

Climate Change/Greenhouse Gas Emissions Controls



Climate Change/Greenhouse Gas Emissions: Overview of EPA's Recent Regulatory Developments

Presented by:
Margaret A. Hill



EPA Greenhouse Gas Emissions Regulations

- Evolved from April 2, 2007 Supreme Court Case (*Mass. v. EPA*); Court held that GHGs including Carbon Dioxide, are pollutants covered by the CAA.
- Supreme Court held that EPA is required to determine if GHG emissions from new motor vehicles cause or contribute to air pollution which may endanger public health or welfare.
- On December 9, 2009, EPA signed two distinct findings regarding GHGs under Section 202(a) of the CAA:
 - Endangerment Finding
 - Cause or Contribute Finding



EPA Endangerment Finding

- Issued on December 15, 2009.
- EPA Administrator determined that current and projected concentration of six GHGs in the atmosphere threaten the public health and welfare of current and future generations:
 - Carbon Dioxide (CO₂)
 - Methane (CH₄)
 - Nitrous Oxide (N₂O)
 - Hydrofluorocarbons (HFCs)
 - Perfluorocarbons (PFCs)
 - Sulfur hexafluoride (SF₆)
- EPA set stage for Final Endangerment Finding after releasing its proposed April 2009 finding that combined GHGs from new motor vehicles and engines “cause or contribute to” pollution which affects public health and welfare.
- 380,000 public comments received by EPA.
- EPA determined that major contributors of GHGs include: Electricity Generation (34%); Transportation (28%); and Industry (19%).
- EPA Administrator: EPA required to protect public health and welfare and is not required to wait until harm occurs.

Mandatory GHG Reporting Rule

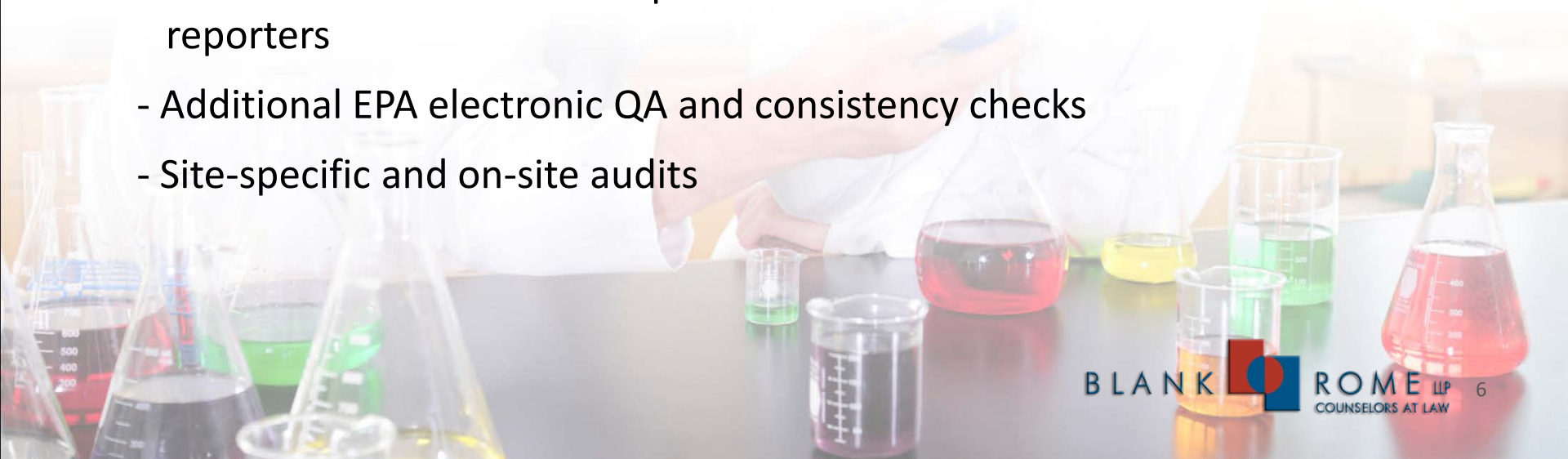
- Generally applies to facilities that emit more than 25,000 TPY of GHGs although some source categories will be required to report even if GHG emissions do not exceed 25,000 ton threshold (sources include: landfills, oil refineries, chemical manufacturers, electricity generators, etc.).
- Rule originated from 2008 Consolidated Appropriations Act which directed EPA to issue a rule by 1/26/09.
- Reporting companies required to self-certify emissions reports.
- State mandatory reporting programs are not preempted; 17 States have developed or are developing such rules.



How Will Emissions Be Verified



- Self Certification
 - Designated representative certifies and submits report
 - Rule allows one designated representative for each facility and supplier
- EPA verification
 - Reports submitted through an electronic system
 - Built-in calculation and completeness checks for reporters
 - Additional EPA electronic QA and consistency checks
 - Site-specific and on-site audits



EPA Vehicle Rule

- Under Final Vehicle Rule (4/1/10), EPA will control GHGs through implementation of GHGs from Light Duty Vehicles.
- Vehicle Rule will take effect with 2012 model year vehicles beginning January 2, 2011 (earliest date 2012 model year vehicles can be sold in United States).
- New standards will apply to new passenger cars, Light Duty Trucks and Medium Duty Passenger Vehicles covering model years 2012-2016.
- Rule was issued in response to Supreme Court's 2007 decision in *Massachusetts v. EPA* which held that GHGs are pollutants under the CAA.



GHG STANDARDS FOR MEDIUM AND HEAVY DUTY TRUCKS

- EPA and NHTSA also issued proposed standards to raise fuel-efficiency requirements and to reduce GHGs emissions.
- The heavy-duty vehicle sector accounts for six percent of all US GHG emissions and 20% of transportation GHG emissions in 2007.
- New proposed standards are targeted to three categories; combination tractors, heavy-duty pick-up trucks and vans and vocational vehicles.
- Engine and vehicle manufacturers have a number of options for compliance; reduction of idling, making aerodynamic improvements, reducing weight, using direct injection technology or advanced transmission designs.
- Credit options will also be available.

December 2000 EPA Johnson Memorandum

- Discussed when air pollutants become subject to regulation under CAA.
- EPA recently reaffirmed the Johnson Memorandum that a pollutant is not subject to regulation (triggering permit and BACT requirements) until a CAA provision or EPA rule requires actual control of pollutant.
- EPA concluded GHGs became subject to regulation for stationary sources with new vehicle rule.



EPA TAILORING RULE

- On 5/13/10, EPA issued a Final Rule Setting Thresholds For GHG Emissions that define when permits are required under the PSD and Title V Operating Program for new and existing industrial facilities.
- Rule is designed to “Tailor” CAA Permitting Programs to limit which facilities will be required to obtain PSD and Title V Operating Permits (will include Power Plants, Refineries, and Cement Production Facilities).
- Rule establishes a schedule to initially focus CAA Permitting Programs on the largest sources with the most CAA permitting experience; coverage will be expanded to include largest sources of GHGs that may not have been covered by the CAA for other pollutants.
- Rule is effective as of 1/2/11; EPA asked states if they must revise their regulations to implement the new GHG emissions threshold.s

State Programs & State Implementation Plans (SIPs)

- On September 12, 2010, EPA proposed two rules as a follow-up to the Tailoring Rule; one rule proposes a Federal Implementation Plan for states that will not have the authority to issue permits for sources of GHGs; the second rule sets forth EPA's Findings that 13 states do not have the requisite authority and requires these states to revise their SIPs (Texas responded to EPA that it will not issue permits for GHGs.)
- EPA planned to finalize the Rules by 12/01/10 and request a SIP call.

State Programs & State Implementation Plans (SIPs)

- Significance of EPA's position is that sources requiring a PSD Permit under the Tailoring Rule will be unable to obtain a required PSD Permit and will be unable to construct or modify a source after 1/2/11 if they are located in an area with a deficient SIP.
- Recent Seventh Circuit Decision: U.S. v. Cinergy Corp., may pose a problem for EPA since the Court held that the CAA does not authorize sanctions for conduct that complies with an EPA-approved SIP, even if the SIP is outdated since the SIP (and the Permit) shields the company from EPA enforcement.
- On 10/30/2009, EPA issued the GHG Reporting Rule applicable to approximately 10,000 facilities. Additional source categories added on 7/12/10.

EPA GUIDANCE ON EVALUATING GHG EMISSION REDUCTION TECHNOLOGY FOR INDUSTRIAL SOURCES

- EPA Guidance on evaluating GHG emission reduction technology for industrial sources.
- New and modified emission sources must use BACT to limit air pollutants (state agencies will be involved in permitting process).
- Series-specific white papers are available to evaluate control technologies.
- Greenhouse gas emission strategies database available; provides information on sector-specific strategies and technologies. <http://ghg.ie.unc.edu:8080/GHGMDB/>

GUIDANCE CLARIFIES THAT TAILORING RULE DOES NOT CHANGE EXISTING PSD APPLICABILITY PROCESS

- Two-Part calculation to be used: Need to evaluate facility's emissions from a "Global Warming" potential, and traditional mass basis.
- Emphasis on using energy efficiency technologies at a source.

Climate Change/Greenhouse Gas Emissions: Overview of Regional and State Climate Change Actions

Presented by:
Charles E. Wagner

Regional and State Climate Change Action – Why?

- U.S. States and Regions have acted to address climate change in the absence of federal legislation and regulation.
- Individual States are major sources of GHG emissions.
- State authority over economic sectors – power generation and agriculture.
- States are both leaders and innovators of climate change action.
- Economic and environmental impact on States – rising sea levels in coastal states; impact on agricultural productivity; and worsening droughts and wildfire risks.
- States have been able to muster bipartisan support to take action.

Regional Climate Change Action

- Regional Greenhouse Gas Initiative
 - Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont.
 - Established December 2005.
 - First mandatory CO2 cap-and-trade program.
 - Caps power plant CO2 emissions and allows emissions trading and auctions.
 - Goal 10% reduction from 2009 levels by 2019.

Regional Climate Change Action

- Midwest Greenhouse Gas Reduction Accord
 - Members: Iowa, Illinois, Kansas, Manitoba, Michigan, Minnesota, and Wisconsin; Observers: Indiana, Ohio, Ontario, and South Dakota.
 - Established November 2007.
 - Goals: Establish regional GHG reduction targets including long-range target between 60-80%; establish multi-sector cap-and-trade system.

Regional Climate Change Action

- Western Climate Initiative
 - Members: Arizona, California, New Mexico, Oregon, and Washington, Utah, Montana, British Columbia, Manitoba, Ontario, and Quebec; Observers: Alaska, Colorado, Idaho, Kansas, Nevada, and Wyoming, Nova Scotia Saskatchewan, Baja California, Chihuahua, Coahuila, Nuevo Leon, Sonora, and Tamaulipas.
 - Established February 2007.
 - 15% reduction from 2005 levels by 2020.
 - Multi-sector cap-and-trade system.

Regional Climate Change Action

- Energy Security and Climate Stewardship Platform for the Midwest
 - Iowa, Illinois, Indiana, Kansas, Manitoba, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin.
 - Established November 2007.
 - Goals: carbon capture and storage development, renewable electricity development, energy efficiency improvements, and increased availability of low-carbon transportation fuels.

Regional Climate Change Action

- Transportation and Climate Initiative
 - Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont.
 - Established June 2010.
 - Regional transportation approach to help states build the clean energy economy of the future.
 - Expand safe and reliable transportation options, attract federal investment, lower transportation costs, improve air quality and public health, and mitigate the transportation sector's impact on climate change.

State Climate Change Action

- Climate Change Action Plans
- Power Generation Emission Reductions
- Transportation Emission Reductions
- Agricultural Emission Reductions



State Climate Change Action

- Climate Change Action Plans
 - Almost 40 states have comprehensive action plans and several are in the process of revising their initial plans.
 - Establish GHG emissions inventories.
 - Establish boards, commissions and other advisory groups to develop and implement plans.
 - Decision making tool for cost-effective GHG emission reductions.
 - Tailored to each state's economic and political structure.

State Climate Change Action

- Power Generation Emission Reductions
 - Renewable portfolio standards.
 - Green pricing.
 - Appliance efficiency standards (beyond federal standards).
 - Energy efficiency resource standards for generation and rate payers.
 - Mandatory GHG emission limits.
 - Carbon capture and storage

State Climate Change Action

- Transportation Emission Reductions
 - Incentives for alternative fuels and alternative fueled vehicles.
 - California light-duty vehicle GHG emissions standard.
 - Implement low-carbon fuel standards.
 - Convert state-owned fleets to alternative fuels.



State Climate Change Action

- Agricultural Emission Reductions
 - Promote soil conservation to increase carbon stored in soil.
 - Promote the use of biomass – crops and residual materials and animal wastes.
 - Forest management.



State Climate Change Action

- Enforceable GHG Emission Limits
 - California Global Warming Solutions Act – A.B. 32 2006.
 - Proposition 23 overwhelming defeated 61% to 39%.
 - Cap-and-trade program for utilities and oil refiners.
 - Low-carbon fuel standard.
 - Vehicle GHG emission standards.
 - And more.

So Should You Care About Regional and State Climate Change Action?

YES!!!



Why?

Because It May Be The Only Game In Town
And You May Have To Play --- Even If You
Don't Want To!!!!



Questions?



Climate Change/Greenhouse Gas Emissions Controls:
**Legislative Efforts in the
111th Congress
and the 112th Congress**

Presented by:
Elizabeth Boehlert
Blank Rome Government Relations

Ashley E. Davis
Blank Rome Government Relations

111th Congress Recap

- **Waxman/Markey** – Economy-wide cap and trade system. Passed House Summer 2009.
- **Bingaman Energy bill** – Federal RES (renewable energy standard) and energy efficiency provisions. No Cap and Trade. Passed Senate Energy and Natural Resources Committee Summer 2009.
- **Kerry-Lieberman** – GHG cap but different systems for different sectors of the economy (utilities, manufacturing, and transportation.)
- Various other proposals floated by Democratic leaders during summer 2010 but lack of time and lack of support of 60 senators prevented anything else from moving forward.

Legislative Delay for EPA Regs?

- Rockefeller (D-WV) two year delay language?
- Appropriations language to deny funds to the EPA?
- More supporters for delay in Congress next year so issue will remain.

112th Congress Outlook

- EPA Oversight
- The CLEAR Act
- Possible small energy bills related to “clean” energy standard, natural gas and electric vehicles, or green buildings

Blank Rome Government Relations, LLC

Ashley Davis

202.772.5893

Davis@BlankRome.com

Elizabeth Boehlert

202.772.5842

Boehlert@BlankRome.com

Watergate

600 New Hampshire Avenue, NW

Washington, DC 20037

202.772.5800

Climate Change Litigation: *Baby it's cold outside!*

A Logical Extension of American Tort Law
or . . . Standardless Liability?

Presented by:
Joseph F. Speelman and

Edward Lowenberg
ExxonMobil, Ret.

The Law

- Traditional Products Liability Law — causation, product responsibility
- Environmental Activism — declaration 15 years ago to “legislate by litigation”
- EPA Endangerment finding regarding Greenhouse Gases – CO₂
- Rise of Public Nuisance Theory of Liability



Public Nuisance Theory

- Restatement III on Product Liability
- Lack of success with other legal theories
- **Political motivation**
+ contingency fee
= climate litigation
- This has been coming for 20 years



“What Rough Beast . . .?”

- 2nd Circuit, 4th Circuit, 9th Circuit public nuisance based climate cases — US Supreme Court
- Columbia University Climate Change Litigation Center
- And for the defense?



What Is The Defense?

- The Defense Must Respond
- The Response Must Be Principled
- The Response Must Be Coordinated
- Points:
 - Rule of Law . . . not politics
 - Defend American jobs . . . and industry
 - Balance the legal . . . and political debate
 - Utilize Influence Model Designed for Internet



The Defense

- Legitimate Science
 - ClimateGate remembered
- Public Nuisance law Must be Kept in Appropriate Legal Context
 - Professor Jim Henderson — Cornell University
- A Rational Legal Thought Process
 - China – Russia – India – Japan
 - Neil Cavuto — “Give me a break!”
- Finally
 - What is the impact on our economy?
 - What is the impact of one volcano erupting anywhere in the World?
 - Why is Greenland called “Greenland”?

