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EPA Proposes to Limit GHG Permitting to Large Sources

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On March 8, 2012, EPA published its proposal for Step 3 of the Prevention of Significant Deterioration ("PSD") and Title V Greenhouse Gas ("GHG") Tailoring Rule, which addresses permitting of GHG emissions from stationary sources under the Clean Air Act. Under the Step 3 proposal, EPA would not lower the permitting thresholds set forth in Steps 1 and 2 of the Tailoring Rule, which were issued by EPA on June 3, 2010, and would provide permitting authorities with additional flexibility to streamline permitting for sources that would otherwise be subject to the PSD program. 76 Fed. Reg. 14226 (March 8, 2012). A final rule is expected by July 2012, with an effective date of July 2013.

Under the Step 1 and Step 2 rulemakings, stationary sources with a potential to emit of more than 100,000 tons per year ("tpy") of CO₂e and modifications of existing sources that total more than 75,000 tpy of CO₂e must go through the PSD permitting process. As part of these earlier actions, EPA also committed to review the inclusion of smaller sources in the PSD permitting program and to propose streamlining provisions that would ease implementation of GHG permitting for both sources and state permitting authorities.

In its proposal, EPA refers to analyses demonstrating that reducing the 100,000 tpy threshold to 50,000 tpy would increase by 3,000 the number of sources that become major sources due to GHG emissions alone, while the number of modifications of existing sources triggered by a 50,000 tpy (as opposed to a 75,000 tpy) threshold would increase by more than 1,000. EPA also claims that lowering the thresholds would address only an additional three percent of GHG from stationary sources. EPA asserts that these statistics, coupled with the increased burden on permitting authorities, justify maintaining the thresholds set in Step 1 and Step 2 of the Tailoring Rule. EPA notes, however, that "a decision not to lower the thresholds in Step 3 does not foreclose a decision to lower them in Step 4." 76 Fed. Reg. at 14238. The Step 4 final rulemaking is not expected until April 30, 2016.

EPA also proposed two streamlining measures for GHG permitting: (1) creation of Plantwide Applicability Limits or "PALs" for GHG emissions; and (2) creation of a federal synthetic minor source permitting program for GHG.

A PAL is an emission limit that is applied to an entire source rather than individual emission limits. The PAL for GHG emissions would provide a source that is not major for any non-GHG pollutants with the flexibility to

increase GHG emissions from individual units without triggering PSD permitting as long as it has accepted—and does not exceed—a source-wide limit on GHG.

A synthetic minor permit for GHG would allow a source that is not a major source for non-GHG pollutants, but with a potential to emit ("PTE") above the regulatory thresholds for CO₂e, to agree to an enforceable GHG emissions limit that is below the Tailoring Rule thresholds and therefore avoid PSD permitting. Although EPA asserts that many state permitting authorities already have this flexibility, the regulations for areas where EPA is the permitting authority must be amended to allow EPA to issue synthetic minor permits. This would include Indian Country and those states, including Wyoming, that do not yet have authority under their State Implementation Plans to regulate GHG.

In addition to these proposals, EPA seeks comment on a number of aspects of the GHG permitting program, including the impact of lowering the GHG thresholds for both PSD applicability and Title V, and various permit streamlining techniques such as general permits and the development of presumptive Best Available Control Technologies or "BACT" for GHG. EPA indicated that it does not intend to address any of these issues in the final rule, but may include these concepts in future rulemakings.

Comments must be received on or before April 20, 2012.

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