submits these comments on the U.S. Environmental Protection Agency's (EPA or the Agency) proposed rule revising the minor New Source Review (NSR) public participation requirements under 40 CFR 51.161. NAPA commends EPA for proposing a well-written, authoritative, and realistic approach to the existing public participation requirement for NSR programs under the Clean Air Act (CAA). While EPA identifies that the federal CAA requires an opportunity for public participation during a major source NSR permitting process, EPA also acknowledges there is no such requirement for public participation during a minor source NSR permitting process.

NAPA supports EPA's proposal to remove minor NSR public participation as a mandatory, minimum element of a State Implementation Plan (SIP) and to restore to state and local air agencies the discretion Congress afforded them under the CAA. NAPA urges EPA to confirm, in the final rule, that this discretionary treatment applies with equal force to synthetic minor source permitting actions, and that no mandatory public participation requirement should attach to synthetic minor permits any more than it does to true minor permits.

Introduction to the asphalt pavement industry and its interest in this rulemaking

NAPA represents over 1,100 companies and approximately 3,500 asphalt mix plants across the nation associated with the production and application of asphalt pavement mixtures which surface more than 94 percent of America's paved roadways. While some of those 3,500 facilities hold true minor source air permits, many are also considered synthetic minor sources, solely based on the amount of fuel combusted to dry aggregate during the production of asphalt pavement. Any asphalt mix plant that emits combustion products above the minor source threshold, voluntarily relies on enforceable throughput, hours-of-operation, or production limits to remain below major source thresholds, and operate under various Federally Enforceable State Operating Permits (FESOPs) as a synthetic minor source.

As the asphalt pavement mix industry continues to explore ways to minimize individual facility emissions, including the retrofitting of more fuel-efficient combustion processes, facility operators of such proposed modifications are unnecessarily required to allow public participation regarding those beneficial modifications, which as EPA states, can “overwhelm[] the public with inconsequential information about minimal-impact minor sources and modifications” in essence making it simpler for facility operators to forgo pursuing such beneficial energy efficient modifications.

Therefore, NAPA and its members have a direct and substantial interest in this rulemaking.

The Clean Air Act Does Not Require Public Participation for Minor NSR, Including Synthetic Minor Permitting Actions

As EPA recognizes in the proposal, CAA section 110(a)(2)(C) directs states to include in their SIPs a program to regulate the modification and construction of stationary sources “as necessary to assure” attainment and maintenance of the national ambient air quality standards. Unlike Parts C and D of Title I of the CAA, which expressly mandate public participation for major source permitting, Congress included no comparable directive for minor sources. Applying the framework the Supreme Court set out in *Loper Bright Enterprises v. Raimondo*, EPA concludes in the proposed rule that “the best reading of CAA section 110(a)(2)(C) is that it delegates discretionary authority to the EPA” to determine what a State's minor source program must contain to assure attainment — a conclusion that leaves the choice of whether, and how, to provide for public comment to the States themselves.

That statutory conclusion does not turn on whether a given minor source achieved its status by design capacity alone (a “true minor” source) or by voluntarily accepting an enforceable limit (a “synthetic minor” source). The proposal itself defines synthetic minor sources as those that

“would ordinarily increase emissions of regulated pollutants by amounts equal to or exceeding the applicable ‘major source’ thresholds, but which voluntarily accept one or more enforceable limitation(s) that keep their emissions below the ‘major source’ thresholds,” and it confirms that “both ‘synthetic minor’ and ‘true minor’ sources and modifications” are “subject to minor NSR program requirements” — not the participation requirements Congress reserved for major sources under Parts C and D. Once an enforceable, practically enforceable limit is in place, a synthetic minor source’s allowable emissions are, by definition and by law, below the major source threshold. There is no statutory or logical basis for treating that source differently from a true minor source with the same allowable emissions simply because of the mechanism by which its minor status was established.

The Practical Concerns EPA Identifies Apply with Equal or Greater Force to Synthetic Minor Permitting Actions

EPA’s proposal is grounded in the Agency’s finding, based on outreach to State and local air agencies, that minor NSR permitting actions are high in volume and low in public interest, and that mandatory notice-and-comment on every such action strains agency resources without producing meaningful public engagement. Air agencies reported that “limited budgets, time, and personnel” made it difficult to provide a 30-day comment period “on all regulated minor NSR preconstruction activities due to the high volume of minor NSR applications,” and that the minor source actions they did notice “received very few comments, most of which were either insubstantial or non-actionable.” EPA also recognized that blanket notice requirements “risked overwhelming the public with inconsequential information about minimal-impact minor sources and modifications, which could discourage public participation in the overall NSR decision-making process instead of promoting it.”

Synthetic minor permits are, if anything, more procedurally substantial than the typical true minor permit, and therefore are well suited to agency discretion rather than a categorical participation mandate. A synthetic minor limit must already be enforceable “as a practical matter,” which requires the permitting authority to build specific, verifiable monitoring, recordkeeping, and reporting conditions into the permit sufficient to confirm compliance with the limit. That technical vetting — performed by the permitting agency as a matter of course — already provides the assurance function that a comment period is meant to serve. Layering a mandatory public comment requirement on top of that existing technical review would replicate, for synthetic minor sources specifically, the same burden-without-benefit problem EPA identified for minor NSR generally, without any showing that synthetic minor sources present air quality impacts or public interest materially different from other minor sources.

Adequate Safeguards Remain in Place Without a Mandatory Participation Requirement

Removing minor NSR public participation as a federal minimum does not leave synthetic minor sources unaccountable. Permitting agencies retain full authority and discretion to provide notice and comment where they judge it warranted, and NAPA expects many States will continue to do so for higher-profile synthetic minor actions as a matter of established practice — EPA's own outreach found that “most air agencies concluded that their minor source public participation practices were already well-tailored to the unique characteristics of their respective jurisdictions.” In addition, the enforceability conditions built into every synthetic minor limit, combined with the Title V backstop that applies if a source exceeds its accepted limit and becomes major, ensure that regulators and the public retain a meaningful check on synthetic minor sources' actual performance, independent of whether a comment period preceded the permit's issuance.

Conclusion

NAPA supports finalization of EPA's proposal to remove minor NSR public participation as a mandatory SIP element and respectfully requests that EPA's final rule make explicit that this discretionary approach extends fully to synthetic minor source and modification permitting actions. Doing so will relieve state and local permitting agencies of an unwarranted procedural burden for a category of sources that, once subject to an enforceable limit, poses no greater air quality impact or public interest than any other minor source, while preserving each agency's discretion to provide public participation where it determines that doing so is appropriate.

NAPA appreciates the opportunity to comment and welcomes the opportunity to discuss these issues further with the Agency.

Regards,



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