



Client Alert

MACDONALD, ILLIG, JONES AND BRITTON LLP

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USEPA Proposed Rules for Greenhouse Gases

On October 27, 2009 USEPA proposed a new rule governing permitting requirements for sources that emit greenhouse gases and on October 30, 2009 USEPA published a final rule governing the reporting of greenhouse gas emissions. The rules are entitled "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" and "Mandatory Reporting of Greenhouse Gases" respectively and a brief overview of the rule follows.

I. Proposed PSD and Title V Greenhouse Gas Tailoring Rule

a. Who would be affected?

The proposed new rule would focus permitting requirements on large facilities that emit over 25,000 tons of greenhouse gases (GHG) per year. The rule will set new thresholds for greenhouse gas emissions under the Clean Air Act's New Source Review and Title V permit programs. The purpose of the rule is to tailor the permit programs to focus on facilities that emit 70 percent of national GHG emissions.

1. Title V

Under Title V, the threshold for "major source" would be set at 25,000 tons per year of potential GHG emissions. Facilities that fit this new definition would need to obtain a Title V operating permit. This proposed level is consistent with the threshold incorporated into the October 30, 2009 mandatory GHG reporting rule and the change is designed to keep thousands of smaller sources of GHG emissions from being automatically designated as major sources as a result of carbon dioxide now being identified as an air pollutant.

2. Prevention of Significant Deterioration ("PSD")

The proposed GHG permitting rule would set the following threshold levels triggering permit requirements for new sources and existing sources making major modifications: the construction of a new source with emissions of 25,000 tons per year or more of GHG or the significant modification of an existing source resulting in 10,000 to 25,000 tons per year of GHG emissions would meet the new definition of a "major stationary source". Facilities meeting these new thresholds would be required to obtain a PSD permit in order to operate.

II. Mandatory Reporting of Greenhouse Gases

a. Who is affected?

The new reporting rule focuses on numerous listed categories of industries, regardless of emission rates, including electricity generating facilities, petroleum refineries, natural gas suppliers, and numerous raw material and chemical production facilities. It also affects landfills, pulp and paper manufacturers, certain raw material production facilities and any facility with stationary fuel combustion sources that emit over 25,000 metric tons of GHG per

year.

b. When did it become effective?

The reporting rule went into effect January 1, 2010 and requires affected entities to begin measuring and tracking their greenhouse gas emission. The first reports to USEPA are due by March 31, 2011 and must cover the 2010 reporting year.

c. What are the requirements?

Facilities must quantify their greenhouse gas emissions. The methods required for quantifying emissions vary widely with source category and size, fuels combusted, existing monitoring equipment, etc. Sources in categories like the stationary fuel combustion source category that are subject to the 25,000 metric ton reporting threshold are responsible for determining whether they will be required to report for 2010 based upon estimated production levels. Most industrial facilities have stationary fuel combustion sources and will need to follow the specific instructions for calculating the estimated carbon dioxide emissions to determine whether they will fall below the 25,000 metric ton cutoff. Those facilities that are in fact regulated under the reporting rule will need to track and report greenhouse gas emissions on an annual basis. Records of greenhouse gas emissions are required to be kept for a minimum of three years. Ultimately, the data collected by USEPA will likely be used to develop regulations to limit greenhouse gas emissions.

III. More Information

For more information on how these proposed rules could change your permit needs and environmental compliance, contact the author of this article, any member of the Environmental Law Group at MacDonald Illig, or the MacDonald Illig attorney with whom you have worked.

For more information:



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