

**Final Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions:  
Federal Implementation Plan for Jefferson County, Kentucky**

**FACT SHEET**

**ACTION**

- On January 10, 2011, the U.S. Environmental Protection Agency (EPA) finalized a Federal Implementation Plan (FIP) to ensure that sources of greenhouse gas (GHG) emissions located in Jefferson County, Kentucky can seek a Prevention of Significant Deterioration (PSD) permit. The Louisville Metro Air Pollution Control District (LMAPCD) is the Clean Air Act permitting authority for Jefferson County, KY.
- In this set of final action, EPA is finding that LMAPCD failed to submit a revised SIP for Jefferson County by their selected deadline (January 1, 2011) and is issuing a federal implementation plan (FIP) to giving EPA the authority to issue PSD permits for sources of GHG emissions in Jefferson County, KY until LMAPCD submits a revised plan that is approved by EPA.
- This FIP will assure that PSD permitting for GHG-emitting sources can continue until the local agency's required SIP revision is complete. A source requiring a PSD permit for its GHG emissions, located in Jefferson County, Kentucky, will be issued a permit by EPA or by the local agency if it takes delegation of the FIP.
- State and local agencies 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 these agencies 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.

**BACKGROUND ON THIS ACTION**

- Greenhouse gases (GHGs) became regulated pollutants under the Clean Air Act on January 2, 2011 when GHG emissions standards for light-duty vehicles took effect. Beginning that date, permits issued under the Clean Air Act permitting programs for large stationary sources of air pollution – the Prevention of Significant Deterioration (PSD) and the Title V Operating Permit Programs – must address GHGs.
- Last April, EPA issued the GHG 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 Clean Air Act (CAA) requires states to develop and follow EPA-approved state implementation plans (SIPs) to implement a number of requirements. These SIPs must include the states' provisions for issuing preconstruction permits under the PSD program. As federal permitting requirements change, as they have to cover GHGs, states may need to modify their SIPs.
- In a December 1, 2010 final rule, EPA found that PSD permitting regulations in 13 states - including the LMAPCD - 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 the permitting agencies in these states selected for submitting their revised permitting plans to EPA. EPA established a deadline of January 1, 2011 for the LMAPCD after the local agency responsible for Jefferson County, KY told EPA that it would not object to this deadline.

## **BACKGROUND ON GREENHOUSE GAS EMISSIONS**

- 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:
  1. **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.
  2. **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. 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 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.
- 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. If a state fails to submit an adequate SIP to EPA, EPA may impose a FIP.

### **FOR MORE INFORMATION**

- To download a copy of this notice, go to EPA's World Wide Web site at: <http://www.epa.gov/nsr>.
- Today's final 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.

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