

Summary: EPA FIP Public Hearing 9-14-10, Kira Darlow

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Written comments accepted until October 14

Background (From EPA Fact Sheet and Federal Register notice):

### **ACTION**

- On August 12, 2010, the U.S. Environmental Protection Agency (EPA) proposed two rules to ensure that businesses planning to build new, large facilities or make major expansions to existing ones will be able to obtain New Source Review Prevention of Significant Deterioration (PSD) permits that address greenhouse gases (GHG).
- In May 2010, EPA finalized the GHG Tailoring Rule, which specifies that beginning in 2011, projects that will increase GHG emissions substantially will require an air permit. Covered facilities include power plants, industrial boilers, and oil refineries and are responsible for 70 percent of the GHGs from stationary sources.
- The Clean Air Act (CAA) requires states to develop and follow state implementation plans (SIPs) that include requirements for issuing PSD permits. When federal permitting requirements change, as they did under the Tailoring Rule, states may need to modify these plans.
- EPA has proposed two actions to fill the gap for any state that cannot make the necessary changes to its permitting program by January 2011. Without these proposals industrial sources of GHGs in some states would not be able to begin construction as of January 2, 2011, the earliest GHG permitting requirements become effective.

### **Proposed Federal Implementation Plan**

- States currently expected to be unable to submit corrected SIPs to apply PSD to GHG sources include: Alaska, Arizona: Pinal County; Rest of State (Excludes Maricopa County, Pima County, and Indian Country), Arkansas, California: Sacramento Metropolitan AQMD, Connecticut, Florida, Idaho, Kansas, Kentucky: Jefferson County; Rest of State, Nebraska, Nevada: Clark County, Oregon, Texas
- EPA will be responsible for acting on permit applications for only the GHG portion of the permit, that the State permitting authorities will be responsible for the non-GHG portion of the permit, and EPA will coordinate with the State permitting authority as needed in order to fully cover any non-GHG emissions that, for example, are subject to BACT because they exceed the significance levels. EPA recognizes that questions may arise as to whether the State permitting authorities have authority to permit non-GHG emissions; as a result, EPA solicits comment on whether EPA should also be the permitting authority for the non-GHG portion of the permit for these latter sources.
- EPA proposes that the FIP consist of the regulatory provisions included in 40 CFR 52.21, except that the applicability provision would include a limitation so that it applies for purposes of this rulemaking only to GHGs.
- *Primacy of the SIP Process:* This proposal is secondary to EPA's overarching goal, which is to assure that in every instance, it will be the State that will be that permitting authority.
- EPA's goal is to have each and every affected State have in place the necessary permitting authorities by the time businesses seeking construction permits need to have their applications processed and the permits issued—and to achieve that outcome by means of engaging with the States directly through a concerted process of consultation and support.
- EPA is taking up the additional task of proposing this FIP and the companion SIP Call action only because the Agency believes it is compelled to do so by the need to assure businesses, to the maximum extent possible and as promptly as possible, that a permitting authority is available to

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process PSD permit applications for GHG-emitting sources once they become subject to PSD requirements on January 2, 2011.

- EPA reports that in informal conversations, officials of various States have acknowledged the need for our SIP Call and FIP actions. That is, they have acknowledged that a short-term FIP may be necessary in their States to establish permitting authority to construct and modify in accordance with environmental safeguards for these sources. In addition, some States have indicated that they will closely consider their opportunities to accept delegation of the permitting responsibilities.

Public Hearing Speakers:

Howard Feltman – Director of Scientific and Regulatory Affairs for API – overall point is that the CAA should not be used to regulate GHGs and EPA should forget the whole idea and leave it to Congress to regulate GHGs; believes that the FIP is an admission that the states are not prepared to handle this and that regulating GHGs under CAA is too costly to American industry

Craig Segal – Sierra Club – support EPA's efforts to regulate GHG in CAA

Janet Phoenix – Coalition for Sustainable Communities / DC Environmental Health Collaborative – encourages EPA to enact the strictest regulation possible to protect the health of vulnerable populations (mostly on behalf of District children, but want to protect all vulnerable populations in country)

Andy Wilson – Public Citizen, Texas Office – wants strict regulation, but possibly tailored regulation for GHGs in Texas in order to induce compliance

Antigany Ambrose – VA Sierra Club – supports EPA's actions and wants to make sure nobody derails the process for VA

Brenda Ekritsel (sp?) – climate scientist with the Union of Concerned Scientists – supports EPA's efforts to support state efforts in complying with Federal regulations

*Unknown name* – Senior Council for Center for Biodiversity (also a law practitioner and former professor at American University College of Law) – believes that the CAA legislation fully supports EPA's efforts to regulate GHGs and that EPA should go forth and implement the regulation fully, supporting the states trying to comply and forcing those that are resisting