



# **Overview of Proposed PSD/Title V Greenhouse Gas Tailoring Rule**

December 10, 2009





# Why the Tailoring Rule is needed



- By rule/policy, PSD and Title V permitting programs under the Clean Air Act apply to major sources and modifications of “*regulated NSR pollutants.*”
  - GHG are currently not “regulated” and thus are not covered by these programs now.
  - There are concerns about how we would administer these programs if GHG become “regulated”.
- Specifically the concerns about regulation of GHG stem from the fact that:
  - By statute, for Title V, the major source threshold is 100 tons/year.
  - By statute, for PSD, the threshold is 250 tons/year (100 tons/year for some categories).
    - For PSD modifications, any change at a major source that results in “any increase” of GHGs would trigger PSD unless we establish a “significance level” that excludes smaller modifications.
  - GHGs (especially CO<sub>2</sub>) are emitted in much greater mass than conventional pollutants, so very small sources exceed the 100/250 ton per year levels.



# Why the Tailoring Rule is Needed



- For title V, millions of smaller sources would be newly classified as major for GHG.
  - About 15,000 major sources now
- For PSD, tens of thousands of smaller new sources and modifications each year would be newly classified as major for GHG.
  - About 300 new major sources/modifications per year now
- The administrative burdens of permitting large numbers of newly-subject sources would cause severe disruption to the existing programs.
  - Many of these sources are in commercial/residential categories that have no experience with CAA permitting
- Tailoring these programs to address large numbers of small sources is necessary to provide a common sense approach to GHG regulation.



# How would the Tailoring Rule Address This?



- Proposes to raise the “major source” thresholds and PSD “significance levels”
  - PSD and Title V: major source size raised to 25,000 tons/year CO<sub>2</sub>e (sum of 6 gases).
  - PSD significance level: raised to a number within the range of 10,000-25,000 tons/year CO<sub>2</sub>e —singular value to be decided upon finalization.
  - Proposal takes comment on other levels.
  - Proposal also takes comment on use of CO<sub>2</sub>e metric/6 gases
    - Use of CO<sub>2</sub>e (sum of six gases) improves source flexibility, simplicity, and consistency with GHG control regulations/climate endpoint.
- Facilities above these levels would be required to obtain permits.
  - Facilities that remain covered are responsible for nearly 70 percent of stationary source GHG emissions.
  - Facilities proposed for exclusion comprise only 7 percent of emissions.
- Small farms, restaurants, office buildings, etc. would not need permits.
- Threshold selection driven by what is necessary to meet congressional intent as closely as possible, and what is administratively feasible.
  - Must choose lowest level that we judge possible to administer.



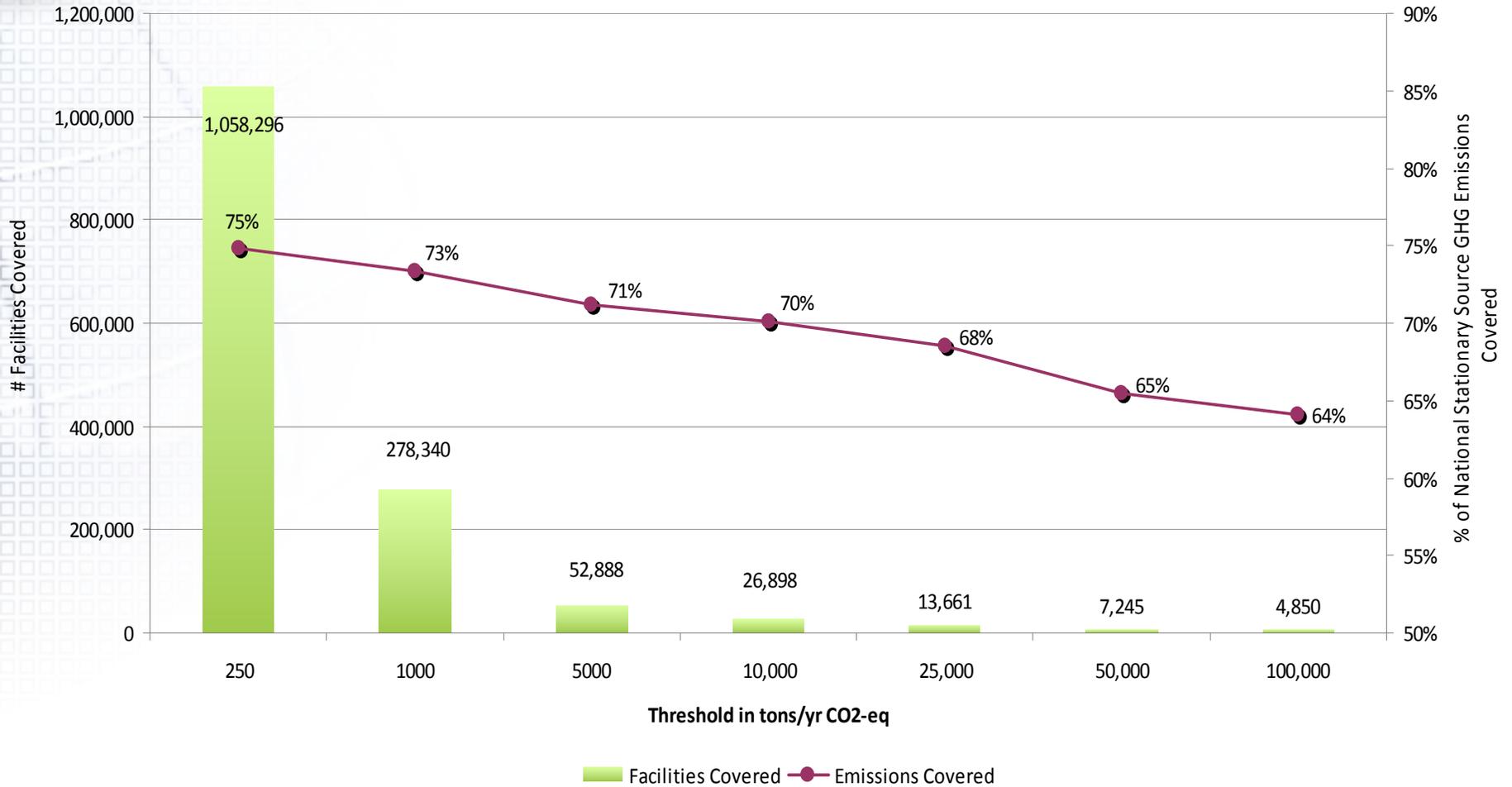
# Selection of Proposed Levels



- 25,000 tons per year CO<sub>2</sub>e (and 10,000-25,000 tons per year CO<sub>2</sub>e for modifications) is proposed as the lowest level at which the program could be administered for the next six years, because:
  - Going lower (we evaluated 1,000, 5,000, and 10,000 tpy) starts to rapidly increase numbers and commercial/residential source applicability.
  - Going higher (we evaluated 50,000 and 100,000) is likely harder to justify with administrative necessity because coverage is less than we have now.
- At proposed levels, GHG regulation would add workload to permitting authorities, but proposal suggests it would not overwhelm them:
  - About 3,000 sources to Title V's current universe of 15,000 sources.
  - Fewer than 100 sources and modifications per year to PSD's current universe of 300 permits per year.
  - Most of the added sources are large municipal solid waste landfills with major amounts of methane.
  - A large share (but not all) of existing major source population will also be major for GHG.
- Promotes coverage of nearly 70% of stationary source GHG emissions.



## Existing Facility and GHG Emissions Coverage at Emission Thresholds



-At 25,000 tpy level, 68% of CO<sub>2</sub>e (87% of CO<sub>2</sub>) emissions are still covered by the permit programs.

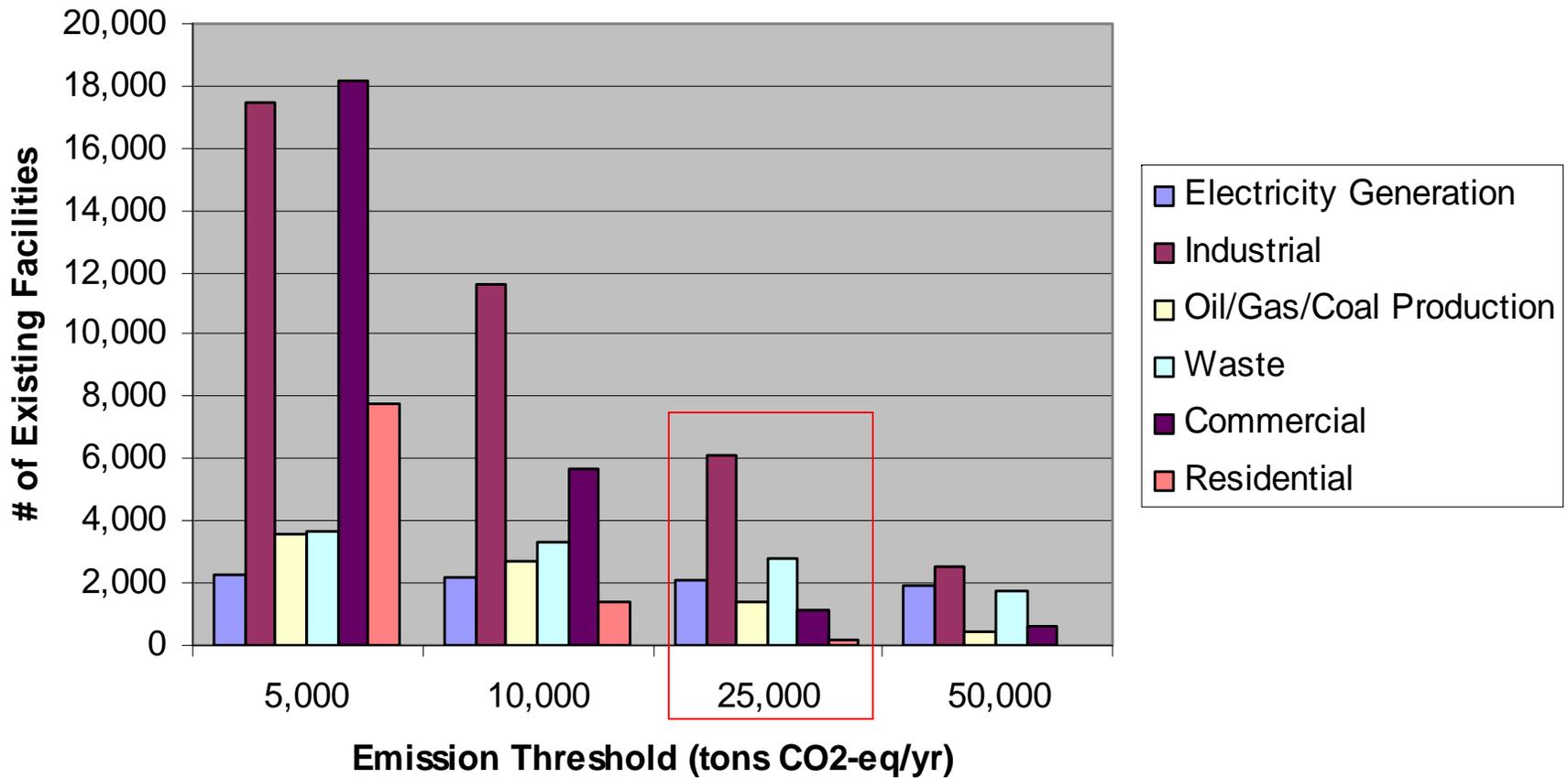
-For comparison, 72% of NO<sub>x</sub> is covered at the 250 tpy level



# Sector Level Information at 25,000 ton/year Level



### Existing Facilities Exceeding GHG Emission Thresholds (By Sector based on PTE)





# Legal Basis for Proposal

- Although the rule departs from statutory thresholds it is permissible to do so under two separate legal bases:
  - “Absurd results”
    - Courts have held that a statutory requirement need not be applied literally if doing so would produce “absurd results” that would be inconsistent with congressional intent.
    - Applying the PSD and Title V statutory thresholds literally would be a classic case of an “absurd result” because it would sweep into the two permitting programs unprecedented numbers of small sources that Congress did not intend be included, and the resulting administrative burdens would prevent the State permitting authorities from permitting the larger sources that Congress did intend be included.
  - “Administrative necessity”
    - Courts have held that a statutory requirement need not be applied literally if it would be impossible for the agency to administer it.
    - Applying the PSD and Title V statutory thresholds literally would create impossible administrative burdens for the State permitting agencies.



# Implementation Issues



- Getting the Phase-in rule in place in States:
  - Will require somewhat novel approach of “narrowing” our existing approvals of permit programs to clarify that our approval does not include sources below 25,000 tons/year CO<sub>2</sub>e or modifications below 10,000 tons/year CO<sub>2</sub>e.
  - States can provide SIP revision for EPA approval should they seek to establish lower thresholds.
- Proposal acknowledges that Title V programs will have more workload and will need to collect adequate fee revenue, but this rule is not the forum for proposing changes to fee provisions and does not make findings of inadequate fee provisions in State programs.



# Additional Elements of Proposal



- EPA identifies measures it will consider for streamlining permitting over the next several years
  - For example, general permits.
- After 5 years, EPA will evaluate whether to change threshold and will do a rulemaking to reflect this.
- Does not address how to set BACT for sources left in program, but commits to separate process to assist with this.
  - CAAAC Climate Change Workgroup to present recommendations in early 2010.
- Proposal separately notes that, while it makes sense to remove smaller sources from permitting, there may be other cost effective ways to address their emissions.