

INSIGHTS

EPA Issues New Final Greenhouse Gas Clean Air Act Permit

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On June 10, 2013, EPA issued a final greenhouse gas (GHG) Prevention of Significant Deterioration (PSD) permit to PL Propylene, LLC for construction of combustion turbines, heaters, waste heat boilers, and a flare at an existing propane dehydrogenation plant in Houston, Texas. Currently, EPA Region 6 has 69 permit applications listed on their docket. Of those applications, EPA has finalized 15 PSD permits. Processing time from initial application to final permit varies, but the time line has ranged between six months to over 14 months with some applications having been pending for longer than that. Bracewell has assisted with the GHG permitting process in Region 6 on twelve applications to date with six of those projects having received final PSD GHG permits. In addition, Bracewell has worked with various clients on strategies for ensuring that GHG permitting is not triggered, allowing certain projects to avoid costly and time-consuming PSD review for GHGs. We have also assisted companies in various States, such as California, Illinois, and New Jersey, and those receiving permits under the Outer Continental Shelf permitting program to navigate GHG permitting requirements. As for Texas, on May 22nd the Texas Legislature sent a bill the governor that should eventually lead to Texas obtaining the authority and responsibility to implement and issue GHG PSD permits in the State. The bill requires the Texas Commission on Environmental Quality (TCEQ) to adopt rules transitioning control to Texas of the GHG permitting process, including submission of State Implementation Plan (SIP) revisions to EPA. Governor Perry is not expected veto the bill and whether he elects to sign or not, on June 16, 2013 it will become law. If the bill is enacted, however, it could take a significant amount of time before a final transition of the program to Texas as TCEQ would have to promulgate rules and obtain EPA approval for SIP revisions prior to taking over the program in its entirety. A shorter timeline might be involved if TCEQ were to accept delegation of the program from EPA, although taking delegation may bring or leave in place extra federal permitting requirements and procedures. Under a delegation arrangement with EPA, GHG permits issued by TCEQ would be subject to appeals before the USEPA Environmental Appeals Board in Washington, DC.