

GHG Regulation Update & Strategy Discussion

Maxine Dewbury

Update 12 8 09

GHG Regulation is COMING FAST – How should we prepare?

- Review
 - Progress towards CAA Regulation
 - Implications
- What EPA is doing
 - Mobile Source Rule
 - Johnson Memo
 - Tailoring Rule
- What EPA is recommending we do
- What Industry is doing
- What should we do to minimize impact?

With CAA Regulation Comes...

Mass v. EPA:

Remanded ICTA petition to regulate GHGs from mobile sources under CAA 202(a)

Clean Air Act Title II

(Motor Vehicles)

- 20 in 10 regulations/ Executive Order
- 202(a) motor vehicles
- 211(c) and (o) fuels
- 2007 Energy (EISA) Act
- California waiver petition

Clean Air Act Title II

(Other Mobile Sources)

- 213 marine shipping vessels
- 231 aircraft
- 213 nonroad

Clean Air Act Title I

(Stationary Sources)

- NSPS rulemakings
- Permits
- Authorities for potential regulation
 - 108 NAAQS?
 - 111 NSPS?
 - 112 HAP?
 - Others?
- PSD/NSR

Other Stationary Source Issues

- Mandatory reporting
- CO2 sequestration

Natural Resource Issues

- NEPA
- Endangered Species Act
- EPA Water Strategy

Other issues

- Legislative initiatives/ EPA Review
- International discussions
- Enterprise sustainability

NSPS or NAAQS Regulation Comes With PSD/NSR and Title V

PSD	Title V
Threshold is 100 or 250 TPY	Threshold is 100 TPY
Standard is BACT; ANPR suggests could require carbon capture and sequestration	Permit must contain “all applicable requirements”; EPA anticipates improved energy efficiency and operational changes
Would encompass small industrial sources, “large office and residential buildings, hotels, large retail establishments, and similar facilities”	EPA estimates 550,000 additional sources (compared to 15,000 -16,000 current Title V sources)
Would be effective immediately once GHGs are regulated pollutants.	Must apply for permit within 1 year of being subjected to Title V
EPA proposes several suggestions include Congressional fix, “tailoring approaches,” legal arguments to craft relief from strict language; streamlined regulatory approaches; general permits; EnergyStar as “presumptive BACT”	EPA proposes several suggestions including legal arguments to craft relief; higher GHG cutoffs; deferral approach; general permits; adjusted fee structure

PSD/NSR & Title V issues

NSR/PSD covers all pollutants “subject to regulation” under the CAA

- Unless a threshold is established, any increase in emissions triggers PSD/NSR
- 100/250 TPY is the highest threshold allowed in CAA
- 100 TPY of CO₂ is a very small source!
 - < 0.5 MMBTU/HR - AGGREGATE COMBUSTION sources
- Regulation is on a Potential to Emit basis

Title V is applicable to all sources with regulated pollutants over 100 TPY PTE

Facilities with as little as 0.5 MMBTU/HR - AGGREGATE COMBUSTION trigger both

Greenhouse Gas Regulation Steps

Process:

- Advanced Notice of Proposed Rulemaking
- Endangerment finding
 - Sufficient Information?
 - Which GHG's included?
- GHG Regulation promulgated
 - Mobile Source Standard Proposed
 - Mobile Source Standard to be final 3/2010
 - Stationary Source Standards to come...
- Once GHG “subject to regulation” under the CAA, PSD & Title V apply....

Step 1: Endangerment Finding

Bush's proposed endangerment finding:

- Positive endangerment – public welfare
- Indirect impacts on human health
- Endangerment finding never finalized

Obama's proposed endangerment finding:

- Direct impacts both health and welfare
- Proposed 3/2009
- Finalized Monday, 12 7 09!!!

Step 2: Regulation under the CAA

Obama proposed Mobile Source Rule:

- Proposed Rule 11/28/2009
- Comments due 11/23/09
- To be finalized 3/31/2010
- Obama's deadline WILL BE MET!!!!!!

Why?

- CAFÉ Standards have the same impact.
- Important to Autos.
- Goal – Final Rule needed 3/31/09 for 2012 Model Year

March, 2010

GHG REALLY WILL become Regulated Pollutants!

So what is EPA going to do about the
PSD/Title V problem??

Remember:

NSR/PSD covers all pollutants subject to
regulation under the CAA

- Unless a threshold is established, any increase in emissions triggers PSD/NSR
- 100/250 TPY is the highest threshold EPA can establish for NSR/PSD applicability.
- 100 TPY of CO₂ is a very small source!

Title V Threshold is 100 TPY

Impact - US EPA's Plan to Regulate GHGs

EPA's assessment on NSR/PSD:

- 41,000 PSD permits vs 280 per year
- \$250 Million/year cost for resources

EPA's assessment of Title V Implications:

- 6.1 MILLION new Title V permits
- \$15 BILLION in new costs for permits
- Need 57 more FTEs per agency for processing
- Title V Permit FEES from Industry will pay for the new resources!

What EPA is doing: Johnson PSD Interpretive Memo

Johnson PSD Interpretive Memo clarified that simply reporting GHGs doesn't make GHGs subject to Regulation under the CAA.

Obama Administration reconsidered policy

- Proposed not to reverse policy
- Clarified that granting of the CA waiver did not make GHGs subject to regulation under the Act
- Clarified that approval of the DE SIP (with GHG regulation) did not make GHGs subject to the CAA
- Solicits comment on WHEN GHGs become subject to regulation under the CAA
- Comments are due MONDAY, 12/7/09

EPA will finalize this reconsideration by 3 31 09

What EPA is doing: Proposed GHG PSD “Tailoring Rule”

EPA Proposes:

Temporarily:

- Raise PSD & Title V Major Source threshold to 25,000 tons CO₂e
- Raise PSD Significance Threshold to 10,000 – 25,000 tons CO₂e

Over next 5 years:

- Investigate streamlining options (PTE calculation, presumptive BACT, general permits)
- Lower thresholds to meet the CAA

Comparison of Sites affected by GHG Reporting Rule to Tailoring Rule

Reporting Rule

25,000 tonne threshold

- Based on Actual
- Affects 9 P&G sites
- 8 of 9 sites Major
- Reporting only

PSD Tailoring Rule

25,000 Ton Threshold

- Based on Potential (PTE)
- Affects at least 26 PG sites
- 10 of 26 sites Major PSD
- 12+ New Title V sites
- 16 New PSD Sites
- Changes that required Minor NSR would require PSD permits (PM, NOx, VOC & GHG)

Assessed Impact on our Facilities

- Only 10 sites subject to GHG Reporting Rule.
- Only 12 Sites subject to Title V PSD now.
- w/o tailoring rule, all sites subject to PSD & Title V due to GHG PTE
- w/ tailoring rule, 2/3 of all US sites subject to PSD

Preliminary Assessment

PSD Major Issue

Once a site is major for any pollutant, they are major for PSD and subject to significance thresholds for all modifications:

PM – 15/10 TPY

NO_x, VOC – 40 TPY

GHG – 10,000 (a 19 MMBTU/hr boiler)

=> Permit changes that required state minor NSR permits now would require Federal PSD permits.

PSD Tailoring Rule

Timeline

- Comments due 12/28/09
- Final Rule due 3/2010
- Without final rule when GHG become Regulated CAA Pollutant any increase triggers PSD

Preliminary Assessment:

- Difference between Actual and PTE huge
- Need 100,000 Threshold – PTE difference

EPA's Plan STATE SIP TYPES

Most EPA-Approved PSD SIPs (delegated states)

- Apply to pollutants “subject to regulation” or “regulated pollutants”
- Establish PSD permit thresholds at 100/250 TPY and
 - Significance level for newly covered pollutants are ZERO
 - Have significance levels above zero up to permit thresholds
- EPA presumes all of these SIPs would interpret their regs to immediately cover new pollutants defined by EPA – not just pollutants that were established when their regulations were adopted and approved. (asks states to advise if this is incorrect)
- EPA proposes to limit it's prior approval or use error correction scheme
- EPA-Approved SIPs which identify pollutants
 - EPA WILL TAKE ACTION BY 3 31 2010 to FIX THESE SO GHGs APPLY
- Some PSD programs are administered by EPA (40 CFR 52.21)
 - These programs would automatically regulated GHGs at Tailoring Levels

EPA's Tailoring Plans for STATE SIPs

EPA RECOMMENDS:

- States take immediate action to put in place changes to their rule language to:
 - Change PSD Thresholds & Significance Levels to match “tailoring rule”
 - Change Title V Threshold for GHGs

BOTH SHOULD BE IN EFFECT BY 3 31 2010

- IOWA IS DOING THIS IN RECORD SPEED

What Industry is doing:

Mobile Source Rule

- EPA did not consider impact on stationary sources so rule did not meet procedural requirements. EPA must fix this to proceed

PSD Interpretive Memo & Tailoring Rule

- EPA should change it's PSD interpretation to match the CAA so that PSD only applies to pollutants subject to NAAQS standards. EPA should create higher significance threshold vs 100/250 levels for GHGs
 - Then, tailoring rule would have reasonable basis and
 - PSD for GHGs would only apply to sources that are already major and would only apply when significant mods are made
- If EPA doesn't change this, PSD should not be triggered for GHGs till late 2010 and
- Tailoring Threshold must be 100,000 TPY PTE

What should we do?

- With no relief, all sites subject to Title V & PSD remember 0.5 lb/MMBTU threshold
- EPA is going to finalize these rules on schedule.
- If Tailoring Rule is finalized as proposed, the damage will still be huge!

What should we do?

State PSD and Title V Rules

- Sites should assess the basis of their permitting rules to understand which category their site is in.
- Sites should track their state interpretations, comments to EPA and stance to understand what their state expects come March
 - S. C. won't change thresholds – it is illegal
- Sites should work with coalitions to see if it is possible to front-load change to state permit thresholds to minimize impact

What else should we do?

- Sites should evaluate whether or not they can limit PTE of GHG to below thresholds currently 25,000 but may increase as high as 100,000.
- We will need to work to figure out how we might handle the issues, particularly with understanding of State situations
 - Permit processing – extreme delays
 - Title V permit applications due in 1 year
 - PSD permitting – how do we deal with actual vs. PTE issues