

US EPA ARCHIVE DOCUMENT

Pinecrest Energy Center LLC  
Prevention of Significant Deterioration Permit for Greenhouse Gas Emissions  
PSD-TX-1298-GHG

**Summary of Revisions in Final Permit**

U.S. Environmental Protection Agency  
July 23, 2014

## Summary of the Formal Public Participation Process

The U.S. Environmental Protection Agency, Region 6 (EPA) proposed to issue a Prevention of Significant Deterioration (PSD) permit to Pinecrest Energy Center on June 20, 2014. The public comment period on the draft permit began June 20, 2014 and closed on July 21, 2014. EPA announced the public comment period through a public notice published in the *Lufkin Daily News* on June 20, 2014 and on Region 6's website. EPA also notified agencies and municipalities by letter dated June 19, 2014 in accordance with 40 CFR Part 124.

The Administrative Record for the draft permit was made available at EPA Region 6's office. EPA also made the draft permit, Statement of Basis and other supporting documentation available on Region 6's website, and available for viewing at the Kurth Memorial Library in Lufkin, TX.

EPA's public notice for the draft permit also provided the public with notice of the public hearing. The public notice stated that "Any request for a public hearing must be received by the EPA either by email or mail by June 26, 2014, and must state the nature of the issues proposed to be raised in the hearing...EPA maintains the right to cancel a public hearing if no request for a public hearing is received by July 9, 2014, or the EPA determines that there is not a significant interest. If the public hearing is cancelled, notification of the cancellation will be posted by July 11, 2014 on the EPA's Website <http://yosemite.epa.gov/r6/Apermit.nsf/AirP>. Individuals may also call the EPA at the contact number listed above to determine if the public hearing has been cancelled." EPA did not receive any written comments concerning the draft permit during the comment period, and did not receive any written requests for a public hearing. EPA posted its announcement that there would not be a hearing on July 11, 2014.

## Update to Applicability Analysis

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of stationary source permitting requirements to greenhouse gases (GHG). *Utility Air Regulatory Group (UARG) v. Environmental Protection Agency (EPA)* (No. 12-1146). The Supreme Court said that the EPA may not treat greenhouse gases as an air pollutant for purposes of determining whether a source is a major source required to obtain a Prevention of Significant Deterioration (PSD) or title V permit. However, the Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of conventional pollutants, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). Pending further EPA engagement in the ongoing judicial process before the District of Columbia Circuit Court of Appeals, the EPA is proceeding with this final permitting decision consistent with EPA's understanding of the Supreme Court's decision.

In this final permit decision, the EPA is continuing to apply the PSD BACT requirement to GHG emissions from Pinecrest Energy Center. This project is otherwise subject to PSD because it emits a regulated NSR pollutant other than GHG (specifically volatile organic compounds, carbon monoxide, nitrogen oxides, and particulate matter) above the major source thresholds. In addition, the proposed source emits or has the potential to emit 75,000 tons per year (tpy) or more of GHG on a carbon dioxide equivalent (CO<sub>2</sub>e) basis (*see* 40 C.F.R. § (49)(iv); *PSD and Title V Permitting Guidance for Greenhouse Gases* (March 2011) at 12-13). The Pinecrest Energy Center will emit 2,808,007 tpy CO<sub>2</sub>e to 3,150,030 tpy CO<sub>2</sub>e, depending on final turbine selection. Since the Supreme Court recognized EPA's authority to limit application of BACT to sources that emit GHGs in greater than *de minimis* amounts, EPA believes it may apply the 75,000 tons per year threshold in existing regulations at this time to determine whether

BACT applies to GHGs at this facility. Accordingly, this project continues to require a PSD permit that includes limitations on GHG emissions based on application of BACT.

EPA Region 6 continues as a PSD permitting authority for GHG emissions in accordance with the provisions of the FIP that do not conflict with the Court's decision and thus remain in place. The Supreme Court's decision does not limit the authority and responsibility of Region 6 with regard to this particular permitting action. No other changes to the administrative record or Final Permit are warranted as a result of the recent Supreme Court decision.

### **Revisions in Final Permit**

The following is a list of administrative and clarifying changes for the *Pinecrest Energy Center (PSD-TX-1298-GHG) Prevention of Significant Deterioration Permit, Final Permit Conditions*.

1. Cover Sheet

The cover sheet titled "Prevention of Significant Deterioration Permit for Greenhouse Gas Emissions Issued Pursuant to the Requirements at 40 CFR §52.21" has been modified to state the following:

In accordance with 40 CFR §124.15(b)(3), this PSD Permit becomes effective ~~30 days after the service of notice of this final decision unless review is requested on the permit pursuant to 40 CFR §124.19~~ immediately upon issuance of this final decision.

This administrative change is made as a result of not receiving any comments during the comment period related to this action.

### **National Historic Preservation Act (NHPA)**

On May 5, 2014, EPA sent a letter to the State Historic Preservation Officer (SHPO) requesting concurrence on EPA findings for Pinecrest's cultural survey. The SHPO sent a letter with concurrence to the EPA on June 3, 2014.