

**Proposed Revisions to the Prevention of Significant Deterioration
and Title V Permitting Regulations for Greenhouse Gases (GHG)
and Establishment of a GHG Significant Emissions Rate**

FACT SHEET

PROPOSED ACTIONS AND CONTEXT

- On August 26, 2016, the U.S. Environmental Protection Agency (EPA) issued a proposed rule to revise provisions in the Prevention of Significant Deterioration (PSD) and title V permitting regulations applicable to greenhouse gases (GHGs) to fully conform with recent court decisions.
- Today's proposal is part of a series of common sense steps EPA has taken to respond to the June 23, 2014, Supreme Court decision in *Utility Air Regulatory Group (UARG) v. EPA* and the April 10, 2015, Court of Appeals for the District of Columbia (D.C. Circuit) *Coalition for Responsible Regulation v EPA* Amended Judgment (Amended Judgment).
- In *UARG v. EPA*, the Supreme Court considered the extent to which the PSD and Title V permitting requirements in the Clean Air Act apply to GHGs. The Court upheld EPA's reading that PSD requirements apply to greenhouse gas emissions from sources that are otherwise required to obtain a PSD permit because they have the potential to emit large amounts of conventional pollutants. However, the Court also held that the EPA may not treat GHGs as an air pollutant for the specific purpose of determining whether a source (or modification thereof) is required to obtain a PSD permit, or for the purpose of determining whether a source is a major source required to obtain a title V permit.
- EPA is proposing to revise several provisions in the permitting regulations that determine whether a source must obtain a permit. EPA is also proposing to establish a Significant Emission Rate (SER) for GHGs, which will be used to determine whether PSD permits are required to contain an emissions limit for GHGs.
- Highlights of the proposal include:
 - Revisions to certain PSD definitions and GHG Plantwide Applicability Limitations (PAL) provisions to ensure that sources that emit or have the potential to emit only GHGs above the major source applicability thresholds are no longer required to obtain a PSD permit.
 - Revisions to a few state-specific PSD provisions to ensure that sources that emit or have the potential to emit only GHGs above the major source applicability thresholds are no longer required to obtain a PSD permit.
 - Revisions to the title V regulations to ensure that a stationary source will not be required to obtain a title V permit solely because the source emits or has the potential to emit GHGs above the major source thresholds.

- Revisions to remove certain “narrowing” provisions from some EPA-approved title V programs for specific states, as we believe those would no longer be needed in light of the other proposed revisions to the title V regulations, among other things.
- In addition, in response to the *UARG v. EPA* decision, the EPA is proposing a 75,000 tpy CO_{2e} Significant Emission Rate (SER) for GHGs. The SER establishes a *de minimis* level below which best available control technology (BACT) is not required for this pollutant.
- EPA will accept written comments on the proposed rule for 60 days after it is published in the *Federal Register*.

BACKGROUND

- The PSD program 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 are designated as attainment or unclassifiable for national ambient air quality standards (NAAQS), including pristine areas like national parks, the 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 PSD program ensures that state of the art control technology is installed at new plants or at existing plants that are undergoing a major modification through the application of BACT for the regulated pollutant.
- 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 it 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 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.
- The EPA actions under review in the court cases included the Tailoring Rule. Under Step 1 of the Tailoring Rule phase-in, PSD and Title V requirements were applicable to only sources that had previously been required to obtain PSD and Title V permits based on emission of pollutants other than GHGs. Step 2 expanded these permitting programs to apply to sources that had the potential to emit only GHGs above applicable thresholds. The D.C. Circuit’s Amended Judgment vacated the EPA regulations that implemented Step 2 of the Tailoring Rule and directed EPA to rescind or revise those provisions and consider whether any further revisions to its regulations are appropriate.

- In *UARG v EPA*, the Supreme Court said that the BACT requirement of the PSD program continues to apply to GHG emissions from sources that are required to obtain a PSD permit because their construction or modification will result in emissions of pollutants above applicable thresholds. In addition, the Supreme Court recognized EPA's authority to limit the application of the BACT requirement to GHGs in those situations where a source has the potential to emit the pollutant in only a relatively small amount that could be considered trivial or *de minimis*.
- In an initial step to comply with the Amended Judgment, on August 19, 2015, the EPA issued a final rule that amended the PSD and title V regulations to remove certain vacated provisions that had been specifically identified by the court and that could be easily dropped from the regulations. The removed regulations included provisions implementing Step 2 of the Tailoring Rule in the PSD program, and the portion of the PSD and title V regulations that required EPA to study and consider further phasing-in the GHG permitting requirements at lower GHG emission thresholds.

FOR MORE INFORMATION

- To download a copy of this proposed rule, go to the EPA's New Source Review website at: <http://www.epa.gov/nsr/nsr-regulatory-actions>.
- Today's Proposed Rule and other associated information are available either electronically at www.regulations.gov, the EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room. (Docket ID No. is EPA-HQ-OAR-2015-0355)
- The Public Reading Room is located in the EPA Headquarters, Room Number 3334 in the William Jefferson Clinton West Building, located at 1301 Constitution Avenue, NW, Washington, D.C. Hours of operation are 8:30 a.m. to 4:30 p.m. eastern standard time, Monday through Friday, excluding Federal holidays.
- Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.

HOW TO COMMENT

- Comments on the proposed rule (identified by Docket ID Number EPA-HQ-OAR-2015-0355) may be submitted by one of the following methods:
 - www.regulations.gov: follow the on-line instructions for submitting comments.
 - Email: Comments may be sent by electronic mail (email) to a-and-r-Docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2015-0355 in the subject line of the message.

- Fax: Fax your comments to: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2015-0355.
 - Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Attention Docket ID No. EPA-HQ-OAR-2015-0355, Mail Code 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
 - Hand/Courier Delivery: EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue, NW, Washington, DC 20004, Attention Docket ID No. EPA-HQ-OAR-2015-0355. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.
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- Special considerations apply for submissions which contain information considered to be Confidential Business Information or other information the disclosure of which is restricted by statute. For more information on this, as well as the full EPA public comment policy, information about multimedia submissions and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.