

INSIGHTS

Texas One Step Closer to Obtaining Authority to Issue GHG Air Permits

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As anticipated, on March 26, 2014, the Texas Commission on Environmental Quality (TCEQ) [adopted](#) rules to implement House Bill 788, which required the Commission to establish greenhouse gas (GHG) emissions rules. The new rules will become effective on April 17, 2014. This action is one more step in the process of transitioning GHG Prevention of Significant Deterioration (PSD) permitting authority from EPA to TCEQ. These regulations come on the heels of EPA publishing a proposal to approve the Texas GHG PSD revisions to the Texas State Implementation Plan (SIP) in [79 Fed. Reg. 9,123](#) (Feb. 18, 2014). Two more steps remain: (1) EPA needs to approve TCEQ's rules and (2) EPA must rescind the Federal Implementation Plan (FIP), the federal rules that currently authorize EPA to issue GHG permits for projects located in Texas. Within a day of TCEQ adopting these new rules, EPA Region 6 issued letters to companies that had pending applications for the issuance of a GHG PSD permit from EPA. As we mentioned in [our post](#) last month, as part of the transition plan, projects that do not yet have a final GHG PSD permit from EPA have the opportunity to select either EPA Region 6 or TCEQ as the permitting authority for their application. These letters served to remind such project proponents of the deadline by which they must select the permitting authority for their projects: May 15, 2014. Notably, these letters warned applicants of the additional hurdles they should anticipate encountering if they select TCEQ as their permitting authority. For example, TCEQ will not have authority to *propose* or *issue* a GHG permit for any projects until EPA's FIP rescission is effective "" which occurs 30 days after publication of EPA's final rule in the Federal Register. Additionally, applicants that select TCEQ as the permitting authority for their projects must submit an application directly to TCEQ. EPA will transfer the working file for the permit to TCEQ so that TCEQ will have the benefit of the work EPA conducted on the permit prior to the transfer. Furthermore, regardless of whether their draft permits already went through public notice and comment while under EPA review, TCEQ will reinstate the public notice and comment process for each proposed permit before issuance. Therefore, applicants should carefully weigh these inconveniences as they determine which permitting authority to select. Further complicating the transition process, the U.S. Supreme Court is expected to issue a decision in *UARG v. EPA*, No. 12-1146 in early summer. The *UARG* case calls into question whether EPA even has authority under the Clean Air Act to require

stationary sources to obtain GHG PSD permits. If the Court concludes that EPA does not have such authority, GHG PSD permits will not be necessary "" unless Congress takes legislative action. *Photo credit:* [euthman](#) / [Foter](#) / [CC BY-SA](#)