



What options do states have?

What is Georgia planning to do?

What are some of the other states doing?

**What are the possible implications to
permit fees?**

What Options do States have?



- 1. Take action to prevent or prohibit the regulation of GHGs within the State
 - Or, if such action had already been taken, do nothing to remove the limitation
- 2. Do nothing
 - SIP allows regulation of GHGs but no effort to adopt Tailoring Rule thresholds
- 3. Adopt the Tailoring Rule thresholds
 - By rule or by interpretation

Option 3 – By Interpretation



- “As we will explain, many state, local and tribal area programs will likely be able to immediately implement our approach without rule or statutory changes by, for example, interpreting the term “subject to regulation” that is part of the applicability provisions for PSD and title V.” [75 FR 31518]
- “We are adopting definitions of the term “subject to regulation” to ...facilitate rapid implementation of the final rules by states. Under this approach, states may not need to undertake a regulatory or legislative action before implementing the final rule. These states would be able to establish their interpretations of the term “subject to regulation” used in existing state rules before January 2, 2011, ... and thereby exempt sources below the threshold from PSD and title V as a matter of both federal and state law.” [75 FR 31525]

Option 1: Prevent or Prohibit the Regulation of GHGs within the State



- U.S. EPA will take over (FIP) the permitting program for greenhouse gases from the state.
 - They have already proposed to do so for about a dozen states. [75 FR 53883, September 2, 2010]
- Regulatory gridlock and regulatory uncertainty
 - Where should the applications be sent?
 - Who is going to process the applications?
 - What forms should be used?
 - Who is contact for questions?
 - U.S. EPA's track record at processing air permit applications is not good. It will likely take much longer for U.S. EPA to process the permits.
- Note: U.S. EPA has indicated their preference to delegate the FIP authority to the state such that the state issues the permits instead of EPA

Option 1: Prevent or Prohibit the Regulation of GHGs within the State



- “For any state that lacks the ability to issue PSD or title V permits for GHG emissions sources consistent with the final rule, we intend to undertake a separate action to call for revisions to these programs. We also intend to move quickly to impose a Federal Implementation Plan (FIP) for PSD through 40 CFR 52.21, and use our federal title V authority to ensure that GHG sources will be permitted consistent with the final rules.”
 - Final EPA Tailoring Rule – 75 FR 31526

Option 2: Do Nothing



- If a state that has the authority to regulate GHGs does nothing to implement the Tailoring Rule thresholds, U.S. EPA will likely disapprove the portion of the State Implementation Plan (SIP) that allows greenhouse gases to be regulated below the Tailoring Rule thresholds.
- Regulatory gridlock and regulatory uncertainty
 - What GHG thresholds and applicability dates should be used?
 - Who (GHG levels) should be submitting applications?
 - Can the State issue a construction permit for a source with GHG emissions above 250 tpy but less than the Tailoring Thresholds?
 - Potential disagreement between State Rules and EPA Approved SIP if EPA finalizes rule to “narrow” the SIP approval to exclude sources less than Tailoring Rule thresholds.

Option 2: Do Nothing



- “For any state that is unable or unwilling to apply the permitting thresholds in the final rules ... EPA will move forward with finalizing a limited approval of the state’s permitting program. By the same token, if we do not receive a letter from a state in response to this request by August 2, 2010, we will be obliged to move forward with finalizing a narrowing of our approval of the existing SIP or title V program.”
 - Final EPA Tailoring Rule – 75 FR 31525

Option 3: Adopt the Tailoring Rule Thresholds



- Regulatory gridlock and regulatory uncertainty described in Options 1 and 2 are avoided.
- The state, and regulated industry, will still experience significant costs to implement the requirements.
- However, the costs to regulated industry and the amount of regulatory uncertainty are less under this path than the other paths.

What is Georgia Planning to do?



- Option 3: Adopt the Tailoring Rule Thresholds
 - Based on the reasons on the previous slide, Georgia EPD has proposed to incorporate the Tailoring Rule thresholds into our rules and to submit a SIP revision to U.S. EPA requesting approval as part of our federally approved plan.

For States Actively Pursuing Option 3 (Adopt Tailoring Rule), EPA may still Preemptively Change a State's SIP Approval



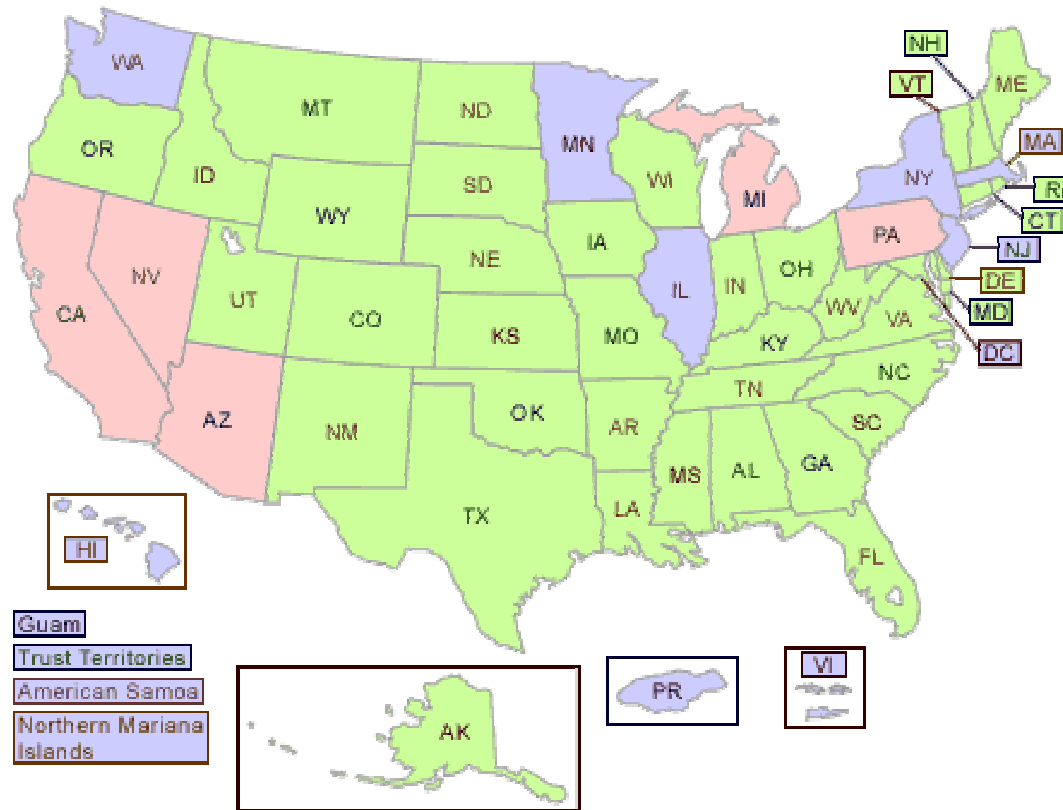
- Note: Content of this slide taken from presentation by Anna Marie Wood, Acting Director, Air Quality Policy Division, EPA OAQPS dated October 20, 2010 (entire presentation posted on our GHG page)
- The purpose of the rulemaking is to serve as a back stop to ensure that all states are able to take advantage of the GHG PSD thresholds established in the Tailoring Rule, regardless of whether SIP revision to adopt Tailoring Rule thresholds is approved as of January 2, 2011
- Proposed in the Tailoring Rule
- EPA to issue a final rule to “narrow” the prior SIP approval to exclude smaller sources to implement the Tailoring Rule
 - Timing for final rule – in place before January 2, 2011
- As long as a State has changed its state laws and EPA has “narrowed” the SIP approval by January 2, 2011 the state’s SIP revision to adopt TR thresholds could be approved later.




What are some of the other States Doing?



- PSD: Delegated Programs vs. SIP Approved Programs
 - Some states (including Illinois, Washington, Minnesota, Hawaii) do not have SIP approved PSD programs. Instead, they are “delegated” the authority to implement the US EPA PSD permitting program in their state. Therefore, US EPA revisions to 40 CFR 52.21 automatically become effective in those states.
 - Some states (New Jersey, New York, Massachusetts) already allow EPA to run the PSD permitting program in their states
- Texas (SIP approved)
- South Carolina (SIP approved)
- Florida (SIP approved)
- Minnesota (delegated)

PSD Status – SIP Approved v. Delegated



-  SIP Approved Areas
-  EPA or Delegated Areas
-  Combination of SIP and EPA or Delegated Areas

Source: <http://www.epa.gov/nsr/where.html>

Texas



- Option 1
- August 2, 2010 letter to EPA
 - “On behalf of the State of Texas, we write to inform you that Texas has neither the authority nor the intention of interpreting, ignoring, or amending its laws in order to compel the permitting of greenhouse gas emissions.”

South Carolina



- Option 3
- August 2, 2010 letter to EPA
 - “SCDHEC recognized that in order to provide clarity and consistency in South Carolina as to ...GHG emissions ..., it needed to take immediate action. The South Carolina General Assembly enacted a Joint Resolution, effective June 11, 2010, that makes the provisions of EPA’s Tailoring Rule effective in South Carolina, until our State promulgates regulations concerning GHG emissions.”

Florida



- Option 1
- July 2, 2010 letter to EPA
 - “As you know, Florida’s PSD permitting program is limited to those pollutants identified in our state rules as ‘PSD pollutants,’ a term that does not include GHGs.”
 - “Currently, it is not possible to estimate how much time will be needed for us to amend our rules to implement the PSD and Title V provisions of the tailoring rule...”

Minnesota



- Option 3
- June 23, 2010 letter
 - “As you are probably aware, Minnesota is a delegated state for the PSD program. The new federal PSD permit threshold, therefore, is effective here immediately. No changes to the state rules are needed to apply the federal GHG permit threshold to our PSD permits.”
 - “We anticipate using an expedited rulemaking process...to implement the Part 70 GHG permit threshold and make related revisions. We expect that the expedited rulemaking process will be completed prior to January 2, 2011.”

What are the Possible Implications to Permit Fees?



- The title V program requires permitting authorities to collect fees “sufficient to cover all reasonable (direct and indirect) costs required to develop and administer [title V] programs.” [75 FR 31584]
 - Section 502(b)(3) of the Clean Air Act
- EPA discusses some options in the final rule, but otherwise provided no specific advice or requirements on revising permit fees to accommodate for the increase in workload due to GHG permitting.

What are the Possible Implications to Permit Fees?



- Georgia EPD works with a group of industry representatives to set the fee rate and structure each year. This process will continue.
- Georgia EPD expects some additional sources to become Synthetic Minor or Title V sources and therefore become subject to the minimum fees under those categories.
- Georgia EPD does not anticipate developing a fee directly on GHG emissions.