

## **Proposed Rules on Clean Air Act Permits for Sources of Greenhouse Gas Emissions under the Prevention of Significant Deterioration Program**

### **FACT SHEET**

#### **ACTION**

- On August 12, 2010, the U.S. Environmental Protection Agency (EPA) proposed two rules to ensure that businesses planning to build new, large facilities or make major expansions to existing ones will be able to obtain New Source Review Prevention of Significant Deterioration (PSD) permits that address greenhouse gases (GHG).
- In May 2010, EPA finalized the GHG Tailoring Rule, which specifies that beginning in 2011, projects that will increase GHG emissions substantially will require an air permit. Covered facilities include power plants, industrial boilers, and oil refineries and are responsible for 70 percent of the GHGs from stationary sources.
- The Clean Air Act (CAA) requires states to develop and follow state implementation plans (SIPs) that include requirements for issuing PSD permits. When federal permitting requirements change, as they did under the Tailoring Rule, states may need to modify these plans.
- EPA has proposed two actions to fill the gap for any state that cannot make the necessary changes to its permitting program by January 2011. Without these proposals industrial sources of GHGs in some states would not be able to begin construction as of January 2, 2011, the earliest GHG permitting requirements become effective.

#### **Proposed Call for State Implementation Plans**

- In the first proposed rule, EPA finds that PSD permitting regulations in some state plans do not meet Clean Air Act requirements because their programs currently do not cover GHG emissions.
- In these states, neither EPA nor the state currently has authority to issue a PSD permit to sources of GHG emissions.
- EPA also proposes a “SIP call,” which would require states to revise their SIPs to ensure that their PSD programs cover GHG emissions.
- States and local areas subject to the proposed SIP call include:

Alaska; Arizona: Pinal County; Rest of Arizona (Excludes Maricopa County, Pima County, and Indian Country); Arkansas; California: Sacramento Metropolitan AQMD; Connecticut; Florida; Idaho; Kansas; Kentucky: Jefferson County; Rest of Kentucky; Nebraska; Nevada:

Clark County; Oregon; and Texas.

- Within 30 days after this rule is published in the *Federal Register*, each permitting agency identified in the proposed SIP call must submit a letter to EPA that explains its GHG permitting authority status. These states must provide information that documents why their programs cannot cover GHG emissions.
- Additionally, all other states that implement their own PSD programs must review their GHG permitting authority and inform EPA if their PSD programs do not apply to GHG sources.
- States may be added or removed from the final SIP call list based on this notification.
- EPA is working closely with the states to help them develop and submit necessary SIP revisions to enable the affected states to issue PSD permits to GHG-emitting sources. EPA will promptly review and respond to their SIP submittals.

#### Proposed Federal Implementation Plan

- EPA, states and the regulated community recognize that there may be circumstances in which states are unable to develop and submit those SIP revisions by January 2, 2011 or for some period of time beyond that date.
- In the second rule, EPA is proposing a federal implementation plan (FIP) that would apply in any state that is unable to submit, by its specified deadline, a SIP revision to ensure that the state has authority to issue permits under the PSD program for GHG sources.
- Any source that requires a PSD permit for its GHGs located in an area that is subject to this FIP would be issued a permit by EPA. The FIP would assure that PSD permitting for GHGs can continue until the state's required SIP revision is complete.
- States are best-suited to issue permits to sources of GHG emissions. They have long-standing experience working together with industrial facilities under their jurisdiction to process PSD permit applications. EPA will continue to provide guidance and act as a resource for the states as they make the various required permitting decisions for GHG emissions.
- EPA will accept comment on the SIP Call proposal for 30 days after publication in the Federal Register. EPA has scheduled a hearing on the FIP proposal for August 25, 2010, and will accept comment on the FIP proposal for 30 days after that hearing.

#### **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 section 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 the greenhouse gas pollution which threatens public health and welfare.

These findings, which were published December 15, 2009, do not impose any requirements on industry or other entities. However, they were 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 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 vehicle rule would trigger CAA permitting requirements for stationary sources on January 2, 2011.
- On April 1, 2010, EPA finalized the light-duty vehicle rule controlling GHG emissions. This rule confirmed that January 2, 2011, is the earliest date that a 2012 model year vehicle meeting these rule requirements may be sold in the United States.

- On May 13, 2010, EPA issued the final GHG Tailoring Rule. This rule set 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.
- Congress established the NSR program as part of the 1977 Clean Air Act Amendments and modified it in the 1990 Amendments. NSR is a preconstruction permitting program that serves two important purposes:
  1. Ensures the maintenance of air quality standards or, where there are not air quality standards, ensures that air quality does not significantly worsen when factories, industrial boilers, or power plants are modified or added. In areas that do not meet the national ambient air quality standards, NSR assures that new emissions do not slow progress toward cleaner air. In areas that meet the standards, especially pristine areas like national parks, NSR's PSD program assures that new emissions fall within air quality standards.
  2. Ensures that state-of-the-art control technology is installed at new plants or at existing plants that are undergoing a major modification.
- New major stationary sources and major modifications at existing major stationary sources that meet emissions applicability thresholds outlined in the CAA and in existing PSD regulations must obtain a PSD permit outlining how they will control emissions. The permit requires facilities to apply best available control technology, which is determined on a case-by-case basis taking into account, among other factors, the cost and effectiveness of the control.
- States are required by the CAA to include provisions for NSR permitting programs in their SIPs.
- These proposed rules would apply only to states that develop their own programs for issuing PSD permits. EPA must approve a state's PSD program before it becomes enforceable as part of that state's SIP. These programs are referred to as "SIP-approved" PSD programs.
- In areas where a state does not have a current SIP-approved PSD program, sources are issued PSD permits under authority of federal PSD regulations, either by EPA or, under a delegation agreement, by the state. PSD in all tribal lands is implemented under the federal regulations. These proposed rules do not directly affect either states without SIP-approved PSD programs or tribal lands.

## **HOW TO COMMENT**

- EPA will accept comment on both proposed rules for 30 days after publication in the Federal Register.
- Comments, identified by Docket ID No. EPA-HQ-OAR-2010-0107, may be submitted by one of the following methods:
  - [www.regulations.gov](http://www.regulations.gov): Follow the online instructions for submitting comments.
  - E-mail: Comments may be sent by electronic mail (e-mail) to [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
  - Fax: Fax your comments to: (202) 566-9744.
  - Mail: Send your comments to: EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2010-0107, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
  - Hand Delivery or Courier: Deliver your comments to: U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20004, Attention Docket ID No. EPA-HQ-OAR-2010-0107. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

## **FOR MORE INFORMATION**

- To download a copy of this notice, go to EPA's website at: <http://www.epa.gov/nsr>.
- Today's proposed action and other background information are also available electronically at <http://www.regulations.gov>, EPA's electronic public docket and comment system. The docket number for this action is Docket ID No. EPA-HQ-OAR-2010-0107.
- For more information on these actions, contact Ms. Lisa Sutton at (919) 541-3450 or [sutton.lisa@epa.gov](mailto:sutton.lisa@epa.gov).