

TO: ARS Clients

FROM: Howard Gebhart/James Wu

SUBJECT: EPA Clarification on PSD Permitting under the GHG Tailoring Rule

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Several clients have inquired about proposed plant modification projects and how the permitting for these projects would be impacted under the U.S. Environmental Protection Agency (EPA) Greenhouse Gas (GHG) Tailoring Rule. EPA recently published an updated question and answer (Q&A) document that clarifies the interpretation of the Tailoring Rule for existing sources that plan physical changes and other modifications.

<http://www.epa.gov/nsr/ghgqa.html>

Specifically, ARS previously understood that for facilities covered by Step 2 of Tailoring Rule (effective on or after July 1, 2011), existing sources would be reclassified as “major sources” under the PSD rules if their potential GHG emissions were above the regulatory threshold of 100,000 tpy CO₂ equivalent (CO₂e). While this remains the case, EPA has clarified that for a modification that occurs at any such Step 2 facility, GHG emissions are subject to regulation **ONLY** if the source:

- (1) has a PTE of 100,000 TPY CO₂e, **AND**
- (2) undertakes a modification that is projected to increase emissions by at least 75,000 TPY CO₂e

In the new EPA Q&A document, it is stated that "*EPA's longstanding "major for one, major for all" PSD policy also applies to GHG-only major sources, but only after GHGs are determined to be subject to regulation for the modification.*"

In the Q&A document cited above, EPA provides a number of examples that illustrate that if an existing stationary source with a current PTE of greater than 100,000 TPY of CO₂e undertakes a modification that will increase GHG emissions by less than 75,000 TPY of CO₂e, then GHGs will be not “subject to regulation” at the time of the modification. This means that non-GHG pollutants would not trigger major source review for the modification, even if these emissions increased by more than the applicable significant level listed in the Prevention of Significant Deterioration (PSD) regulations.

What this means is that for planned plant modifications at those sources where only the GHG emissions exceed the major source threshold, the modification must first meet the GHG “major modification” emissions test before the PSD “major modification” test is applied to other regulated pollutants. This is a change from ARS’ original interpretation of the Tailoring Rule communicated to many of you where we believed that being major for GHG emissions would potentially require PSD permitting for modifications based on increases in emissions for non-GHG pollutants. EPA’s latest interpretation clarifies that if a change does not first produce a significant increase in GHG emissions (defined as 75,000 tpy CO₂e), then the other regulated non-GHG pollutants cannot be triggered for PSD review, provided that the non-GHG emissions increase is not by itself a major source. If the modification does produce an increase in GHG emissions that is above 75,000 tpy CO₂e, only then must you must evaluate the non-GHG pollutants for PSD applicability.

Remember that the above interpretation applies only to GHG Step 2 sources (a source that is major under PSD for GHG emissions only). If your source is a PSD major source already based on non-GHG emissions, the PSD major modification test for non-GHG pollutants still applies.

When assessing the potential impacts of a modification on GHG emissions, remember that EPA currently discounts “biogenic” CO₂ emissions. For ARS’ clients, this would include fermentation tanks at ethanol facilities and biomass-fired boilers and equipment. EPA’s draft rulemaking that would exclude “biogenic” CO₂ emissions from counting toward major source and major modification applicability was published in the March 21, 2011 Federal Register and the comment period on the draft rule extends to May 5, 2011. This rule would defer counting of “biogenic” emissions under the Tailoring Rule for up to three years. EPA estimates that this rulemaking will be finalized around July 2011.

In summary, if you are planning a modification to a facility that would be regulated as a major source solely due to GHG emissions, EPA’s recent interpretation of the Tailoring Rule results in excluding certain modifications from being processed under the more rigorous Prevention of Significant Deterioration (PSD) rules. Only those modifications that are first defined as being major modifications for GHG emissions (increasing GHG emissions by 75,000 tpy CO₂e or more) would be potentially subject to PSD review for non-GHG emissions. Coupled with EPA’s planned deferral for regulating GHG emissions associated with biogenic sources, many projects that would otherwise require review under the more rigorous PSD rules will continue to be processed as minor sources.

If there are questions regarding EPA’s Tailoring Rule, GHG emissions, or how this new EPA interpretation impacts your operations, please contact your ARS Project Manager.