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EPA's Increase in Global Warming Potential of Methane Could Trigger Permitting Obligations For Minor Sources of Greenhouse Gases

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On November 29, 2013, EPA published the final rule increasing the Global Warming Potential (GWP) of methane from 21 to 25. As a result of these revisions, facilities must multiply each ton of methane emitted by 25 when calculating CO₂ equivalent emissions under both the Greenhouse Gas (GHG) Reporting Rule and the Title V and Prevention of Significant Deterioration (PSD) permitting programs. As EPA acknowledges in the preamble to the final rule, the revision could trigger permitting obligations for facilities that currently are emitting at below major source thresholds.

The change to the GWP of methane is incorporated into Table A-1 of the GHG Reporting Rule, which sets forth the GWP of all GHG for purposes of calculating emissions under the Reporting Rule, and is being made as part of broader revisions to the GHG Reporting Rule. The revision to Table A-1 therefore will directly affect facilities subject to reporting under the GHG Reporting Rule, including oil and gas facilities, underground coal mines, soda ash production, and petroleum refineries. The effective date of the rule is January 1, 2014, and EPA states that it would be "prudent" for reporting facilities to use the new GWP when calculating GHG emissions for reporting year 2013 annual reports.

Furthermore, Table A-1 is referenced by the GHG Tailoring Rule and therefore is relevant to both Title V and PSD permitting of GHG. EPA acknowledges in the preamble to the rule that the change to the GWP of methane could trigger Title V and PSD permitting for facilities with emissions currently below major source permitting thresholds, including those operating under a synthetic minor permit that limits emissions to below major source thresholds. For example, EPA states that where synthetic minor source permit limits are established in terms of CO₂ equivalent (as opposed to a mass-based emission limit), this change could affect a facility's ability to comply with the terms of its permit.

The rule also affects facilities that are in the permitting process. While existing PSD permits would not be reopened or revised as a result of issuance of the final rule, and EPA states that emission limits will continue

to be based on the GWP of methane that was in effect at the time of permit issuance, the new rule will affect any permit that has not yet been issued. If a state has a delegated program, or if states incorporate by reference the PSD regulations without specifying an "as of" date, the change will apply to permits on January 1, 2014. If a state needs to adopt amendments to the GWPs in their State Implementation Plan, a facility seeking a permit in that state will have additional time before the change affects the PSD permitting process. For purposes of Title V permitting, however, the revisions to the GWP of methane will become effective as of January 1, 2014.

EPA also notes that many state reporting and emission reduction programs rely on the GWP set forth in Table A-1. In addition to increasing the GWP of methane, EPA also made changes to the GWP of nitrous oxide, sulfur hexafluoride, and added a GWP for a number of fluorinated GHG.

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