

FACT SHEET
**Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases:
Removal of Certain Vacated Elements**

ACTION

- On August 12, 2015, the Environmental Protection Agency (EPA) issued a good cause final rule to remove portions of its Prevention of Significant Deterioration (PSD) and title V permitting regulations that were initially promulgated in 2010 and that the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) specifically identified as vacated in the *Coalition for Responsible Regulation v EPA* Amended Judgment (*Coalition* Amended Judgment) that followed the U.S. Supreme Court decision in *Utility Air Regulatory Group (UARG) v EPA*.
- In *UARG v. EPA*, the U.S. Supreme Court said that the EPA may not treat greenhouse gases (GHG) as an air pollutant for the specific purpose of determining whether a source (or modification thereof) is required to obtain a PSD or title V permit, and thus declared that the EPA regulations implementing that approach for determining whether a PSD or title V permit is necessary (i.e., Step 2 of the Tailoring Rule) are invalid. The *Coalition* Amended Judgment specifically identified the permitting regulations that were vacated and must now be removed from EPA's PSD and title permitting regulations.
- This good cause final rule removes from the PSD and title V regulations those vacated provisions that can be removed from the EPA regulations through a ministerial action. The removed regulations include portions of Step 2 of the Tailoring Rule as applicable to the PSD program and the PSD and title V regulations that required EPA to consider further phasing-in the GHG permitting requirements at lower GHG emission thresholds. The EPA intends to further revise the PSD and title V regulations in a separate rulemaking to fully implement the *Coalition* Amended Judgment.
- This action follows memoranda issued by the Agency on July 24, 2014 and December 19, 2014 that announced our preliminary views and next steps on the application of PSD to GHGs following the *UARG v. EPA* Supreme Court decision. The memoranda can be found on our GHG permitting website: <http://epa.gov/nsr/ghgpermitting.html>.
- The EPA is issuing this good cause final rule without a prior notice-and comment rulemaking because this action is ministerial in nature.

BACKGROUND

- New Source Review (NSR) is a preconstruction permitting program established under the 1977 Clean Air Act (CAA) Amendments that serves two important purposes:
 1. It ensures the maintenance of air quality standards when major stationary sources such as factories, industrial boilers and power plants are constructed or modified. In areas that do not meet the national air quality standards, nonattainment NSR ensures

that new emissions do not slow progress toward cleaner air. In areas that meet the standards, including pristine areas like national parks, NSR's PSD program ensures that new emissions will not cause air quality to deteriorate significantly and that these areas will continue to attain air quality standards.

2. The NSR program ensures that state of the art control technology is installed at new plants or at existing plants that are undergoing a major modification.
- The title V operating permit program, established under the 1990 CAA Amendments, is a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and for assuring compliance with such requirements, but does not generally impose new substantive air quality control requirements.
 - On June 3, 2010, the EPA published the final Tailoring Rule, which phased in permitting requirements for greenhouse gas emissions from stationary sources under the CAA permitting programs. The final Tailoring Rule set thresholds for GHG emissions that define when permits under the NSR PSD and title V permit programs were required for new and existing industrial facilities based on the level of greenhouse gas emissions from a source.
 - Step 1 of the Tailoring Rule (January 2, 2011 to June 30, 2011) only applied to sources that were subject to the program before greenhouse gases were regulated under the Clean Air Act (i.e., those sources that were newly-constructed or modified in a way that significantly increased emissions of a pollutant other than GHGs). During this time, no sources were subject to CAA permitting requirements due solely to GHG emissions.
 - Step 2 of the Tailoring Rule began on July 1, 2011, and allowed PSD and title V requirements to apply to additional sources based solely on GHG emissions if those emissions exceeded certain regulatory limits. The Step 2 permitting regulations for GHG-only sources are the portion of the GHG permitting regulations that the U.S Supreme Court found to be invalid in *UARG v EPA*.

ADDITIONAL INFORMATION

- Interested parties can download information on this action from EPA's Web site at: <http://epa.gov/nsr/actions.html>.
- The notice of proposed rulemaking and other background information are also available either electronically in www.regulations.gov, EPA's electronic public docket and comment system. Docket ID No. is EPA-HQ-OAR-2015-0414.