

This question and answer document (Q&A) explains the requirements of EPA regulations, describes EPA policies, and recommends procedures for permitting authorities to use to ensure that permitting decisions are consistent with applicable regulations. This Q&A is not a rule or regulation, and the guidance it contains may not apply to a particular situation based upon the individual facts and circumstances. This Q&A does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. The use of non-mandatory language such as “guidance,” “recommend,” “may,” “should,” and “can,” is intended to describe EPA policies and recommendations. Mandatory terminology such as “must” and “required” are intended to describe controlling requirements under the terms of the Clean Air Act and EPA regulations, but the Q&A does not establish legally binding requirements in and of itself.

Issuing Permits for Sources with Dual PSD Permitting Authorities

Question: In States (or local districts) where GHG permitting is done under a FIP but where permitting of other regulated NSR pollutants is done under an EPA-approved state implementation plan (SIP), who issues the permit if a proposed new source or modification involves both GHGs and non-GHGs?

Answer: In the described jurisdictions, EPA is the permitting authority¹ for GHGs and the State is the permitting authority for all other regulated NSR pollutants. Therefore, if the emissions analysis reveals that a source or project is subject to PSD only for its GHG emissions, the EPA Region, as the GHG permitting authority, will issue the PSD permit (or permit revision). On the other hand, if the source or project is subject to PSD only for non-GHG pollutants, then the State will issue the PSD permit. If the source or project is not subject to PSD for any pollutants, the State will issue the minor source permit, as applicable.

In the case of a source or project that has both GHGs and non-GHGs that are subject to PSD, and the source is an existing major PSD source for the non-GHG pollutant(s), the State will issue the non-GHG portion of the permit and EPA will issue the GHG portion. However, if a source or project is subject to PSD solely because of its GHG emissions and one or more of the non-GHG pollutants are emitted at or above the applicable PSD significant levels – as defined in 40 CFR 52.21(b)(23) – and below the applicable 100 or 250 TPY major source threshold, then the EPA Region will issue the permit for not only GHG, but for the other regulated NSR pollutant(s) emitted in a significant amount. This approach is explained in the GHG FIP Rule at 75 FR 82251:

“In addition, beginning on July 1, 2011, those states without authority to regulate GHG may not be able to issue PSD permits for non-GHG pollutants to sources that are major only because of their GHG emissions. This is because under the state’s approved SIP, these sources are not major sources. In this circumstance, EPA will also be the PSD permitting authority for the non-GHG pollutants...”

¹ Note that when EPA is the permitting authority we may delegate our permitting authority to a state, local, or Tribal agency that is willing and able to issue permits on our behalf.

Example Scenarios

1. In September 2011, a proposed new source that will emit GHG emissions in excess of 100,000 TPY CO₂e and the major source threshold (*i.e.*, 100 or 250 TPY mass) applies for a permit. The source will not emit any other regulated NSR pollutant at or above the major source threshold, but it will emit 50 TPY of NO_x. The proposed source is located in a State where GHG permitting is done under a FIP but where permitting of other regulated NSR pollutants is done under an approved SIP program. Who would issue the permit for this source?

This proposed source's GHG emissions are subject to PSD. Furthermore, since it will emit NO_x above the 40 TPY significant level, the NO_x emissions are also subject to PSD. However, since this source's NO_x emissions are not part of an existing PSD permit issued by the State permitting authority, the EPA Region will issue the PSD permit for not only GHG, but for NO_x as well. The State agency will issue a minor source permit, if required, for any non-GHG pollutant(s) that the source emits below the applicable significant amount.

2. An existing PSD source receives a permit prior to July 1, 2011 to undertake a minor modification that will increase emissions of non-GHG regulated NSR pollutants at levels below their applicable significant levels. The source currently has a potential to emit (PTE) of GHG above 100,000 TPY CO₂e and above the major source threshold (100 or 250 TPY mass), and the modifications will increase GHG emissions by at least 75,000 TPY CO₂e. Since emission increases of all other regulated NSR pollutants will be below their applicable significant levels, this is not an "anyway modification." However, if the source does not begin actual construction on the issued minor modification permit before July 1, 2011, and since its PTE is above 100,000 TPY CO₂e and the major source threshold, it will be subject to PSD for GHGs unless it obtains a permit revision that limits its GHG emissions increase to below 75,000 TPY CO₂e. If this happens, and the source is located in a State where GHG permitting is done under a FIP but where permitting of other regulated NSR pollutants is done under an approved SIP program, who would issue the permit revision for the emissions increases? And which agency issues the permit limiting the GHG emissions to below 75,000 TPY CO₂e?

If the source is seeking to limit its GHG emissions to a level below 75,000 TPY CO₂e, then the State permitting authority would need to issue the permit revision for the minor modification that includes an enforceable limit on GHG emissions (*e.g.*, a limit that is enforceable as a practical matter). However, if the source is unable to limit its GHG emissions through an enforceable permit condition, the EPA Region would issue the major modification PSD permit for the GHG emissions increase, and the State agency would issue a minor modification permit revision, if required, for the increases of non-GHG pollutants.