

EPA promulgates final greenhouse gas “tailoring rule”

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In our last issue, we discussed EPA’s proposed “Tailoring Rule,” which is intended to raise the Prevention of Significant Deterioration (PSD) thresholds of 100 and 250 tons per year, and the Title V permitting threshold of 100 tons per year, to minimize the number of stationary sources that would be impacted by the automatic application of PSD and Title V to such low emissions rates of greenhouse gas (“GHG”). As you recall, these thresholds are triggered as a result of EPA’s endangerment/cause and contribute findings and the mobile source rules which EPA adopted in response to the Supreme Court’s 2007 decision *Massachusetts v. EPA*, in which the Supreme Court determined that GHGs are “air pollutants” under the CAA.



On June 3, 2010, EPA promulgated its Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule. 75 Fed. Reg. 31514 (June 3, 2010). While EPA had proposed an initial threshold of 25,000 short tons of carbon dioxide equivalent (“CO₂e”) emissions, in its final rule, EPA raised the threshold to 75,000 tons per year of CO₂e. Permitting pursuant to the Tailoring Rule will be implemented in two steps. In “Step 1,” beginning January 2, 2011, GHG sources will become subject to PSD for their GHG emissions if they undergo PSD permitting anyway, either for new construction or for modification projects based on emissions of non-GHG pollutants, as long as they increase their GHG emissions by 75,000 tons per year of CO₂e, or more. These sources will undergo BACT only if GHG emissions from new construction or modification, on a purely mass basis, exceed zero tons per year, and, GHG emissions or increases equal or exceed 75,000 tons per year CO₂e. In Step 1, Title V sources will be required to address GHGs as part of their Title V permitting when they apply for, revise or renew their Title V permits.

In Step 2, beginning July 1, 2011, sources with the potential to emit 100,000 CO₂e or more, as well as another other regulated New Source Review pollutants over the 100 or 250 ton statutory thresholds) will be considered major sources under PSD. Any physical change or change in the method of operation at a major source resulting in a net GHG emissions increase of 75,000 tons per year CO₂e or more will be subject to PSD review (assuming an increase in GHG emissions based purely on mass). Title V sources will continue to include GHG in Title V permitting in Step 2 as well as long as they remain subject to Title V based upon emissions of nonGHG emissions. However, sources with GHG emissions exceeding 100,000 tons per year CO₂e will be required to obtain a Title V permit regardless of nonGHG emissions, as long as the mass GHG emission rate exceeds 100 tons per year.

EPA is attempting to limit the effects of the Tailoring Rule by, first, narrowing the definition of “potential to emit” to reflect something closer to actual emissions. Second, EPA is considering adopting “general permits” for GHG sources. Finally, EPA continues to focus on developing a workable method of applying the CAA’s “Best Available Control Technology” (the requirement that automatically applies to new major GHG sources/major modifications).

LINKS

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