

Proposed PSD and Title V GHG Tailoring Rule

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McIlvaine Company Hot Topic Hour
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Presentation Agenda

- How GHGs Became a Pollutant
- Overview of EPA's Proposed Light Duty Vehicle Rule
- Overview of EPA's Proposed GHG Tailoring Rule
- Letter from Administrator Jackson

GHGs Become a Pollutant

- In April 2007, the US Supreme Court ruled that GHGs meet the definition of air pollutants covered by CAA (Mass. vs. EPA)
- On December 7, 2009, Administrator finalizes its “Endangerment Finding” for GHGs, which formally authorizes EPA to promulgate regulations for GHGs



EPA's Light Duty Vehicle Rule (GHGs Subject to "Control")

- On September 28, 2009, EPA proposed mobile source regulations that would regulate GHGs for light-duty vehicles (LDVs)
- The proposed LDV rule directly limits the mobile source emissions (tail-pipe emissions) of CO₂, CH₄, N₂O, HFCs (HFCs debatable because "credit" given for fleet-wide CO₂ standards if HFCs from ACs are reduced)
- The LDV rule clearly does not regulate
 - ◆ SF₆, PFCs (included in endangerment finding)



LDV Implementation Schedule

- EPA's official schedule (as of Monday) is that the LDV rule will be finalized approximately April 1, 2010 – this likely means an EPA Administrator signature date
- Given normal delays (2-3 weeks for long rules with extensive formatting) for Federal Register printing plus a 30-60 days from publication as the effective date, the likely effective date would be from late May to late June
- Compliance with emissions standards begins in 2012

Impact on Prevention of Significant Deterioration (PSD) and Title V Permitting

- Once GHGs become “subject to regulation” under CAA, EPA interprets that GHGs become regulated under Prevention of Significant Deterioration (PSD) and Title V regulations
- Causes significant issues since major source thresholds in the Clean Air Act and in existing regulations for PSD and Title V programs are 100/250 tpy

Creating Administrative Necessity?



- The March deadline for the proposed LDV rule is being driven by the NHTSA's (Corporate Average Fuel Economy) CAFE standards for model years 2012 through 2016
- Does EPA need to establish GHGs emission limits in the rule to accomplish its objectives? (Tighter CAFE standards achieve the prime objective – reduction of GHG emissions)
- Since objectives can be met without direct regulation of GHGs, is EPA unnecessarily creating a PSD and Title V problem by including GHG limits into the CAFE rule?
- EPA's response is that they are compelled under the Clean Air Act to issue mobile source regulations for specific pollutants

Title V and PSD Major Source Definitions



- The Title V and PSD major source emission thresholds are “**hard-wired**” in the CAA.
- **PSD - CAA Section 169** - The term “major emitting facility” is defined as potential to emit **one hundred tons per year or more of any air pollutant** for 28 listed source categories or **two hundred and fifty tons per year or more of any air pollutant** for others
- **Title V - CAA Section 302** - Except as otherwise expressly provided, the terms “major stationary source” and “major emitting facility” mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, **one hundred tons per year or more of any air pollutant**

EPA Proposes the “GHG Tailoring Rule”

- On October 27, 2009, (74 FR 55292) the EPA proposed the GHG Tailoring Rule
- Proposes to increase the major source thresholds for GHGs from the current 100/250 tpy thresholds to 25,000 tpy, effectively “**tailoring**” the PSD and Title V permit programs to target only “major” GHG sources and major modifications
- Necessary because emissions of GHGs are typically emitted in much higher quantities than traditional PSD pollutants and without the higher applicability threshold, permitting agencies would be overwhelmed with PSD and Title V applications
- Proposed regulation of 6 GHG compounds:
 - ◆ CO₂, CH₄, N₂O, HFCs, PFCs, & SF₆
- EPA is scheduled to promulgate by the end of March, with a 60 day effective date (i.e., as early as late May)

Tailoring Rule Applicability

- Proposed Title V major source applicability threshold of 25,000 tpy CO₂e
- PSD major source threshold of 25,000 tpy CO₂e, with a significant emission rate (SER) of between 10,000 and 25,000 tpy CO₂e
- If a major source is making modifications that result in emissions increasing above the SER, it must obtain PSD permit
- Potential emissions are weighted by the GWP of the six GHGs:
 - ◆ Carbon Dioxide: 1
 - ◆ Methane: 21
 - ◆ Nitrous Oxide: 310
 - ◆ Sulfur Hexafluoride: 22,800
 - ◆ HFCs: 140 – 11,700
 - ◆ PFCs: 6,500 – 9,200

The Lisa Jackson Letter



EPA-Senate Interaction

- On February 19, 2010, Jay Rockefeller, Chairman of the Senate Committee on Commerce, along with other Senators raised concerns about the potential impacts and timing of the Tailoring Rule on the economy
- On February 22, 2010, Administrator Jackson replied, addressing issues raised by Rockefeller's letter
- Letter stated much of the obvious, that EPA believed it is obligated under the Clean Air Act to regulate GHG emissions for motor vehicles, which requires regulation under the PSD program

Clarification (of Sorts)

- However, provided following additional information:
 - ◆ Phase I: PSD permits must be issued for GHGs only for “large sources” beginning in 1st half of 2011 (those already must apply for “Clean Air Act permits as a result of their non-GHG emissions”)
 - ◆ Phase II: Between latter half of 2011 and 2013, “permits” (presumably PSD for new and modified major sources) will be required
 - ◆ Threshold will be “substantially-higher” than 25,000 tpy

Unresolved Issues

- Still appears to be accelerated timeline, albeit not as bad as originally proposed
- Substantial issues on whether many states will have the authority to issue permits prior to modifying state regulations to accommodate Tailoring Rule changes
- Uncertain whether EPA may issue a “federal implementation plan (FIP)” as a backstop to ensure timely implementation of Tailoring Rule requirements



Questions?