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Client Alert

EPA Releases Proposed Rule Regarding Permits for Greenhouse Gas Emissions

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The U.S. E.P.A. has taken another step toward regulating greenhouse gas emissions under the Clean Air Act. On September 30, the EPA released a proposed rule setting GHG threshold levels for determining whether a new or modified source of GHG must comply with Prevention of Significant Deterioration (PSD) permitting requirements, including the requirements to demonstrate the use of best available control technology (BACT). The proposed thresholds are 25,000 tons per year of “carbon dioxide equivalent” (CO₂e) of GHGs for a “major stationary source” and 10,000 tons per year of CO₂e for a “significant” increase. EPA proposes to base the calculation of CO₂e on the “Inventory of U.S. Greenhouse Gas Emissions and Sinks,” which is updated annually. The compounds including in the calculation are carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆).

Facilities that meet the threshold levels would include power plants, refineries, and factories. EPA estimates that 400 new sources and modifications to existing sources would be subject to PSD review each year for GHG emissions, but this estimate may be low because the emission factors for carbon dioxide are several orders of magnitude higher than the emission factors for non-GHG for combustion sources. For example, the AP-42 emission factor for natural gas fired heaters is 120,000 pounds of CO₂ and only 7.6 pounds of PM₁₀ per million standard cubic feet of natural gas burned. At these rates, the addition of a new 20 MMBtu gas-fired heater at a major source for GHG would trigger PSD requirements for GHG even though the heater would not be “significant” for any other pollutant.

For each state with an approved PSD program in the state implementation plan (SIP), EPA expressly proposes to take no action on the permitting threshold provisions to the extent the state subjects new sources below 25,000 tons of GHG per year or increases of less than 10,000 tons of GHG per year to PSD requirements.

In addition, EPA estimates that 14,000 large sources would need to obtain Title V operating permits that include GHG emissions. About 3,000 sources would be newly subject to CAA

operating permit requirements as a result of this action. The majority of these newly regulated sources are expected to be municipal solid waste landfills. In general, facilities that already have Title V operating permits would not need to immediately revise them, but these facilities would be required to include estimates of their GHG emissions in the applications to renew their operating permits. Facilities may use the same data reported to EPA under the Mandatory Reporting Rule to fulfill this requirement.

Congress continues to deliberate over regulation of greenhouse gases through a system of tradable emissions credits—known as a “cap-and-trade” system, which is generally viewed as preferable to regulation of GHGs by the EPA under the Clean Air Act. However, until Congress passes legislation, EPA will continue moving forward with its efforts to regulate GHGs. The permitting requirements will be triggered as soon as EPA begins regulating GHGs under the Clean Air Act, which could come as early as the spring of 2010, when EPA’s proposed rule regulating GHG emissions from cars and light-duty trucks is expected to go into effect.

The proposed rule regarding threshold levels can be viewed in its entirety [here](#). Additional information can be found [here](#). EPA will accept comments on the rule until December 28, 2009.