



October 8, 2019

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U.S. Environmental Protection Agency
EPA Docket Center
Mailcode 2822IT
Attention: Docket ID No. EPA-HQ-OAR-2018-0048
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting, EPA-HQ-OAR-2018-0048

Dear Docket Clerk:

GPA Midstream Association ("GPA Midstream") appreciates this opportunity to submit comments to the U.S. Environmental Protection Agency ("EPA") on its proposed rule, Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting, 84 Fed. Reg. 39,244 (August 9, 2019).

GPA Midstream has served the U.S. energy industry since 1921. GPA Midstream is composed of nearly 80 corporate members that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as "midstream activities." Such processing includes the removal of impurities from the raw gas stream produced at the wellhead as well as the extraction for sale of natural gas liquid products ("NGLs") such as ethane, propane, butane, and natural gasoline or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA Midstream membership accounts for more than 90% of the NGLs produced in the United States from natural gas processing.

Summary

GPA Midstream strongly supports the proposed rule as a sound regulatory reform. The proposed rule will allow for netting that recognizes actual emissions increases and decreases at Step 1 without calculating facility wide net emissions at Step 2. This simplification recognizes a project's true emissions impact instead of forcing a source owner or operator to record a significant emissions increase that exists only on paper. The proposed rule is especially important for complex midstream emission sources with multiple emissions units, such as gas processing plants and liquefied natural gas plants, where Step 2 netting is complex and difficult. By instituting this change through a rulemaking, instead of merely interpretive guidance, industry is provided more certainty that this may be EPA's final word on the question. This will provide our members with the confidence that they will not be penalized by replacing old equipment with more efficient, lower emitting equipment.

1. EPA's Proposed Revisions Correctly Confirm in Clear Regulatory Language that Project Netting is Allowed Under the NSR Requirements of the Clean Air Act

GPA Midstream supports EPA's proposed revision to its NSR regulations to expressly provide for project netting. *See* Proposed 40 C.F.R. §§ 51.165 and 52.21 and Part 51 Appendix S (adding the term "sum of the difference" and defining "sum of the difference" to "include both increases in decreases in emissions"). Although EPA's interpretation of the current regulations to allow for project netting is entirely reasonable and defensible, revising the regulations to confirm project netting expressly provides more certainty to regulated industry given that EPA's interpretation has changed many times over the years. *See* Memorandum from E. Scott Pruitt to Regional Administrators, "Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program" (Mar. 13, 2018) ("March 2018 Memo") at 6-8 (discussing changes in EPA interpretations). As the proposed rule notes, the U.S. Court of Appeals for the District of Columbia Circuit has already held that the Clean Air Act provides no instructions on how increases in emissions are calculated for the purposes of a "modification." *New York v. EPA*, 413 F.3d 3, 22 (D.C. Cir. 2005).

Defining an "increase" in emissions to account for the actual full balance of emission increases and decreases attributable to a project is perfectly reasonable and the proposed revisions should be entitled to deference. Under current case law, Agency interpretations are "entitled to deference" where "the regulatory scheme is technical and complex, the agency considered the matter in a detailed and reasoned fashion, and the decision involves reconciling conflicting policies." *Chevron USA Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 865 (1984) (footnotes omitted). Here, the proposed regulatory revisions meet all of the *Chevron* Step 2 criteria, particularly since the proposed rule and the March 2018 Memo have considered both the agency's varying historic interpretations and the related policy considerations in detail.

2. No Change to Recordkeeping Requirements Should be Required

EPA asked for comment on how sources should keep records of their emissions increases and decreases, if the proposed rule is finalized. 84 Fed. Reg. at 39248. GPA Midstream believes that current recordkeeping requirements are adequate to document, and allow for validation of, a source's netting calculations. Those requirements, found at 40 C.F.R. § 52.21(r)(6)(i)(c) already require an owner or operator to "document and maintain a record of ... any netting calculations, if applicable." Nothing in the language or structure of Section 52.21(r)(6) requires netting calculations under Step 1 to be treated differently than netting calculations under Step 2.

3. State Implementation Plans Will Require Revisions if the Rule is Finalized

EPA also asked for comment on whether states would need to modify their State Implementation Plans ("SIPs") to accommodate this rule's clarifications. 84 Fed. Reg. at 39248. GPA Midstream believes the states would need to do so. The Administrator has a non-discretionary duty to initiate a SIP call whenever he determines that a SIP is inadequate to "comply with any requirement of this chapter." 42 U.S.C. § 7410(k)(5) ("shall require the State to revise the plan"). The changes to 40 C.F.R. §§ 51.165 and 166, regarding how Step 1 emissions increases are calculated go to fundamental aspects of how a "modification" is defined under the Clean Air Act. Or, as EPA phrased the issue in its 2002 NSR Reform Rule, it is part of the "'base' NSR

program requirements which are set forth in §§ 51.165 [and] 51.166,” as well as EPA’s “own PSD permitting program” under § 52.21. 67 Fed. Reg. 80,186, 80,241 (Dec. 31, 2002). Should EPA finalize the proposed rule, any State or local agency using a different definition of “modification” would be at odds with the minimum program elements of the PSD program. Under such a circumstance, Clean Air Act Section 110(k)(5) would require the Administrator to initiate a SIP call for those jurisdictions.

4. EPA Correctly Does Not Impose Unnecessary Constraints on How a Source Owner or Operator Defines the Project

In the proposed rule, EPA does not impose new constraints on how a source owner or operator defines a project to allow for netting at Step 1 of the NSR process. This is a sound approach that merely allows for a commonsense consideration of actual emission reductions, while retaining the rest of the requirements for NSR review.

EPA properly reasons this will not mean sources will “circumvent” NSR. In reaching this conclusion, EPA finds that formally promulgating a project netting regulation would not create a loophole for sources to “circumvent” NSR requirements. GPA Midstream supports EPA’s proposal to allow source owners or operators to reasonably define the scope of the project for Step 1 netting purposes. 84 Fed. Reg. at 39,250-51. Step 1 netting does not provide the same opportunity for NSR circumvention as when an owner or operator attempts to sub-divide a single project into multiple smaller projects in order to avoid a significant emissions increase. Combining activities with *decreased* emissions into a single project that may otherwise increase emissions will still result in either a facility-wide net decrease in emissions or an insignificant increase. This is far different than an owner or operator artificially sub-dividing a project to hide a significant emission increase.

EPA should not require sources to show all activities are “substantially related” in order to qualify for project netting. GPA Midstream further supports the proposed rule’s finding that the 2009 NSR Aggregation Action’s requirement that reviewing authorities aggregate “substantially related” activities should not apply in the Step 1 netting context. *Id.* at 39,250. Step 1 netting does not provide the same opportunity for NSR circumvention as when an owner or operator attempts to sub-divide a single project into multiple smaller projects in order to avoid a significant emissions increase.

Imposing the “substantially related” test on Step 1 netting determinations would unnecessarily inject subjectivity and complexity into what should be a straightforward determination of project scope. EPA defines “substantially related” as the “interrelationship and interdependence of the activities ... such that substantially related activities are likely to be jointly planned” or that they are “technically or economically” connected through “physical and/or operational changes or a complementary relationship whereby a change at a plant may exist and operate independently, however its benefit is significantly reduced without the other activity.” 84 Fed. Reg. at 39,250 (citing 83 Fed. Reg. 57,327 (Nov. 15, 2018) (reconsideration of PSD and NSR aggregation)). That type of complex, multi-factored test where some factors may be true and others false, leave a source to the subjective, *post hoc* judgment of the enforcement agency to determine whether or not there was a substantial relationship between activities. Additional complexity –

leading to delays in permitting – will ultimately have a unnecessary chilling effect on investments in new equipment that will improve operations without resulting in any net emissions increase.

GPA Midstream appreciates the opportunity to submit these comments in response to EPA's proposed rule and is standing by to answer any questions that the agency may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matt Hite". The signature is fluid and cursive, with the first letter of "Matt" being a large, stylized capital "M".

Matt Hite
Vice President of Government Affairs
GPA Midstream Association

