

EPA Issues New GHG Permitting Guidelines

EPA announced it is making available guidance and tools to help state and local air permitting authorities identify pollution reduction options for greenhouse gases (GHGs) under the Clean Air Act. These tools are part of EPA's common sense approach to GHG permitting of the largest emissions sources outlined this spring in the tailoring rule. GHG pollution threatens the health and welfare of all Americans, and contributes to climate change, according to EPA.

EPA recommends that permitting authorities use the best available control technology (BACT) process to look at all available emission reduction options for GHGs. After taking into account technical feasibility, cost and other economic, environmental and energy considerations, permitting authorities should narrow the options and select the best one. EPA anticipates that, in most cases, this process will show that the most cost effective way for industry to reduce GHG emissions will be through energy efficiency. The guidance does not define or require a specific control option for a particular type of source because BACT is determined on a case-by-case basis. Instead, the guidance and resources provide the basic information that permit writers and applicants need to address GHGs.

Starting Jan. 2, 2011, industries that are large emitters of GHGs, and are planning to build new facilities or make major modifications to existing ones, will work with permitting authorities to identify and implement BACT to minimize their GHGs. Emissions from small sources, such as farms and restaurants are not covered by these GHG permitting requirements. EPA is accepting public feedback on the guidance for the next few weeks on any aspect that contains technical or calculation errors or where the guidance would benefit from additional clarity. For more information: <http://www.epa.gov/nsr/ghgpermitting.html>

The Supreme Court announced that it would take up the common law case, American Electric Power v. Connecticut, regarding the federal Greenhouse Gas reporting and permitting rules. The case will be argued in the spring, after the U.S. Circuit Court of Appeals for the District of Columbia decides whether to stay four related EPA regulations, parts of which are due to go into effect on January 2, 2011. A ruling on the stay request is due at any time.

The regulations are relevant to the Supreme Court's consideration of the case because it may reach its conclusion by ruling on whether efforts by EPA to regulate carbon emissions in recent years have effectively supplanted any federal common law that would give the states the right to claim that emissions are a "public nuisance." The four rules under attack from industry groups are: the "timing" rule that requires new controls of greenhouse gas emissions from stationary sources would be triggered on Jan. 2, 2011, the day that new motor vehicle standards go into effect; the "tailoring" rule that interprets the Clean Air Act in such a way that only major polluters are required to obtain permits for greenhouse gas emissions; the "endangerment" rule

focusing on EPA's initial decision in which it held that greenhouse gases are harmful; and the "tailpipe" rule, which adopts new standards for car and light-truck emissions.

The case before the Supreme Court was prompted by the combined efforts of eight states, New York City, and several land trusts to require utilities that operate fossil fuel-fired electric power plants to reduce emissions. American Electric Power Co. Inc. and several other power companies responded that the Clean Air Act supplants the federal common law when it comes to greenhouse gas emissions. In 2009, the 2nd U.S. Circuit Court of Appeals ruled in favor of the states. The implications of the Court's decision will not only affect the utilities industry, but will likely have wide-reaching impacts on other economic sectors, including automakers, agricultural and manufacturing interests, extractive industries, and chemical companies.