

VIEWPOINT

More businesses to face EPA rules

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If your business emits greenhouse gases, the U.S. Environmental Protection Agency's new "tailoring rule" might affect it as soon as January. The Clean Air Act, which was enacted in 1963, requires a source emitting 250 tons or more per year of a regulated pollutant to obtain permits when significant changes are made to that source. That threshold drops to 100 tons per year if the source belongs to a list of 28 specified facilities.



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A 2007 Supreme Court ruling added carbon emissions to the purview of the Clean Air Act. Sources can easily exceed the 250/100 thresholds, which means apartment buildings and restaurants using fossil fuels to operate could be required to seek permits.

To avoid sweeping large numbers of sources into regulatory compliance, the EPA adopted its tailoring rule in May. The rule phases in stationary-source permitting requirements for greenhouse-gas emitters beginning in January with large producers. They include power plants, refineries and cement production facilities.

In July, the EPA plans to expand these permitting requirements to cover all new facilities with carbon emissions of at least 100,000 tons per year. Also affected are modifications at existing facilities that would increase carbon emissions by at least 75,000 tons per year.

These permits must demonstrate the use of best-available control technologies to minimize

greenhouse-gas emissions that would increase when a business builds a facility or significantly modifies its operations.

The EPA says this rule will relieve overwhelming permitting burdens on many carbon emitters and permitting authorities. But roughly 900 previously unpermitted facilities will need permits, according to the EPA's estimates.

By 2016, EPA plans to complete a follow-up rule to address permitting of smaller carbon emitters. This rule could require as many as 6 million sources of greenhouse-gas emissions to obtain a permit to build or modify facilities. This could include hotels, new restaurants and nearly every chemical facility in the country.

Despite hopes by some industries for a specific exemption from the permitting requirements, the EPA did not exempt specific source categories, including sources that combust biomass. These sources are generally considered by many to be at least a "carbon-neutral" source of emissions.

Obtaining a permit under the Clean Air Act is not a simple process. On average, the process takes six to 12 months. In some instances, it can take years.

Businesses required to comply with these requirements could be barred from construction for long periods of time. If the regulatory burden is too great, many businesses will simply not undertake construction projects or modifications.

Given these and other issues with the EPA's tailoring rule, hundreds of businesses and several industry groups have petitioned an appeals court to review it. Some have asked the court to suspend its effectiveness until the review has concluded.

If the appeals court grants this request, the tailoring rule likely will not take effect, if ever, until the litigation is resolved.

If the appeals court denies this request, businesses that may be subject to the rule soon will need to evaluate its potential impact on their operations and future plans for development and construction.

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