

Climate Change Update Legislative and Regulatory Developments

National Shipbuilding Research Program

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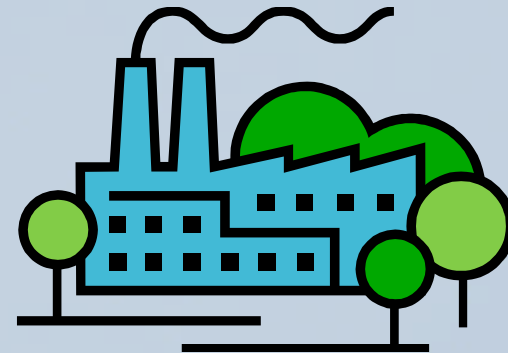
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Massachusetts v. EPA

- In March 2007, Supreme Court held that CO₂ is an air pollutant under the Clean Air Act (CAA) and required EPA to make one of three findings:
 - CO₂ from mobile sources endangers public health, welfare or both (“endangerment finding”)
 - CO₂ does not endanger public health or welfare
 - The scientific evidence is insufficient to make a determination on whether CO₂ endangers public health or welfare

Obama EPA Response to Massachusetts v. EPA

- Numerous Separate but Related Regulatory Actions
 - GHG Reporting Rule
 - finalized October 30, 2009, and effective December 29, 2009
 - Endangerment Finding
 - Finalized December 7, 2009
 - Reconsideration of “Johnson Memo” regarding EPA interpretation of PSD applicability
 - Finalized March 29, 2010
 - Light Duty Vehicle GHG Standards (Vehicle Rule)
 - Finalized April 2, 2010
 - GHG Tailoring Rule
 - Finalized May 13, 2010



Endangerment Finding

- Formal finding under the CAA that GHGs from mobile sources “cause or contribute to air pollution that can reasonably be anticipated to endanger public health or welfare.”
- Technically a finding under Title II of CAA (Mobile Sources)
- However, CAA Title I endangerment language almost identical
- Endangerment Finding premised on public health and welfare (both climate-related)

Johnson Memorandum Reconsideration/ Vehicle Rule

- December 2008 Memorandum from then Administrator Johnson stated that GHGs would be “subject to regulation under the Act” upon finalization of a rulemaking requiring “actual control” of GHGs.
- “Subject to Regulation” triggers Prevention of Significant Deterioration and Title V permitting requirements under CAA Stationary Source Provisions
- Widespread concern that PSD and Title V would be triggered in Spring of 2010, which EPA indicated was the date by which it must promulgate Vehicle Rule, as Vehicle Rule would require “actual control” through fleet average mileage requirements
- However, immediately prior to promulgation of Vehicle Rule, EPA issued Johnson Memo Reconsideration
 - Holds that GHGs are not subject to regulation until the Vehicle Rule “takes effect” (i.e January 2011), not upon promulgation of rule or 60 days after publication in Federal Register.
- EPA then promulgated GHG Vehicle Rule
 - Limits GHG Emissions from Light Duty Vehicles to 250g CO₂/mile in 2016

GHG Tailoring Rule

- Johnson Memorandum Reconsideration Delays Impact of PSD and Title V for 9 Months but does not offer permanent solution to impacts of PSD and Title V to smaller sources
- PSD program applies to new “major” sources under the CAA and to “major modifications” at existing sources.
 - Major Source: 250 tons/year of a “regulated NSR pollutant (or 100 tons for specified source categories)
 - Major Modification: physical change or change in method of operations that results in a “significant” increase in emissions.
 - Significance level zero as no current regulation in place
- Title V Threshold 100 TPY
- Literal application of statutory thresholds would regulate millions of small sources.

GHG Tailoring Rule “phases in” PSD and Title V applicability thresholds

- EPA announced Three Phases to limit impacts on smaller sources
 - EPA cites administrative necessity, absurd results, and “one step at a time” discretion
- **Phase I: January 1, 2011-June 30, 2011**
 - PSD applies to only new sources or modifications at 75,000 tpy CO₂e threshold that must undergo PSD permitting anyway for another regulated pollutant.
 - Title V applies if source must undergo Title V permitting or renewal anyway (all “anyway” Title V applications must include “applicable requirements” for GHGs)
- **Phase II: July 1, 2011-June 30 2013**
 - “anyway” sources continue under Phase I
 - PSD will apply because GHGs alone for new sources above 100,000 and existing sources above 100,000 that make a modification exceeding significance level of 75,000 tpy
 - Any facility above 100,000 tpy must obtain Title V permit if it doesn’t already have one.

GHG Tailoring (Continued)

- **Phase III: July 1, 2013-April 30, 2016**
 - EPA has not set thresholds for Phase III as it determines how permitting authorities can handle administrative burdens
 - EPA has promulgated “enforceable commitments” to engage in further rulemaking by July 2012 with an effective date of July 2013
 - EPA has committed to not lowering thresholds below 50,000 tpy before April 30, 2016
- **Beyond 2016**
 - EPA will study impacts on permitting agencies and promulgate rule either maintaining thresholds, lowering them, or permanently excluding them

Legislative Developments

- Numerous “cap and trade” bills that cap GHGs nationally and allow trading amongst regulated entities.
 - Proposals generally reduce GHGs \approx 80% by 2050 with \approx 20% reduction by 2020 (2005 baseline)
 - All proposals would require that sources above 25,000 tpy submit allowances for every ton of GHGs emitted
 - Allowances are distributed to many regulated industries in early years, with phase-in of allowance auctioning
 - Special provisions for energy-intensive trade exposed industries

Climate Legislation (continued)

- Waxman-Markey
 - Passed full House in June 2009
- Kerry-Boxer
 - Based upon Waxman-Markey, passed out of Senate EPW committee late 2009
- Kerry-Lieberman (formerly Kerry-Graham-Lieberman)
 - Similar to W-M and K-L, including collaboration from bi-partisan collaboration from Senator Graham before he withdrew support this spring
 - Currently preferred Senate legislative vehicle
 - Potentially included as amendment to energy bill that may be considered in July
 - Renewed momentum for climate and energy bill as a result of BP oil spill

The Role of the Existing CAA under Congressional Proposals

- **Waxman-Markey and Kerry-Lieberman**
 - Would require NSPS standards for some uncapped sources.
 - CAA Preemption under W-M and K-L
 - NSPS for capped sources
 - NAAQS
 - HAPs
 - PSD/NSR
 - International Air Pollution
 - Title V
- **Kerry-Boxer**
 - Less Preemption than W-M or K-L, would have maintained PSD/NSR, Title V, NSPS
 - Codification of Higher PSD/Title V thresholds
- **Murkowski Resolution**
 - Would prevent EPA from regulating GHGs under the CAA
 - Unlike Cap and Trade proposals, preemption is not a quid pro quo for price on carbon (cap and trade)
 - Murkowski resolution would eliminate key driver for cap and trade (alternative regulation under existing CAA)
 - Vote Expected June 10