

Texas Commission on Environmental Quality (TCEQ) Comments on Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a Significant Emissions Rate (SER) for GHG Emissions under the PSD Program; Proposed Rule

Docket ID Number EPA-HQ-OAR-2015-0355

Background

On October 3, 2016, the U.S. Environmental Protection Agency (EPA) proposed amendments to the regulations at 40 Code of Federal Regulations (CFR) Parts 51, 52, 60, 70, and 71 relating to the treatment of GHG emissions under the federal PSD and Title V permitting programs (81 *FR* 68110). The proposed changes are in response to the June 23, 2014, U.S. Supreme Court's decision in *Utility Air Regulatory Group (UARG) v. EPA* and the April 10, 2015, Amended Judgment by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Coalition for Responsible Regulation v. EPA*. Specifically, the EPA proposed revisions to ensure that neither the PSD nor Title V rules require a source to obtain a permit solely because the source emits or has the potential to emit (PTE) GHG above the applicable thresholds. In addition, the EPA proposed a SER of 75,000 tons per year (tpy) carbon dioxide equivalent (CO₂e) for GHG under the PSD program, below which Best Available Control Technology (BACT) would not be required for a source's GHG emissions. TCEQ offers the following comments on the proposed rules, as outlined below.

TCEQ Comments on the Proposed Rules

I. Proposed SER of 75,000 tpy CO₂e, and alternate options for SER.

A. TCEQ supports the proposed SER of 75,000 tpy CO₂e.

As discussed in comments previously submitted, TCEQ does not support the EPA's overall requirements for permitting of GHG emissions under the PSD program. However, TCEQ acknowledges that if GHG permitting is to be required, the proposed SER of 75,000 tpy CO₂e is consistent with the approach established in the Step 1 GHG permitting regulations and with the thresholds that the EPA and other permitting authorities have been using for several years. The proposed SER of 75,000 tpy CO₂e is least likely to cause disruption or confusion for regulated entities and for permitting authorities. Therefore, TCEQ supports the proposed continued use of the 75,000 tpy CO₂e SER as an appropriate threshold.

B. TCEQ is opposed to the potential selection of any GHG SER below the proposed SER of 75,000 tpy CO₂e.

The EPA solicited comment on the possible selection of an SER below 75,000 tpy, specifically citing hypothetical examples of a SER of 30,000 or 45,000 tpy CO₂e for purposes of applying BACT requirements. TCEQ is strongly opposed to the possible establishment of a SER below 75,000 tpy CO₂e. The cited thresholds of 30,000 or 45,000 tpy CO₂e would greatly expand the number of projects subject to BACT review for GHG with little additional benefit and would create confusion for regulated entities and permitting authorities which have become accustomed to the higher thresholds established in the EPA's Tailoring Rule regulations. A BACT review of GHG emissions from these smaller sources would rarely result in any changes in required control equipment or in a significant reduction in GHG emissions. In the notice of proposed rulemaking, at 81 *FR* 68137, the EPA stated, "[t]he current 75,000 tpy CO₂e threshold has resulted in the PSD BACT requirement applying to GHGs in the vast majority of the actual 'anyway source' PSD permits covering the type of units for which GHG BACT review would be expected to achieve meaningful emissions reductions." The EPA additionally stated, "[c]onsidering the limited additional cases where GHG BACT review could apply at a GHG SER below 75,000 tpy CO₂e and the limited degree of emissions reductions that might be achieved in each case, we propose to conclude that the burdens of subjecting such projects to case-by-

case BACT review for GHGs would yield a gain of trivial or no value." TCEQ concurs with this conclusion.

C. The EPA requested comments on the type of new or modified emission sources and units that would trigger PSD and be subject to the GHG BACT requirement at suggested alternative GHG SER levels of 30,000, 45,000, or 75,000 tpy CO₂e.

Selecting a SER value less than 75,000 tpy CO₂e (such as 30,000 or 40,000 tpy) would obviously result in an increase to the number and types of facilities subject to the GHG PSD requirements. This is especially true for the numerous types of combustion units, including but not limited to boilers, turbines, engines, furnaces, kilns, and incinerators. However, as stated previously and below, there is no real benefit to increasing the number of facilities or additional combustion source types subject to the GHG PSD requirements because there is no adequately demonstrated technology for control of GHG that is technically or economically feasible. In addition, since GHG emissions are typically generated from combustion processes with known fuel and combustion properties, the EPA can use emission factors and other existing data to calculate the impact of a decrease in the SER on the different sizes and types of combustion units.

II. Discussion of the requirement for a GHG-specific BACT review.

Proposed GHG BACT are either already commonly in use for criteria pollutants or not generally available in a feasible, demonstrated form.

Regardless of the value selected for a SER, in most applications, a GHG-specific BACT review is not likely to result in substantial reductions in GHG emissions beyond what is already accomplished through the existing BACT review for criteria pollutants. In the preamble, the EPA summarized the current BACT for sources of GHGs: energy efficiency measures, leak detection and repair measures, gas recovery and utilization, and carbon capture and storage. The first three technologies are already widely used for control of criteria pollutants and would tend to produce the same reduction in GHG emissions for major PSD sources even without a specific regulatory requirement for BACT on GHG emissions. Carbon capture and storage (CCS) is still not an adequately demonstrated technology for control of GHG emissions and, in many applications, CCS will not be technically or economically feasible.

III. Texas-specific issues and actions.

TCEQ supports the EPA's proposed removal of the limited authority the EPA retained for issuance of certain GHG PSD permits in Texas.

As part of its November 10, 2014, final rule rescinding the GHG PSD Federal Implementation Plan (FIP) (79 FR 66641), the EPA retained limited authority to issue GHG PSD permits for certain 'anyway' sources that wished to remain with EPA throughout the permit process. As indicated in comments submitted on that final rule, TCEQ supported the EPA's process for transitioning authority to Texas and addressing certain permit applications that were still pending with the EPA or in the appeal process at the time of the rescission of the FIP and approval of TCEQ state implementation plan (SIP) revisions. TCEQ also supports the EPA's proposal to remove the remaining portions of the FIP for those permits that have since been issued. As TCEQ stated in its SIP revision for GHG permitting, the agency will implement and enforce permitting requirements for those EPA-issued GHG PSD permits.