

EPA Issues Guidance to States and Regulated Community on New GHG Air Permitting Rules

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On November 10, 2010, the United States Environmental Protection Agency (EPA) guidance entitled "PSD and Title V Permitting Guidance for Greenhouse Gases." The guidance documents assists states regulating greenhouse gas (GHG) emissions to implement regulations taking effect on January 2, 2011 for the largest GHG emitting facilities. It also provides some measure of instruction to the regulated community on how their facilities and processes will be regulated.

The regulation itself sought to avoid impacts of GHG regulation on small GHG emitters, focusing instead on large emitting facilities, which would account for 70 percent of GHG emissions in the United States. Beginning on January 2, 2011, those regulated facilities will now have to account for GHG emissions among the other emissions already regulated under the Clean Air Act. The Guidance also describes methods by which facilities can avoid permitting requirements, mainly by reducing the amount of GHGs emitted by the facility through various mechanisms like production or operational limits. These would include using alternate energy sources, reducing the amount of fuel consumed (through efficiency or reduced consumption), limiting hours of operation for certain equipment that generates GHGs and other similar methods. Limiting the "potential to emit" is a mechanism that has been applied to other regulated emissions to avoid certain permitting requirements.

However, if a facility is required to obtain a permit, it must also demonstrate that it is incorporating Best Available Control Technology (BACT). EPA defines BACT as follows:

BACT is an emissions limitation which is based on the maximum degree of control that can be achieved. It is a case-by-case decision that considers energy, environmental, and economic impact. BACT can be add-on control equipment or modification of the production processes or methods. This includes fuel cleaning or treatment and innovative fuel combustion techniques. BACT may be a design, equipment, work practice, or operational standard if imposition of an emissions standard is infeasible.

While commonly applied for other pollutants, its implementation for control of GHG emissions is new. In its Guidance, EPA encourages state regulators and regulated sources to consider overall energy efficiency to reduce GHG emissions as a means of complying with BACT requirements. A source would benchmark its current energy usage and calculate its GHG emissions. GHG reductions as a



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result of demonstrated energy improvement projects would then be compared to the benchmark. A more efficient facility could be considered to have achieved BACT.

Of course, there may be techniques that would include add-on controls that would collect GHG missions, but those are likely in the developmental stage and prohibitively expensive. During the analysis, which is done on a case-by-case basis, may be ruled out because they may be too expensive, too energy intensive, environmentally unsound in other ways, or technically infeasible. In short, the current guidance provides quite a bit of discretion to favor energy efficiency over more intrusive GHG control techniques.

Many were concerned that EPA would impose draconian measures to control GHG emissions when it first issued its Rule in May 2010. However, given the incremental application of the Rule, the flexibility to meet the standards, and the initial emphasis on energy efficiency, EPA is going ahead with GHG regulation slowly. Of course, this will not prevent those hell bent on avoiding any regulation of GHG emissions from claiming that the sky is falling. But given that GHG emission regulation is here to stay for at least the near term, and the recent report by NASA that 2010 is shaping up to be the hottest year on record, those opposing GHG regulation are likely forestalling the inevitability of it in the future.