

# New Source Review: Aggregation Policy

Wayne D'Angelo  
Kelley Dye & Warren, LLP  
wdangelo@kelleydye.com  
973-503-5911

# NSR: Generally

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- New/Modified Sources in Attainment/Unclassifiable areas must:
  - Obtain preconstruction permit
  - Prove construction will not violate certain air quality standards
  - Show compliance with BACT
- New/Modified Sources in Nonattainment areas must:
  - Install Lowest Achievable Emissions Rate (“LAER”)
- New Facility or “major modification”
  - *“Any physical change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under [CAA]”*
    - Unless specifically exempted
    - 40 C.F.R. Sec. 52.21(b)(2) (emphasis added)

# Thus a Modification is Subject to NSR if it:

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- Constitutes a physical change to an emissions unit or change in the method of operation;
- Occurs at a facility that is a “major” source; and,
- Results in a “significant net emissions increase.”

# November 13, 2006 Proposal (71 Fed. Reg. 54,235)

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- **Debottlenecking**
  - Clarified the calculation of an emissions increase when a modification to one component allows another, unmodified component, to increase its output
  - Withdrawn on January 12, 2009
- **Project Netting**
  - Clarified and codified process by which previous and prospective emissions changes would yield a significant net increase
  - No action taken
- **Aggregation**

# Aggregation: Final Rule

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- No CAA basis or EPA rule addressing circumstances where nominally separate changes are aggregated for purposes of determining NSR applicability
  - *Ad hoc*
  - Statutory and regulatory applicability determinations
- Now, projects must be “Substantially related”
  - “There should be an apparent interconnection – either technically or economically – between the 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.”

# Examples of “Substantially Related” Projects

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- Installation of a burner on a utility boiler and the upgrade of the air-handling equipment to handle the new burner’s increased emissions
- Installation of a process heater to make a new product and the installation of a holding tank to handle the new product

# Factors Considered

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- Activities that are:
  - Jointly planned
  - Jointly funded
  - Jointly studied
  - Proximate in time
    - More than 3 years, presume not substantially related
- Factors to be considered
  - Not necessarily determinative factors
- Previously, modifications a plants which modify regularly to meet consumer demands “cannot be presumed independent.”
  - No longer Agency position
  - “Substantially related” means more than whether two projects contribute to the building of a vessel.

# Outlook for NSR Reform

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- Not great
- Aggregation rule may be a “midnight rule”
  - Being “re-reviewed” by Obama EPA
- Debottlenecking
  - Withdrawn by Bush EPA
  - Unlikely to have a champion in Obama EPA
- Project Netting
  - “No action” by Bush EPA
  - Likely same effect as withdrawing
  - Favorable action by current Administration unlikely