



CIBO GHG Regulations Update

CIBO Environment Committee
Meeting
December 8, 2009
Arlington, Virginia

Greenhouse Gas Regulation

- Topics to cover today:
 - Final EPA GHG reporting rule
 - EPA Final Endangerment finding & ClimateGate
 - EPA's proposed GHG tailpipe standards
 - EPA's proposed Johnson *Deseret* guidance reconsideration rule
 - EPA's proposed Prevention of Significant Deterioration (PSD) & Title V tailoring rule
 - Center for Biological Diversity Petition
 - EPA's new Clean Air Act Advisory Committee (CAAAC) work group on GHG Best Available Control Technology (BACT)
 - EPA review of GHG New Source Performance Standards (NSPS) for utility/industrial boilers
 - Actions in the States

EPA Final GHG Reporting Rule

- Though final rule addressed many industry comments, litigation is being considered by at least one trade association (NPRA)
- Key issues:
 - Use of “best available monitoring data”
 - Timing of submittal of 2011 report
 - Availability of an electronic reporting tool
 - 5% accuracy requirement for measurement devices (e.g., flow meters)
 - Treatment of contiguous property under common ownership

ClimateGate & Its Implications

- ClimateGate: hacked emails from the University of East Anglia's (U.K) Climate Research Center suggest widespread efforts to manipulate temperature data, hide confounding results, prevent proper peer review of findings, and suppress climate skeptics
- Results of ClimateGate on timing of endangerment finding:
 - **House/Senate letter to EPA seeking delay in release of endangerment finding**
 - **Lisa Jackson Senate testimony**
 - **John Holdren (EPA Science Advisor) House testimony**
 - **Competitive Enterprise Institute petition**
 - **Trade association letter**
 - **However, EPA denies Chamber's request for an on-the-record formal rulemaking**

EPA Endangerment Finding

- **Key issues (2 part test): 1) can GHGs be reasonably anticipated to endanger public health &/or welfare? 2) do emissions from relevant source categories cause or contribute to this air pollution?**
- **Final rule signed 12/7 says “yes” to both questions (effective 30 days after publication in *FR*)**
 - **Human health & welfare finding (compelling scientific evidence)**
 - **Transportation sources (Section 202) contribute GHGs (23% of US emissions)**
 - **6 GHGs (CO₂, methane, N₂O, HFCs, PFC, SF₆) included**
 - **Administrator “using judgment” to weigh threats; for health include higher temperatures with increased mortality/morbidity, higher ozone concentrations, more severe weather, increases in food and water-borne pathogens**
 - **Can’t delay if science is compelling**

EPA GHG Tailpipe Standards Proposal

- Companion piece to proposal to make CAFE` standards more stringent (NHTSA), part of deal with California, auto manufacturers, ENGOS
- Directly responds to Mass v EPA Supreme Court case
- Must go final by end of March 2010 to allow manufacturers time to retool for 2012 model year
- Issues addressed in comments:
 - What's the hurry? CAFÉ` & air conditioning standards will have roughly the same impact
 - EPA failed to assess impacts on other sources, and has underestimated burdens on permit authorities

EPA Reconsideration of Johnson *Deseret* Guidance Proposal

- **Irony: Obama EPA proposes to agree with Bush administration viewpoint**
- **EPA preferred view: GHGs become “regulated pollutants” under the CAA only when regulations require actual control**
- **Petitioners view: GHGs become “regulated pollutants” when EPA requires monitoring or reporting**
- **Comment issues:**
 - **Agree with EPA’s general interpretation, but effective on first substantive control requirement date**
 - **PSD only triggered for pollutants for which NAAQS are set**



EPA Proposed PSD & Title V Tailoring Rule

- Issue: combination of final endangerment finding and final GHG tailpipe standards makes GHGs regulated pollutants, immediately triggering PSD and Title V requirements for major stationary sources
- Problem: without EPA rulemaking PSD major source threshold is 100/250 tons of GHGs per year, Title V threshold is 100 tons of GHGs, and addition of new equipment or modification of existing equipment that increases GHG emissions by “any amount” triggers PSD and BACT

EPA Proposed PSD & Title V Tailoring Rule

- Projected impacts without EPA rules:
TOTAL CHAOS
 - 41,000 PSD permits vs. 280 today; cost impacts > \$250 million; permit authorities would need on average 12 new FTEs each, without them PSD permits would take at least 3 years; hiring and training new FTEs would take 3 years
 - 6.1 million new Title V permits would be required vs. 14,700 today; \$15 billion of new costs; 57 new FTEs would be needed per agency, and without them Title V permit processing would take 10 years; 29 additional enforcement & judicial staff would be needed; hiring & training staff would take 3 years

EPA Proposed PSD & Title V Tailoring Rule

- What EPA proposes to do:
 - Raise PSD & Title V major source thresholds to 25,000 tons (would only eliminate 7% of stationary source emissions)
 - Raise PSD significance thresholds to between 10,000 and 25,000 tons
 - Over next 5 years after rule goes final, investigate streamlining options, including revisions to calculation of PTE, especially for smaller sources; general permits; and presumptive BACT
 - In 6th year, promulgate new rule with revised applicability and significance thresholds, and various streamlining methods

EPA Proposed PSD & Title V Tailoring Rule

- **Legal justification for these changes:**
 - “absurd results” doctrine: results would contravene Congressional intent and undermine purpose of programs
 - Administrative necessity: state programs would be impossible to administer
- **Problem areas**
 - Legal justification vulnerable to challenge
 - EPA likely underestimated impact of rule changes
 - Some streamlining techniques may be legally vulnerable (presumptive BACT)
 - Lower PSD & Title V thresholds remain on the books under state law
 - Retroactive liability if rules are overturned
 - No calculation of impact on sources still in PSD and Title V programs
 - What is BACT for GHGs?



EPA Proposed PSD & Title V Tailoring Rule

- Likely comments focused on two approaches:
 - “Train wreck”: for some, an equity issue; EPA cannot ignore statutory definitions, hence we keep 100/250 ton threshold and expect total chaos; look for quick Congressional intervention once magnitude becomes apparent
 - CAA wrong vehicle for regulating GHGs, but if EPA proceeds, need additional fixes:
 - Delayed implementation
 - Higher major source & significance thresholds
 - Reasonable BACT outcomes considering lack of end-of-pipe controls
 - Don’t count biomass CO₂

Petition to Establish GHG NAAQS

- Filed by the Center for Biological Diversity and 350.org
12/2/2009
- Asks EPA to set CO₂ NAAQS at level “no greater than” 350 ppm (currently 390 ppm) & declare other GHGs as criteria pollutants with NAAQS at “science-based levels”
- Comparable to a 45% reduction (from 1990 levels) by 2020
- Implications:
 - Long court case petitioners likely to lose (?), but ties up EPA staff
 - Impetus for Congressional action?
 - If successful, entire country nonattainment, with permitting nightmares: RACT, LAER, offsets, sanctions for failure to attain, etc.



New CAAAC GHG PSD BACT Work Group

- BACT for GHGs is not addressed in the “PSD Tailoring” rule
- However, states will need to be ready to address BACT requirements by the end of May 2010 (effective date of GHG tailpipe rule)
- New EPA Work Group was formed at the 10/7 CAAAC meeting to provide BACT guidance” to the states; interim report by 12/31, final report by 3/31/2010



New CAAAC GHG PSD BACT Work Group

- Work Group charge:
 - Evaluate GHG reduction technologies, costs, performance
 - Encourage cost-effective, high-performing new technologies
 - Look at multi-pollutant reduction opportunities
- Work Group membership: EPA, NACAA, NRDC, ED, Clean Air Trust, states, autos, paper, utilities, oil, lawyers
- EPA staff leads: Peter Tsirigotis, David Solomon, Lisa Conner, Teresa Clemons, Anna Wood

New CAAAC GHG PSD BACT Work Group

- Work Group issues:
 - Few BACT experts, too few industries represented?
 - Design changes on the table
 - Fuel switching on the table
 - Biomass carbon neutrality at risk
 - Discussions about looking at whole source for reductions, not just new/modified facility
 - Truly “outside the box” thinking discouraged due to short time frame; only look at traditional BACT, not innovations like offsets
 - Top-down policy will be employed
 - Work Group reports to CAAAC, which is only group that can formally “advise” EPA, so WG decisions may be rehashed by CAAAC
 - Are right EPA staff involved? Will we like the outcomes?

NSPS for GHGs

- **Boiler NSPS (Subparts Da, Db, Dc) currently under a voluntary remand; EPA interested in integrating utility MACT and NSPS revisions, possibly including GHGs. Utility boilers appear to be the initial focus, but EPA has noted that industrial boilers are the second largest emission source. Current BACT work will be very important**
- **Other categories being considered: refineries, cement, adipic acid (recent consent decree requiring EPA decision by 11/15/2010)**
- **Apparent implementation schedule for utility boilers: 3 years after MACT compliance date**

Actions in the States

- **California: petition to put on the ballot for next election a delay in implementing AB32 cap & trade program until employment rate is comparable to that when rule was passed (~5% vs. >10% today)**
- **Idaho: “voluntary” inclusion of Title V CO2 limits for utility plant gasifying coal and manufacturing fertilizer**
- **Illinois: petition to EAB to require coal syngas plant to burn natural gas in boilers instead of syngas due to lower GHG emissions—plant-wide fuel switching**
- **Multiple ENGOs and state officials: Letter to Congress arguing federal legislation will nullify GHG reduction programs implemented by states**



Summary

- EPA is moving very aggressively to regulate GHGs
- Many in industry are resting their hopes on Congressional action
- Hints of flexibility are seen with career EPA staff, but may be over-ridden by the Administration
- The CAAAC BACT Work Group will have difficulty reaching consensus