

## **GHG Permitting Programs Ready to Go by January 2<sup>nd</sup>**

*National Association of Clean Air Agencies*

*October 28, 2010*

With the onset of greenhouse gas (GHG) permitting only two months away, every state but one is poised to ensure that sources can obtain preconstruction permits under the Clean Air Act come January 2, 2011. While most states already have the authority to permit GHGs under preconstruction permit – or Prevention of Significant Deterioration (PSD) – programs, EPA has identified programs in 13 states that need to revise their State Implementation Plans (SIPs) in order to gain authority to issue PSD permits for GHG emissions. Excepting only one, programs in all states on the list have indicated that they will either revise their PSD rules by January 2, 2011 or very shortly thereafter, or accept a Federal Implementation Plan (FIP) that will give EPA authority to issue the GHG portion of PSD permits until state rules are revised. This provides that sources required to apply PSD controls to their GHG emissions will be able to obtain the necessary permits and avoid construction delays.

In August of this year, EPA proposed two companion rulemakings to ensure that authority to issue PSD permits for GHG emissions is in place by January 2, 2011. In the first action, Proposed Finding of Substantial Inadequacy and SIP Call,<sup>1</sup> EPA identified programs in 13 states that did not appear to have the authority to apply their PSD programs to GHG emissions (“Presumptive SIP Call List”). States on the Presumptive SIP Call List were asked to send a letter to EPA by October 4, 2010 confirming that GHGs are not included in their PSD programs and identifying a deadline for submitting SIP revisions to EPA for approval. The agency proposed allowing programs to identify a SIP submittal date as early as December 22, 2010, or three weeks from issuance of the final SIP Call. In the second action, Proposed Federal Implementation Plan,<sup>2</sup> EPA proposed to immediately promulgate a FIP for any program unable to submit SIP revisions by the identified deadline, providing states a federal backstop in the event that they could not change their own rules by January 2, 2011. Programs unable to revise their rules by January 2, 2011 have the option of choosing the earliest SIP submittal date, allowing EPA to immediately promulgate a FIP.<sup>3</sup>

The National Association of Clean Air Agencies (NACAA), the association of air pollution control agencies in 52 states and territories and over 165 metropolitan areas across the country, has reviewed and briefly summarized the responses of the programs on EPA’s Presumptive SIP Call List.<sup>4</sup> The letters summarized below are from programs in 14 states: the 13 identified by EPA in the Presumptive SIP Call List plus one state that asked to be added to the list. Of these, programs in 7 states indicated that they anticipate revising their rules by January 2, 2011 or very shortly thereafter, while programs in 6 states indicated that they will accept a FIP to apply PSD requirements to GHG emissions. Only one state declined to revise its rules or accept the FIP.

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<sup>1</sup> 75 *Federal Register* 53892.

<sup>2</sup> 75 *Federal Register* 53883.

<sup>3</sup> The agency also indicated that authority to permit GHGs under Title V operating permit programs will be addressed separately at a later date.

<sup>4</sup> All letters are available in Docket # EPA-HQ-OAR-2010-0107. The following summary includes responses from only those states that were identified by EPA as part of, or asked to be added to, the Presumptive SIP Call List.

State-By-State Summary of GHG SIP Call Letters

AGENCY	SUMMARY OF RESPONSES
Alaska	<ul style="list-style-type: none"> <li>➔ Alaska is currently in the process of revising its regulations to allow the state to comply with federal rules regarding GHG permitting, and anticipates that those revisions will be in effect by January 2, 2011.</li> <li>➔ The state anticipates submitting its SIP revisions to EPA by December 22, 2010, and asks to be dropped from the SIP Call list upon submittal. The state requests parallel processing of its SIP revisions, and for notification if EPA is unable to approve the SIP revisions by January 2, 2011.</li> </ul>
Pinal Co., AZ	<ul style="list-style-type: none"> <li>➔ Pinal Co.'s PSD program does not currently include GHGs. The county plans to amend its rules to include GHGs and submit SIP revisions to EPA.</li> <li>➔ Until then, the county asks for the implementation of a FIP to address GHGs under its PSD program, and will request delegation of the FIP.</li> </ul>
Arizona <sup>5</sup>	<ul style="list-style-type: none"> <li>➔ Arizona does not have the authority to permit GHGs under its PSD program, and does not agree that its program is therefore inadequate.</li> <li>➔ The state will accept the imposition of a FIP implementing PSD requirements for GHGs, and does not object to a SIP submittal deadline as short as 3 weeks from the date of the final SIP Call.</li> </ul>
Arkansas	<ul style="list-style-type: none"> <li>➔ Arkansas confirms its status as a state that does not currently have the authority to permit GHGs under its PSD program. While the state plans to develop the authority to include GHGs in its PSD program, and to ask for parallel processing of its associated SIP revisions, it will not be submitting SIP revisions by December 2010.</li> <li>➔ The state does not object to the shortest SIP submittal deadline of 3 weeks from the date of the final SIP Call, and subsequent implementation of a FIP to address PSD requirements for GHGs. The state prefers not to accept delegation of the FIP.</li> </ul>
Sacramento, CA	<ul style="list-style-type: none"> <li>➔ Sacramento concludes, after further review, that its SIP does contain general authority to implement PSD requirements for GHGs. Nonetheless, the district plans to revise its PSD rules for clarity in January 2011.</li> <li>➔ If EPA disagrees with the district's reading of its SIP as a whole as conferring authority to apply PSD requirements to GHGs, then the district would not object to a SIP submittal deadline of January 31, 2011.</li> </ul>
Connecticut	<ul style="list-style-type: none"> <li>➔ Connecticut confirms that its SIP does not currently apply its PSD program to GHGs. The state intends to revise its PSD program to include GHGs, and will seek expedited processing of those regulatory revisions. A public hearing on the initial draft proposal is scheduled for October 18, 2010. The state requests parallel processing of its SIP revisions.</li> <li>➔ The state does not object to a SIP submittal deadline of March 1, 2011.</li> </ul>
Florida	<ul style="list-style-type: none"> <li>➔ Florida confirms that its SIP does not apply PSD requirements to GHGs; the state cannot develop adequate authority and submit SIP revisions by December 2010.</li> <li>➔ The state does not object to a SIP submittal deadline of December 22, 2010, and subsequent implementation of a FIP to address GHG PSD requirements.</li> </ul>

<sup>5</sup> Excluding Maricopa Co., Pima Co., and Indian Country.

Idaho	<ul style="list-style-type: none"> <li>➔ Idaho confirms that its current SIP does not authorize the issuance of PSD permits for GHGs. The state intends to incorporate GHGs into its PSD program, and will submit SIP revisions after approval by its legislature (between April and June 2011).</li> <li>➔ The state requests a SIP submittal deadline of December 22, 2010, and the subsequent implementation of a FIP to address PSD requirements for GHGs.</li> </ul>
Kansas	<ul style="list-style-type: none"> <li>➔ Kansas confirms that it does not currently have the authority to include GHGs in its PSD permits. The state is in the process of revising its regulations to include GHGs, and intends to publish the final rules in November 2010 with an implementation date of January 2, 2011. The state has requested parallel processing of its SIP revisions, and submitted a draft to EPA on October 1, 2010. The final rule will be submitted as soon as possible after the close of public comments on October 26, 2010.</li> <li>➔ The state requests that EPA take action on its SIP revisions no later than January 2, 2011. If EPA is unable to act in time and the state remains on the proposed SIP Call list, the state requests the shortest possible SIP submittal deadline of December 22, 2010 or 3 weeks from the final SIP Call, and subsequent implementation of a FIP to address PSD requirements for GHGs. If so, the state requests immediate delegation of the FIP.</li> </ul>
Jefferson Co., KY	<ul style="list-style-type: none"> <li>➔ Jefferson Co. is in the process of revising its PSD regulations to incorporate GHGs. The district anticipates adopting the revised regulations prior to December 1, 2010, and requests parallel processing of its SIP submittal.</li> <li>➔ In the event that the district is unable to adopt the revised regulations by December 1, 2010, it would not object to a SIP submittal deadline of January 1, 2011.</li> </ul>
Kentucky	<ul style="list-style-type: none"> <li>➔ Kentucky intends to amend current regulations to incorporate GHGs into its PSD program, and anticipates submitting SIP amendments by January 1, 2011.</li> <li>➔ The state proposes a SIP submittal deadline of March 31, 2011.</li> </ul>
Nebraska	<ul style="list-style-type: none"> <li>➔ Nebraska intends to adopt regulations to apply its PSD program to GHGs. A rulemaking is already underway, and the state anticipates final promulgation by January 2, 2011. The state requests parallel processing of its SIP revision.</li> <li>➔ The state does not object to a SIP submittal deadline of March 1, 2011.</li> </ul>
Clark Co., NV	<ul style="list-style-type: none"> <li>➔ Clark Co. submitted SIP revisions concerning its PSD applicability provisions and definitions earlier this year, though further revisions to incorporate GHGs are required. The county is in the process of amending its PSD regulations to incorporate GHGs, and anticipates submitting SIP revisions to EPA by December 1, 2010.</li> <li>➔ If, due to unforeseen circumstances, the county does not submit its SIP revisions by December 1, 2010, it would not object to a SIP submittal deadline of July 1, 2011.</li> </ul>
Oregon	<ul style="list-style-type: none"> <li>➔ Oregon confirms that its SIP PSD program does not currently apply to GHGs. The state plans to develop authority to apply its PSD program to GHGs, and submit SIP revisions to EPA by the end of February 2010.</li> <li>➔ The state does not object to a SIP submittal deadline of December 22, 2010.</li> </ul>
Texas	<ul style="list-style-type: none"> <li>➔ Texas does not believe that its SIP is inadequate because it does not include GHGs, and questions the legality of EPA's SIP Call proposal.</li> <li>➔ The state does not believe EPA's proposed SIP submittal deadline is reasonable.</li> </ul>

Wyoming	<ul style="list-style-type: none"><li>➔ Wyoming indicates that its laws prevent the state from regulating GHGs, and asks to be moved to the SIP Call List.</li><li>➔ The state does not object to a SIP submittal deadline of December 22, 2010, and subsequent implementation of a FIP to address PSD requirements for GHGs.</li></ul>
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