

## Clean Air Act Permitting for Greenhouse Gas Emissions – Final Rules

### FACT SHEET

#### ACTION

- On December 23, 2010, the U.S. Environmental Protection Agency (EPA) issued a series of rules that put the necessary regulatory framework in place to ensure that 1) industrial facilities can get Clean Air Act permits covering their greenhouse gas (GHG) emissions when needed and 2) facilities emitting GHGs at levels below those established in the Tailoring Rule do not need to obtain federal Clean Air Act permits.
- On January 2, 2011, EPA’s GHG emissions standards for light-duty vehicles take effect. On that date, permits issued under the Clean Air Act permitting programs for large stationary sources – the Prevention of Significant Deterioration (PSD) and the Title V Operating Permit Programs – must begin to address GHGs.
- Last April, EPA issued the tailoring rule to ensure that only the largest sources of GHGs, those responsible for 70 percent of the GHG pollution from stationary sources, would require air permits.
- EPA has been working with state local agencies since that time to make sure that:
  - All permitting agencies have the authority to permit GHGs or are on the path to have such authority, with EPA serving as the permitting authority in the interim, and
  - Only those sources identified in the tailoring rule—the largest emitters of GHGs—are required to obtain permits.
- The rules signed today address these critical permitting program components and ensure that new and expanding facilities in all states can seek permits for greenhouse gas emissions.

#### Rules Ensuring Authority to Permit GHGs under the PSD Permitting Program

- One set of rules signed today will give EPA authority to permit GHG emissions in the PSD program in eight states until the identified state and local agencies revise their permitting regulations to cover GHGs as defined in the Tailoring Rule. These rules include:
  - Findings of Failure to Submit State Implementation Plan Changes for Seven States
  - Final Greenhouse Gas Prevention of Significant Deterioration Federal Implementation Plan
  - Interim Final Texas Greenhouse Gas Prevention of Significant Deterioration Error Correction, State Implementation Plan Partial Approval/Disapproval, and Federal Implementation
  - Proposed Texas Greenhouse Gas Prevention of Significant Deterioration Error Correction, State Implementation Plan Partial Approval/Disapproval, and Federal Implementation
- In a December 1, 2010 final rule, EPA found that PSD permitting regulations in 13 states do not meet Clean Air Act requirements because their programs currently do not cover GHG emissions. EPA also issued a “SIP call,” which requires these states to revise their programs

to ensure that their PSD programs cover GHG emissions. This rule also established the dates these 13 states have selected for submitting their revised permitting plans to EPA, which range from December 22, 2010 to December 1, 2011.

- Seven states, including 8 permitting programs, opted for the earliest SIP submittal deadline – December 22, 2010. These include: Pinal County, Arizona; the rest of the state of Arizona excluding some other local permitting programs); Arkansas; Florida; Idaho; Kansas; Oregon; and Wyoming.
  - These programs did not submit revised programs by December 22. EPA is finding that these programs have failed to submit revised SIPs by their selected deadline and is issuing a Federal Implementation Plan (FIP) giving EPA the authority to issue PSD permits for GHGs in these states until they submit a revised plan that is approved by the Agency.
- The other five agencies, Kentucky, Clark County Nevada, Connecticut, parts of California, and Nebraska will submit their plans shortly after the beginning of 2011 but do not expect to need to act on permits between January 2011 and their anticipated plan approval dates.
- The state of Texas did not select a SIP submittal date and, under the Clean Air Act, defaults to the latest possible date – December 1, 2011 - one year later. EPA is issuing a complementary series of actions today that will assure PSD permitting in Texas can continue during this time without disruption for GHG emitting sources.
- EPA is determining that it made an error when it originally approved the Texas PSD permitting SIP because the state of Texas did not address how the program will apply to pollutants newly subject to regulation and did not provide assurances that the program has adequate legal authority to apply to such pollutants. Under the error correction provisions of the Clean Air Act, EPA is converting that previous approval to a partial approval and partial disapproval. This partial disapproval of the Texas PSD SIP allows EPA to issue a Federal Implementation Plan that gives EPA the authority to apply federal PSD permitting requirements to large sources of GHGs in Texas. This action is appropriate because the state of Texas has made it clear that it will not apply PSD permitting requirements to GHGs.
- So that there will be no period of time when businesses in Texas are unable to obtain the necessary permits, EPA is partially disapproving the Texas PSD SIP and implementing the Federal plan as an interim final rule. This will allow the action to become effective immediately on an interim basis. EPA also issued a proposal to allow for public comment on this action.
- States are best-suited to issue permits to sources of GHG emissions. They have longstanding experience working together with industrial facilities under their jurisdiction to process PSD permit applications. EPA intends to delegate the authority to issue GHG permits to states if requested. EPA will continue to provide guidance and act as a resource for the states as we work together to make the various required permitting decisions for GHG emissions.

### **Rules Focusing GHG Permitting Initially on the Largest Sources**

- In a second set of actions, EPA has issued two final rules that will focus Clean Air Act permitting for GHGs on the largest emissions sources including electric generating units, cement production facilities, and petroleum refineries. These rules include:
  - Final State Implementation Plan Narrowing rule for Prevention of Significant Deterioration Permitting for Greenhouse Gases
  - Final Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule
- With these “narrowing” rules in place, federal rules will not require states to permit sources with GHG emissions below those established in the Tailoring Rule even if they have not been able to adopt the new levels into their SIP or approved operating permit program.
- EPA has encouraged states to modify their state laws as soon as possible to ensure that sources emitting GHG at levels below those established in the GHG Tailoring Rule are not required to seek permits under state laws.

### **Prevention of Significant Deterioration Permit Narrowing Rule**

- The first of these rules applies to certain states’ PSD permitting regulations contained in their state implementation plans or “SIPs”. This final rule withdraws EPA’s previous approval for the portions of SIPs in 24 states’ regulations that apply PSD permitting to sources with GHG emissions lower than those required by the GHG Tailoring Rule. The states included in this final action are:
  - Alabama, California, Colorado, Georgia, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, and Wisconsin.
- EPA is narrowing its previous SIP approvals because these states’ plans require PSD permits for GHG emissions at levels below the thresholds established in the Tailoring Rule, and yet they do not provide assurances that the states would have the resources to issue PSD permits for the thousands of sources that would need permits for emissions at those levels. These inadequate assurances made EPA’s approval of these SIPs flawed, and EPA is now addressing that flaw.

### **Title V Operating Permit Program**

- In the second “narrowing rule” signed today, EPA is limiting its previous approval of title V operating permit programs in 33 states including:
  - Alabama, California, Colorado, District of Columbia, Georgia, Hawaii, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virgin Islands, Virginia, Washington, West Virginia, and Wisconsin
- The GHG Tailoring Rule requires title V permits for major sources with GHG emissions of 100,000 tons per year (tpy) or more of carbon dioxide equivalents (CO<sub>2</sub>e). Many state and local programs generally require title V permitting at major source thresholds as low as 100 tpy for any air pollutant.

- EPA is narrowing its previous operating permit approvals because these programs may impose a title V permitting requirement on major sources of GHG but they do not have the ability to adequately permit sources below the Tailoring Rule thresholds.

## **BACKGROUND**

- On April 2, 2007, the Supreme Court found that GHGs, including carbon dioxide, are air pollutants covered by the CAA. *Massachusetts v. EPA*, 549 U.S. 497 (2007). The Court found that EPA was required to determine whether or not emissions of GHGs from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision.
- On December 7, 2009, the EPA Administrator signed two distinct findings regarding GHGs under the CAA:
  - Endangerment Finding: The Administrator found that the current and projected atmospheric concentrations of the six key well-mixed GHGs – CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, and SF<sub>6</sub> – threaten the public health and welfare of current and future generations.
  - Cause or Contribute Finding: The Administrator found that the combined emissions of these well-mixed GHGs from new motor vehicles and new motor vehicle engines contribute to greenhouse gas pollution, which threatens public health and welfare.

These findings, published December 15, 2009, do not impose any requirements on industry or other entities. They were, however, a prerequisite to finalizing the GHG standards for light-duty vehicles.

- On December 18, 2008, EPA issued a memorandum, "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program" (known as the "Johnson Memo" or the "PSD Interpretive Memo"). Whether a pollutant is "subject to regulation" is important for the purposes of determining whether it is covered under the CAA permitting programs. The PSD Interpretive Memo established that a pollutant is "subject to regulation" only if it is subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant. On February 17, 2009, EPA granted a petition for reconsideration of this memorandum.
- On March 29, 2010, the Administrator signed a notice conveying the Agency's decision to continue applying the PSD Interpretive Memo's interpretation of "subject to regulation." EPA concluded that the "actual control interpretation" is the most appropriate interpretation. The Agency established that CAA permitting requirements apply to a newly regulated pollutant at the time a regulatory requirement to control emissions of that pollutant "takes effect" (rather than upon promulgation or the legal effective date of the regulation containing such a requirement). Based on the anticipated promulgation of the light-duty vehicle rule, the notice stated that the GHG requirements of the light-duty vehicle rule would trigger CAA permitting requirements for stationary sources on January 2, 2011.

- EPA published the Light-Duty Vehicle (LDVR) on May 7, 2010. The LDVR rule established standards for certain greenhouse gases emitted by new light duty motor vehicles, commencing with model year 2012 vehicles. These vehicles may be introduced into commerce beginning on January 2, 2011. Taken in conjunction with the operation of the Clean Air Act and with other recent EPA actions, this means that GHG emissions become “regulated pollutants” as of that date. More specifically, EPA's related actions established that PSD requirements apply to GHG emissions from stationary sources beginning on January 2, 2011.
- On May 13, 2010, EPA issued the final GHG Tailoring Rule. This rule effectively raised the thresholds for GHG emissions that define when permits under the PSD and Title V Operating Permit programs are required for new and existing industrial facilities. Without the GHG Tailoring Rule, the thresholds established in the CAA for other pollutants would apply to GHGs. The phased in approach, established in the Tailoring Rule, provides time for large industrial facilities and state governments to develop the capacity to implement permitting requirements for GHGs.
  - Starting in January 2011, large industrial facilities that must already obtain Clean Air Act permits for non-GHGs must also include GHG requirements in these permits if they are newly constructed and have the potential to emit 75,000 tons per year of carbon dioxide equivalent (CO<sub>2</sub>e) or more or if they make changes at the facility that increase GHG emissions by that amount.
  - Starting in July 2011, in addition to facilities described above, all new facilities emitting GHGs in excess of 100,000 tons of per year CO<sub>2</sub>e and facilities making changes that would increase GHG emissions by at least 75,000 tpy CO<sub>2</sub>e, and that also exceed 100/250 tons per year of GHGs on a mass basis, will be required to obtain permits that address GHG emissions
  - Operating permits will be needed by all sources that emit at least 100,000 tons of GHG per year on a CO<sub>2</sub>e basis beginning in July 2011.
  - Sources less than 50,000 tons of GHGs per year on a CO<sub>2</sub>e basis will not be required to obtain permits for GHGs before 2016.
- These permitting programs are proven tools for reducing air pollution, and can be used to control GHG emissions. However, the thresholds established in the Clean Air Act for other air pollutants, 100 and 250 tons per year, were based on traditional pollutants, such as particle pollution and nitrogen dioxide. PSD and title V requirements for GHGs at these thresholds would lead to dramatic increases in the number of required permits — tens of thousands of PSD permits and millions of title V permits. State and local permitting authorities would be overwhelmed and the programs’ abilities to manage air quality would be severely impaired.
- The proposed Tailoring Rule (74 FR 55292, October 27, 2009) included a proposal to narrow EPA’s approval of the SIPs and title V programs that cover sources of GHG emissions at levels below the thresholds in the Tailoring Rule. EPA recognized that most of the PSD SIPs and title V programs would otherwise continue to apply only the statutory thresholds for GHGs until revised, and some states would not have sufficient time to complete the SIP and program revision process before permitting was triggered.

- The final GHG Tailoring Rule did not address the SIP and title V narrowing proposal. Instead, in the final Tailoring Rule, EPA requested states to submit information so that the Agency could determine if it was still necessary to finalize the SIP and title V narrowing proposal.
- Most states responded that they will be able to permit GHG consistently with the Tailoring Rule by January 2, 2011, by modifying state laws and permitting regulations on an expedited schedule. Even so, many states will not be able to complete their submittal with enough time for EPA to approve them prior to January 2, 2011.

### **FOR MORE INFORMATION**

- To download a copy of these notices, go to EPA's Web site at: <http://www.epa.gov/nsr>.
- Today's actions and other background information are also available electronically at <http://www.regulations.gov>, EPA's electronic public docket and comment system. The docket numbers and staff contacts for each action include:
  - Notice of Findings of Failure to Submit State Implementation Plan Changes for Seven States
    - EPA-HQ-OAR-2010-0107
    - Lisa Sutton – [sutton.lisa@epa.gov](mailto:sutton.lisa@epa.gov), 919-541-3450
  - Final Greenhouse Gas Prevention of Significant Deterioration Federal Implementation Plan
    - Docket ID No. EPA-HQ-OAR-2010-0107
    - Cheryl Vetter – [vetter.cheryl@epa.gov](mailto:vetter.cheryl@epa.gov), 919-541-4391
  - Interim Final Texas Greenhouse Gas Prevention of Significant Deterioration Error Correction, State Implementation Plan Partial Approval/Disapproval, and Federal Implementation Plan
    - Docket ID No. EPA-HQ-OAR-2010-1033
    - Peter Keller – interim final rule – [keller.peter@epa.gov](mailto:keller.peter@epa.gov), 919-541- 5339
  - Proposed Texas Greenhouse Gas Prevention of Significant Deterioration Error Correction, State Implementation Plan Partial Approval/Disapproval, and Federal Implementation Plan
    - Docket ID No. EPA-HQ-OAR-2010-1033
    - Cheryl Vetter – proposed rule – [vetter.cheryl@epa.gov](mailto:vetter.cheryl@epa.gov), 919-541-4391
  - Final State Implementation Plan Narrowing rule for Prevention of Significant Deterioration Permitting for Greenhouse Gases:
    - Docket ID No. EPA-HQ-OAR-2009-0517
    - Michael Brooks – [brooks.michaels@epa.gov](mailto:brooks.michaels@epa.gov), 919-541-3539
  - Final Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule
    - Docket ID No. EPA-HQ-OAR-2010-0107
    - Jeff Herring – [herring.jeff@epa.gov](mailto:herring.jeff@epa.gov), 919-541-3195