



October 4, 2019

Andrew Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, DC 20460
Docket ID No. EPA-HQ-OAR-2018-0048

Re: Connecticut DEEP Comments on Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting

Dear Administrator Wheeler:

In the proposed rule *Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting* (84 FR 39244, August 9, 2019), hereafter referred to as the “Project Emissions Accounting Rule,” the United States Environmental Protection Agency (EPA) is proposing to revise New Source Review (NSR) applicability regulations to clarify that both emissions increases and decreases from a proposed project are to be considered at Step 1 of the NSR major modification applicability test. The Connecticut Department of Energy and Environmental Protection (DEEP) respectfully disagrees with such action as adoption of the proposed rule could increase transported emissions from upwind states, thereby, inhibiting Connecticut’s efforts towards attaining compliance with the National Ambient Air Quality Standards (NAAQS). Additionally, as currently drafted, the proposed rule fails to ensure that only environmentally beneficial projects are undertaken. Last, DEEP also disagrees with the incorporation of this proposed clarification as a minimum program element for any state, as state and local programs should be able to adopt NSR programs that are more protective and perhaps allow no version of project emissions accounting.

The NSR preconstruction permitting program, specifically, the PSD and NNSR programs, require stationary sources of air pollution to obtain a preconstruction permit prior to beginning the construction of a new major stationary source or the major modification of an existing major stationary source. To determine whether a proposed project triggers a major modification, sources generally apply a two-step applicability test. Step 1 of this test requires a determination of whether the proposed project, by itself, is projected to result in a “significant emissions increase” of a regulated NSR pollutant. If such an increase is projected to occur, the process moves to Step 2. In Step 2, a determination is made as to whether the proposed project, in conjunction with any other emissions changes at the major stationary source that are contemporaneous to the project and creditable, result in a “significant net emissions increase.”

If there is a significant net emissions increase, then the proposed project is a major modification and subject to NSR preconstruction permitting.¹ Consequently, for a proposed project to trigger a major modification and subsequently be subject to NSR preconstruction permitting, the proposed project shall cause both a significant emissions increase (Step 1) and a significant net emissions increase (Step 2) of a regulated NSR pollutant.

In the past, EPA interpreted the regulatory language in Step 1 of the NSR major modification applicability test to preclude the consideration of emissions decreases in the determination of whether a project will cause a significant emissions increase as under the 2006 Project Netting Proposal.² However, on March 13, 2018, EPA communicated its new interpretation of the regulatory language at hand: emissions decreases as well as increases are to be considered at Step 1 of the NSR major modification applicability test.³ The rationale for this change being that the previous interpretation had prevented sources from undertaking projects that were overall environmentally beneficial and this new approach will encourage emissions decreases that might not otherwise occur.⁴

Although the proposal lacks any estimates of cost savings or emissions decreases associated with project emissions accounting,⁵ EPA believes that codification of this new regulatory interpretation will have an overall positive effect. DEEP respectfully disagrees with such conclusion.

Adoption of the Project Emissions Accounting Rule could result in a substantial decrease in the number of projects that go through NSR preconstruction permitting, as the consideration of emissions decreases in Step 1 will likely limit the number of projects that reach Step 2 of the applicability test. One of the goals of the NSR preconstruction permitting program is to facilitate states' efforts towards attaining and maintaining compliance with the NAAQS. As such, prior to beginning construction or modification, this program requires sources to demonstrate that their new projects will not worsen (in nonattainment areas) or degrade (in attainment areas) air quality. This might entail establishing operational restrictions in order to limit emissions or installing control equipment in order to achieve the desired level of emissions reduction. By foregoing this program, states could essentially allow projects to move forward despite substantial ambient air quality impacts or higher level of emissions. Such a result would not only negatively impact the state where the project is proposed but also nearby states.

Furthermore, states with applicable State Implementation Plan- approved regulations that expressly preclude project emissions accounting should not be required to incorporate such

¹ A preconstruction permitting program that requires sources to complete an ambient air quality impact analysis on the proposed project, and install (when applicable) control technologies adequate to achieve the maximum degree of emissions reduction or the most stringent emission rates, among others.

² 71 FR 54235 (September 14, 2006).

³ "Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program" in which EPA sets out the basis for the Project Emissions Accounting Rule in a memorandum.

⁴ Project Emissions Accounting Rule at 39250.

⁵ Project Emissions Accounting Rule at 39251.

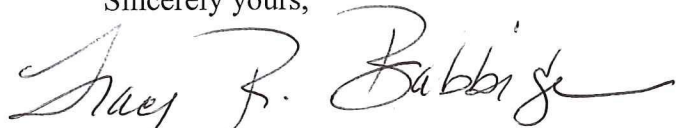
program elements into their NSR preconstruction permitting programs.⁶ In accordance with Section 110(a)(2)(C) of the Clean Air Act, each state shall implement enforceable emission limitations and other control measures, means, or techniques, as may be necessary or appropriate to assure that NAAQS are achieved. Forcing the aforementioned states to include project emissions accounting into their programs may interfere with their ability to achieve compliance with the applicable NAAQS or weaken their PSD and NNSR programs to the extent of causing an increase in upwind emissions.

Although Connecticut's ongoing commitment to implement emission control programs that are among the most stringent in the nation has resulted in significant decreases to the ambient emission levels, the people of Connecticut continue to be exposed to unhealthy ozone levels caused by transported emissions from upwind states. Connecticut's location places it in the path of transported emissions, at levels so high as to negate Connecticut's efforts to attain compliance with the NAAQS. As previously explained, adoption of the Project Emissions Accounting Rule could lead to an increase in emissions from upwind states, either by allowing projects with substantial ambient air quality impacts to move forward or projects that could have further reduced their emissions. For this reason, EPA's proposed action would not only contravene with previous action taken by the Agency in an effort to address interstate air pollution, but would also hinder Connecticut's ability to attain compliance with all the NAAQS.

Finally, the Project Emissions Accounting Rule as proposed fails to adequately ensure that sources make the appropriate determinations in Step 1 of the NSR major modification applicability test. Two points are of particular concern. First, the potential for "over aggregation" of unrelated activities into a single project, in order to benefit from the reduction in emissions from such unrelated activities, and thus, circumvent NSR review. Second, the lack of provisions requiring that the emissions reductions in Step 1 be enforceable as a practical matter or procedures to demonstrate that the decreases have actually occurred and are maintained. States without a robust minor NSR program that generally review and assess these determinations, will fail to identify all the projects that have incorrectly been determined not to trigger a major modification, projects that should have gone through NSR preconstruction permitting and achieved the necessary emissions reductions.

For the reasons presented, DEEP opposes adoption of the Project Emissions Accounting Rule. Thank you for the opportunity to submit these comments.

Sincerely yours,



Tracy R. Babbidge, Chief
Bureau of Air Management

⁶ Project Emissions Accounting Rule at 39252.

