



EPA Proposes Revisions to PSD and Title V Greenhouse Gas Permitting Regulations

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EPA recently proposed revisions to its Prevention of Significant Deterioration (“PSD”) and Title V regulations that will impact the permitting of greenhouse gases (“GHGs”). These regulatory changes are being proposed to conform with decisions by the U.S. Supreme Court and the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”).

In 2007, the U.S. Supreme Court in *Massachusetts V EPA* held that GHGs fall within the definition of the term “air pollutant” under the Clean Air Act. In response, EPA promulgated regulations that made GHGs subject to PSD and Title V permitting if emissions exceeded the applicability thresholds. EPA recognized that the regulation of GHGs under the PSD and Title V programs would radically increase the number of sources subject to permitting, so EPA promulgated the Greenhouse Gas Tailoring Rule which established a phase-in approach for PSD and Title V applicability based on the amount of GHGs emitted by various sources.

The Greenhouse Gas Tailoring Rule was challenged and upheld by the D.C. Circuit in *Coalition for Responsible Regulation v. EPA*, but was then appealed to the Supreme Court. In *Utility Air Regulatory Group v. EPA*, the Supreme Court held that EPA may not treat GHGs as an air pollutant solely for purposes of determining whether a source is required to obtain a PSD or Title V permit. In other words, a source is not subject to PSD and Title V permitting if it emits GHGs but no other regulated pollutant. The Court also held, however, that EPA could continue to regulate GHGs in PSD and Title V permits issued to sources that exceed applicable thresholds for non-GHG pollutants. The Court sent the case back to the D.C. Circuit to determine which parts of the Greenhouse Gas Tailoring Rule should be struck and which parts should be left in place. The D.C. Circuit then issued an Amended Judgement which, in turn, led to the currently proposed regulatory revisions.

The proposed regulatory changes will remove from the PSD and Title V regulations the requirement to obtain permits for sources based solely on the emission of GHGs. The specific changes being proposed include:

- The addition of an exemption clause to the definitions of “major stationary source” and “major modification” in the PSD regulations to ensure that the rules do not require a source to obtain a permit solely because of the emission or potential emission of GHGs above major source thresholds or significant levels.
- Removal of the definition of the term “greenhouse gases” from within the definition of “subject to regulation” in the PSD regulations and establishment of a standalone definition of “greenhouse gases.” The definition identifies carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride as GHGs.
- Amendment of the definitions of “subject to regulation” and “significant” in the PSD regulations so that GHGs will be subject only to Best Available Control Technology review if the source has been classified as a major stationary source or a major modification for a non-GHG pollutant and there is a significant net emissions increase of GHG emissions.
- For sources subject to PSD due to non-GHG pollutants, establishment of a significant emissions rate of 75,000 tons per year of GHGs on a Carbon Dioxide Equivalent basis as a threshold level below which Best Available Control Technology is not required for GHG emissions.
- Removal of the ability of a source that would be major only for GHGs to obtain a Plantwide Applicability Limitation.
- Refining the PSD Plantwide Applicability Limitation provisions so that a source that is major for a non-GHG pollutant could still apply for a GHG Plantwide Applicability Limitation, but only for the purpose of relieving the source from having to address the Best Available Control Technology requirement for GHGs.
- Revision of the definition of “major source” in the Title V regulations to clarify that GHGs are no longer considered in determining whether a stationary source is a major source.
- As with the PSD regulations, removal of the definition of the term “greenhouse gases” from within the definition of “subject to regulation” in the Title V regulations and establishment of a standalone definition of “greenhouse gases.”

Comments on the proposed rule must be received by EPA on or before December 2, 2016.

81 Fed. Reg. 68110 (October 3, 2016).

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