



EPA GHG Regulation under the Clean Air Act: Washington, D.C. Perspective

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GHG REGULATION: HOW MUCH PAIN?



"Sorry, Harold, but I'm reducing our carbon footprint."

Supreme Court Massachusetts v. EPA Decision April 2007

- GHGs are CAA “air pollutants” which EPA must regulate if it finds endangerment to public health or welfare
- Case was in the context of GHG emissions from new motor vehicles, but precedent applies to sources across the economy

EPA Proposes Endangerment Finding on April 17, 2009

- Finds that elevated concentration of six GHGs in atmosphere constitute “air pollution” endangering both public health and welfare because of climate change effects
- Finds that four of these GHGs, including CO₂, emitted by new motor vehicles cause or contribute to this air pollution
- Does not propose regulations to control these emissions – but once endangerment finding final, EPA must regulate

→ Comments due June 23, 2009

What Happens Next

- President announces agreement with automakers on May 19 on motor vehicle fuel economy regulations that will include GHG regulations under CAA – actual proposal expected this Summer before endangerment finding is finalized
- Endangerment finding will be finalized later this year
- Auto GHG regulations will be finalized some time next year
- EPA will move to set standards for large coal-fired powerplants later this year
- Numerous petitions in queue to regulate GHG emissions from a variety of other sources

Can EPA Limit GHG Regulation under CAA to Large Sources Only?

EPA and environmental organizations say that's their plan

But they have several problems, mainly:

- "PSD" program
- "NAAQS" program

Prevention of Significant Deterioration Program

- Pre-construction permitting program for “major” stationary sources – permits require use of Best Available Control Technology
- Applies to air pollutants regulated under CAA under any program – so if EPA, as it intends to do, adopts regulations restricting auto GHG emissions, “major” stationary sources of GHG emissions must obtain PSD permits
- Applies automatically without further rulemaking requirements
- “Major” source thresholds: 100/250 tons per year
- For CO₂, that’s almost nothing - very large number of sources emit CO₂ above these thresholds because their heating systems use natural gas or oil
 - EPA: building of ~ 65,000 sq ft emits above 250 tpy CO₂
 - Chamber study: 1.2 million sources



Potentially Regulated Sources

- Office and apartment buildings; hotels; enclosed malls; large retail stores and warehouses; college buildings, hospitals and large assisted-living facilities; large houses of worship; product pipelines; food processing facilities; large heated agricultural facilities; indoor sports arenas and other large public assembly buildings; restaurants; soda manufacturers; bakers, breweries and wineries; and many others.
- Farms – Methane and N₂O emissions
- Will need permit for new construction or modification
- All pain for no gain – worst possible time to impose new permit requirements for new construction

Regulatory Gridlock

- EPA – permitting burden, at minimum, would increase by order of magnitude – much higher if include modified as well as new sources
- EPA: “If the transition were not effectively managed, an overwhelmed permit system would not be able to keep up with the demand for pre-construction permits, and construction could be delayed on a large number of projects under this scenario.”

Can EPA “Manage the Transition”

- EPA offers potential ways it can limit PSD to very large sources only – dubious legality
- And some environmental groups say EPA cannot limit the scope of the program and demand regulation of all sources

National Ambient Air Quality Standards Program

- Establishes maximum concentrations of pollutant allowed in atmosphere
- States must adopt plans with stringent control requirements on sources to attain the standard
- EPA proposed endangerment finding states that current atmospheric GHG concentrations endanger both health and welfare
- Implying need to set a “primary” health-based standard at a level below current concentrations
- But there is nothing states can do to affect atmospheric GHG concentrations! Because it’s a global problem. This could be an economic train wreck.



Does EPA Have to Promulgate a GHG NAAQS?

- EPA and some environmental groups would like to think not.
- But GHG NAAQS may be legally required if EPA makes endangerment finding
- And two environmental groups and two state AGs have told EPA it is legally obligated to adopt a GHG NAAQS

Strategic Considerations

- EPA and Congressional leadership are trying to use threat of CAA regulation as sword to soften up industry on cap-and-trade
- National legislation is preferable to CAA regulation by a mile, but not at any cost
- Two-front battle to get a sensible climate change program
- Sen. Barrasso and Rep. Issa focus spotlight

Carbon Regulation Is All About Choices





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