

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



Air Permits Required for Greenhouse Gas Emissions under the Clean Air Act

The Obama Administration's effort to regulate greenhouse gas ("GHG") emissions under the federal Clean Air Act ("CAA") will begin on January 2, 2011 when GHG emissions from commercial and industrial sources will become "subject to regulation" under the Title V and Prevention of Significant Deterioration ("PSD") permitting programs. The applicability of these permitting requirements to GHG emissions is prompted by the U.S. Environmental Protection Agency's ("EPA") determination that GHG emissions contribute to air pollution that endangers human health and welfare, and EPA's subsequent regulation of GHG tailpipe emissions from cars and light trucks. See 74 Fed. Reg. 66494 (Dec. 15, 2009) and 75 Fed. Reg. 25324 (May 7, 2010).

In an effort to reduce the number of sources required to obtain permits as a result of their GHG emissions, EPA issued a final "tailoring" regulation that significantly raises the permit applicability thresholds for GHGs. See 75 Fed. Reg. 31514 (June 3, 2010). This action was necessary because GHGs are emitted in much higher amounts than traditional criteria pollutants, such as particulate matter and sulfur dioxide. Thus, even light commercial operations, restaurants or hospitals for example, may have exceeded permitting thresholds applicable to criteria pollutants (i.e., 100 or 250 tons per year ("tpy")) merely as a result of fossil fuel combustion for heating and other uses. EPA reasoned that subjecting all of these previously unpermitted sources to new construction and operating permit requirements would have been unduly burdensome to these facilities and state regulatory agencies.

The tailoring rule includes special provisions for the six-month period from January 2, 2011 to July 1, 2011. After July 1, 2011 existing sources that emit or have the potential to emit 100,000 tpy or more of CO₂ equivalent ("CO₂e") that undertake a modification that increases emissions of GHGs by 75,000 tpy or more of CO₂e will be subject to PSD. Additionally, new facilities that emit or have the potential to emit 100,000 tpy or more of CO₂e emissions are also subject to PSD. In both cases, sources would be required to limit GHG emissions by applying Best Available Control Technology ("BACT"). Over the next five years, EPA will study the regulation of GHGs under the PSD program and consider whether the permitting thresholds should be revised. Finally, the rule increases the 100 tpy threshold for Title V operating permits to 100,000 tpy of CO₂e for GHG sources.

Absent the tailoring rule, EPA estimated that more than six million additional sources would have needed Title V operating permits and 82,000 PSD permitting actions per year would have been required to address GHG emissions. Under the tailoring rule, EPA estimates that approximately 550 facilities will be required to obtain a Title V permit for the first time. Furthermore, 900 additional PSD permitting actions per year are expected.

Numerous legal challenges to EPA's June 3rd tailoring regulation have already been filed while Congress continues to ponder climate legislation with no clear legislative timeline.

BCCZ's Climate Change Group actively tracks legislative, regulatory, and litigation developments regarding greenhouse gas issues at all levels of government and advises clients as to the potential impacts. For more information on these or other greenhouse gas issues, please contact Michael H. Winek (412) 394-6538 mwinek@bccz.com or Seth A. Rice (412) 394-5490 srice@bccz.com.



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