

MAY 27, 2010 www.mcvpr.com**ENVIRONMENTAL ALERT*****Final Rule: Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule***

On May 13, 2010, the U.S. Environmental Protection Agency (“EPA”) issued a final rule setting the greenhouse gas (“GHG”) emission thresholds that define when permits under the Clean Air Act’s New Source Review Prevention of Significant Deterioration (“PSD”) and Title V Operating Permit programs are required for new, modified and existing emission sources. The May 13, 2010 final rule addresses emissions of the following GHGs: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆).

As announced in our October 2009 McV Environmental Alert, on September 22, 2009, the EPA issued a final rule mandating GHG reporting requirements for entities that emit 25,000 metric tons or more of GHGs (measured in carbon dioxide equivalents or CO₂e) per year to collect GHG emission data beginning January 1, 2010. The final rule issued on May 13, 2010 goes on to require that, between January 2 and June 30, 2011, sources subject to PSD or Title V permitting programs due to non-GHG emissions will be required to include GHG emissions in their PSD or Title V permits and determine the pollution prevention measures necessary to address GHG emissions if the source proposes to increase GHG emissions by 75,000 tons per year or more of CO₂e and if the source also significantly increases emissions of a non-GHG pollutant. Thus, between January 2 and June 30, 2011, sources will not be subject to the Clean Air Act’s PSD and Title V permit program requirements due solely to GHG emissions.

However, between July 1, 2011 and June 30, 2013, new construction projects that emit, or have the potential to emit, 100,000 tons per year or more of CO₂e will be subject to PSD and Title V requirements even if the source does not exceed the permitting thresholds for any other pollutant for which a threshold has been fixed. Regarding source modifications during this period, modifications at existing facilities that increase

net GHG emissions by 75,000 tons per year or more of CO₂e will be subject to PSD program GHG emission permitting requirements even if the source does not increase emissions of any other pollutant above applicable thresholds. Likewise, during this period the Clean Air Act Title V operating permit requirements will apply to sources that emit at least 100,000 tons of CO₂e per year regardless of whether Title V would apply based on emissions of any non-GHG pollutant.

The final rule issued May 13, 2010 is controversial because the Clean Air Act, the statute under which the EPA is issuing the final rule, applies PSD requirements to sources with emissions greater than 250 tons per year and Title V permitting requirements to sources with emissions greater than 100 tons per year. EPA has opted to “tailor” the applicability of this final rule by setting GHG emission thresholds at 75,000 and 100,000 tons per year of CO₂e because GHGs are emitted in much higher volumes than traditional pollutants and deferring to the congressional thresholds contained in the Clean Air Act would cause tens of thousands of additional sources to be subject to PSD permit requirements and millions of additional sources to be subject to Title V permits.

If you have any questions or comments, or wish additional information regarding this matter, please contact any of the attorneys listed below, members of our Environmental, Energy and Land Use Practice Group.

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