

Much Ado about Nothing: EPA Proposes Existing GHG Permitting Levels, GHG Permitting Streamlining Measures

FEBRUARY 29, 2012

On February 27, 2012, EPA released a proposed rule to maintain the existing applicability thresholds for PSD and Title V GHG permitting. The proposed rule will be part of the Tailoring Rule, which “tailored” the PSD and Title V permitting requirements to GHG emissions. Steps One and Two of the [Tailoring Rule](#) were finalized in 2010. Step One, which became effective on January 2, 2011, required stationary sources already subject to Title V and PSD permitting to obtain PSD permits for GHG emission increases of 75,000 or more tons per year (“tpy”) CO₂e and address GHGs in Title V permits. Under Step Two, effective July 1, 2011, sources not already subject to PSD and Title V permitting requirements for non-GHG pollutants had to obtain PSD and Title V permits if they emitted, or had the potential to emit, 100,000 tpy or more CO₂e. Sources conducting a modification that increased GHG emissions by at least 75,000 tpy CO₂e were also required to obtain a PSD permit.

When the Tailoring Rule was finalized, EPA indicated that by July 1, 2012, it would complete a Step Three of the rule to apply GHG permitting to additional sources by July 1, 2013. The Tailoring Rule requires EPA to finalize an action “on promulgating lower GHGs thresholds for PSD applicability” and Title V applicability. 40 C.F.R. §§ 52.22(b)(1), 70.12(b)(1). EPA also indicated that it might solicit comment on the permanent exclusion of sources from one or both permitting programs due to the “absurd results” doctrine. 75 Fed. Reg. 31,524 (June 3, 2010). With the release of this proposed rule, EPA has retreated from that commitment to promulgate lower GHG thresholds. EPA indicated its analysis of the impacts from lowering the threshold to as low as 60,000 tpy CO₂e revealed that a significantly large number of sources would be added to the program, but only an additional 1% of GHG emissions from all stationary sources above the statutory thresholds would be implicated. EPA determined that lowering the applicability thresholds and the corresponding increase in administrative burdens was not worth such a relatively small environmental benefit. EPA also cited the need to develop streamlining efficiency measures for GHG permitting, before additional sources could be brought into the program. To that end, EPA has proposed two streamlining measures. The first would allow plantwide applicability limits for GHG emissions and thereby provide sources with increased flexibility. The second streamlining measure would allow sources located in areas subject to federal GHG PSD permitting to obtain synthetic minor limitations for GHGs in lieu of a GHG PSD permit.

EPA will accept comment for 45 days after publication in the Federal Register on the proposed rule and other aspects of its GHG permitting program, including permitting burdens, and other permit streamlining measures. EPA will also hold a hearing on the proposed rule on March 20, 2012 in Arlington, Virginia.

2 Min Read

Related Topics

Climate Change

Rulemaking

Related Capabilities

Environmental

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.