

**Final Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions:
Finding of Substantial Inadequacy and SIP Call**

FACT SHEET

ACTION

- On December 1, 2010, the U.S. Environmental Protection Agency (EPA) finalized a rule that will ensure industries planning to build new, large facilities or making major expansions to existing plants will be able to obtain a New Source Review Prevention of Significant Deterioration (PSD) permit to control greenhouse gases (GHG) emissions.
- This rule is the next step in EPA's common sense plan to focus permitting on the largest industrial sources, while shielding millions of small businesses that make up the vast majority of the U.S. economy.
- This rule calls on certain states to make changes to their PSD permitting regulations. Together, EPA and the state and local permitting authorities have determined that changes are needed to assure that these states have the authority to issue PSD permits addressing GHGs beginning in January 2011, or very shortly afterward.
- On January 2, 2011, EPA's GHG emissions standards for light-duty vehicles take effect. On that date, Clean Air Act permitting programs for stationary sources must address GHGs. The PSD and the Title V Operating Permits programs are proven tools for protecting air quality and can be used to address GHGs.
- In May 2010, EPA issued the GHG Tailoring Rule. The rule established a common sense approach to permitting GHG emissions, which will be required beginning on January 2, 2011 by operation of the Clean Air Act. The rule does not require new control or permitting requirements, rather it focuses on the largest industrial sources, those emitting nearly 70 percent of the greenhouse gas pollution from stationary sources, while shielding millions of small businesses that make up the vast majority of the U.S. economy.
- In addition to the GHG Tailoring Rule, EPA determined that a variety of actions were needed to assure that permitting for GHGs runs seamlessly. Together with state and local permitting authorities, EPA will ensure that:
 - Permitting agencies have the authority to permit GHGs,
 - Clean Air Act permitting for GHGs follows the phased in approach outlined in the GHG Tailoring Rule - focusing initially on the largest sources of GHGs, and
 - Appropriate technical information and guidance, and/or Agency assistance are available to permitting authorities and regulated facilities involved in the GHG permitting process.

- Today's final rule addresses the first of these actions. The Clean Air Act (CAA) allows 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. When federal permitting requirements change, as they will when EPA's GHG emissions standards for light-duty vehicles take effect in January 2011, states may need to modify their SIPs to meet the new requirements. Assuring that each state and local permitting agency has the authority to permit GHGs requires SIP changes in a number of states. EPA worked closely with the states on this rule.
- In this final rule, EPA finds that PSD permitting regulations in 13 states 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 is issuing a "SIP call," which requires these states to revise their SIPs to ensure that their PSD programs cover GHG emissions.
- The 13 states are: Arizona; Arkansas; California; Connecticut; Florida; Idaho; Kansas; Kentucky; Nebraska; Nevada; Oregon; Texas; and Wyoming.
- This rule also establishes the dates these 13 states have selected for submitting their revised permitting plans to EPA.
 - Seven states opted for the earliest SIP submittal deadline – December 22, 2010. These states include: Arizona, Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming.
 - 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 act on permits between January 2011 and their planned submittal dates.
 - Texas did not select a SIP submittal date and, under the Clean Air Act, would default to the latest possible date – one year from this action's signature on December 1, 2010. EPA, however, is planning additional actions to ensure that GHG sources in Texas can be issued permits as of January 2, 2011.

NEXT STEPS TO ASSURE THAT GHG PERMITTING RUNS SMOOTHLY

- EPA is working closely with all 13 states to help them develop and submit necessary SIP revisions that enable them to issue PSD permits to GHG-emitting sources. EPA will promptly review and act on their SIP submittals.
- If any state is unable to meet its deadline, EPA will issue a Federal Implementation Plan (FIP) that applies only to GHGs. The FIP will authorize EPA to issue PSD permits to the GHG sources located in that state or local area until the state's required SIP revision is approved by EPA.

- The first set of seven states agreed to the earliest deadline with the understanding that if the state misses the deadline, EPA will issue a FIP as early as December 23 (or the day after the submittal deadline has passed).
- EPA is planning additional actions to ensure that GHG sources in Texas can be issued permits as of January 2, 2011.
- In a separate action, EPA will soon issue a final rule to assure that all states can use the phased in approach outlined in the GHG Tailoring Rule - focusing initially on the largest sources of GHGs.

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:
 1. **Endangerment Finding:** The Administrator found that the current and projected atmospheric concentrations of the six key well-mixed GHGs – CO₂, CH₄, N₂O, HFCs, PFCs, and SF₆ – 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. 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 Rule (LDVR) on May 7, 2010, which established regulations under the Clean Air Act (CAA) that control emissions of carbon dioxide (a constituent of GHG). Taken in conjunction with the operation of the Clean Air Act and with other recent EPA actions, the LDVR established that CAA permitting requirements apply to GHG emissions. More specifically, EPA's related actions established that PSD requirements apply to GHG emissions from stationary sources beginning on January 2, 2011.
- The "Tailoring Rule," published June 3, 2010, focused the applicability of PSD requirements on the largest GHG-emitting sources on a phased-in basis. Covered facilities include power plants, industrial boilers, and oil refineries, and are responsible for 70 percent (by mass) of the GHGs emitted by stationary sources.
- 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.

FOR MORE INFORMATION

- To download a copy of this notice, go to EPA's website 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.
- For more information on the final rule, contact Ms. Lisa Sutton at (919) 541-3450 or sutton.lisa@epa.gov.