

**Determinations Concerning Need for Error Correction, Partial Approval and Partial Disapproval; and Federal Implementation Plan Regarding Texas's Prevention of Significant Deterioration Program**  
**Final Rule**

**FACT SHEET**

**ACTION**

- On April 22, 2011, the U.S. Environmental Protection Agency (EPA) issued a final rule that ensures businesses in Texas will be able to seek and obtain the air permits needed for new or expanding projects that increase greenhouse gas (GHG) emissions.
- In this action, EPA has determined that it made an error when it originally approved the Texas PSD permitting State Implementation Plan (SIP) because the state of Texas did not address how the program will apply to pollutants newly subject to regulation and did not provide assurances that the program has adequate legal authority to apply to such pollutants. This error has consequences for GHG, because GHG became newly regulated earlier this year.
- EPA took this action as an interim final rule in December 2010 and issued a parallel proposal for public comment. The final rule issued today responds to public comment on the proposal and will replace the interim final rule, which will expire at the end of April 2011.
- The partial disapproval of the Texas SIP authorizes EPA to issue a Federal Implementation Plan (FIP) for Texas. The FIP is included in this rulemaking.
- Under the FIP, EPA will be the permitting authority for GHG-emitting sources in Texas until the state submits and EPA approves a SIP that includes provisions to regulate GHG.
- States are best-suited to issue permits to sources of GHG emissions. They have longstanding experience working together with industrial facilities under their jurisdiction to process PSD permit applications. EPA intends to delegate the authority to issue GHG permits to states if requested. EPA will continue to provide guidance and act as a resource for the state of Texas as we work together to make the various required permitting decisions for GHG emissions and will work with the state to develop authority to issue permits for GHG emissions if it wishes.

**BACKGROUND**

- On April 2, 2007, the Supreme Court found that GHGs, including carbon dioxide, are air pollutants covered by the CAA. *Massachusetts v. EPA*, 549 U.S. 497 (2007). The Court found that EPA was required to determine whether or not emissions of GHGs from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to

endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision.

- On December 7, 2009, the EPA Administrator signed two distinct findings regarding GHGs under section the CAA:
  1. **Endangerment Finding:** The Administrator found that the current and projected atmospheric concentrations of the six, key, well-mixed GHGs—CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, and SF<sub>6</sub>—threaten the public health and welfare of current and future generations.
  2. **Cause or Contribute Finding:** The Administrator found that the combined emissions of these well-mixed GHGs from new motor vehicles and new motor vehicle engines contribute to greenhouse gas pollution, which threatens public health and welfare.

These findings, published December 15, 2009, do not impose any requirements on industry or other entities. However, they were a prerequisite to finalizing the GHG standards for light-duty vehicles.

- On December 18, 2008, EPA issued a memorandum, "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program" (known as the "Johnson Memo" or the "PSD Interpretive Memo"). Whether a pollutant is "subject to regulation" is important for the purposes of determining whether it is covered under the CAA permitting programs. The PSD Interpretive Memo established that a pollutant is "subject to regulation" only if it is subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant. On February 17, 2009, EPA granted a petition for reconsideration of this memorandum.
- On March 29, 2010, the Administrator signed a notice conveying the Agency's decision to continue applying the PSD Interpretive Memo's interpretation of "subject to regulation." EPA concluded that the "actual control interpretation" is the most appropriate interpretation. The Agency established that CAA permitting requirements apply to a newly regulated pollutant at the time a regulatory requirement to control emissions of that pollutant "takes effect" (rather than upon promulgation or the legal effective date of the regulation containing such a requirement). Based on the anticipated promulgation of the light-duty vehicle rule, the notice stated that the GHG requirements of the light-duty vehicle rule would trigger CAA permitting requirements for stationary sources on January 2, 2011.
- EPA published the Light-Duty Vehicle Rule (LDVR) on May 7, 2010, which established regulations under the Clean Air Act (CAA) that control emissions of carbon dioxide (a constituent of GHG). Taken together with other recent EPA actions, the LDVR established that CAA permitting requirements apply to GHG emissions. More specifically, EPA's related actions established that PSD requirements apply to GHG emissions from stationary sources beginning on January 2, 2011.

- The "Tailoring Rule," published June 3, 2010, focused the applicability of PSD requirements on the largest GHG-emitting sources on a phased-in basis. Covered facilities include power plants, industrial boilers, and oil refineries, and are responsible for 70 percent (by mass) of the GHGs emitted by stationary sources.
- In a December 1, 2010 final rule, EPA found that PSD permitting regulations in 13 states – including Texas -- do not meet Clean Air Act requirements because their programs currently do not cover GHG emissions. EPA also issued a “SIP call,” which requires these states to revise their programs to ensure that their PSD programs cover GHG emissions. This rule also established the dates these 13 states have selected for submitting their revised permitting plans to EPA, which range from December 22, 2010 to December 1, 2011. The state of Texas did not select a SIP submittal date and, under the Clean Air Act, defaults to the latest possible date – December 1, 2011 - one year later. EPA is issuing a FIP for Texas to make sure PSD permitting in Texas can continue without interruption.
- In a December 23, 2010 interim final rule and parallel proposal, EPA determined that there was a flaw in Texas’ SIP that would leave businesses without a permitting authority for GHGs. EPA has been serving as the permitting authority for GHGs since January 2, 2011 and this action will allow the agency to continue doing so until Texas can submit and obtain approval the necessary revisions to enable Texas to issue air permits to GHG-emitting sources.
- Congress established the NSR program as part of the 1977 Clean Air Act Amendments and modified it in the 1990 Amendments. NSR is a preconstruction permitting program that serves two important purposes:
  1. Ensures the maintenance of air quality standards or, where there are not air quality standards, ensures that air quality does not significantly worsen when factories, industrial boilers, or power plants are modified or added. In areas that do not meet the national ambient air quality standards, NSR assures that new emissions do not slow progress toward cleaner air. In areas that meet the standards, especially pristine areas like national parks, NSR’s PSD program assures that new emissions fall within air quality standards.
  2. Ensures that state-of-the-art control technology is installed at new plants or at existing plants that are undergoing a major modification.
- New major stationary sources and major modifications at existing major stationary sources that meet emissions applicability thresholds outlined in the CAA and in existing PSD regulations must obtain a PSD permit outlining how they will control emissions. The permit requires facilities to apply best available control technology, which is determined on a case-by-case basis taking into account, among other factors, the cost and effectiveness of the control.
- States are required by the CAA to include provisions for NSR permitting programs in their SIPs.



## **FOR MORE INFORMATION**

To download a copy of this notice, go to EPA's Web site at: <http://www.epa.gov/nsr>.

Today's final action and other background information are also available electronically at <http://www.regulations.gov>, EPA's electronic public docket and comment system. The docket number for this action is Docket ID No. EPA-HQ-OAR-2010-1033.

For more information on the final rule, contact Cheryl Vetter at (919) 541-4391 e-mail [vetter.cheryl@epa.gov](mailto:vetter.cheryl@epa.gov).