

# ENVIRONMENTAL

# NEWSFLASH

FEBRUARY 23, 2009

## EPA TO RECONSIDER WHETHER CARBON DIOXIDE IS REGULATED UNDER CLEAN AIR ACT PSD PROGRAM

The Clean Air Act's Prevention of Significant Deterioration (PSD) program applies to all new major stationary sources of any pollutant regulated under the Act. In general, a facility is considered to be "major" if it emits or has the potential to emit 250 tons per year of a regulated pollutant. Also, in general, the PSD program applies to major modifications of existing major sources where that modification results in an emissions increase of a regulated pollutant. Regulated facilities must obtain a permit prior to beginning construction and must employ best available control technology (BACT) for the regulated pollutant.

In a memorandum dated December 18, 2008, the Bush EPA took the position that emissions of carbon dioxide, a greenhouse gas, do not trigger regulation under the PSD program because carbon dioxide is not a regulated pollutant. Specifically, the Bush EPA maintained that in order for a pollutant to be considered a regulated pollutant, the pollutant must be subject to regulations imposing limitations on emissions. Environmental groups pointed out that EPA regulations impose monitoring and reporting requirements for carbon dioxide at certain types of facilities. Therefore, in the view of the environmental groups, carbon dioxide is a regulated pollutant that could trigger the requirements of the PSD program. The environmental groups had petitioned EPA to reconsider the December 18 memorandum.

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On February 17, 2009, the Obama EPA granted the petition for reconsideration in order to allow public comment on the issues raised in the December 18 memorandum. The Obama Administration has previously expressed support for regulating greenhouse gas emissions under the Clean Air Act. An interpretation that carbon dioxide emissions are subject to the PSD program could potentially require a large number facilities, including power plants, to employ BACT to control carbon dioxide emissions.

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