

# New Source Review Improvements

Plastics Industry Association and Flexible Packaging Association  
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# NSR Improvement Actions

## Completed Actions

- Actual-to-Projected-Actual Applicability Test Guidance
- MM2A Memo – Rescinds OI/AI
- Project Emissions Accounting Memo
- Source Aggregation Guidance, Meadowbrook Letter (“Common Control”)
- Source Aggregation Guidance (“Adjacency”) (draft)
- Project Aggregation Reconsideration

## On-Going Work

- Ambient Air Guidance
- Project Emissions Accounting Rulemaking
- Rulemaking on Treatment of Biomass for Permitting



## NSR “Reload” – Contemplated New Actions

- First wave of actions either completed or in the production pipeline
- OAQPS/AQPD has proposed a variety of possible next actions
- Complete pending reconsiderations?
- Streamlining (*e.g.*, increased use of electronic systems) and “housekeeping” actions



## NSR Updates: Actual-to-Projected-Actual Applicability Test Guidance Memorandum

- **Memorandum: “New Source Review Preconstruction Permitting Requirements: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability”** signed by Administrator Pruitt on December 7, 2017
  - Available at [https://www.epa.gov/sites/production/files/2017-12/documents/policy\\_memo.12.7.17.pdf](https://www.epa.gov/sites/production/files/2017-12/documents/policy_memo.12.7.17.pdf)
  - Where a source projects an insignificant emissions increase, the level of actual emissions after the project governs applicability
  - Projections may reflect the intent to actively manage post-project operations in order to prevent a significant emissions increase from occurring
  - EPA will not second guess NSR applicability analyses that comply with the procedural requirements of the regulations



# Once In Always In

- **2018 EPA Withdraws Once In Always In**

- On January 25, 2018, EPA issued guidance memorandum, **“Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act”**
  - Memo addresses when a major source subject to a maximum achievable control technology (MACT) standard, under section 112 of the Clean Air Act (CAA), may be reclassified as an area source and no longer subject to MACT requirements
  - Discusses EPA’s plain language reading of the statutory terms “major source” and “area source”
  - Withdraws 1995 Seitz memo “Once In Always In” policy, which required major sources to limit potential to emit to below the major source threshold by the first compliance date to be treated as an area source
  - Responds to comments received in response to E.O. 13777 and 13783 on the need to revise 1995 OIAI policy
  - EPA intends to issue a FR Notice to take comment on regulatory text to implement EPA’s plain language reading of statute as discussed in January 2018 guidance memorandum

- **Litigation**

- On March 26, 2018, coalition of environmental groups filed a petition for review in the D.C. Circuit Court

- **For More Information**

- <https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean>
- Contact: Debra Dalcher, Policy and Strategies Group, 919-627-4883 or [Dalcher.debra@epa.gov](mailto:Dalcher.debra@epa.gov)



# Project Emissions Accounting (Project Netting) Guidance Memorandum

- **Memorandum: “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program”** was published on March 30, 2018 (83 FR 13745)
  - Available at [www.gpo.gov/fdsys/pkg/FR-2018-03-30/pdf/2018-06430.pdf](http://www.gpo.gov/fdsys/pkg/FR-2018-03-30/pdf/2018-06430.pdf)
  - Communicates EPA’s interpretation that the current NSR regulations provide that emissions decreases as well as increases are to be considered at Step 1 of the NSR applicability process, i.e., determining whether a project will result in a significant emissions increase
  - Interpretation is grounded in the principle that the plain language of the CAA indicates that Congress intended to apply NSR to changes that increase actual emissions and the language in the corresponding NSR regulations is consistent with that intent
- Prior EPA guidance had indicated that the relevant provisions of the NSR regulations preclude the consideration of emissions decreases at Step 1
  - For the reasons discussed in the memo, EPA will no longer apply such interpretation



# Source Aggregation

- EPA defines “*stationary source*” in the permitting programs as all of the pollutant-emitting activities that are: [40 CFR 70.2 and 52.21(b)(1) and (5)]
  - located on one or more contiguous or adjacent properties *and*
  - are under common control of one person (or persons under common control), *and*
  - belong to the same major industrial grouping (2 digit SIC code)
- EPA clarified its interpretation of “common control” in an April 2018 letter to Pennsylvania DEP (the Meadowbrook Letter)
  - The Meadowbrook Letter explains EPA’s view that control means the power or authority of one entity to dictate decisions of the other that could affect the applicability of, or compliance with, relevant air pollution regulatory requirements
- EPA’s interpretation of “adjacent” has evolved through source-specific determinations
  - 2016 Rulemaking clarified “adjacent” for oil and gas operations
    - Adjacent operations are limited to those within ¼ mile with shared equipment
  - EPA posted on September 5, 2018, the “**Draft Guidance: Interpretation Adjacent for New Source Review and Title V Source Determinations in All Industries other than Oil and Gas**” and accepted public comment through October 5, 2018 at [www.epa.gov/nsr/forms/interpreting-adjacent-source-determinations](http://www.epa.gov/nsr/forms/interpreting-adjacent-source-determinations)



# Project Aggregation Reconsideration

- 2009 Rule for Project Aggregation
  - Established “substantially related” criterion for aggregating projects, and a 3-year rebuttable presumption against aggregating
  - Did not amend the CFR text (definition of “project”), considered an interpretive rule
  - Calling it a “new interpretation” of the rule text, it only applies prospectively
- Reconsideration and Stay of the 2009 Rule
  - NRDC petitioned for reconsideration and sued EPA on the 2009 Rule
  - EPA granted reconsideration and stayed the effectiveness of the 2009 Rule pending completion of the reconsideration or litigation
  - In 2010, EPA proposed reconsideration with a preference to revoke 2009 Rule
  - Final action concludes reconsideration and lifts the stay





## Ambient Air Guidance

- EPA defines “*ambient air*” as “that portion of the atmosphere, external to buildings, to which the general public has access” (40 CFR 50.1(e))
  - EPA’s longstanding policy for implementing ambient air for PSD purposes was stated in a 1980 Costle letter, “*the atmosphere over land that is owned or controlled by the source and to which public access is precluded by a fence or other physical barriers*”
  - Subsequent guidance provided over the years by EPA to recommend how to apply 1980 policy statement for specific situations
- We are evaluating several key terms associated with the definition including: “general public”, “access” and “building” to determine where additional flexibility may be appropriate
- EPA anticipates releasing draft guidance for comment on the Internet in Fall 2018



## Project Emissions Accounting (PEA) Proposed Rule

- EPA published on March 30, 2018, the **Issuance of Guidance Memorandum, “PEA Under the New Source Review Preconstruction Permitting Program”**
- As discussed in the memo, this clarification will apply to all project categories (including existing units only, new units only, and new and existing units)
  - Memo can be found at [www.gpo.gov/fdsys/pkg/FR-2018-03-30/pdf/2018-06430.pdf](http://www.gpo.gov/fdsys/pkg/FR-2018-03-30/pdf/2018-06430.pdf)
- A proposal will codify the considerations and interpretations reflected in the memorandum
  - Current schedule: Winter 2018



## Treatment of Biogenic CO<sub>2</sub> Emissions in Permitting

- **On April 23, 2018, the EPA Administrator issued a policy statement on the treatment of forest biomass for energy production at stationary sources**
  - Recognizes the benefits of using managed forest biomass for energy production at stationary sources
  - Signals the Agency's intent to treat managed forest biomass biogenic CO<sub>2</sub> emissions from energy production at stationary sources as carbon neutral in future regulatory actions
  - [https://www.epa.gov/sites/production/files/20184/documents/biomass\\_policy\\_statement\\_2018\\_04\\_23.pdf](https://www.epa.gov/sites/production/files/20184/documents/biomass_policy_statement_2018_04_23.pdf)
- EPA considering regulatory approaches related to the treatment of biogenic CO<sub>2</sub> emissions from stationary sources

