

**COMMENTS OF THE EDISON ELECTRIC INSTITUTE ON
PREVENTION OF SIGNIFICANT DETERIORATION AND TITLE V
GREENHOUSE GAS TAILORING RULE STEP 3,
GHG PLANTWIDE APPLICABILITY LIMITATIONS
AND GHG SYNTHETIC MINOR LIMITATIONS**

DOCKET NO. EPA-HQ-OAR-2009-0517

The Edison Electric Institute (EEI) appreciates this opportunity to provide comments on the *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3, GHG Plantwide Applicability Limitations and GHG Synthetic Minor Limitations* recently proposed by the Environmental Protection Agency (EPA or Agency). 77 *Fed. Reg.* 14226 (Mar. 8, 2012) (Step 3 Proposal).

EEI is the association of shareholder-owned electric companies, international affiliates and industry associates worldwide. Our U.S. members serve 95 percent of the ultimate customers in the shareholder-owned segment of the industry, and represent approximately 70 percent of the U.S. electric power industry. EEI members own and operate electric generating units (EGUs) that are subject to EPA's Prevention of Significant Deterioration (PSD) and title V programs for greenhouse gases (GHGs) and are currently required to apply for and obtain preconstruction PSD permits when building new EGUs or undertaking modifications at an existing EGUs where such actions would result in the potential to emit (PTE) GHGs at levels that exceed the thresholds set forth in EPA's Tailoring Rule.¹

¹ *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule*, 75 *Fed. Reg.* 31514 (June 3, 2010).

I. Introduction

In the Step 3 Proposal, EPA outlines several possible approaches to addressing the burden of GHG permitting, but proposes only two streamlining approaches for the PSD and title V GHG programs: GHG plantwide applicability limitations (PALs) and synthetic minor limitations for GHG sources in areas subject to the Federal Implementation Plan (FIP) for GHGs. While EPA seeks comment on other possible streamlining options, the Agency did not offer specific proposals with respect to these options.

As with the Tailoring Rule itself, EPA's stated goals for the Step 3 Proposal are to alleviate the administrative burdens on smaller sources and permitting agencies that result from subjecting numerous new sources to the requirements of the PSD program, especially the time-consuming permit-by-permit Best Available Control Technology (BACT) determinations that are part of the Clean Air Act (CAA) pre-construction permitting program. Some EGUs, especially smaller units that emit at or just below the Tailoring Rule's permitting thresholds, may benefit from PALs or synthetic minor limitations, but larger units, which include the majority of EGUs, do not appear to be the intended beneficiaries of the Tailoring Rule or the Step 3 Proposal and may not be able to take advantage of these streamlining options. Nonetheless, EEI supports flexible regulations that reduce the cost of compliance while preserving environmental benefits.

EEI confines these comments to issues related to PALs, synthetic minor limitations and two of the other streamlining options EPA discusses in the Step 3 Proposal. EPA's authority to regulate GHGs under the PSD program, including the permitting thresholds set forth in the Tailoring

Rule, is under review by the D.C. Circuit.² EEI's comments purposefully do not address issues currently before the court and should not be interpreted as commenting on the legal authority for EPA's current permitting requirements affecting GHGs.

II. GHG PALs Could Be Useful If Made More Workable.

EPA proposes to amend current regulations to allowing permitting authorities to 1) issue PALs to GHG-only sources; 2) issue either a mass-based or a carbon dioxide equivalent (CO₂e)–based PAL to a particular source; and 3) allow compliance with a GHG PAL to be used as an alternative approach for determining whether a project is a major modification subject to regulation. *See 77 Fed. Reg.* at 14239.

EEI is not aware of any EGU that currently uses PALs for other pollutants to ensure that emissions remain below major new source review (NSR) applicability thresholds. In general, the limited nature of the proposed options and the complexity of the regulations make PALs an unavailable or unattractive option for most if not all EGUs. Moreover, many states have not adopted the NSR reforms that make PALs a regulatory option.

In the proposed rule, GHG-only sources are defined as sources that would only become subject to PSD requirements because of the GHG emissions thresholds contained in the current Tailoring Rule. Therefore, most EGUs would likely not benefit from the ability of a regulatory authority to issue PALs to a GHG-only source under the Major Source Opt-in Approach. Because EPA

² *See Coalition for Responsible Regulation v. EPA*, Nos. 09-1322 *et al.*; *Coalition for Responsible Regulation v. EPA*, Nos. 10-1073 *et al.*; and *Coalition for Responsible Regulation v. EPA*, Nos. 10-1092 *et al.*

indicates that GHG PALs also may be an option for sources that could be considered major sources for both criteria and GHG emissions (*e.g.*, where the source chose to establish PALs for its non-GHG regulated NSR pollutants that may or may not be above the applicable major source thresholds for those pollutants),³ EEI supports efforts to make PALs more workable for these sources, including amending the regulations to issue PALs on either a mass- or a CO₂e- basis. EEI also supports allowing compliance with a PAL to be used as an alternative applicability approach for determining whether a project is a major modification and subject to regulation.

In this regard, EPA also should clarify that individual GHG emissions can be “netted” for purposes of determining the availability of a PAL. The Tailoring Rule allows a “sum-of-six well-mixed GHGs on a mass basis” for determining whether a new source or a modified source triggers PSD and applies a similar summing methodology for the calculation of CO₂e emissions.⁴ EPA’s regulations, at 40 C.F.R. 52.21(b)(3)(i)(b), define net emissions increases to mean contemporaneous increases and decreases. The proposed rule, however, refers to the issuance of PALs for GHGs in a general fashion, stating broadly that PALs allow a source to make changes at the source that do not trigger NSR if overall emissions at a source remain below the PAL level. While the existing regulations provide for PALs on a “tons per year” basis,⁵ further clarification would ensure that individual GHG emissions increases and decreases can be combined to stay within a yearly PAL limitation for the regulated GHG pollutant. Given the complexity of various construction projects at EGUs and other sources that may need to be

³ 77 *Fed. Reg.* 14, 241, col. 3.

⁴ 75 *Fed. Reg.* 31,514, 31,606.

⁵ 40 C.F.R. § 52.21(aa)(2)(v).

undertaken for compliance with various CAA regulations, sources need to be certain how compliance with a PAL will be calculated for GHGs.⁶

III. Synthetic Minor Limitations Should Be Broadly Available To All Sources.

EPA also proposes to allow certain sources subject to the GHG FIP that are at or below the current Tailoring Rule permitting thresholds to adopt enforceable operating limits that ensure emissions stay below the thresholds, thus earning them the regulatory status of “synthetic minor” sources. *See 77 Fed. Reg.* at 14244. Synthetic minor permits are a way to restrict a source’s PTE, thereby avoiding NSR and title V permitting requirements.

Based on a review of the recently released GHG emissions reporting data collected under EPA’s GHG Mandatory Reporting Rule, there are more than 300 EGUs that currently emit GHGs at or just below the current Tailoring Rule permitting thresholds. While most of these EGUs likely are not subject to the GHG FIP, the Agency’s actions will serve as important precedent for all PSD GHG permitting authorities. As a consequence, EPA’s approach to synthetic minor limitations should be broad enough to cover a wide range of source categories. The Step 3 Proposal implies that this streamlining option will only be available to a limited subset of source categories. *See id.* at 14249. EPA’s final rule should make synthetic minor limitations available to any source that wishes to take on voluntary, but enforceable operating restrictions to limit PTE and avoid permitting requirements. At minimum, EPA should affirm that state permitting

⁶ EEI again emphasizes that its comments are in the context of the proposed rule and do not purposefully address any issue current before the D.C. Circuit concerning EPA’s authority to regulated GHGs under the PSD program.

agencies are not prohibited from employing synthetic minor limitations for any particular GHG sources.

EPA recognizes that the current significance rate for GHGs is zero tons per year, “thus making this type of synthetic minor limit less practical for GHG sources.” 77 *Fed. Reg.* at 14245. EPA should make synthetic minor limitations a more attractive and useful streamlining technique by increasing the significance rate for GHGs to the current permitting thresholds set forth in the Tailoring Rule.

IV. EPA Should Engage In A Public Process to Explore Other Streamlining Options, Including Presumptive BACT And General Permits For GHGs.

In the Step 3 Proposal, EPA requests comment on two additional streamlining options: presumptive BACT and general permits for GHGs. As noted in EEI’s comments on the Tailoring Rule, filed in Docket No. EPA-HQ-OAR-2009-0517 on December 28, 2009, “presumptive BACT levels may offer some benefit to sources confronted with PSD and should be considered as a possible tool for streamlining the permitting process, especially for those sources above [] applicability thresholds. However, sources must continue to be allowed the opportunity to address environmental, energy and economic considerations.” EEI supports a public process to address presumptive BACT and would encourage EPA to provide an opportunity for public discussion on this topic. Similarly, EEI supports a public process for exploring issues related to the use of general GHG PSD permits for certain sources. Accordingly, EPA should issue an advanced notice of proposed rulemaking on both these topics.