



Air Permitting Update

Air Permits Division

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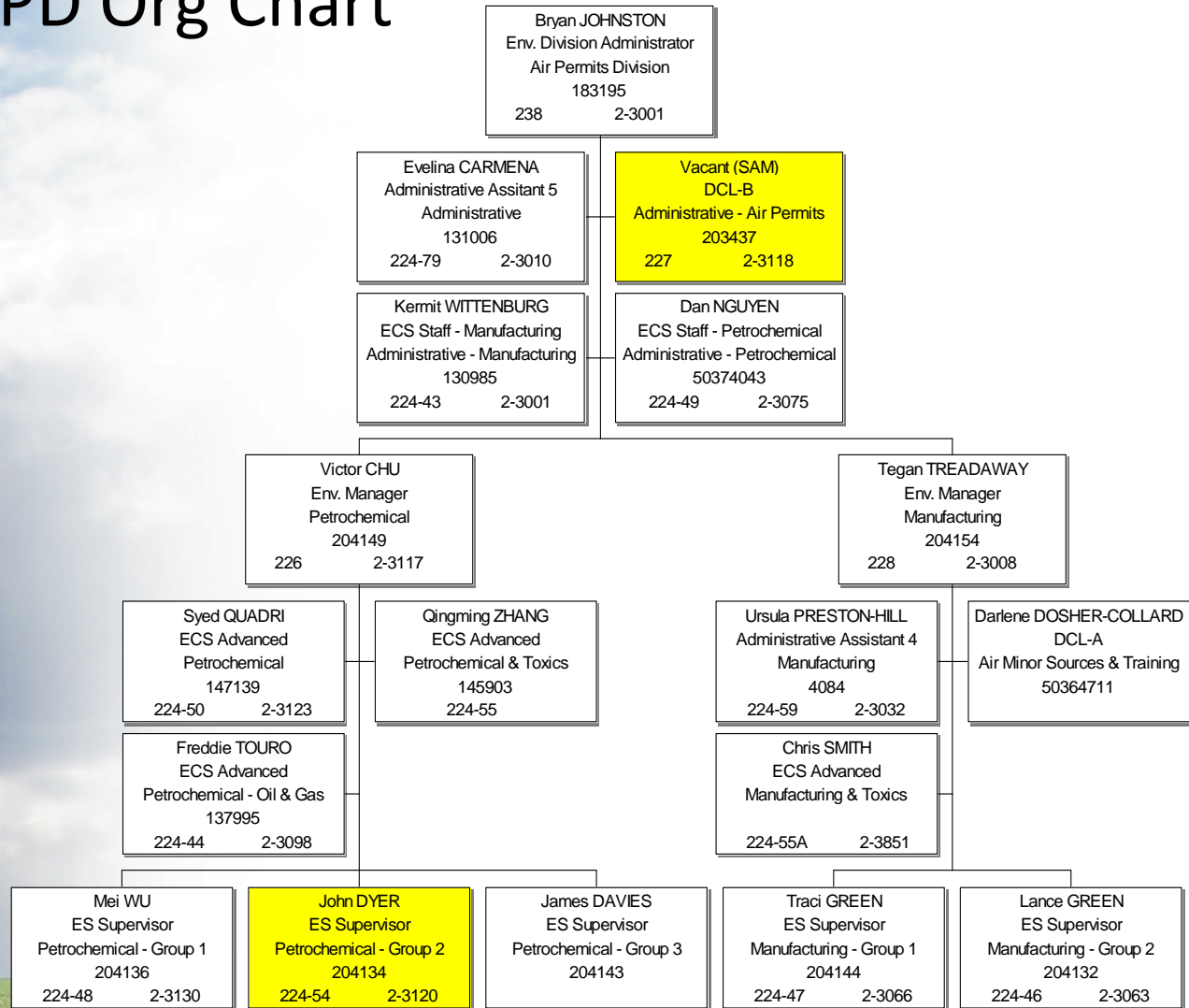
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APD Org Chart





FY09-10 Work Plan

APD's FY09-10 Work Plan is online at

<http://www.deq.louisiana.gov/portal/tabid/64/Default.aspx>.

1. Complete the Title V actions identified on the FY09-10 Work Plan
2. Continue reduction in number of pending Oil and Gas applications
3. Continue reduction in number of Title V Renewal applications pending for more than 18 months
4. Meet Operational Plan goals
5. Meet Performance Partnership Grant (PPG) commitments
6. Promulgate and implement the Regulatory Permit for Concrete Manufacturing Facilities
7. Finalize the two Master General Permits for minor sources currently under development



FY09-10 Work Plan

APD's FY09-10 Work Plan, continued ...

8. Develop online submittal format with IS
9. Develop standardized procedures for establishing stack testing requirements
10. Develop standardized procedures for incorporating stack test data into permits
11. Develop technical and supervisory review guidelines
12. Develop a standard form for appointment of a Duly Authorized Representative
13. Revise and prepare certain Standard Operating Procedures (SOPs)
14. Address overlap between Title V and Prevention of Significant Deterioration (PSD) Permits



FY09-10 Work Plan

APD's FY09-10 Work Plan, continued ...

15. Develop Periodic Monitoring guidance
16. Analyze processing of Title V minor modifications
17. Review of pending activities in TEMPO
18. Publish the status of all pending applications on the Web
19. Establish minimum productivity requirements
20. Finalize revisions to the Title V General Permit
21. Develop an LDEQ position on RQ release reporting



Minor Source General Permits

Crude Oil and Natural Gas Production

LDEQ is developing a minor source oil & gas general permit to replace the Standard Oil & Gas Air (SOGA) permit.

This general permit will be issued in accordance with LAC 33:III.513.A. Applicants will apply for coverage to operate under the general permit (akin to LPDES general permit procedures).

The permit will address all recently promulgated regulations impacting the oil & gas production industry, including:

- NSPS JJJJ
- NSPS IIII
- HH (area source requirements)



Minor Source General Permits

Crude Oil and Natural Gas Production

LDEQ released a draft version on May 28, 2009, and received comments through June 19, 2009.

104 comments were received.

LDEQ has evaluated and prepared responses to all comments received. Significant changes to the draft permit have been made.

LDEQ anticipates the document will be public noticed imminently.



Minor Source General Permits

Surface Coating & Fabrication

Facilities eligible for coverage under this general permit include facilities primarily engaged in surface coating and fabrication. These facilities are typically classified under Standard Industrial Classification (SIC) Codes beginning with 34xx, 35xx, 36xx, or 37xx.

On public notice:

- 10/5/09: *The Advocate, American Press, Times, Advertiser, Times-Picayune, News-Star, & Houma Daily Courier*
- 10/7/09: *Town Talk*

Comment period ends November 10, 2009.



South Coast Air Quality Mgmt. Dist. v. EPA

April 29, 2009 – EPA sets forth its “legal position” on the *South Coast* matter by letter from Lawrence E. Starfield, Acting Regional Administrator of EPA Region 6, to LDEQ.

“On April 30, 2004, EPA published a ‘Phase 1’ rule that removed the need for States to include 1-hour ozone NSR elements as part of their federally approved SIP after EPA revoked the 1-hour national ambient air quality standard for ozone.”

“The court vacated that provision and found that NSR was a ‘control’ and that ‘withdrawing [it] from a SIP would constitute impermissible backsliding’” [the December 22, 2006 *South Coast* decision].



South Coast Air Quality Mgmt. Dist. v. EPA

Letter from Larry Starfield, continued ...

“On October 3, 2007, EPA’s Office of Air & Radiation informed Regional Administrators that the decision effectively restored NSR applicability thresholds and emission offsets in ozone nonattainment areas pursuant to classifications previously in effect for the 1-hour standard. The memorandum strongly encouraged States to comply with the court decision in a timely manner.”

“EPA expects States to implement 1-hour nonattainment NSR requirements using thresholds and emission offsets based on the classifications for areas designated nonattainment for the 1-hour ozone standard.”



South Coast Air Quality Mgmt. Dist. v. EPA

Letter from Lawrence E. Starfield, continued ...

“[W]e interpret the CAA ... to require nonattainment NSR permits to be based on the requirements that apply at the time of permit issuance, not those that applied at the time of permit application.”

“[W]e encourage LDEQ ... to undertake all appropriate rulemaking to ensure that LDEQ’s permits can be issued consistent with the *South Coast* decision.”

“We will continue to review NSR permits, and will **comment on** any that do not implement the threshold and offset requirements set out in the *South Coast* decision.”

Does “comment on” = object?



South Coast Air Quality Mgmt. Dist. v. EPA

EPA has indicated that the agency intends to propose a rule to address how 1-hour NSR requirements apply as a result of the Court's vacatur.

- January 16, 2009 (74 FR 2936):

“The EPA plans to issue a separate proposed rule providing additional guidance as to how these two requirements (185 fees and NSR) now apply.”

“The EPA plans to issue a separate proposed rule providing further guidance on how the section 185 fee provisions and the 1-hour NSR requirements apply as a result of the Court's vacatur.”

- March 26, 2009 (74 FR 13166):

“Currently, EPA has proposed one rule and is developing other actions to address the court's vacatur and remand with respect to these three requirements [1-hour NSR; 1-hour contingency measures; and, for severe and extreme areas, the obligations related to a section 185 fee program].”

No proposal to date.



South Coast Air Quality Mgmt. Dist. v. EPA

This matter is now being litigated (*Louisiana Environmental Action Network v. Lisa Jackson*).

Further, EPA has formally commented that the agency will not approve our pending re-designation request without an NSR rule that implements severe area thresholds in the BRNA.



South Coast Air Quality Mgmt. Dist. v. EPA

On October 15, 2009, EPA sent “fair notice” letters to a large number of facilities in the Baton Rouge Nonattainment Area.

“All applicable federal requirements must remain in effect for source located in the Baton Rouge ozone nonattainment area including the 1-hour NNSR requirements.”

“Such requirements include utilizing the “severe” NSR requirements of 25 ton-per-year major source threshold and an offset ratio 1.3 to 1.”

“This letter provides notice that permits issued inconsistent with the Court decision will not protect sources from potential EPA enforcement action to ensure application of the applicable federal regulations including severe area NSR requirements.”



South Coast Air Quality Mgmt. Dist. v. EPA

EPA's October 15, 2009 letter ... what was not said:

- How long the severe area requirements will continue to apply (e.g., until the BRNA is formally re-designated as attainment with the 1997 8-hour ozone NAAQS?).
- The date by which affected sources must submit a Title V application.
- EPA position on retroactive NNSR. EPA's letter references "permits issued inconsistent with the Court decision," but this is vague.
 - Should LDEQ apply NNSR to 25 TPY NO_x and/or VOC sources from this point forward, or does EPA expect LDEQ to retroactively apply NNSR to permits issued after a given date (e.g., December 22, 2006, January 14, 2008)?



PM_{2.5}

EPA's final rule entitled "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})," was promulgated on May 16, 2008.

- EPA is (or was) requiring states with SIP-approved PSD programs (like Louisiana) to submit revised PSD programs and revised NNSR programs for PM_{2.5} by May 16, 2011.
- In addition, this rule provided a "grandfathering provision" for PM_{2.5} at 40 CFR 52.21(i)(1)(xi).
 - If application was determined to be complete before July 15, 2008, the PM_{2.5} requirements in effect before that date (i.e., the use of PM₁₀ as a surrogate for PM_{2.5}) shall apply to the source or modification.



PM2.5

Well, scratch that ...

On June 1, 2009, EPA provided notice that the agency had granted a petition for reconsideration of the aforementioned rule (74 FR 26098).

- This rulemaking also stayed the grandfathering provision until September 1, 2009.

On September 22, 2009, EPA extended the stay of the grandfathering provision until June 22, 2010 (74 FR 48153).

It is expected that the agency will permanently repeal this exemption before the stay expires.



PM_{2.5}

Further, in the September 22 rulemaking, EPA notes its intent to

“issue a separate *Federal Register* notice soliciting comments on issues related to

(1) the repeal of the grandfathering provision for PM_{2.5} ...,
and

(2) **ending** the PM₁₀ Surrogate Policy in States with EPA approved PSD programs in their SIP,”

and in yet *another* subsequent notice,

“solicit comment on issues related to the remaining two provisions of the May 2008 final rule for which the Administrator granted reconsideration.”



PM_{2.5}

Thus, it appears that EPA intends to propose, receive comment on, and finalize two additional rules related to implementation of the PM_{2.5} NAAQS, despite the fact that only 18 months remain before the May 16, 2011, date set forth in the original rule.

This would leave little, if any, time for LDEQ to adopt a rule, a process which often takes 6 months or more.

Further, other recent actions suggest that the “PM₁₀ Surrogate Policy in States with EPA approved PSD programs in their SIP” is effectively **DOA** at this moment.



PM_{2.5}

On August 12, 2009, in response to the petition regarding Louisville Gas and Electric Company's Trimble County Generating Station (Petition IV-2008-3), EPA states that the Kentucky Division for Air Quality must **"demonstrate that PM₁₀ is a reasonable surrogate for PM_{2.5}."**

Kentucky is a SIP-approved state.

EPA offers a possible approach to making that demonstration, but caveats this discussion "without suggesting that the following two steps are necessary or sufficient."



PM_{2.5}

LDEQ-specific PM_{2.5} correspondence:

On August 31, 2009, LDEQ received an e-mail from EPA stating:

“We wanted to pass along some relatively new information from OAQPS before we get too far along in the public notice period.”

The new information is described as a **requirement** (not recommendation) to “specifically review new permitting actions for PM_{2.5} issues and the use of the PM₁₀ surrogate.”



PM2.5

By letter dated September 24, 2009, EPA provided input regarding Nucor Steel Louisiana's application.

"[W]e believe that permit applicants and permitting authorities should determine whether PM10 is a reasonable surrogate for PM2.5 under the specific facts and circumstances of specific permitting actions, and not proceed with the general presumption that PM10 is always a reasonable surrogate for PM2.5."

"Therefore, we believe LDEQ should ... address PM2.5 emissions directly or show how compliance with the PSD requirements for PM10 will serve as an adequate surrogate for meeting the PSD requirements for PM2.5 for this specific facility."



PM2.5

September 24 Nucor letter, continued ...

“Directly addressing PM2.5 *might* including determining the best available control technology (BACT) for PM2.5 and determining the proposed source’s impact on currently monitored PM2.5 concentrations in relation to the current PM2.5 NAAQS.”



PM_{2.5}

However, this issue extends well beyond a single permit action. LDEQ believes EPA's approach is problematic for a number of reasons.

- EPA's Approach Ignores Its Own PM_{2.5} Implementation Rule for NSR
- EPA's Approach Promotes Inconsistent Implementation of the PM_{2.5} NAAQS on a National Level
- EPA's Approach Ignores the Fact That There is No Final Rule Addressing Modeling Thresholds for PM_{2.5}
- EPA Can Offer No Definitive Guidance as to How to Demonstrate PM₁₀ Is a Reasonable Surrogate for PM_{2.5}



PM_{2.5}

Advice to the regulated community: If PM₁₀ triggers PSD, quantify PM_{2.5} emissions and:

- Perform a BACT analysis for PM_{2.5}.
- Demonstrate that PM_{2.5} emissions from your facility do not cause an exceedance of the PM_{2.5} NAAQS of 15 µg/m³ (annual average) and 35 µg/m³ (24-hour average).
 - For purposes of this analysis, the ambient concentrations attributed to the facility should be added to PM_{2.5} background concentrations.
 - Prior to initiation of modeling runs, a modeling protocol should be submitted to and approved by the Air Quality Assessment Division.



Reconsideration of Ozone Standard

On September 16, 2009, EPA announced that it intends to reconsider the ozone NAAQS finalized in March 2008.

EPA revised the primary ozone NAAQS in March 2008 to 0.075 parts per million (ppm) and set the secondary NAAQS at a level identical to the primary standard.

The Clean Air Scientific Advisory Committee had recommended that the agency set the primary standard between 0.060 and 0.070 ppm and that the secondary standard be distinctly different from the primary standard in averaging time, level and form.



Reconsideration of Ozone Standard

EPA said it is reconsidering the ozone NAAQS because the agency has “concerns regarding whether the revisions to the primary and secondary NAAQS adopted in the Ozone NAAQS Rule satisfy the requirements of the Clean Air Act.”

EPA will reconsider the standards based on the existing administrative record compiled for the March 2008 decision, which included more than 1700 scientific studies.

Because EPA is relying on existing documentation, the agency will be able to conduct an “expedited rulemaking.”



Reconsideration of Ozone Standard

The EPA Administrator will sign a notice of proposed rulemaking with the proposed ozone standard by December 21, 2009, and a final rule by August 31, 2010.

In concert with this decision to review the standard, EPA will stay the 2008 ozone standard with respect to designations. Accordingly, EPA will not finalize designations on March 2010 as originally scheduled (nor will attainment SIPs be due March 2013).

Instead, EPA intends to finalize designations for the new ozone standard by August 2011 and require SIP submittals by December 2013.



Potential Nonattainment Areas

The following maps show the parishes that would be nonattainment with an ozone NAAQS of 60, 65, or 70 ppb.

The parishes that are completely shaded orange have an ozone monitor that indicates nonattainment.

New nonattainment areas:

- 0.075 ppm NAAQS: Caddo, Jefferson, Lafayette, Lafourche, Pointe Coupee, Saint John the Baptist
- 0.070 ppm NAAQS: Add Bossier, Calcasieu, St. Bernard, St. Charles, St. James, and St. Tammany
- 0.065 ppm NAAQS: Add Orleans
- 0.060 ppm NAAQS: Add Ouachita
- Additional parishes if MSAs must be included



Reconsideration: NSR Aggregation

On January 15, 2009, EPA promulgated a final action entitled “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation and Project Netting” (74 FR 2376).

- Aggregation amendments adopted
- No action on Project Netting

On February 13, 2009, EPA administratively stayed and delayed the effective date of the Aggregation amendments for 90 days (74 FR 7284).

On May 14, 2009, EPA extended the delay for an additional 12 months to allow for sufficient time to conduct the reconsideration proceeding (74 FR 22693).

- The new effective date of the rule will be May 18, 2010.



Reconsideration: Reasonable Possibility

On December 21, 2007, EPA promulgated its “Reasonable Possibility in Recordkeeping” rule (72 FR 72607).

On April 24, 2009, EPA notified the State of New Jersey its intent to reconsider this rule, as the agency believes that additional public comment is warranted.

However, EPA has decided not to stay the rule while reconsideration is underway because the agency believes

“that the standard in the current rule is preferable to the prior standard which was vacated by the Court as too vague.”

To date, EPA has not released another proposal on this topic.



Reconsideration: Fugitive Emissions

On December 19, 2008, EPA promulgated its “Reconsideration of Inclusion of Fugitive Emissions” rule (73 FR 77882).

On September 30, 2009, EPA provided notice of a grant of reconsideration and administratively stay of the rule until December 30, 2009 (74 FR 50115).

Anticipate that the effectiveness of the rule will be extended again.



Flexible Permitting

On October 2, 2009, EPA promulgated its “Flexible Air Permitting Rule” (74 FR 51418). This rule addresses:

- Alternative Operating Scenarios (AOSs)
- Approved Replicable Methodologies (ARMs)

In the final rule, EPA acknowledged that the

- “final action is primarily a reaffirmation of currently available flexibility options and the process for accessing them,” and
- “because the final rules represent clarifications to the existing part 70 regulations, we believe that many States will be able to implement the final rules without revising their regulations.”



Flexible Permitting

In general, LDEQ has been able to address prospective operating scenarios identified by a permit applicant by simply including in the Title V permit the applicable requirements and corresponding compliance assurance terms (i.e., monitoring, recordkeeping, and reporting requirements) related to these scenarios.

Further, EPA agrees “that States currently have authority to issue ARMs in title V permits.”

It does not appear that this rule will significantly impact current permitting procedures.



GHG: An Inconvenient Regulation

On September 30, 2009, EPA announced proposal of its “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule.”

Phase I

Interim major stationary source threshold =
25,000 TPY CO₂e

PSD significance level between 10,000 and
25,000 TPY CO₂e



GHG: An Inconvenient Regulation

So just how much is 25,000 TPY of CO₂e?

For external combustion sources:

AP-42 factor for CO ₂ :	120,000	lb/10 ⁶ scf
AP-42 factor for CH ₄ :	2.3	lb/10 ⁶ scf
GWP for CH ₄ :	21	

25,000 TPY of CO₂e = 48.5 MM Btu/hr of natural gas-fired equipment

10,000 TPY of CO₂e = 19.4 MM Btu/hr of natural gas-fired equipment



GHG: An Inconvenient Regulation

Phase I, continued ...

Entails development of streamlining methods:

- potential revisions to the definition of “potential to emit,”
- general permits, and
- presumptive BACT.

... “that allow EPA to craft the application of PSD and Title V in ways that are achievable and effectively balance the burdens on both the permitting authorities and the regulated community with the reductions achievable.”

EPA expects the permitting authorities to “ramp up resources” for permit issuance.



GHG: An Inconvenient Regulation

Phase 2

Within 5 years of promulgating the first phase, EPA will conduct a study of the permitting authorities' ability to administer the Title V and PSD programs going forward.

Then, by the end of the 6th year, **promulgate, as the second phase, revised applicability and significance level thresholds** and other streamlining techniques, as appropriate. According to EPA:

“At this time, we cannot anticipate specifically what the second phase of this tailoring program will consist of. The situation that we confront is unprecedented.”



GHG: An Inconvenient Regulation

Title V Implications

Minor sources that become major as a result of the 25,000 TPY CO₂e major source threshold would have to apply for Title V permits.

Except as discussed on the following slide, existing Title V permits would not need to be reopened immediately to incorporate GHGs (because there are generally no applicable requirements for GHGs).



GHG: An Inconvenient Regulation

Title V Implications

Existing Title V permits may have to be revised under two possible scenarios:

1. EPA promulgates applicable requirements for GHGs that would apply to such the source (LAC 33:III.529.B.1), or
2. the source makes a modification that would result in a newly applicable requirement for GHGs, such as BACT.

Title V renewals would need to assure that the permit properly addresses GHGs.



GHG: An Inconvenient Regulation

This proposed action does not require states to submit a SIP revision.

According to EPA, although each state PSD program – as established by state regulations that comprise the SIP – will have a lower threshold and significance level for CO₂e, those lower levels will not be federally approved and therefore not federally enforceable.

However, the lower thresholds remain “on the books,” and are therefore binding as a matter of state law. As a result, states may wish to consider revising those state law provisions.

How so if EPA does not conclude GHGs to be a “regulated NSR pollutant”?



GHG: An Inconvenient Regulation

There will be additional activity associated with GHG permitting that will likely require states to increase revenue to cover the expected increase.

At this time, EPA believes that the best approach to address this situation is for states to assess their increased workload and determine whether their current fee regulations need to be amended to cover any expected revenue shortfall.



GHG: An Inconvenient Regulation

On December 18, 2008, then EPA Administrator Johnson issued a memo entitled “EPA’s Interpretation of Regulations that Determine Pollutants Covered By Federal Prevention of Significant Deterioration (PSD) Permit Program.” In this document, EPA notes:

EPA will interpret this definition of “regulated NSR pollutant” to exclude pollutants for which EPA regulations only require monitoring or reporting but to include each pollutant subject to either a provision in the Clean Air Act or regulation adopted by EPA under the Clean Air Act that **requires actual control of emissions** of that pollutant.



GHG: An Inconvenient Regulation

On February 17, 2009, EPA Administrator Jackson granted a petition for reconsideration of the regulatory interpretation in the memo.

However, she did not grant a request to stay the memo, so the interpretation remains in effect for the federal PSD program pending completion of this reconsideration action.

On October 7, 2009, EPA published a proposal entitled “Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by the Federal PSD Permit Program” (74 FR 51535).

This document implements the grant of reconsideration by discussing and requesting public comment on various interpretations of the regulatory phrase “subject to regulation.”



GHG: An Inconvenient Regulation

EPA has solicited comments on interpretations that would make PSD applicable to a pollutant on the basis of:

- an EPA regulation requiring actual control of emissions of a pollutant;
- an EPA regulation requiring monitoring or reporting of emissions of a pollutant;
- the inclusion of regulatory requirements for specific pollutants in an EPA-approved state implementation plan (SIP);
- an EPA finding of endangerment; and
- the grant of a section 209 waiver.

Of the 5 interpretations described, EPA continues to favor the “actual control interpretation.” Comments must be received on or before December 7, 2009.



Questions / Comments?

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