

INSIGHTS

EPA Proposes TCEQ Take Over GHG Permitting in Texas

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On Tuesday, February 4, 2014, EPA issued a [pre-publication copy](#) of a proposed rule that if adopted would transfer greenhouse gas (GHG) permitting in Texas from EPA Region 6 to the Texas Commission on Environmental Quality (TCEQ). The proposed rule has yet to be published in the Federal Register. When it is published, the public will have 30 days to comment on the proposed rule. EPA must review and respond to those comments before it can adopt a final rule that would transfer authority to TCEQ. EPA is proposing to approve portions of various State Implementation Plan (SIP) revisions to the Texas SIP and NSR permitting program that are consistent with the federal requirements for PSD permitting of GHGs. EPA is also proposing to rescind the Federal Implementation Plan (FIP) for Texas, which EPA put in place because Texas had not developed a permitting program for GHGs. The proposed rule contains a transition plan for permits that have been issued but are not yet final because of administrative or judicial review and also permit applications that are in the queue but are still pending. Under the proposed rule, a permit that has been issued but is still subject to administrative or judicial review would stay with EPA Region 6. See Proposed Rule at 35 ("EPA will retain GHG PSD permitting authority for issued permits for which . . . all administrative and judicial appeal processes (including any associated remand action) have not been completed upon the signature date of any future EPA final action to approve TCEQ's SIP submittal and rescind the GHG PSD FIP.") By way of contrast, the proposed rule would allow applicants with pending permits to elect to either have their permit stay with EPA Region 6 or transfer to TCEQ. The proposed rule indicates that EPA would send a letter to those applicants, establishing a deadline by which they would need to decide which agency should oversee their permit. If an applicant does not make an election by the deadline specified in that letter, then EPA Region 6 would retain authority over the application. See Proposed Rule at 34-35. Because the rule has to undergo all the normal administrative processes associated with rulemaking, a final rule will not likely be issued until April at the earliest. In the interim, TCEQ has already proposed rules in anticipation of taking over the GHG permitting program and the comment period has closed. The final regulations are expected to be published on April 11 so that they can become effective on April 17, 2014.