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## Recent Changes to Air Permitting Regulations

The Pennsylvania Department of Environmental Protection ("PADEP") recently amended its Nonattainment New Source Review ("NSR") air regulations.

Under the Clean Air Act, the United States Environmental Protection Agency ("USEPA") has established National Ambient Air Quality Standards ("NAAQS") for a number of air pollutants, including ground-level ozone, or smog, which is created when volatile organic compounds ("VOCs") and nitrogen oxides ("NOx") interact. The USEPA also has identified areas of the country that are in attainment and nonattainment with those standards. The northwest Pennsylvania area presently is classified as nonattainment for ozone.

In conjunction with NAAQS and the identification of attainment and nonattainment areas, USEPA established permitting programs to be followed when an air pollution source is constructed or modified in an attainment or nonattainment area. In attainment areas, the permitting program that applies is called Prevention of Significant Deterioration ("PSD"); in nonattainment areas, the permitting program that applies is NSR. Under the Clean Air Act, states are responsible for implementing the USEPA regulations.

The USEPA promulgated NSR regulations in the 1970s. In December 2002, USEPA revised its NSR regulations. On May 19, 2007, PADEP modified its existing NSR regulations to reflect USEPA's revisions.

### Who is Affected?

Under Pennsylvania's NSR revisions, the first question is whether a project involves "the construction of a new major facility or modification of an existing major facility located in a nonattainment area..." In northwest Pennsylvania, a facility or project that emits or has the potential to emit 100 tons per year ("TPY") of NOx or 50 TPY of VOCs is major. Thus, projects in northwest Pennsylvania that emit VOCs and/or NOx may be impacted by NSR permitting if the project is major or occurs at a facility that is major.

If the facility or project is major for VOCs and/or NOx, the next question is whether a "significant net emissions increase" will result from the project. Determining whether a significant net emissions increase will result is a two-step process. First, the owner must determine the VOC and/or NOx emissions increases resulting from the project. This is determined as follows: for affected existing units, the emissions increase is the difference between the existing unit's actual emissions and its projected actual emissions; for all new sources, the emissions increase is

the unit's potential to emit. Second, the owner must determine the historical emission increases/decreases at the facility that are contemporaneous and creditable. If the sum of the results of these two steps exceeds the significance levels for VOCs or NOx (40 TPY), then the project is subject to the special permitting requirements of NSR.

### What Are the Key Changes?

The method of measuring the emission changes from existing units is one of the key changes to the NSR rules. The prior rules focused on changes in potential to emit as the measure, whereas the new regulations focus on changes in actual emissions. The new regulations provide a very detailed and complex methodology to be followed to determine both the actual emissions from an existing unit and the projected emissions from an existing unit after the project is completed.

Another significant change in the regulations involves the time period for determining whether historical emission increases are contemporaneous. Under the prior regulations, if the project was not significant, the owner had to look back to January 1991 for contemporaneous emissions increases. Under the new regulations, the look-back is limited to 10 years.

One other key change is the availability of a Plantwide Applicability Limit ("PAL"). Under a PAL, the facility agrees to limit the emissions from its facility below a certain level; then, if the facility complies with its PAL, it can avoid the applicability of the permitting requirements of the NSR regulations.

PADEP also modified the provisions relating to plan approval extensions, which apply beyond NSR. Under the revision, the department may grant limited time extensions; however, if the work on the project is not commenced within 18 months of the original plan approval or if there is an 18-month lapse of activity, PADEP will reevaluate the project to ensure that it meets the applicable air pollution control standard (i.e., BAT, BACT or LAER). Thus, in order to obtain a plan approval time extension, you may be subject to more stringent air pollution controls that develop after issuance of the original plan approval.

This article highlights only a few of the significant changes made to the NSR permitting program in Pennsylvania. We recommend a more thorough review of these regulations, which can be found at 25 Pa. Code, Chapter 127, Subchapter E, well in advance of embarking on a project that will result in increased emissions of nonattainment pollutants. \*

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