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EPA Issues New Air Guidance on Plantwide Applicability Limits

Authors: John Wayne Cropp

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On August 4, 2020, the EPA issued new guidance addressing the issue of Plantwide Applicability Limits (PAL) under the New Source Review (NSR) program of the Clean Air Act. The PAL guidance is intended to expedite facility modifications and new source construction without permit approval, by providing assurances regarding the way in which EPA and most states will approach PAL issues in the future.

Referred to as *Guidance on Plantwide Applicability Limitation Provisions Under the New Source Review Regulations*, it relates to the PAL regulations that are part of the 2002 NSR Reform Rule, 67 Federal Register 80186 (December 31, 2002). To date, EPA has seen scant use of the PAL concept with less than 75 PAL permits in existence nationwide. The new guidance is intended to answer questions and provide confidence to major air pollution emitting sources that the PAL program will not be utilized to ratchet down air emissions, but instead offers flexibility in the permitting mechanisms under the NSR program.

In practical application, Major Source facilities can obtain a PAL permit which establishes an air emission cap in tons per year of a regulated pollutant for the entire facility. According to EPA, as long as actual emissions remain below the PAL, a source can implement modifications to existing emission units and construct new emission units to react to market demand or to meet other company business objectives. The concept is that those facilities which take advantage of PAL permitting may be able to gain a competitive advantage by being able to quickly change production operations without regulatory delays that sometimes can take up to 18 months.

In the guidance, EPA addresses a number of stakeholder concerns. These include PAL reopening, PAL expiration, PAL renewal, PAL termination, monitoring requirements, validation testing and missing monitoring data.

The PAL program has had limited use in the past, but there is hope that with the new guidance there will be increased utilization of it by the industry. Regulatory flexibility and regulatory assurances are a welcome opportunity for the industry in re-building the economy during these challenging times. The environmental attorneys at Baker Donelson are knowledgeable and available to assist with the intricacies of the PAL program. Please contact [Wayne Cropp](#) or any member of Baker Donelson's [Environmental Group](#) for any questions.