

Public Comments and Responses

Letter dated January 11, 2011 from Gary Rubenstein, Sierra Research

Comment #1: The commenter supports Staff's proposed exclusion of sections (m) and (k) of 40 CFR 52.21 as they pertain to GHG, noting that this part of the proposal is consistent with EPA's Tailoring Rule and EPA's "PSD and Title V and Permitting Guidance for Greenhouse Gases" (November 2010).

Response: Thank you for support. Section (k) clearly does not apply to GHG because there is no NAAQS for GHG. Section (m) clearly does not apply to GHG because, as noted in the Guidance Document, it is excluded by section (i)(5)(iii) because it is not listed as one of the pollutants in (i)(5)(i). Discussions with staff at EPA Region IX indicated that the exclusion of sections (m) and (k) for GHG is acceptable.

Comment #2: Section (n)(2) should also be excluded as it pertains to GHG. This section requires the submittal, if requested by the Administrator, of information on air quality impacts of the source and of commercial, residential, industrial and other growth that has occurred in the area since August 7, 1977. Air quality impacts can only be determined by ambient air quality modeling or monitoring, and EPA's Guidance Document does not recommend that PSD applicants be required to model or conduct ambient monitoring for CO₂ or GHG.

Response: While sections (k) and (m) are clearly not applicable to GHG (see response to comment #1), section (n)(2) is a different matter. The application of this requirement is at the discretion of the Air Pollution Control Officer. Although the current guidance document does not recommend requiring this modeling and monitoring, circumstances could change in the future that would make the application of modeling and monitoring of GHG relevant, at which time the Administrator would have the option to require it. In discussions with staff of EPA Region IX, they indicated that exclusion of section (n)(2) is not acceptable and could result in disapproval of the rule. Staff will continue to propose Rule 203 without an exclusion for section (n)(2).

Comment #3: Sections (o) and (p) should be excluded as they pertain to GHG. Section (o), Additional Impacts Analysis, requires an assessment of the impairment to visibility, soils, vegetation, and air quality that would occur as a result of the growth associated with the proposed project. Section (p) requires an assessment of the impact of the proposed source on Class I areas. EPA's Guidance Document states that it is not necessary for applicants or permitting authorities to assess impacts from GHG in the context of additional impacts analysis or Class I area provisions.

Response: As noted in the comment, the current Guidance Document does not recommend these additional analyses and assessments for GHG. It is expected that permitting authorities will follow the guidance and not require them at this time. However, circumstances could change in the future that would make these requirements relevant to GHG, at which time new guidance could be issued. If the District excluded sections (o) and (p) in the proposed amendments, it could

result in a requirement to amend Rule 203 in the future to incorporate these sections as they pertain to GHG. In discussions with staff of EPA Region IX, they indicated that exclusion of sections (o) and (p) is not acceptable and could result in disapproval of the rule. Staff will continue to propose Rule 203 without exclusions for sections (o) and (p).

The comment letter begins on the following page.

January 11, 2011

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Subject: Comments on Proposed Amendments to Rule 203 - Prevention of Significant Deterioration

Dear Mr. Cooley:

Thank you for the opportunity to comment on the District's proposed amendments to Rule 203, Prevention of Significant Deterioration. We are aware of the very short time provided by EPA in its State Implementation Plan (SIP) call for the District to amend the New Source Review rule to incorporate Prevention of Significant Deterioration (PSD) review for greenhouse gases (GHGs), and we believe the District has done an outstanding job of developing the proposed amendments. However, we urge the District to take the time needed to fully consider all public comments and other issues related to implementing the PSD program and not to be rushed into adoption to meet an unreasonably stringent timetable. We note that the United States Court of Appeals for the D.C. Circuit recently stayed the effectiveness of the Federal Implementation Plan (FIP) PSD rule promulgated by EPA for the state of Texas. The FIP rule was adopted by EPA because of Texas' failure to comply with the SIP call by the date specified in the SIP call. Texas appealed the FIP rule on the basis that EPA failed to give the state sufficient time to respond. While the stay "is to give the court sufficient opportunity to consider the merits of the emergency motion ... and should not be construed in any way as a ruling on the merits of that motion" (Order, No. 10-1425, Dec. 30, 2010), the court's issuance of the stay indicates that there is significant doubt about whether EPA can force states to meet its extremely short timetable. The Court has set forth an aggressive schedule for filings in this case (EPA must file its response to Texas' motion by 10 am EST on January 6; Texas must file its response by 4 pm EST on January 7), so a decision on the merits may be issued before the District's scheduled January 27th hearing on the proposed amendments.

If the District does, in fact, intend to proceed with adoption of this rule, we want to express our support for the District's proposed exclusion of GHGs from the requirements of 40 CFR 52.21 subsections (k) and (m). We note that the District's proposed exclusion is consistent with EPA *written* policy as expressed in EPA's GHG Tailoring Rule (75 FR 31513, June 3, 2010) and in the November 2010 guidance document titled "PSD and Title V Permitting Guidance for Greenhouse Gases," and we agree with these EPA policy statements that the requirements of these sections are not logically applicable to GHG.

Finally, we recommend that the District also exclude 40 CFR 52.21 subsections (n)(2), (o) and (p) for purposes of GHG, consistent with the same EPA guidance cited above. This recommendation and consistency with EPA guidance are discussed further below.

Requirements of 40 CFR 52.21 Subsections (k), (m), (n)(2), (o) and (p) and Applicability to GHGs

In a discussion of general requirements for PSD in the Preamble to the Tailoring Rule, EPA discussed the applicability of the ambient air quality and additional impacts assessment requirements of 40 CFR 52.21 Subsections (k), (m), (n)(2), (o) and (p) to GHG emissions and unambiguously stated that these requirements would not apply for GHGs:

In addition to performing BACT, the source [to which PSD applies] must analyze impacts on ambient air quality to assure that no violation of any NAAQS or PSD increments will result, and must analyze impacts on soil, vegetation, and visibility. In addition, sources or modifications that would impact Class I areas (e.g., national parks) may be subject to additional requirements to protect air quality related values (AQRVs) that have been identified for such areas. Under PSD, if a source's proposed project may impact a Class I area, the Federal Land Manager is notified and is responsible for evaluating a source's projected impact on the AQRVs and recommending either approval or disapproval of the source's permit application based on anticipated impacts. ***There are currently no NAAQS or PSD increments established for GHGs, and therefore these PSD requirements would not apply for GHGs, even when PSD is triggered for GHGs.*** [p. 31520, emphasis added]

EPA expanded on the inapplicability of these analyses in its November 2010 guidance document and reiterated that modeling, monitoring, additional impacts analysis and Class I area provisions of the PSD regulations are not appropriate or necessary for GHGs:

Since there are no NAAQS or PSD increments for GHGs, the requirements in sections 52.21(k) and 51.166(k) of EPA's regulations to demonstrate that a source does not cause or contribute to a violation of the NAAQS is not applicable to GHGs. ***Thus, we do not recommend that PSD applicants be required to model or conduct ambient monitoring for CO₂ or GHGs...*** EPA does not consider it necessary for applicants to gather monitoring data to assess ambient air quality for GHGs under section 52.21(m)(1)(ii), section 51.166(m)(1)(ii), or similar provisions that may be contained in state rules based on EPA's rules. GHGs do not affect "ambient air quality" in the sense that EPA intended when these parts of EPA's rules were initially drafted. ***Considering the nature of GHG emissions and their global impacts, EPA does not believe it is practical or appropriate to expect permitting authorities to collect monitoring data for purpose of assessing ambient air impacts of GHGs.***

Furthermore, consistent with EPA's statement in the Tailoring Rule, ***EPA believes it is not necessary for applicants or permitting authorities to assess impacts***

from GHGs in the context of the additional impacts analysis or Class I area provisions of the PSD regulations for the following policy reasons. Although it is clear that GHG emissions contribute to global warming and other climate changes that result in impacts on the environment, including impacts on Class I areas and soils and vegetation due to the global scope of the problem, climate change modeling and evaluations of risks and impacts of GHG emissions is typically conducted for changes in emissions orders of magnitude larger than the emissions from individual projects that might be analyzed in PSD permit reviews.

Quantifying the exact impacts attributable to a specific GHG source obtaining a permit in specific places and points would not be possible with current climate change modeling. Given these considerations, GHG emissions would serve as the more appropriate and credible proxy for assessing the impact of a given facility. Thus, EPA believes that the most practical way to address the considerations reflected in the Class I area and additional impacts analysis is to focus on reducing GHG emissions to the maximum extent. In light of these analytical challenges, *compliance with the BACT analysis is the best technique that can be employed at present to satisfy the additional impacts analysis and Class I area requirements of the rules related to GHGs*. [pp. 48-49, emphasis added]

Subsection (k) requires the preparation of a *source impact analysis* to demonstrate that emissions from a new or modified source will not cause or contribute to the violation of (1) any national ambient air quality standard; or (2) any maximum allowable increase over the baseline concentration. EPA's November 2010 guidance clearly states, "Since there are no NAAQS or PSD increments for GHGs, the requirements in sections 52.21(k) and 51.166(k) of EPA's regulations to demonstrate that a source does not cause or contribute to a violation of the NAAQS is not applicable to GHGs." Therefore, SMAQMD's proposal to exclude this subsection for GHGs is explicitly supported by EPA's November 2010 GHG guidance.

Subsection (m) requires pre- and/or post-construction ambient air quality monitoring to establish existing air quality in areas that would be affected or to determine the effect of emissions on air quality from a new or modified source. EPA's November 2010 GHG guidance states, "EPA does not consider it necessary for applicants to gather monitoring data to assess ambient air quality for GHGs under section 52.21(m)(1)(ii), section 51.166(m)(1)(ii), or similar provisions that may be contained in state rules based on EPA's rules. GHGs do not affect "ambient air quality" in the sense that EPA intended when these parts of EPA's rules were initially drafted." This guidance explicitly supports SMAQMD's proposal to exclude subsection (m) from applicability to GHGs.

Subsection (n)(2) requires the submittal, if requested by the Administrator, of information on air quality impacts of the source and of commercial, residential, industrial and other growth that has occurred in the area since August 7, 1977. Air quality impacts can only be determined by ambient air quality modeling or monitoring, and EPA's November 2010 guidance indicates that neither is appropriate for GHG: "...*we do not recommend that PSD applicants be required to model or conduct ambient monitoring for CO2 or GHGs.*" Consistent with this guidance, the requirements of subsection (n)(2) should not be applicable to GHGs.

Subsection (o), the *Additional Impacts Analysis*, requires an assessment of the impairment to visibility, soils, vegetation, and air quality that would occur as a result of the growth associated with the proposed project. Subsection (p) requires an assessment of the impact of the proposed source on Class I areas. EPA's guidance states, "***EPA believes it is not necessary for applicants or permitting authorities to assess impacts from GHGs in the context of the additional impacts analysis or Class I area provisions of the PSD regulations...*** EPA believes that the most practical way to address the considerations reflected in the Class I area and additional impacts analysis is to focus on reducing GHG emissions to the maximum extent." Therefore, adding subsections (o) and (p) to the list of subsections excluded from applicability to GHGs is consistent with and supported by EPA's guidance.

These additions can be made to proposed Rule 203, Section 103.2; the proposed changes are shown in double underline and ~~strikeout~~ text, as follows:

103.2 The following subsections of 40 CFR Part 52.21, in effect July 1, 2010, are excluded for the purposes of greenhouse gases: (k), and (m), (n)(2), (o) and (p).

We appreciate the opportunity to review and comment on the proposed amendments. If you have any questions or need additional information regarding our comments, please do not hesitate to call.

Sincerely,



Gary Rubenstein
Senior Partner