



Representing the Interest of America's Industrial Energy Users Since 1978

Environmental, Energy & Technical Committee Meetings

December 4-5, 2012
Radisson Hotel, Reagan
National Airport
Arlington, VA
(703) 920-8600

MINUTES

TUES-WED December 4-5, 2012

TECHNICAL FOCUS GROUP SESSION

Surviving Environmental State and Federal Compliance Inspections

Moderator, **J.A. (Fred) Cleveland**, Eastman Chemical Company

The usual "round the table" introductions were carried out. **Bob Corbin** introduced the guests that are considering membership. This topic came about as a result of a presentation viewed by **Bob Bessette** at another meeting. A review with some of the membership indicated that this would be a useful topic for the members.

The Interrelations of State Air Permitting and Enforcement

Tamera Thompson, VA-DEQ Air Permit Manager

Kerri Nicholas, VA-DEQ Air Enforcement Manager

Tamera Thompson is in the permitting department in the VA-DEQ. Air Permitting covers NSR/PSD, minor NSR, Title V, State Operating Permits, and General Permits. The State does not really like general permits. Many times there is a conflict with state laws that causes problems with the permit. For states with Class I areas (Shenandoah National Park and James River Wilderness), additional criteria will apply, including interaction with Federal Land Managers. Modeling is required. A Pre-application meeting is required (and recommended for all permit applications). The timeline is typically 365 days from a complete application.

Non-attainment permitting takes additional work. There are more stringent standards (LAER) as well as additional modeling. Minor NSR permitting is the most common activity. No public comment is required for such permits. The regulatory deadline is 90 days from complete application. Title V permits have to be renewed every 5 years. If a renewal application is filed with 6 months of expiration, there is no problem. However, after that, the plant should theoretically shut down.

Once the application is filed, the state will issue a letter of administrative completeness. This letter will serve as the effective temporary permit so that the plant can continue to operate. As emissions have gone down, the total fees have gone down. In order to cover costs, the \$/ton rate had to be increased. In addition, a yearly maintenance fee and an application fee have been instated. When applying for a permit, the Regional Office should be contacted. The Regional Office will determine what type of permit is needed.



The Virginia form is lengthy because there is only one form for all types. Only pertinent information relative to the type of permit is needed. Getting a complete application submitted is the key to getting a permit.

Kerri Nicholas is with the enforcement division of the VA-DEQ. There are 6 regional offices with 42 positions for air inspectors and one compliance manager per region. The compliance program's main objective is to ensure that the regulated facilities are complying with applicable regulatory requirements. Although the inspectors are generally assigned to a specific media (i.e., air, water, land preservation), they are often familiar with media outside of their specific area.

The compliance program works with the enforcement division when compliance issues arise. They coordinate with EPA on high priority violations. The enforcement division provides legal, policy, and technical oversight in support of enforcement actions. The enforcement division mandate includes requiring appropriate corrective action and promoting deterrence. During 2011, 318 cases were resolved with about \$3 MM in charges and fines. The funds go into an emergency response fund for environmental issues. Over 250 facilities were returned to compliance.

Virginia law allows for a penalty of up to \$32,500/day for each violation. There are a number of options for enforcement including informal correction, warnings, notice of alleged violation, letters of agreement, and, at worst, permit rescission. The path to agreement does not always follow a straight line. Administrative proceedings require either an informal fact finding or a formal hearing. For informal cases, the maximum charge is \$10,000. For more serious cases, penalties can be up to \$100,000.

Industry's role, besides being in compliance, is to coordinate their responses with their internal permit and policy personnel and provide information that is requested whenever possible. The goal is compliance and not punishment. Permitting, compliance, and enforcement staff must coordinate and work together. All of the actions are on-line and available for public view. The web sites are noted in the presentation slides that are available on the CIBO members only web site.

Company Air/Multimedia Inspection Case Study **Rob Sanch**, DTE Energy Services, Inc.

DTE has a number of plants that are in the non-regulated side of the utility. A facility should be ready for an inspection at any time. This requires preparation. Knowing the permit, knowing the compliance plan, and knowing the inspector are all key requirements for a "good" inspection. Good record keeping is absolutely essential. Personnel on site should know where the records are and should have a working knowledge of the compliance requirements. The facility needs to be clear on the compliance requirements and operate in this manner continuously.

At the time of the inspection, personnel should know whom to contact when an inspector arrives. One should know what the inspector needs before they ask to see it. It is a good idea to talk through any issues identified during the inspection. Be sure to exhaust all avenues to determine compliance with requirements. A close-out meeting should be arranged with facility management.

After the inspection, follow up information should be submitted quickly. Clearly state any corrective actions and explain how this issue will not occur again. There may be an occasion where there will be a disagreement. Respond respectfully. In some states, there will be a fine for any issue



that is raised. Inspections as a result of citizen complaints of result from smell, noise, or dust issues. The inspector has an obligation to look into such complaints. There is no need to be defensive. Operations should be reviewed to determine if the facility is potentially the source of the problem.

If it is known that there is an issue that could affect the neighbors, consider communicating this to the regulator in advance. Having a good track record with the inspector leads to a level of trust when there are nuisance complaints. At a wood fired plant, there was a smell complaint. The dried wood that was being used did not smell. It turned out there was another facility with the issue. Suppliers can be a source of the problem. In some cases, changing to suppliers with better control may be one corrective action.

For routine inspections, records reviews are more intensive than with citizen complaints. A plant tour is usually a good idea in order to show that compliance is taken seriously. It is a good idea to know the inspection schedule so that additional preparation can be done in advance, making the inspection go more smoothly.

Federal Environmental Enforcement

Richard Alonso, Partner, Bracewell & Giuliani, L.L.P.

What happens when there is a problem? Try to keep the problem at the state level. Bringing the case to the EPA level increases the complexity and the level of fines (by an order of magnitude). EPA enforcement falls under the Office of Enforcement Compliance Assurance (OECA). The head of this office is a political appointee. OECA sets the national enforcement policy. The policy includes who should get inspections and what measures are to be utilized. One of the issues is to assure that the regulations are enforceable and that they do not conflict with enforcement policy. Under the central authority, there is a criminal division, a compliance division, and a civil division. These divisions do coordinate with each other.

The office of compliance does the applicability determinations. Questions that go to the regional offices on applicability are typically cleared through the compliance division of OECA. All of the electronic data gathered by EPA is housed in the office of compliance. There is a "watch list" that is maintained for high priority issues. This list was published last year under public pressure. The office of civil enforcement is the work horse at OECA.

There are other offices, including environmental justice, that are housed under OECA. Under civil enforcement, there are the media offices and the special litigation group. An environmental management system will be the first thing the enforcement group will be looking for. The desired result is to move along an administrative order solution. This approach will prescribe a compliance program and may result in a fine (up to about \$300,000).

There are some situations that can lead to an administrative law judge. If the problem is considered to be very serious, a judicial action will be required. The Department of Justice supplies the legal team that prosecutes these cases. Issues such as, "What are the waters of the US?" and "What constitutes routine maintenance?", get into legal decisions that may not coincide with either the facility or the state interpretation. In a case in Texas, the state commissioner made a determination on a construction project and the facility started construction. Then they got a "stop work" order from the EPA. The EPA claimed that the decision by the commissioner was in conflict with the State



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Implementation Plan (SIP). EPA disagreed with the commissioner's decision and a lengthy process ensued. The situation was eventually resolved, but the delay was costly.

NSR enforcement is considered to be the only CAA program that substantially reduces air emissions by OECA. Enforcement is justified internally given court decisions on major rules. The EPA targets an industry sector for alleged, industry wide compliance issues. Rather than go to each plant, the EPA goes to company headquarters for a "global settlement". The air group has pioneered this approach. The other media (water, solid waste, etc.) are now following the air group's approach. Settlements with the EPA will not only involve higher level fines. There will be tighter compliance schedules, more stringent rules, higher levels of compliance, enforcement of GHG requirements, and additional reporting requirements. Enforcement policy is used as a tool to advance policy decisions. Through enforcement settlements, advanced GHG reducing measures may be required. For example, forcing the shutdown or repowering of old boilers (firing coal) by insisting on non-cost effective control requirements provides reductions in GHG gases. The EPA then takes credit for GHG reductions. The EPA position on compliance is that the facility has the burden to show that they are in compliance. If the facility cannot demonstrate compliance, it is assumed to be "out of compliance".

ENERGY SESSION

Frederick (Fred) P. Fendt, The Dow Chemical Company, Energy Committee Chairman
Robin Mills Ridgway, Purdue University, Energy Committee Vice-Chairman

Robin Ridgway opened the session. **Bob Corbin** introduced the guests and welcomed the new members. The usual "around the room" introductions were done. **Bob Bessette** gave the anti-trust admonition.

The Future of Coal After the Elections - **Tom Altmeyer**, Arch Coal Inc.

Arch Coal primarily produces and sells low sulfur coal to industries and utilities. The "train wreck" slide was shown, noting that not much has really changed as a result of the elections. There are still a substantial number of rules in various states of applicability that are either in effect or about to come into effect in the next year. The drive to natural gas presents a short term solution to demand and environmental issues. However, there are a lot of uncertainties associated with natural gas. Industrial consumption and residential consumption of gas are rising. Power generation from gas is increasing. Transportation and export development could provide further increases in demand. Gas production is not profitable at current price levels. The combination of horizontal drilling and "fracking" needs a higher price for gas in order to be profitable. Regulation of the "fracking" process will no doubt add to costs. Additional pipeline capacity will likely be needed to move the gas to where it will be consumed. Greenhouse gas regulations will impact natural gas production after utility coal and refineries. All of these uncertainties pose the potential for price increases from current levels. At worse, if production well drilling declines due to the current low price of gas, a temporary shortage can occur with an attendant spike in the price of gas. This has happened several times since the 90s.

At the present time, coal fired plants based on PRB coal are already cheaper than gas fired units. For Central Appalachian coal, gas will need to get to about \$5/MMBTU for the coal based units to be cheaper than gas. It was also pointed out that local supply disruption for gas (pipeline failure,



explosion, etc.) cannot be overcome with local storage. Coal can be stored in piles and oil can be stored in tanks. Gas is mostly stored in pipelines and underground caverns.

The Future of the IPP After the Elections - **Gary Merritt**, Inter Power/AhlCon Partners, L.P.

The IPP industry grew out of the federal PURPA laws in the late 70s. This law allowed independent ownership of certain types of facilities (called "qualified facilities") that were not regulated under the Public Utilities Holding Company Act (PUHCA). Under this law, regulated utilities were forced to purchase the electricity produced at a qualified facility at the utility's "avoided cost". In the 90s, deregulation of generation in many parts of the country increased the number of independent power plants.

With the repeal of the PUHCA laws, utilities could have both a regulated operation and a deregulated operation. The future has two basic components: new generation and existing generation. Federal and state laws have established requirements for renewable energy credits, tax credits, environmental performance, and greenhouse gases. The top 10 IPPs now own considerable amounts of ex utility plants. Low economic growth has dampened demand for power. Tax incentives for alternative energy are at risk. Without a Power Purchase Agreement (PPA) financing is much more difficult. Smaller units are at risk due to the economies of scale when considering the cost of add on controls.

For new units, financing will be a major issue. Coming up with 50% of the equity on a project is much more difficult, especially without a guaranteed market. Regulations add to the future uncertainty. Fuel price uncertainty has been amplified. Right now the cost of gas is low. Coal prices are soft. But coal is being exported and the cost of opening a new mine tends to drive up costs. Tolling arrangements are being considered which shift some of the risk. There needs to be a period of stability for future new projects to move forward.

The Executive Order and Support Activities - **Katrina Pielli**, DOE

The August Executive Order by the president seeks to increase the amount of combined heat and power by 40 Gw. A workshop in January is being sponsored by DOE on the various approaches and economics of CHP. There is also the Save Energy Now programs and their descendants. DOE would consider a webinar for communication of that program. The EPA is also promoting energy efficiency in some of their regulations. Today, the DOE posted some jobs for some of their programs. Issues such as economics, inside the fence vs outside the fence, marginal pricing, low priced gas, and back-up power all serve to impose barriers to the wider application of combined heat and power.

CIBO Policy Discussion – **Robin Mills Ridgway**, Purdue University

With regard to policy issues, a true "all of the above" policy for fuels would be helpful. A streamlined regulatory system would also make a significant contribution. Reduced uncertainty is critical (ie a longer time span between rule changes). A "no regrets" strategy for greenhouse gases would be sensible (ie doing things that make sense and, in conjunction, reduce GHGs). Financing of projects is always a problem, especially for smaller plants.

ENVIRONMENTAL COMMITTEE SESSION



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Maxine D. Dewbury, The Procter & Gamble Company, Environmental Committee Chairman
Robert (Rob) Kaufmann, Koch Companies Public Sector, LLC, Environmental Committee, Vice-Chairman

The minutes from the last meeting were approved as written. **Lisa Jaeger, Bracewell & Giuliani L.L.P.**, gave the anti-trust admonition.

Boiler MACT Slate of Rules - **John C. deRuyter**, E.I. DuPont de Nemours & Co.
Amy Marshall, URS Corporation

Amy Marshall of URS noted that the Cement MACT rule has to come out by December 20th. Since that rule has a definition of solid waste impact, there is a chance that the Boiler MACT rule will come out in the same time frame. There is also the possibility that it could come out separately. Given the impact on jobs, there is some concern that the release will be held up until the negotiations on the "fiscal cliff" are done.

In the meantime, the rules that were issued on May 2011 are still in effect. Since the EPA has undertaken a reconsideration, they issued a stay of the rules. However, the court vacated the stay. In the interim, the EPA has issued "No Action" letters. In theory, the compliance date is March 2014. However, when the new rules are issued, the EPA can re-start the clock and allow 3 years from the date of issue.

Recently, the EPA proposed a revision to the MATS rule for utilities (and only for fossil fuels). These revisions were aimed at new units. For start-up, the new proposal requires the use of natural gas, propane, distillate oil, syngas, and/or low sulfur diesel fuel.

There are about 1750 units in the Boiler MACT with numerical limits. For MACT controls, the assumptions are fabric filters for particulate control, additives for chloride control, activated carbon for mercury coal, and combustion conditions for CO control. The solid fuel units have been grouped together. The chloride control cost was modified by considering scrubbing systems as well as dry sorbent injection. There also appears to be some movement on using DSI for chloride control. The use of wet or dry scrubbing for SO₂ control may allow the use of the SO₂ monitor for compliance with the chloride standard. A test would be required to establish the level of SO₂ control that would be needed to achieve the chloride level. Once that is established, as long as the unit is operating with that level of SO₂ or less, the unit would be considered to be in compliance with chlorides.

There has been a change in the use of a fuel variability factor for these rules. The average fuel variability factor was used rather than the maximum. In the chloride variability, EPA arbitrarily cut off any values higher than 3 sigma variation as "outliers". This reduced the variability estimate by 15%. Further, by taking the mean as the value rather than the mean plus 3 sigma, they further reduced the variability factor. That coupled with an error in the database, did not provide sufficient change in the chloride standard. The mercury standard was raised by 1.9 if this FVF was used. With these revisions, the cost of implementation was reduced from \$14.3 billion to \$12 billion. The EPA estimate was \$5 billion.

The wish list for the revised rule is a 130 ppm CO limit, easy language on the extra year compliance, a fresh 3 years to comply, FVFs for chloride and mercury, SU/SD procedures that are



clear, good definition of natural gas curtailment, no PM CEMS for biomass, retaining the dioxin work practice standard, NHSM fuels, and GACT date for tune up beyond 2013. There may also be some changes to the Area Source MACT, particularly with respect to limited use boilers and seasonal boilers. One comment on the difference in cost for “compliance coal” (chloride and mercury) vs typical steam coal might be the difference in cost for metallurgical coal vs. steam coal.

Litigation Update - **Lisa Jaeger**, Bracewell & Giuliani, L.L.P.

The first Boiler MACT rule went to court and was vacated due to the inclusion of CISWI units in the calculations. If a unit burns any solid waste, it is a waste incinerator and must be in another rule. There were a number of other issues that were never addressed. In the 2011 rule, there were a number of provisions that we petitioned the EPA on. EPA responded with some changes. Looking at the various positions, subcategories will be challenged by eNGOs as illegal. The fuel variability factors will be challenged as either being illegal or not reflecting actual performance. Surrogates will be challenged as illegal. Work practice standards will be challenged as illegal. Malfunction/affirmative defense will be challenged with numerical limits proposed. The energy assessment will likely be challenged as failing to cover other issues.

The time line starts with the proposed rule in June, 2010. The final rule was issued in Mar. of 2011. A re-proposed rule was issued in Dec. 2011. A “no action” letter was issued In Feb. 2012. The completion case was decided negatively in November. The final reconsideration is expected in January so as not to interfere with the “fiscal cliff” negotiations. If so, the rule would become effective in March 2013. That also starts the law suit filing on the reconsidered rule. Optimistically, a court decision might be in August 2014. Compliance dates could be shifted from 3 years from Mar., 2011 to 3 years from Jan. 2013.

The Completion Case came out in November. The Sierra club challenged EPA's claim that they had issued sufficient rules to cover 90% of the HAPs. The Sierra claim was that EPA did not cover every one of the 189 HAPs in all of the MACT rules that have been issued. The claim was vacated and remanded to EPA on a procedural basis. EPA did not take notice and comment on the claim that they made 90%. Thus, it is unlikely that EPA will put this claim out on the street again.

Another case was the Gold Mine MACT. This MACT did not set up a separate Area Source rule. The claim against EPA was that if any HAP was major and qualified for MACT all the others were subject to MACT (and not GACT).

The RICE MACT and PC MACT suits are in abeyance pending the issuance of a final rule. The Pulp and Paper residual risk review was petitioned in November. The Brick and Ceramic Kilns entered into an agreement for another rule to be proposed next August.

The Ozone NAAQS case went to oral argument in November. The EPA standard was set at 75 ppb as opposed to the CASAC recommendation of 60 - 70 ppb.

There is a law suit against EPA by eNGOs that EPA must make a determination and revise, if necessary, the CCR exemption from hazardous waste, subtitle D regulations, and the TCLP determination. The Bevill amendment directly exempts CCR until EPA does a report and regulatory determination on the nature CCR. EPA provided CCR Reports and Determinations in 1988/1993 and



1999/2000. The claim is that there is a mandatory duty to review these every 3 years. EPA claims that the review is inseparable from determination and therefore there is no mandatory requirement. USWAG claims a statute of limitation issue that the filing of the law suit was late (procedural claim). They agree with EPA that there is no mandatory requirement. Further, the claim is moot pending EPA's June 2010 proposal. Further, there is no jurisdiction for remedy. The Bevill Amendment is clear and EPA responded. On the issue of subtitle D regulations, EPA agreed that it had a requirement to review, but can't do the review in 6 months. The USWAG claims are similar. In particular, the language is clear that the review should be from "time to time" and not a 3 year mandatory review.

On the TCLP test, the arguments are similar. In this case, EPA has asked for one year for review. In some ways, the law suit only impacts the timing. EPA can review and modify these regulations at any time. The issues raised by the lawsuit are whether or not such reviews are mandatory and whether they need to be done in 6 months. EPA wants to issue another NODA on the proposed rule. They would want at least a year to complete the review of the rule.

Coal Ash Material Safety - **Lisa Bradley**, AECOM Environmental

The ACAA promoted a study done by AECOM on a human health, risk based evaluation on the USGS coal ash data. The USGS has been doing a study on the transit of coal through US power plants. The study focused on 5 plants across the US. Some of this data was on coal ash. The AECOM study used risk based screening developed by US EPA on exposure for a 5 year old child, ie the most conservative assumption. The plants used 5 different coals that were representative of the major coals in use in the US. The overall average composition of coal ash is similar to volcanic ash. The main constituents are silica, alumina, and iron oxide. There are trace elements that make up less than 1% of the total ash. These are mostly other metals (on the order of 30 metals) that are present at ppm levels in the flyash.

For toxic risk, there is a fundamental relationship of exposure and toxicity. If there is no exposure, there is no risk. All materials have a dose/response relationship. Aspirin can be taken on a regular basis. However, if one takes the whole bottle all at one time, it is lethal. Screening levels are calculated based on a residential soil exposure. The assumption is that a child or an adult is exposed to constituents in the soil on a daily basis by incidental ingestion. This basically assumes that a residential house is built directly on top of a coal ash pile. These assumptions over estimate exposure and over-estimate the response to these metals. These are naturally occurring elements.. The EPA sets standards for toxicity that are on the order of 1 chance in 1 million to 1 chance in 100,000 in a lifetime. The current cancer risk in the US is 1 chance in 3 in a person's lifetime. Apparently the US EPA has never heard of significant figures.

The soil based threshold levels are already established. There are screening levels that have already been determined. In all cases, the concentrations of trace elements are below the EPA standards for soil levels. The results indicate that with few exceptions, the constituent concentrations in coal ash are below screening levels for residential soils and are similar in concentration to background soils. Thus, not only does coal ash not qualify as a hazardous substance from a regulatory perspective, it would not be classified as hazardous on a human health risk basis. Because exposure to coal ash used in beneficial applications, such as concrete, road base, or structural fill would be much lower than a residential scenario, these uses would also not pose a direct contact risk to human health.



RCRA Ash - Where are we Today? - **Gary Merritt**, Inter Power/AhlCon Partners, L.P.

On the regulatory side, EPA has a proposed rule-making and OSM has a proposed rule-making. The OSM rule is proposing regulations regarding the utilization of coal combustion residuals in coal mine reclamations. On the legislative side, there has been a draft bill that has attracted bipartisan support in both the House and the Senate. They are looking for a major bill to attach this bill. We need to support the legislative effort to regulate coal ash under subtitle D. The TCLP issue is important as it will have broader implications than an applicability to coal ash. There may be some conflicts between the OSM proposal and the EPA rules. The OSM rule may propose a different test to apply for beneficial use.

2013 Deferred Inputs to GHG Reporting Programs – **Katherine (Kitty) Sibold**, EPA

In 2011, EPA deferred certain elements of reporting into the GHG Reporting Program to March of 2013. Subsequently, there was another group that was deferred to 2015. There was consideration given to the potential harm that could result from public reporting of data that are used to calculate the GHG emission rates. Reporting requirements for 2012 are due on 2013. During the next few weeks, the electronic reporting system scheme will be made available. A fact sheet will also be posted on the EPA website. The electronic system will be open in February. The deadline for reporting is April 2013. EPA has determined that none of the required inputs in this round are considered to be confidential business information. Most of the information is CEMs type data. Other elements that have been deferred to 2015 are still being reviewed to address these concerns.

NAAQS Update – **William (Bill) C. Campbell**, AECOM Environment

The main issues are ozone, PM2.5, and 1 hour SO₂ and NO_x standards. Modeling and model results are the key impacts. The 75 ppb ozone level is from the 2008 rule. EPA will be coming up with another proposal in 2013 with a likely final rule in 2014. On PM2.5, there is a 2012 proposal, but there are not too many means to handle the requirements. One area to watch is the secondary standards. On the particulates, we are getting visibility limits in a health based standard.

The one hour standards for NO_x and SO₂ are difficult to deal with due to the limitations on modeling and the nearness of background levels. Significant modeling challenges for permitting new and modified sources include variability of emissions and limitations of the models. In areas with low wind speeds, the models merely accumulate materials. A new modeling package is supposed to come out to address this issue. Monitors were used to verify compliance. If an area did not have a monitor, the area was “unclassified” and considered to be in compliance. Now EPA wants to model everything for compliance.

In the case of NO_x, there is the issue of NO vs NO₂ in terms of emissions. Advanced modeling approaches require an in stack NO/NO₂ ratio and representative ambient ozone data. A new monitoring network is required by 2013 for certain areas (roadways in particular). Re-designations would be required in 2016 -2017. In one case, a monitor has been used for many years. With the new standard, the monitor shows non-compliance.

There is a program underway at one site to reduce SO₂ to meet the new standard. The problem with the new standard is that modeling is required, and the model significantly over-predicts



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the actual monitored SO₂ levels. The modeling predicts an ambient concentration that would be 20 times the standard, even if all of the coal is removed. There are now 5 monitors being used to help develop a more robust and accurate model. The modeling effort has also been modified to include more wind data. Due to “complex terrain”, meaning hills and nearby mountains, this is still a difficult problem. Even with the improvements to the model, the results are still high by a factor of 2 or 3. One issue is the use of hourly average data during periods of light and variable winds. When the winds are light and variable, they move around. The model takes the average direction for the wind and assumes the plume moves in that direction for the entire hour. These refinements to the model are showing promising results, but no conclusions can be drawn yet.

National Unified Emissions Standards Update - **Rohit Sharma**, LyondellBasell Industries

EPA published a proposal for uniform emissions standards for fugitive emissions and other sources. Comments were solicited. The comment period is closed. The goal is to have a central set of standards in Part 65 for things like cooling towers, unloading, flares, etc. While the goal is laudable, the implementation is problematical. Part of the problem is the “cherry picking” approach by EPA. The selection of the most stringent standards to be applied across the board makes compliance difficult and costly. Flares and waste water have been separated. The definitions in some cases are being changed.

Environmental Justice - **Michelle Lusk**, Cement Kiln Recycling Coalition

The coalition represents cement manufacturers that recover energy for use in cement kilns. Raw materials are heated to high temperature to make cement. Cement mixed with sand and water makes concrete. Concrete is the largest construction material in the country. As originally proposed, materials that might be considered wastes would be fuels for a cement kiln.

Tires provide a case in point. Kilns can use whole tires. However, under EPA's definition, a tire that was “thrown away” is a waste and not a fuel (Non Hazardous Secondary Materials or NHSM). If the material is a waste, then the kiln becomes a waste incinerator.

EPA claims Environmental Justice benefits because of the claim that waste incinerators are more likely located on average near poor neighborhoods. Legitimate comparisons can be made only between “similarly situated populations”. The population located within a 3 mile radius of a single combustion unit cannot be compared to the national average. Because of their rural locations, 89% of the cement plants that EPA estimates will be effected by these rules are actually below the minority populations. As a result, EPA was comfortable with proposing regulations that could shift secondary materials away from areas where EJ concerns do not exist towards places where EJ issues are already recognized (ie landfills). This is a misuse of Environmental Justice. Comments were submitted to EPA.

GOVERNMENT AFFAIRS SESSION

Anthony Reed, Archer Daniels Midland Company
Karen Neale, Hummingbird Strategies LLC



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The results of the election are in. The basic situation in the government remains the same. The Republicans retained control of the House. The Democrats retained control of the Senate and the presidency. This is a recipe for continued gridlock. Senator Wyden will be taking over the Energy Committee. There will also be a change on the Environment Committee as Senator Inhofe retires. There will be a significant number of new faces in Congress, which will require continued education efforts. The DoD bill was passed yesterday without the ash bill.

With the potential of negotiations on the "fiscal cliff", there is talk of a carbon tax. However, there are a number of groups that are already lobbying against a carbon tax. When the next Congress starts early next year, there are a number of organizational and budget issues that will have to be addressed before any new legislative approaches are taken.

Senate bill S 1000 went to the House. The House made modifications and sent the bill back to the Senate Energy Committee for review. The bill attempted to relax certain regulations on appliances. The bill now provides for some studies to promote energy efficiency in industry. A number of market issues will be considered (back up, stand by power, net metering, etc.).

From yesterday's discussion, CIBO will be putting together an "energy position". Today's Hill visits are aimed at hearing from Senate Energy Committee staff on both sides of the aisle to get an idea of what legislative activity might be forthcoming.

Next Technical Focus Group/Environmental & Energy Committee Meetings

TUESDAY & WEDNESDAY, March 5-6, 2013

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