

Energy & Environmental Issues CIBO Annual Meeting 2014

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Topics of Importance

- Boiler MACT and Area Source Compliance Planning
- EPA's Regulation of GHG's under the CAA – The Tailoring Rule's implications on business & permitting complexity & the impact of the recent Supreme Court Decision

Boiler MACT & GACT Compliance

Area Source Compliance was due 3 2014

- Changes to policy on resulted in opt-outs at everywhere except two sites (originally 16 sites in)

Remaining sites subject

- Site in PR that only burns liquid fuel
 - Tune-ups and one-time energy assessment.
- Site in Wisconsin that can burn coal - one boiler
 - Tune-up and one time energy assessment
 - Demonstrate compliance with Hg and CO limits
 - Hadn't burned coal since 2011, but maintains capability
 - Took hundreds of samples from coal pile to make 3 composites. Demonstrated compliance using fuel sampling.

Learnings from Area Source Work

- All P&G sites did annual boiler tune-ups
 - Did not take readings of CO before tune-up
 - Did not keep detailed records consistent with EPA requirements.
 - Assuring records necessary for tune-ups took support
 - Working with smaller sites (less experienced) required substantial effort.
- Beyond tune-up records, compliance with limits took substantial effort
 - To understand requirements,
 - To complete electronic submittals (using CEDRI and CDX) for NOCS,
 - To complete CO & Hg performance evaluations and submit testing results electronically to EPA
 - To assure ongoing compliance.

Boiler MACT Compliance

4 Sites subject

- One site with natural gas combustion only
- One site with boiler that burns coal
 - Plan to switch to gas
- One Biomass Boiler
 - Anticipate ability to comply with limits
 - Burns biomass with paper fines
- One Biomass Boiler
 - Combusts paper fines and natural gas

Boiler MACT Compliance

Sites burning Natural Gas

- Energy Assessments
- Tune-ups

Sites burning Biomass or co-firing paper residuals

- Both sites were prepared for compliance 2007.
- New limits, additional pollutants, new compliance assurance requirements

Anticipate ability to meet limits based on data

- Are we missing something? What about the details?

Boiler MACT Compliance Questions

Do other biomass-fired boilers anticipate challenges meeting limits? What pollutants?

Any units planning to use TSM vs PM limits?

Are biomass sites are planning to comply via fuel analysis? Which pollutants?

How do sites plan to comply with CO limits?

- Oxygen trim control? Oxygen analysis? CEMS?

Have you determined how to do fuel analysis, stack tests and what you will do to demonstrate ongoing continuous compliance?

Who has compliance with this rule figured out?

CAA Regulation of GHGs – Impact on PSD and Title V

- GHG Regulation under the CAA & implications for permitting
 - One of my greater concerns
 - Related to EPA's legal approach regulating GHG –
- How will small business manage Complexity?
 - PSD Permits – Need knowledge of complex PSD regs
 - How do sites support business needs for quick permits?
 - Title V Permits
 - requires compliance certification,
 - complex terms and conditions to assure ongoing compliance

Comparison of Sites affected by GHG Reporting Rule to Tailoring Rule Proposal

GHG Reporting Rule

25,000 tonne threshold

- Based on Actual Emissions
- Affects **10** sites ~20%
- 9 of 10 sites already Major
- Reporting only

PSD Tailoring Rule

25,000 ton threshold

- Based on Potential (PTE)
- **Affects 27 sites ~ 60%**
- 14 sites Major Title V
- 10 sites Major - PSD
- 13 New Title V sites
- **17 New PSD Sites**
- Changes that required State NSR permits would require Federal PSD permits (PM, NO_x, VOC & GHG)

Outcome & Initial Work 2010 – Increased Threshold to 100,000 TPY

Avoided Substantial Site Impacts:

Title V – No new sites impacted (vs 13 new sites)

- Operating cost avoidance: \$100,000/year/site
- Annual Plant Manager Certification of Compliance

PSD/NSR – One new site (vs 17 new sites)

- Increased regulatory complexity
- Higher compliance profile
- Significant risk of Initiative delay due to Federal Permitting
- Require increased SEL/HSE Leader capability to manage complex permitting applicability decisions and agency interactions

Proposed vs. Final Tailoring Rule & Projected Implications – Initial Success & Outlook for Future for P&G: Issue – EPA’s legal basis required lowering threshold

Proposal:

- 25,000 PTE Major Source with
10,000 Sign. Threshold
 - Effective 5/31/2010
- Threshold lowered 3 – 5 years

Impact (25,000 TPY):

- Title V Sites inc. from 14 to 27
 - 13 New Title V Sites
- PSD Sites inc from 10 to 27
 - 17 New PSD Sites

Final Rule:

- 100,000 PTE Major Source with
75,000 Sign. Threshold
 - Effective 1/2/2011 (“anyway sources”)
 - Effective 7/1/2011 (others)
 - 7/1/2013 EPA may reduce threshold to 50,000 PTE
 - April 2016 – EPA may further reduce threshold

Impact – Steps 1-2 (100,000 TPY):

- 1 New PSD Sites
- 0 New Title V Sites

Impact – Step 3/4? @ 50,000 TPY

- 7 More PSD/Title V Sites by 2013

GHG Regulatory & Legislative Work

Step 3 of the tailoring rule

- **Commented on Step 3**
 - EPA poised to reduce threshold
 - Stated fewer permits – state agencies could handle
 - Commented on other reasons for fewer permits than projected.
 - Economic Conditions
 - Industry does not bring EPA permits that cannot be approved
 - EPA did NOT reduce threshold Step 3.

But what about future reductions mandated by legal approach?

**Industry's Last
Chance:
Can Litigation
limit PSD
applicability to
avoid additional
sources
becoming Major
due to GHG
Regulation**



GHG Regulatory Influence

- Litigation - Last Opportunity to address issue
 - DC Circuit refused to rule – issue not ripe – no one impacted.
 - 10/2013 Supreme Court Agreed to hear certain issues!!!
 - Decision Rendered June 23 2014

GHG Permitting Litigation

Utility Air Regulatory Group v. EPA - U.S. Supreme Court Case No. 12-1146 *et al. Regarding the GHG Tailoring Rule*

Decided: June 23, 2014

Background:

- Industry sought Supreme Court review of the D.C. Circuit's decision upholding the GHG Permit tailoring rule in *Coalition for Responsible Regulation v. EPA*
- ***On October 15, 2013 the Supreme Court agreed to hear the issue "Whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases."***

Supreme Court Ruling UARG v EPA

Question: Whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases?”

Two challenges:

- “First we must decide whether EPA permissibly determined that a source may be subject to the PSD and Title V permitting requirements on the sole basis of the sources potential to emit greenhouse gases.
- Second, we must decide whether EPA permissibly determined that a source already subject to the PSD program because of its emissions of conventional pollutants (an “anyway” source) may be required to limit its greenhouse-gas emissions by employing the “best available control technology” for greenhouse gases.”

Supreme Court Ruling UARG v EPA

Whether EPA permissibly determined that a source may be subject to the PSD and Title V permitting requirements on the sole basis of the sources potential to emit greenhouse gases:

“...There is no insuperable textual barrier to EPA’s interpreting “any air pollutant” in the permitting triggers of PSD and Title V to encompass only pollutants emitted in quantities that enable them to be sensibly regulated at the statutory thresholds, and to exclude those atypical pollutants that, like GHGs are emitted in such vast quantities that their inclusion would radically transform those programs and render them unworkable as written.”

Having determined that EPA was mistaken in thinking the Act compelled a GHG inclusive interpretation of the PSD and Title V triggers, we next consider the agency’s alternative position that its interpretation was justified as an exercise of its “discretion” to adopt a reasonable construction of the statute.”

“...EPA acknowledges that PSD review is a “complicated, resource intensive, time-consuming, and sometimes contentious process” suitable for “hundreds of larger sources” not “tens of thousands of smaller sources...”

“...it would be patently unreasonable - not to say outrageous – for EPA to insist on seizing expansive power that it admits the statute is not designed to grant.”

“...We conclude that EPA’s rewriting of the statutory thresholds was impermissible and therefore could not validate the Agency’s interpretation of the triggering provisions...”

“...In the Tailoring Rule, EPA asserts newfound authority to regulate millions of small sources...and to decide, on an ongoing basis and without regard for the thresholds prescribed by Congress, how many of those sources to regulate. We are not willing to stand on the dock and wave goodbye as EPA embarks on this multiyear voyage of discovery...EPA therefore lacked authority to “tailor” the Act’s unambiguous numerical thresholds to accommodate its GHG inclusive interpretation of the permitting triggers. Instead, the need to rewrite clear provisions of the statute should have alerted EPA that it had taken a wrong interpretive turn.... Because the Tailoring Rule cannot save EPA’s interpretation of the triggers, that interpretation was impermissible under Chevron.”

Supreme Court Ruling UARG v EPA

“ To sum up: We hold that EPA exceeded its statutory authority when it interpreted the CAA to require PSD and Title V permitting for stationary sources based on their GHG emissions. Specifically the agency may not treat GHGs as a pollutant for purposes of defining a “major emitting facility” (or a “modification” thereof) in the PSD context or a “major source” in the Title V context. To the extent its regulations purport to do so they are invalid. EPA may, however, continue to treat GHGs as a “pollutant subject to regulation under this chapter” for purposes of requiring BACT for “anyway” sources. This judgment of the Court of Appeals is affirmed in part and reversed in part.”

GHG Regulation by EPA: Outcome

- Litigation Outcome
 - Supreme Court agreed with Industry's CAA interpretations re GHG regulation
 - EPA can regulate GHG under NSPS but
 - GHGs can only be regulated under PSD if PSD triggered for conventional pollutants.
 - EPA does not have authority to regulate GHGs under PSD on the basis of GHG alone. Only if PSD triggered by conventional PSD pollutants can EPA regulate GHG under BACT.
- EPA cannot further reduce GHG Threshold for Federal Permitting
- Next Steps: Goes back to DC Circuit, EPA to define *de minimis* for BACT purposes

**Outcome:
Wish granted
courtesy of
the U. S.
Supreme
Court**



Impact of Supreme Court Decision on new Title V and PSD Sources

Outlook before decision:

EPA's Tailoring Rule:

- 100,000 PTE Major Source with
- 75,000 Sign. Threshold
 - Effective 1/2/2011 (“anyway sources”)
 - Effective 7/1/2011 (others)
 - 1 New PSD Site
 - 0 New Title V Sites

Impact – 50,000 TPY:

- 7 More PSD/Title V Sites by 2013

Impact – 25,000 TPY:

- Title V Sites inc. from 14 to 27
 - 13 New Title V Sites
- PSD Sites inc from 10 to 27
 - 17 New PSD Sites

Outlook after decision:

- ✓ No New Major Sources for PSD or Title V EVER
- ✓ BACT for PSD permitting at de minimis GHG levels (yet to be determined)
- ✓ No substantial increased Title V burden on states
- ✓ No substantial increased PSD complexity on small sources of conventional pollutants that have GHG emissions
- ✓ PSD remains a “complicated, resource intensive, time-consuming, and sometimes contentious process” suitable for “hundreds of larger sources” not “tens of thousands of smaller sources”.
- ✓ AND WILL NOT BE APPLIED TO THESE SMALLER SOURCES due to GHGs

Outcome & Impact - Permanent Fix

Avoided Substantial Site Impacts:

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Questions?

- How prepared are your sites for Boiler MACT compliance?
 - How will you meet limits?
 - How will you meet ongoing compliance obligations?
 - Can you do it all by 1/31/2016?
- How well equipped are your facilities for managing complex regulatory requirements?