

October 8, 2019

U.S. Environmental Protection Agency  
EPA Docket Center  
Docket ID No. EPA-HQ-OAR-2018-0048  
Mail Code 28221T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Re: *Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting*

To Whom it May Concern:

The Northeast States for Coordinated Air Use Management (NESCAUM) submit the following comments on the U.S. Environmental Protection Agency's (EPA's) proposed rule "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting" [84 Fed. Reg. 39244-39254 (August 9, 2019)] (*hereinafter* "Project Emissions Accounting"). NESCAUM is the regional association of state air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

The NESCAUM states view a strong, sound New Source Review (NSR) program as a critical component for controlling emissions from large industrial sources. In an EPA memorandum issued on March 18, 2018 to EPA Regional Administrators, the Agency indicated its intent to change the pre-permitting process for stationary sources to allow emissions decreases to be included in Step 1 of the major modification applicability process. As noted in the March 18 Memorandum, such a change would be a departure from EPA's previous position of precluding consideration of emissions decreases at Step 1. EPA is now proposing to codify this change.

NESCAUM makes three main points in these comments: First, EPA's Project Emissions Accounting proposal could weaken the PSD and NNSR programs and allow for increased emissions from large industrial sources. Second, NESCAUM strongly disagrees that states should be required to amend their State Implementation Plans (SIPs) to incorporate the weaker federal applicability process, thus undermining state efforts to attain the National Ambient Air Quality Standards (NAAQS). Third, EPA's proposal will weaken emission monitoring, record keeping, and reporting requirements. Our specific comments are below.

### The Proposed Changes Will Weaken the PSD and NNSR Programs

In this action, EPA proposes to withdraw the Agency's 2006 Project Netting Proposal and replace it with a less protective procedure for determining whether a proposed project is a "major modification" requiring a PSD/NNSR preconstruction permit. The PSD requirements apply in areas that are in attainment of or unclassifiable for the NAAQS for the pollutant in question, while NNSR requirements apply in nonattainment areas.

Under the existing program, a two-step applicability test is used to determine whether a proposed project at an existing major source is a major modification. In Step 1, the facility determines if a "significant emissions increase" will result from a project, considering only project-related emissions *increases*. If the project would result in a "significant emissions increase," the facility has the option to move on to Step 2 to determine whether a "significant net emissions increase" would occur, considering emissions increases and decreases associated with that project and other contemporaneous creditable changes, which occur between "the date five years before construction of a particular project commences and the date that the increase from a particular change occurs."

If the project emissions increase calculated in Step 1 triggers the applicability threshold and (1) the facility opts not to conduct the Step 2 netting calculations or (2) the Step 2 calculations show a "significant net emissions increase," the facility is subject to NSR preconstruction permitting requirements. This approach ensures that emissions decreases associated with a proposed project are considered in the applicability determination only if emissions increases and decreases associated with other projects at the facility undertaken over a five year period are also considered.

EPA's Project Emissions Accounting proposal will result in an important change in the Step 1 procedure: Facilities will be allowed to include the project-related emissions *decreases* in the calculation of project-related emissions. If the net project-related emissions (project emissions increases, minus project emissions decreases) do not exceed major modification thresholds, NSR preconstruction permitting requirements would not apply. The other elements of the comprehensive "netting" requirement, emission increases and decreases associated with other contemporaneous projects, would remain in Step 2 of the procedure and would be considered only if the net project emissions in Step 1 trigger the major modification threshold.

By allowing the consideration of emissions decreases in Step 1 of the applicability process, the proposed action could sharply reduce the number of projects that trigger major modification thresholds. If net emissions under Step 1 do not exceed the thresholds, then the project need not consider contemporaneous changes under Step 2 that could increase facility-wide net emissions above the thresholds. Omitting Step 2, therefore, may reduce the number of sources that are subject to the PSD or NNSR preconstruction permitting process. By avoiding PSD/NNSR preconstruction permitting, projects that can have substantial ambient air quality impacts would

not perform the modeling necessary to assess those impacts. This would fail to assure that the projects do not cause or contribute to non-attainment or significant deterioration of air quality in the home state or neighboring states when the increased pollution is transported across state borders.

In addition, PSD/NNSR requirements for major modifications include BACT/LAER demonstrations. The proposal would allow more projects to avoid these technology reviews, allowing them to contribute to emissions in excess of what would occur if BACT/LAER applied. These “excess” emissions could exacerbate non-attainment in the home state or neighboring states.

#### A Final Rule Should Not Require States to Incorporate Weaker Provisions into State Implementation Plans (SIPs)

As part of the proposal, EPA has requested comment on whether the proposed revisions to the PSD and NNSR programs should constitute mandatory minimum program elements for all jurisdictions. As EPA acknowledges, there are jurisdictions with SIP-approved regulations that do not currently allow project emissions accounting. For these jurisdictions, making the project emissions accounting a mandatory element would result in weaker and less protective PSD and NNSR programs. Such major program changes would also be disruptive and add complexity to otherwise established and effective programs.

Clean Air Act §110(a)(2)(C) requires states to develop a program to regulate the construction and modification of any stationary source “as necessary to assure that (NAAQS) are achieved.” If EPA moves to eliminate a permitting agency’s ability to require more stringent analysis in determining what constitutes a major modification, then with this action EPA removes a critical tool for local authorities to use in achieving and maintaining compliance with the NAAQS. We urge EPA to preserve the ability of state and local jurisdictions to develop the program flexibility needed to maintain air quality and public health protections.

#### A Final Rule Should Not Weaken Monitoring, Recordkeeping, and Reporting Requirements

EPA requests comment on whether its provisions under 40 C.F.R. §52.21(r)(6) provide appropriate monitoring, recordkeeping and reporting requirements for both emissions increases and decreases under Step 1. Previous rulemakings modified NNSR and PSD program calculation methods for determining if a project triggers major modification thresholds. EPA moved from a calculation known as the actual-to-potential test to an actual-to-projected-actual emissions test. In the actual-to-potential test, a facility determined a project’s historical emissions based on actual emissions, typically within the past two years, and calculated the theoretical “potential to emit” (PTE) emissions of the project, which are the maximum theoretical emissions from running the project equipment 24 hours a day for a full year. EPA changed this calculation to one that compares actual historic emissions to anticipated future

emissions from the project. This calculation also allowed a facility to subtract emissions that resulted from demand growth. With the change in calculating what triggers a major modification, EPA also changed record-keeping requirements. Only facilities that have a “reasonable possibility” of triggering NNSR or PSD are required to maintain project records.

The change in record-keeping requirements eliminated an agency’s ability to monitor and track how changes in facility operations impacted air emissions. The current proposed changes combined with the “reasonable possibility” provisions for tracking will significantly reduce the data available to agencies. Because of this, agencies will not be able to evaluate whether facilities are double-counting emissions decreases. One potential way to address this problem is to amend the rules to provide that projected decreases associated with a project do not count toward the 50 percent threshold that triggers monitoring, recordkeeping, and reporting requirements. EPA should also require projected emissions reductions to be enforceable as a practical matter.

If you have any questions concerning these comments, please contact myself or Lisa Rector, NESCAUM Stationary Source Program Director, lrector@nescaum.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul J. Miller". The signature is written in a cursive, flowing style.

Paul J. Miller

cc: NESCAUM directors  
Lynne Hamjian, EPA Region 1  
Richard Ruvo, EPA Region 2