

The Department of Environmental Quality has reviewed the economic impact analysis prepared by the Department of Planning and Budget and disagrees strongly with the suggestion that “the best way to minimize compliance costs is to establish a dual system” whereby large firms may choose to maximize their operational flexibility under the source-wide net emission increase permit review system.

In reaching this conclusion, the report assumes that there are operational flexibility benefits to be realized under the source-wide net emission increase method of Minor NSR permit review. No such operational flexibility benefits are possible. Although that was originally one of the primary objectives of the source-wide net emissions increase method, the lack of a means for making such “netting” emission reductions enforceable without a Minor NSR permit means that the netting reductions cannot be used to avoid Minor NSR review. Preserving a dual system would only preserve the procedural complexity and the increased administrative costs for the department, without providing any real benefits to the public or regulated community.

The report assumes that the increased administrative costs of preserving the source-wide review system would not be as significant for large sources because large sources would already be familiar with the similar emissions analysis method used under Major Source NSR. The differences between the source-wide net emission increase analysis methods under the Major NSR and minor NSR programs are significant. They differ in nearly every aspect of the analysis (i.e. no contemporaneous period, limited to “directly resultant” emission increases and decreases, no backup permitting system, etc.). EPA guidance for Major NSR is useless for understanding the Minor NSR analysis. If there are reasons that large firms would experience reduced administrative costs, previous familiarity with Major NSR is not among them.

The report also indicates that there is reason to believe that large sources would support preserving aspects of source-wide net emission increase system in this dual tiered system, without providing any supporting evidence. DEQ did not believe this to be true and encouraged DPB to contact the large sources or their representative to get their input first hand; however, to the best of our knowledge this was never done.

Finally, this regulatory action is being presented as a fast-track amendment specifically to provide relief to both DEQ and the regulated industry. Basic to the fast track proposal is DEQ’s belief that returning to the previous single emission unit system would not be controversial. This allows the change to be made through an abbreviated process. Constructing a new regulation that preserves the option for a source-wide analysis is deemed by DEQ to have the potential to be highly controversial. This would delay the benefits of this regulatory relief and subject both DEQ and the regulated industry to unnecessary permit costs and delays.