



For more information or if you have any questions about this and other environmental law topics, please contact any attorney on our [Environmental team](#) or the authors below.

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EPA Lets Most Stationary Sources Off the Hook for Greenhouse Gas Permits

Earlier today, the U.S. Environmental Protection Agency finalized its rule regulating greenhouse gas emissions (GHGs) from stationary sources like manufacturing plants, cogeneration facilities and utilities. The rule is more lenient than the one originally proposed by EPA last September, applying to sources that emit 75,000 tons or more per year of GHGs, rather than the 25,000 tons per year (tpy) originally proposed. Seventy-five thousand tons per year of GHGs is equivalent to approximately 90 MMBTU/hr or about 7.5 million gallons of fuel per year.

Under today's rule, beginning January 2, 2011, most sources emitting 75,000 tpy or more of GHGs will need a Clean Air Permit – a Title V operating permit for all such sources and a PSD permit if any such source is modified. Although “most” sources need a permit, some will not; notably, a particular source will not need a GHG permit in January if it is not already subject to the Clean Air Act. If it is not otherwise subject to the Act, it does not need a permit until July 1, 2011 at the earliest. On July 1, 2011, stationary sources of GHGs emitting 100,000 tpy or more will also need GHG permits, even if they are not currently subject to the Clean Air Act. These sources will all need a Title V permit to operate and will need a PSD permit if they undertake a major modification. EPA estimates that, starting on July 1, 2011, approximately 550 facilities that do not currently need a CAA permit will have to obtain one – mostly solid waste landfills and large industrial facilities. This is significantly fewer than the 3,000 new facilities that would have required permits under the scheme EPA outlined in the proposed rule.

Starting in 2011, EPA will also begin a new rulemaking to determine what smaller sources, if any, should be subject to GHG permitting requirements. In today's rule, EPA has asserted that no sources smaller than 50,000 tpy will require a permit even after that new rulemaking, and that those permits will not be required before April 30, 2016, at the earliest.

Thus, most of the sources potentially subject to the stationary source GHG rule under EPA's proposal will not require permits. However, two large questions remain. The first is what pollution reduction technology EPA will require for the new permittees. At present, no specific technology has been shown to cost-effectively remove GHGs from air emissions. EPA still has yet to announce what steps it will require the new permittees to take to reduce GHGs, although it has previously announced its intention to do so by the end of the year.

The second big question is whether any environmental groups will sue EPA regarding the rule. Several industry representatives and state attorneys general have already sued EPA regarding the Agency's prior GHG rules and will likely sue regarding this one. However, it is also possible that any one of a number of environmental groups will also sue EPA regarding today's action, arguing that the CAA requires a more stringent rule than the one issued today. As discussed in the Venable Client Alert regarding the proposed rule, on its face, the CAA applies at a level of either 100 or 250 tpy of emissions, depending on the source. EPA has set the GHG floor at 75,000 tpy based on the argument that it would be too burdensome for it and the States to comply with the 100/250 tpy limit – too many permits would have to be issued under the lower limit. In light of the fact that EPA has excluded so many sources from permitting (even compared to the proposed rule), it is possible that environmental groups could sue to enforce the stricter, lower limit.

The final rule will be published shortly in the Federal Register.

For more information on actions your industry or business must take to comply with the new rule, please contact [Lowell Rothschild](#) at 202.344.4065, [Bob Smith](#) at 202.344.4056, or [Doug Green](#) at 202.344.4483.

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