



Rhode Island Department of Environmental Management
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SUBJECT: Interim Guidance on Prevention of Significant Deterioration (PSD) and Title V Permitting for Greenhouse Gases (GHGs)

DATE: May 22, 2015

Background

In May 2010, the Environmental Protection Agency (EPA) adopted the “Tailoring Rule” which, for the first time, required sources to get major source permits for their greenhouse gas (GHG) emissions under the Prevention of Significant Deterioration (PSD) program and the Title V Operating Permits program.

In January 2011, the Department of Environmental Management’s Office of Air Resources (DEM) adopted the requirements of the “Tailoring Rule” into its Air Pollution Control Regulation No. 9 for PSD and Air Pollution Control Regulation No. 29 for Title V.

On June 23, 2014, the United States Supreme Court issued a decision addressing permitting requirements for stationary source of GHG emissions. In summary, the Supreme Court determined that EPA may not treat GHGs as an air pollutant for purposes of determining if a source is a major source required to obtain a Prevention of Significant Deterioration (PSD) and/or Title V permit. The Supreme Court did, however, determine that sources that trigger PSD for a pollutant other than GHGs should still apply Best Available Control Technology (BACT) to the GHG emissions.

On July 24 2014, EPA issued guidance in the form of a memorandum with the subject “*Next Steps and Preliminary Views on the Application of Clean Air Act Permitting Programs to Greenhouse Gases Following the Supreme Court’s Decision in Utility Air Regulators Group v. Environmental Protection Agency*”. The EPA memorandum provides interim guidance on some of the immediate issues raised as a result of the court decision. On April 10, 2015, the D.C. Circuit Court of Appeals vacated the Tailoring Rule to the extent it requires sources to obtain PSD or Title V permits solely due to their greenhouse gas emissions.

This policy is intended to provide interim guidance on how DEM will address PSD and Title V permitting of greenhouse gases in response to the June 23, 2014, United States Supreme Court decision and EPA’s July 24, 2014 guidance.

At the point when EPA revises the GHG permitting requirements under their regulations (40 CFR Part 52), and after review and evaluation, DEM will make the appropriate changes to its rules (Air Pollution Control Regulation Nos. 9 & 29).

Applicability

DEM will apply EPA's July 24, 2104 guidance to its permitting programs and will not require PSD or Title V permits for major sources based solely on their greenhouse gas emissions. The following is a brief summary of the main points of the EPA guidance. More detailed information can be found in the EPA memorandum.

1. Permit Applications for Sources and Modifications Previously Classified as “Major” Based Solely on GHG Emissions (“Step 2” sources)

Major source permits pursuant to the PSD provisions in section 9.5 of Air Pollution Control Regulation No. 9 will no longer be required for sources if GHG are the only pollutant (1) that the source emits or has the potential to emit above the major source thresholds, or (2) for which there is a significant emissions increase and a significant net emissions increase from a modification.

Operating permits pursuant to Air Pollution Control Regulation No. 29 will no longer be required for sources if GHG are the only pollutant that the source emits or has the potential to emit above the major source threshold.

If a source has not triggered PSD or Title V applicability based on their emissions of a pollutant other than GHG, they cannot trigger permitting based solely on their GHG emissions. The 100,000 tons per year (tpy) carbon dioxide equivalent (CO_{2e}) threshold for new sources no longer needs to be considered when making an applicability determination for major source permitting. Additionally, any source that is making a modification that is above the 75,000 tpy CO_{2e} threshold does not automatically trigger review. The significant emissions increase and net emissions increase of another pollutant must be triggered before evaluating GHGs.

2. Sources Triggering PSD Requirements Based on Pollutants Other Than GHG (“Step 1” or “anyway” sources)

The Supreme Court determined that EPA could continue to require that PSD permits, required based on emissions of pollutants other than GHG, include a BACT determination for GHGs.

For new sources, the EPA guidance states that GHG BACT requirements must be applied if a new source triggers PSD for another pollutant and the source emits or has the potential to emit 75,000 tpy or more of GHG on a CO_{2e} basis and greater than zero on a mass basis.

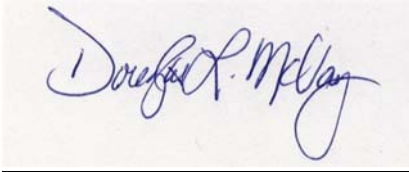
For modifications, the EPA guidance states that GHG BACT requirements must be applied if (1) the modification is otherwise subject to PSD for a pollutant other than GHG and (2) the

modification results in a GHG emissions increase and a net GHG emissions increase equal to or greater than 75,000 tpy CO₂e and greater than zero on a mass basis.

For “anyway sources” this guidance continues to apply the requirements in the current regulations.

3. Title V

As stated earlier, operating permits will no longer be required for sources if GHG are the only pollutant that the source emits or has the potential to emit above the major source threshold. If a source that is required to obtain an operating permit for a pollutant other than GHGs and underwent a BACT determination for GHGs in a PSD permit, those BACT conditions should be incorporated into the operating permit.

A handwritten signature in blue ink, reading "Douglas L. McVay", is centered on a light-colored rectangular background.

**Douglas L. McVay, Chief
Office of Air Resources**