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Client Alert: USEPA Finalizes "Project Emissions Accounting" Rule for NSR Permitting Program

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Yesterday, on October 22, 2020, USEPA finalized the "Project Emissions Accounting" Rule for the New Source Review (NSR) permitting program. The new Rule permits a consideration of both emissions increases and decreases during the first step of deciding whether the NSR permitting program applies to a proposed modification to an existing major source.

The NSR program uses a two-step analysis to decide whether its requirements apply to proposed modification of an existing major source. Under the prior rule, step one determined if there would be a significant emissions increase caused by the modification. If so, step two analyzed whether there would be a significant net emissions increase; step two therefore allowed the consideration of both emissions increases and decreases caused by the modification. This meant that sources with proposed modifications would potentially complete the step one analysis only to later show that the NSR program did not apply because the modification contained sufficient emissions decreases to not cause a net increase. Because the new rule allows considerations of both increases and decreases at the initial step, the rule will provide a positive impact to major sources seeking a modification that ultimately do not lead to a significant net increase by saving them the time and money of going through both steps.

However, the new rule only applies to USEPA and federally delegated permitting authorities. It does not require states with approved State Implementation Plans (SIPs) to modify their program and regulations to adopt the change. A major source seeking a modification must therefore first review if its state operates its own NSR program through an approved SIP and, if so, whether it intends to adopt a similar rule.

Please feel free to contact Anthony Giuliani, Ryan Elliott, or your Vorys attorney with any questions.