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District of Columbia Proposes Much-Anticipated Synthetic Minor Air Permitting Regulations

On February 3, 2017, the District of Columbia's Department of Energy & Environment ("Department") released a Notice of Proposed Rulemaking announcing its much-anticipated synthetic minor air permitting regulations ("Proposed Rule"). The Proposed Rule will establish a synthetic minor permit program under Chapter 2 of Title 20 of the D.C. Municipal Regulations, set up and revise fees for air quality permits, and through the administrative amendment process, allow for the incorporation of Chapter 2 preconstruction permit requirements into Title V (Chapter 3) permits under the Clean Air Act.

This is a positive development for sources that need air permits in D.C., and we recommend that companies file comments supporting the Proposed Rule as discussed below on or before the March 4, 2017 closure of the comment period. A redline version highlighting the major differences between the Proposed Rule and the existing regulations is [here](#).

Chapter 2: General and Non-Attainment Area Permits

Synthetic Minor Regulations

The Department proposes adding two new provisions, Sections 200.6 and 200.7, to establish the synthetic minor program. Section 200.6 will give the Department discretion to establish conditions in a Chapter 2 permit "that limits emissions from a source so as to avoid applicability of the permitting requirements" of Chapter 3. Similarly, Section 200.7 will allow the Department to establish a condition in a Chapter 2 permit "that limits emissions from a source so as to avoid applicability of a District or federal air quality regulation, other than the requirements [under Chapter 3], except when prohibited by another District or federal regulation." Together, these two terms will allow a source to take restrictions that would, for example, allow it to avoid becoming a "major" source for either Chapter 2 or 3.

An additional notice requirement applies to these synthetic minor permits. A new Subsection (d) under Section 210.5 will require that notices for synthetic permits, provided to the public, the affected community, as well as EPA and other Affected States, should include "a description of the proposed limitation and the resulting potential to emit of the source."

Companies that are required to procure air permits in the District of Columbia have always argued that the Department had the authority to impose limits in Chapter 2 permits (including construction and operating permits) that would restrict a source's potential to emit even before these new proposed regulations. But the Department disagreed. In any event, these proposed regulations explicitly provide such authority.

Fees under Chapter 2

The Department also proposes an entirely new section, Section 211, which will establish fees for the construction, modification, or operation of a stationary source or the air pollution control device at any stationary source. These fees range from \$250 to \$5,000 depending on the type of equipment or permit. In addition, Section 211.4 of this new section will provide that those permits that contain a condition under Section 200.6 must pay the permit application fee of \$5,000 under Section 305.5, as opposed to the permit fees under Section 211.

Source Category Permits

The Department also revises the language on the public participation requirements for "source category permits" covering a group of similar sources or emission units. Proposed 200.8. The District has issued seven types of source category permits, including area source dry cleaning facilities using perchloroethylene, temporary portable crusher or screen equipment, temporary portable concrete plants, and four types of natural gas-fired or diesel-fired emergency engines subject to either NSPS or NESHAP. A newly added subsection (i) will state that, while the establishment of source category permits still requires public notice and comment as under the existing regulations, "individual applications for the permit are not subject to public notice and comment." Proposed 200.8(i).

Chapter 3: Operating Permits and Acid Rain Programs

Synthetic Minor Regulations

The Department proposes revisions and additions to Chapter 3 as well. First, in Section 300.3(c) the Department adds a "synthetic minor" provision that will exempt a source from Title V if the source accepts a condition pursuant to the new Section 200.6 and pays Chapter 3 permit fees.

Fees under Chapter 3

In addition, the Department proposes to repeal and replace Section 305, which deals with Title V permit fees. Section 305.1 will establish permit *application* fees that range from \$5,000 to \$30,000 depending upon the tons of total potential emissions of each regulated pollutant. Section 305.2 will set *annual* fees that range from \$1,000 to \$30,000, depending on the total tons of actual emissions of each regulated pollutant. In addition, under Section 305.3, owners or operators of Title V sources with actual emissions greater than 100 tons per year will have to pay \$300 for each ton of annual emissions in excess of 100 tons. These new annual fees will be subject to increases linked to the Consumer Price Index. Proposed 305.6. Both the application fees, under Section 305.1, and the annual fees, under Section 305.2, are based on each regulated pollutant. The definition of "regulated pollutants" for Section 305 will be amended to exclude greenhouse gases. Proposed 399.1 ("Regulated pollutant" used only for Section 305).

Incorporation of Chapter 2 Permits into Chapter 3 Permits

The Department proposes to add a provision under Section 303.4, the administrative permit amendments section, that will allow sources to incorporate into the Title V permit the requirements from Chapter 2 preconstruction permits, so long as the Chapter 2 permit goes through the already established enhanced notice and comment requirements necessary for initial permit issuance, significant modifications, and renewals under Section 303.10. Proposed 303.4(a)(5). This means that Chapter 2 requirements for a facility's permit at the preconstruction stage can be added into a Title V permit without going through the more rigorous procedures under Chapter 3 for permit modifications if these terms are met. Proposed 303.4(a)(5).



Appeal of Permits

Finally, in Section 303.11, the Department proposes to change the venue for judicial review of any final action granting or denying an application for a permit, permit amendment or modification, or permit renewal from the Superior Court of the District of Columbia to the District's Office of Administrative Hearings.

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