

ENVIRONMENTAL ALERT

EPA ANNOUNCES PROPOSED RULE REQUIRING PERMITTING FOR MAJOR SOURCES OF GREENHOUSE GAS EMISSIONS

On September 30, 2009 the United States Environmental Protection Agency announced a proposed rule to require permitting for major sources of greenhouse gas emissions. This proposed rule comes hard on the heels of last week's finalization of the Greenhouse Gas Reporting Rule. The new rule goes far beyond mere reporting requirements and instead requires permitting and use of best available control technologies and energy efficiency measures, in certain circumstances, to authorize and minimize greenhouse gas emissions. For purposes of the proposed rule, affected sources would be those emitting over 25,000 tons of greenhouse gases each year.

The rule would implement permitting and emission limitation requirements for greenhouse gases through use of the New Source Review and Title V operating permit programs. The rule covers six greenhouse gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. Emissions of non-carbon dioxide greenhouse gases would be translated into carbon dioxide equivalents (CO₂e), to provide a uniform metric for measuring greenhouse gas emissions.

It appears that the proposed rule would have its primary impact through the New Source Review and Prevention of Significant Deterioration program. NSR/PSD affects new and modified facilities that are increasing emissions of criteria pollutants above certain threshold levels. When NSR/PSD is triggered, there is a requirement to utilize certain minimum levels of control technologies to limit emissions of the pollutants in question. Under the new rule proposal, EPA is proposing a significant increase threshold within the range of 10,000 and 25,000 tpy CO₂e that would be used in determining whether existing affected sources making modifications would be required to obtain a PSD permit that would require the use of best available control technology. EPA is soliciting comment on the question of what significance level should be selected.

Greenhouse gas emission requirements would be incorporated into Title V operating permits. Affected facilities with greenhouse gas emissions in excess of 25,000 tons per year that already have operating permits would not need to revise their operating permits until the next renewal cycle of such permits.

EPA's choice of a significant increase level of between 10,000 and 25,000 tons per year is an interesting choice and one that will be widely commented upon, with a likelihood that the eventual final selection of a significant increase threshold will be challenged by industry, environmental groups, or both. Current thresholds for criteria pollutants are all at or below 250 tons per year. However, such a significant increase threshold for greenhouse gases would bring a huge number of otherwise unregulated facilities into the program. Typical quantities of greenhouse gas emissions are far greater than other pollutant emissions, when measured in tons per year. This is the reason for the much higher threshold proposed here.

ENVIRONMENTAL ALERT

EPA estimates that 400 new sources and modifications to existing sources would trigger greenhouse gas PSD review each year. EPA further estimates that 14,000 large sources will need to obtain operating permits for greenhouse gases under the new program.

The rule is expected to be published soon in the Federal Register. Following publication there will be a sixty day comment period. Please contact the Eckert Seamans Environmental Department if you have questions about this proposed new rule or if you wish to submit comments to the EPA.

The Environmental Alert is intended to keep readers current on matters affecting environmental issues and is not intended to be legal advice. For information or assistance regarding any of the information noted above, please contact Scott R. Dismukes at 412.566.1998 or sdismukes@eckertseamans.com, Richard S. Wiedman at 412.566.5967 or rwiedman@eckertseamans.com, David A. Rockman at 412.566.1999 or drockman@eckertseamans.com, Kathryn L. Clark at 412.566.6188 or kclark@eckertseamans.com, Erin W. McDowell at 412.566.6070 or emcdowell@eckertseamans.com, Jessica L. Sharrow at 412.566.5941 or jsharrow@eckertseamans.com or any other attorney with whom you have been working.

© Eckert Seamans Cherin & Mellott, LLC, 2009, all rights reserved.