

### US EPA REVISES MANDATORY REPORTING RULES FOR GREENHOUSE GAS EMISSIONS

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On May 13, 2010, the United States Environmental Protection Agency (US EPA) released its final Prevention of Significant Deterioration (PSD) Tailoring Rule pertaining to the permitting of major stationary sources of greenhouse gas (GHG) emissions. The proposed final Tailoring Rule is the US EPA's most recent foray into GHG regulation under the Clean Air Act (CAA) and presents a significant departure from the previously expected reach of the GHG regulatory scheme. Under existing CAA regulations, many small businesses and other types of operations, such as office buildings, schools, restaurants and residential developments would be subject to these new reporting requirements. The Tailoring Rule is intended to increase the thresholds for GHG source review and phase in the applicability of the monitoring and reporting program depending on the prior permitting status of the source and amount of GHG emissions.

The first phase of the Rule begins January 2, 2011, when sources that are otherwise regulated as major sources for non-GHG pollutants would be required to undergo PSD review for GHGs if they have a potential to emit 75,000 tons or more of carbon dioxide equivalent per year. A major source which has obtained a PSD permit before January 2, 2011, will not be subject to PSD requirements for GHGs unless it applies for a PSD permit to modify an existing source. In addition, during this phase Title V operating permits under the CAA would be required for sources of GHG that otherwise are major sources for non-GHG regulated emissions.

The second phase of the Rule begins July 1, 2011, and will pertain to sources that have the potential to emit 100,000 tons or more of carbon dioxide equivalent per year of GHGs, regardless of whether the source would otherwise be a major source for any other emission. Major modification PSD review will be triggered if the modification would result in an increase of 75,000 tons per year or more of carbon dioxide equivalent of GHGs. In this phase, sources of 100,000 tons or more of carbon dioxide equivalent GHGs would be required to obtain a Title V permit if they do not already have one.

Phase three involves a rule-making process in which US EPA will seek comment as to how to regulate smaller sources of GHGs and will result in a final rule on or before July 1, 2012 setting these lower thresholds. US EPA has committed that it will not seek to regulate sources of less than 50,000 tons of carbon dioxide equivalent GHGs under the PSD and Title V programs before 2016.

The proposed rules are slated to take effect on August 14, 2010. State environmental regulatory agencies are expected to implement the rules immediately. In Michigan, the Department of Natural Resources and Environment (DNRE) intends to adopt the Tailoring Rule as promulgated.

Sources of GHGs subject to regulation will be required to achieve "Best Available Control Technology" (BACT) to limit GHG emissions under permits for new facilities and major modifications to existing facilities. It is uncertain at this time what will constitute BACT to control GHGs as these types of emissions have not been regulated before so as to establish a body of technical knowledge sufficient to give meaning to this regulatory term.

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