

2010 Quarterly Report on Climate Change – Regulatory Update

December 16, 2010

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Significant developments at the global climate change conference: COP 16

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Summary

- On surface: by under-promising and over-delivering, UN process clawed back some respect
- On closer inspection: punted on the hard stuff



OUTCOME OF COP16: Cancun Agreements

Four Significant Areas

- Kyoto Protocol
- Green Climate Fund
- MRV
- REDD

Future of the Kyoto Protocol

- STEP FORWARD:
 - Japan, then Canada and Russia, initially indicated would not agree to commitments post-Kyoto.
 - Negotiators finally found a compromise in the Cancun Agreements
- PUNT: Not much actually agreed to.
 - The Cancun Agreements state that countries will “aim to complete” work about extending the Kyoto Protocol “as early as possible and in time to ensure that there is no gap between the first and second commitment periods.”
 - The text refers to findings by the UN panel of climate scientists: Need GHG 25 percent and 40 percent below 1990 levels by 2020 to avoid the worst damage
 - Note: United States pledged 17 percent reduction from 2005 levels in Copenhagen Accord

Green Climate Fund

- Step Forward: The Cancun Agreements formally set up a financial structure or “Green Climate Fund” that provides funding and technology to less-developed nations to stave off the threats posed by climate change.
 - In the Cancun Agreements, the structure of the fund is set out in detail, including governance, voting and accountability. The board will have 15 members from developed and 25 from developing countries. The World Bank is appointed to serve as Trustee for the first three years.
- PUNT: Show me the money
 - Of the agreed \$30 billion that was pledged since Copenhagen, only \$8 billion has actually been committed to international climate change programs and only \$4 billion has actually been received.
 - Going into COP 16, a recent report from the high-level advisory group on Climate Change Finance convened by UN Secretary General Ban Ki-Moon found that while it will be challenging, the developed countries “can” meet their pledges.

MRV Transparency

- Step Forward: Non-Annex 1 countries agreed to transparency in measurement, reporting, and verification (MRV) of greenhouse gas emissions
 - This caused the deadlock between the United States and China in COP-15
 - PUNT: The United States still has no reporting requirements

REDD

- REDD (“reducing emissions from deforestation and (forest) degradation”)
 - This was a popular item with both developed and undeveloped nations
 - Most agree that REDD will rapidly move forward over the next few years with encouragement from developed nations (for the cheap offsets) and developing countries (for the preservation of forests and offset profit) that view REDD as a faster vehicle to control deforestation and GHGs, as well as a source of economic incentives to tackle clear cutting and forest fires.
- PUNT: No details re financing
 - REDD would be financed in an ad hoc approach through seed funds set up by developed nations and through private sector voluntary carbon markets. When negotiators meet next year in South Africa, they will need to add more substance to these efforts.



Speaking of offsets...

- What is new with CDM?



Questions?

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Impact of Proposition 26 on California's Global Warming Solutions Act (AB 32)

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Summary

- California's General Election held November 2, 2010
- Included were Propositions 23 and 26:
 - Prop. 23 – Would have suspended California's Global Warming Solutions Act (AB 32), but was convincingly defeated by 61.6 percent of the vote
 - Prop. 26 – Redefines "taxes" to include many regulatory fees, requiring two-thirds "supermajority" vote to enact; squeaked by with 52.5 percent of the vote
- The Result: Confusion. Although Prop. 23's defeat keeps AB 32 on track, Prop. 26 may block the fees required to implement AB 32.



What happened?

- It appears that voters were strongly in favor of keeping California's climate change law in effect.
- But at the same time, voters sought to prevent new fees from being imposed on them.
- Either voters did not see the possible connection between Props. 23 and 26, or they did not care.

Prop. 26 – Key Points

- Taxes vs. Fees:
 - Taxes typically require a two-thirds vote of both the state Assembly and Senate (for state taxes), or two-thirds approval by the voters (for local taxes).
 - By contrast, fees typically require a simple majority vote.
- Prop. 26 redraws the line between taxes and fees, such that taxes are now a much broader category, and include many regulatory fees that fund environmental programs.
 - Taxes now include fees that exceed the actual, reasonable costs of the regulations, or are imposed solely to raise revenue for a regulatory program.
 - Fees are narrowed to those imposed to cover costs incident to issuing permits, licenses, etc., such as processing applications and performing inspections.
- The Result: Many charges imposed by the government that were previously considered fees are now considered taxes, subjecting them to a two-thirds vote instead of a simple majority.

Prop. 26 – Specific Language

- “Any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members . . . of the two houses of the Legislature. . . .”
- “Tax” is defined as “any levy, charge, or exaction of any kind” imposed by either the state or a local government.
 - Exceptions:
 - Not tax – charges imposed for a specific benefit or privilege granted directly to the payor and not others.
 - Not tax – charges imposed for specific government services or products provided directly to the payor and not others.
 - Not tax – charges imposed for the reasonable regulatory costs to the government incident to issuing licenses and permits, performing investigations, inspections and audits, and related enforcement.
 - Phase-In Period: Taxes adopted between Jan. 1, 2010 and Nov. 3, 2010 that were not passed by a two-thirds vote are void 12 months after the effective date of Prop. 26 (i.e., Nov. 3, 2011), unless reenacted with a two-thirds vote.

Prop. 26 – Specific Language (cont.)

- “Grandfathering” – Taxes enacted prior to Jan. 1, 2010 appear to be exempt from Prop. 26.
- When imposing a new or increased fee, the government must prove, by a preponderance of the evidence, that:
 - The fee is not a tax
 - The amount is no more than necessary to cover the reasonable costs of the governmental activity
 - The manner in which the costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens placed on, or benefits received from, the government activity

Impact of Prop. 26 on AB 32

- AB 32 includes a variety of funding and fee mechanisms critical to achieving its emissions reductions goals – Are they now blocked by Prop. 26, absent a two-thirds vote of the Legislature?
 - Administrative Fee
 - Vehicle “Feebate”
 - “Mitigation fee” on sales of so-called “high global warming potential” gases
 - Revenue from auctioning emissions allowances under the cap-and-trade program
 - Future fees imposed by air districts and local governments to incentivize GHG emissions reductions (e.g., the San Joaquin Valley AQMD’s “indirect source fee” on developers)
- Threshold Question: Are these fees already in place? Were they enacted prior to Jan. 1, 2010?
- Do these fees require a “change in state statute”?
- Are these fees redefined as taxes under Prop. 26?
- Do any of Prop. 26’s exceptions apply?

Conflicting Opinions

- Mary Nichols, Chairwoman of the California Air Resources Board, says:
 - “Prop. 26 does not impair the scoping plan adopted in 2008 or any regulations developed under that plan. AB 32 is on track...”
- Others, including some California officials, are not so sure.
 - The Legislative Analyst’s office is currently examining the issue and has requested an opinion from the state’s Legislative Counsel.

Focus: AB 32's Administrative Fee

- AB 32's Administrative Fee is already in place, and is being heavily relied upon to fund future AB 32 implementation.
 - \$36.5 million approved in the 2010-2011 State Budget
- The Issue: Is the Administrative Fee “grandfathered”?
 - Authorized by AB 32, which was passed in 2006
 - Adopted by CARB regulation in September 2009, but became effective in July 2010
 - Approved by the Legislature in the “2010-2011 Budget Bill” passed in October this year
- Moving Forward: What happens next year?
 - The Administrative Fee must be adjusted every year based upon CARB's cost expectations for the AB 32 program in the following fiscal year
 - Thus, the Administrative Fee will be revisited in the budget bill every year

What the future holds...

- Many already predict that interpretation and implementation of Prop. 26 will prompt litigation
 - Prop. 26 is poorly drafted
 - Mary Nichols is confident that Prop. 26 will not affect AB 32 implementation
 - But the Legislative Analyst's office and Legislative Counsel have yet to weigh in
 - Don't forget Jerry Brown and his recent track-record on environmental issues
- Uncertainty – Bad for the regulated community
 - A resolution is likely sooner than later
 - Special legislative hearing scheduled in mid-January



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EPA Issues PSD and Title V Permitting and BACT Guidance for GHG Sources Subject to the “Tailoring Rule”

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The “TAILORING” Rule

- In May 2010, EPA finalized a rule to limit applicability of the PSD and Title V operating permit programs to new or modified sources with emission thresholds far greater than the 100 or 250 tons per year (depending on source type) that had previously defined a major source of regulated pollutants subject to PSD.
- Beginning January 2, 2011, through the Tailoring Rule, PSD and Title V permits will be required for sources if their GHG emissions are greater than 75,000 tons a year and their other emissions trigger the applicability of PSD. Beginning in July 2011, sources with emissions of 75,000 tons a year or more of GHG emissions will need to meet PSD and Title V requirements even if other emissions do not trigger these requirements.
- On December 10, 2010, the United States Court of Appeals for the District of Columbia rejected a request to delay the implementation of the Tailoring Rule, so it is still scheduled to go into effect Jan. 2, 2011.



EPA'S GUIDANCE

APPLICABILITY OF TAILORING RULE TO NEW AND MODIFIED SOURCES

- The Tailoring Rule left open a number of questions that EPA promised would be answered in Guidance it promised to issue before the Rule went into effect. That Guidance has now been issued. The Guidance is not a rule, but it provides a highly specific methodology in certain areas.
- One of the first issues dealt with by EPA in its Guidance is how sources are to determine whether a proposed project constitutes a new major source or GHGs or a major modification to an existing source of GHGs.

EPA's GUIDANCE (cont.)

- For PSD applicability purposes, GHGs are defined as a single air pollutant that is the aggregate of the group of the following six contaminants:
 - Carbon dioxide
 - Nitrous oxide
 - Methane
 - Hydrofluorcarbons
 - Perfluorcarbons (PFCs)
 - Sulfur Hexafluoride (SF₆)

EPA's GUIDANCE (cont.)

- For GHGs, the Tailoring Rule does not change the basic PSD applicability process. However, the applicability test for GHGs has changed from just aggregating the TPY of the NSR pollutant to a two-part test that evaluates both:
 1. The sum of the CO₂e emissions in TPY to determine whether the sources emissions are a regulated NSR pollutant and, if so,
 2. The sum of the mass emissions in TPY of the six GHGs. For the purpose of summing CO₂e emission, each GHG is assigned a Global Warming Potential as follows:

<u>GHG</u>	<u>GWP</u>
Carbon Dioxide	1
Nitrous Oxide	310
Methane	21
HFC-32	650
PFC-14	6500

EPA's GUIDANCE (cont.)

- CO₂e emissions are defined as the sum of the mass emissions of each individual GHG adjusted for its Global Warming Potential.
- Thus, for example, for permits issued from Jan. 2, 2011 to June 30, 2011, the PSD applicability tests for “Anyway New Sources”* is whether the potential emissions of GHGs from the new source are equal to or greater than 75,000 TPY on a CO₂e basis and the total mass of GHGs. That means, for example, a source emitting 3,571 TPY of methane will require a PSD permit just based on its Global Warming Potential alone.

- An “Anyway New Source” is one that is considered a major source for PSD and that is required to obtain a PSD for pollutants other than GHGs.

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EPA's GUIDANCE (cont.)

- EPA's Guidance also sets forth the PSD applicability tests for new sources with permits issued after July 1, 2011, and modified sources with permits issued before and after July 1, 2011.
- Each of these tests also utilizes the Global Warming Potential to determine total potential emissions.



BACT ANALYSIS

- Once a major source becomes subject to PSD, it must apply best available control technology (“BACT”), demonstrate compliance with air quality related values and PSD increments.
- EPA’s BACT requirements are set forth in Section 165(a)(4) of the Clean Air Act and in Federal Regulations at 40 CFR 52.21(c).

BACT ANALYSIS (cont)

- In its Guidance, EPA recommends that permitting authorities use its *existing* EPA five-step “top-down” BACT process modified to take into account GHG specific considerations. The “Top Down” process consists of the following steps.*
 1. Identify all available control technologies.
 2. Eliminate technically infeasible options
 3. Rank remaining control technologies
 4. Evaluate most effective controls
 5. Select BACT and identify an emission limit
- EPA’s Guidance reviews the general concepts of the Top-Down process and provides specific GHG considerations.

* A comprehensive discussion of the five step top-down BACT process can be found in EPA’s 1990 “Draft New Source Review Workshop Manual: www.EPA.GOV/TTN/NSR/GEN/WKSHPMAN.pdf.

BACT ANALYSIS (cont.)

STEP 1 – IDENTIFY CONTROL OPTIONS

- The first step in the “Top-Down” BACT process is to identify all “available” control options. Available control options are those air pollution control technologies or techniques that have the potential for practical application to the emission unit and the pollutant being evaluated.
- EPA’s Guidance urges permitting authorities to use the discretion available to them to include the most energy-efficient options in the BACT analysis for both GHG and non-GHG regulated NSR pollutants.

BACT ANALYSIS (cont.)

- EPA's Guidance suggests that three categories of potential available control techniques should be considered in Step 1 by the permitting authority.
 1. Inherently lower emitting process, practices and designs. These are technologies that maximize the efficiency of the emissions unit. Examples given in the Guidance are boilers with supercritical and ultrasupercritical steady pressures.
 - a. EPA does not interpret the Clean Air Act to prohibit redefining the source in order to achieve BACT, and
 - b. The permitting authority is directed to take a hard look at the applicant's proposed source design in order to discern which design elements are inherent for the applicant's purpose and which design elements may be changed to achieve pollutant emissions reductions without disrupting the applicant's basic purpose.

BACT ANALYSIS (cont.)

2. Add-on controls – These are technologies that reduce emissions. For the purposes of a BACT analysis, EPA classifies carbon capture and storage as an add-on technology that is currently available for large CO₂ emitting facilities, including fossil fired power plants and industrial facilities with high purity CO₂ streams (recognizes case specific factors may rule out this technology).
3. Combination of inherently lower emitting processes, practices and designs, and add-on controls.

BACT ANALYSIS (cont.)

STEP 2: Eliminate Technically Infeasible Options

- EPA considers a technology to be technically feasible if it has been demonstrated in practice or is available and applicable to the source type.
- The Guidance recognizes that it is being issued at a time when add-on controls for certain GHGs of GHG emission sources may be limited in number.
- The Guidance states that in early years of GHG control strategies, consideration of commercial guarantees is likely to be more relevant for certain GHG controls.
- EPA generally considers CCS to be an available add-on pollution control technology for large CO₂ emitting facilities with high purity CO₂ streams.
- According to the Guidance, CCS may be eliminated from a BACT analysis in Step 2 if it can be shown there are significant differences pertinent to the successful operation for each of the three main components of CCS – CO₂ capture and compression, transport and storage.
- See Blog by Dave Wagner.



BACT ANALYSIS (cont.)

STEP 3 – Ranking of Controls

- Step 3 of the process calls for the remaining control technologies to be listed in order of overall control effectiveness for the required NSR pollutant under review.
- The Guidance requires that overall effectiveness must take into account so that the measure with the lowest net emissions from the facility is the top ranked measure. The ranking is to be based on the total CO₂e (Global Warming Potential), rather than total mass or collective mass of individual GHGs

BACT ANALYSIS (cont.)

STEP 4 – Economic, Energy and Environmental Impacts

Under Step 4 of the “Top Down” BACT analysis, permitting authorities must consider the economic, energy and environmental impacts arising from each option remaining after Step 2.

The Guidance states that for GHGs, in conducting the energy, environmental and economic impacts analysis, permitting authorities have a great deal of discretion in deciding the form of analysis and the weight to be given to particular impacts.

When conducting a BACT analysis for GHGs, permitting authorities are directed to consider the potential trade-offs of selecting particular GHG control strategies. Permitting authorities are given flexibility when evaluating the trade-offs associated with decreasing one pollutant at the cost of increasing another.

For options that involve improvements in the energy efficiency of the source, EPA says that it does not expect significant trade-offs in emissions of regulated pollutants since energy efficiency improvements generally reduce emissions of all pollutants.

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BACT ANALYSIS (cont.)

STEP 5 – Selecting BACT

- According to the Guidance, in Step 5, the most effective control option not eliminated in Step 4 should be selected as BACT.
- EPA expects many permits issued after January 2, 2011 to initially place more of an emphasis on energy efficiency.
- A permit may also include work practices such as environmental management systems focused on energy efficiency in addition to emission limits.
- In setting BACT limits, permitting authorities have the discretion to select limits that do not necessarily reflect the highest possible control efficiencies, but that will allow compliance on a consistent basis and consider safety factors.

C. OTHER PSD REQUIREMENTS

- The Clean Air Act states that if a facility triggers review for non-regulated NSR pollutants (that are non-GHG pollutants) for which there are established NAAQS PSD increments, the air quality, additional impacts, and Class 1 requirements would apply to those pollutants. These requirements have generally been abandoned for GHG sources. There are no NAAQS for GHG or PSD increments which must be satisfied.
- EPA's GHG Guidance also states that it is not necessary for applicants to gather monitoring to assess ambient air quality for GHGs to satisfy the requirements for such monitoring under federal or state rules.

The Guidance also states that the most practical way to address the considerations reflected in a Class 1 area is to focus on reducing GHG emission to the maximum extent.



D. BIOMASS

It remains unclear whether emissions attributable to the combustion of biomass may be excluded when determining whether a new or modified facility must incorporate GHGs into their permitting program.



E. TITLE V

- Under the Clean Air Act, major sources must apply for, and incorporate into an operating permit, conditions necessary to assure compliance with all applicable Clean Air Act requirements. This applies as well to GHGs.
- What are the applicable requirements to sources of GHGs?
- Mandatory greenhouse gas reporting rules are currently not included within the definition of applicable requirements in 40 CFR 70.2 and 71.2.

E. TITLE V (cont.)

- As a general matter, all Title V permits issued by permitting authorities must contain, among other things, emissions limitations and standards necessary to assure compliance with all applicable requirements for GHGs, all monitoring and testing required by applicable requirements for GHGs, and compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with GHG-related terms and conditions of the permit.
- Under Step 1 of the Tailoring Rule, (“Anyway New Sources”), no source can be major for purposes of Title V on the basis of its GHG emissions alone. Thus no new Title V permits come into the Title V program solely prior to July 2011 as a result of GHG emissions. However, an “Anyway New Source” will be required to address GHGs as part of its Title V permitting. In addition, as GHGs are not currently considered regulated air pollutants under the Title V regulations, the requirement to provide emissions-related information for regulated air pollutants does not apply.

E. TITLE V (cont.)

- Both of the following conditions need to be met in order for Title V to apply under Step 2 of the Tailoring Rule (post July 2011 sources) to a GHG emission source:
 1. An existing or newly constructed source emits or has the PTE GHGs in amounts that equal or exceed 100 TPY calculated as the sum of the six well-mixed GHGs on a mass basis (no GWPs applied).
 2. An existing or newly constructed source emits or has the PTE GHGs in amounts that equal or exceed 100,000 TPY calculated as the sum of the six well-mixed GHGs on a CO₂e basis (GWPs applied).

In Step 2 of the Tailoring Rule, as under Step 1, for all sources otherwise subject to Title V for non-GHG pollutants (i.e., Anyway New Sources), sources and permitting authorities will need to meet the generally applicable Title V application and permitting requirements as they pertain to GHG applicable requirements established under other CAA programs.

- See Reed Smith Blog authored by Ms. Smokelin.



F. SECTOR-SPECIFIC WHITE PAPERS

As part of its Guidance, EPA published seven white papers that detail sector-specific technologies for addressing GHG emission. They are:

- Electric generating units
- Large industrial and commercial boilers
- Pulp and paper
- Cement
- Iron and steel
- Refineries
- Nitric acid plants



F. Conclusion

- As a result of the use of the Global Warming Potential, there will be many more new or modified sources of GHGs covered by EPA's PSD regulations than originally thought to be the case. The emphasis on energy efficiency and the possibility of basic design and process changes reflected in the Guidance could add substantial expense to a project and should be incorporated into a source's planning. Early planning continues to be critical for new or modified sources.



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Carbon Capture and Storage Developments in the United States

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CCS and the Obama Administration

- Federal Task Force:
 - “There are no insurmountable technical, legal, institutional, or other barriers to the deployment of CCS,” but we need a price on carbon emissions.
 - Need a legal and regulatory framework for CCS projects that facilitates project development, protects human health and the environment, and provides public confidence that carbon dioxide can be stored safely and securely.
- DOE: has awarded more than \$2 billion related to CCS projects in past year-and-a-half

CCS and EPA

- Two CCS-related rules finalized last month
 1. Drinking water
 2. GHG reporting



CCS and EPA

- Drinking water protection
 - EPA finalized a rule (11/22/2010) that sets requirements for geologic sequestration of carbon dioxide, including the development of a new class of injection well.
 - Rule is designed to ensure that wells used for CCS are appropriately sited, constructed, tested, monitored, and closed.

CCS and EPA (cont.)

- GHG reporting rule finalized (11/22/2010) that requires CCS projects to report GHGs
- BACT Guidance (Larry Demase discussed earlier)
 - BACT is case-by-case, and cost of emission-reduction is a factor
 - Under the new EPA Guidance, CCS won't be BACT (at least most of the time) because too expensive
 - EPA suggests that CO₂-EOR is more likely to be BACT because of its cost mitigating results

CCS Programs in 21 U.S. States

- 21 state jurisdictions have incentives or some regulation in place for CCS



California and CCS

- State has established a review panel
 - Review CCS policy frameworks used elsewhere, and identify gaps, alternatives, and applicability in California
 - Develop specific recommendations that could help guide CCS legislation and regulations.
- Held its 5th meeting December 15, 2010



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Issues and Problems To Consider Regarding 2011 GHG Emissions Monitoring & Reporting

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Overview of GHG Reporting Requirements

- As of December 29, 2009, the EPA requires the reporting of greenhouse gas (GHG) emissions and other relevant information from certain source categories in the United States.
- Requires monitoring and annual reporting by an owner/operator of facilities that emit GHGs and for suppliers of fuels, industrial GHG gases, and certain types of motor vehicle and engine suppliers.
- **How it Works**
- Annual Reporting (March 31) of GHG by:
 - Facilities having identified (“all in”) source categories
 - Facilities having other source categories emitting 25,000 mt CO₂e/year or more

Overview of GHG Reporting Requirements (cont.)

- C. Any facility with “stationary sources” where the aggregate maximum rated heat input capacity > 30 mmBtu/hr and emitting 25,000 mt CO₂e /year or more.
- Program now covers more than 13,000 reporters. Recently added are:
 - The Petroleum and Natural Gas Industry (2800)
 - Fuel and Industrial GHG Suppliers (1224)
 - Fluorinated GHG Processes (259)
 - Geologic Sequestration and Injection of Carbon Dioxide (93)
- Reporting done at the facility level
- If the EPA reporting rule applies to any source category, a facility will report emission for *all* source categories for which methods are provided in the EPA rules (with exception for onshore petroleum and natural gas production/distribution)

Issues and Problems for 2011

Identify the “Facility”

- A “facility” is defined in rule 98.6 as any:
 - Physical property, plant, building, structure, source, or stationary equipment,
 - located on one or more contiguous or adjacent properties in actual physical contact,
 - or separated solely by public roadway or other public right-of-way,
 - and under common ownership or common control

Issues and Problems for 2011 (cont.)

Identify the “Facility”

- Commercial business park with tenants having industrial production processes in several buildings. If each tenant is a separate legal entity and does not share common ownership or operation of their process units, then each one must determine whether the EPA regulations apply.
- Easement by third party providing public access rights? Other complex reality issues? A river would qualify as a public right-of-way, but what about state boundaries or the Great Lakes?
- Lease a building with furnaces, hot water heaters, incinerators to third parties – tenant pays the utilities. The facility is identified based on who owns and operates the equipment according to the EPA.
- Gas hot water heater located in a commercial fleet gas station reportable as a stationary emission source?

Issues and Problems for 2011 (cont.)

Identify the “Facility”

- Building facility heaters, including comfort heating and water heaters combusting solid, liquid, or gaseous fuel meet the definition of a stationary fuel source. If the station part of a facility, then maybe under the common pipe rule.
- “Facility” may instead be defined with respect to source category:
 - Well fields – Lease
 - Onshore petroleum – Hydrocarbon basin
 - Natural gas production and distribution – ask whether the local distribution company is regulated by a PUC or is an independent municipally owned distribution system.

Issues and Problems for 2011 (cont.)

Who Reports?

- EPA's reporting rules apply to owners *and* operators of facilities that emit GHG.
- Who reports where a municipal landfill gas is transported off-site to unrelated third party who either burns it to produce electricity or converts it to commercial grade natural gas for wholesale?
 - Municipal landfill as supplier if generates 25,000 mt/yr or more of CO₂e *and* third party (if meet stationary source requirements or possibly as a local natural gas distribution company).
- Who reports where an owner contracts with a third party to operate the facilities?
 - Technically both, according to EPA (but does not expect both to report)

Issues and Problems for 2011 (cont.)

Contract Issues

- Owner/operator of a facility may not be the one maintaining it, e.g., most well-drilling activities are conducted by third-party service providers. In such cases, sufficient time may be needed to revise contract terms to arrange for gathering of emissions data.
- Reporters should consider protecting themselves. A Delegated Representative (or their delegate) is on the hook for certification of the emissions data report. Reporters should consider careful preparation, with counsel as necessary, of any contracts, leases, or other agreements with third parties with terms specifying:
 - True and accurate reporting information will be provided
 - Information provided in a timely fashion
 - Remedies for non-compliance

Issues and Problems for 2011 (cont.)

E-GGRT

- The Electronic Greenhouse Gas Reporting Tool (e-GGRT) is a web-based system that EPA is developing for reporters to submit their annual reports. Reporters can also submit bulk file uploads for reports formatted in the e-GGRT XML reporting schema.
- Have not seen it yet
- XML schema
- E-GRT also used to register facilities or suppliers and to submit the Certificate of Representation

Issues and Problems for 2011 (cont.)

Designated Representative

- EPA rules require a reporter to select a “delegated representative” (DR) for each facility/supplier and submit a Certificate of Representation to the EPA. DR responsible for certifying, signing and submitting GSG emissions reports (due 60 days prior to initial emission report deadline).
- The DR must be selected by an agreement binding on the owner/operator of the facility. What constitutes an agreement?
- The DR does not have to be an employee of the owner

Issues and Problems for 2011 (cont.)

Best Available Monitoring Methods

- For specified time periods during 2011, dependent on EPA criteria, reporters may use best-available monitoring methods (BAMM) for certain emission sources
 - Current monitoring methods used not meeting EPA specifications
 - Supplier data
 - Engineering calculations
 - Other company records
- Extension requests may be submitted based on EPA timelines

Issues and Problems for 2011 (cont.)

Best Available Monitoring Methods

- What if I miss the BMM extension request deadlines?
 - Initiate a BMM extension request under § 98.3. However, according to the EPA, you would not be relieved your of liability for failure to install and use that equipment during the previous reporting periods.
- Any subsequent extensions to the original request should be submitted to the EPA within four weeks of identifying the need to extend the request, and no later than four weeks before the date provided in the original request

Best Practices

- Determine the EPA deadlines applicable to your facilities for the Monitoring Plan, Certificate of Representation, BMM and extension requests, Annual Report
- Appoint a designated representative and understand DR responsibilities
- Prepare GHG inventory of necessary calculation tools and assemble facility background information
- Do not assume e-GGRT will be intuitive to use. March 31, 2011 coming soon, so periodically check to see if e-GGRT is up and running.
- Participate in EPA training programs
- Conduct an applicability review and make sure the DR “got the memo.” Part-time DR - how to deal with ongoing monitoring of EPA rule changes?
- Contact legal counsel as necessary

Appendix - 2011 Deadlines

- January 1, 2011 – Monitoring begins for new source categories required to report for the first time in 2011
- January 30, 2011 – Certificate of Representation. Must register online through the e-GGRT system (except subpart LL, Suppliers of Coal-based Liquid Fuels, and subpart MM, Suppliers of Petroleum Products).
- March 31, 2011 – Annual Report (for reporters that had to monitor in 2010). As of September 16, 2010, facilities and suppliers must report three additional items:
 - The names and physical addresses of all of a facility's/supplier's U.S. parent companies and their respective percentages of ownership (highest-level)
 - The facility's/supplier's primary North American Industry Classification System (NAICS) code(s) and all additional applicable NAICS code(s)
 - Identification of whether reported emissions include cogeneration emissions

Appendix - 2011 Deadlines (cont.)

- Revised reports due within 45 days of discovering or being notified by EPA of errors
- Finalize GHG Monitoring Plan (due date varies)
 - Identify positions of responsibility for collection of emissions data
 - Explain procedures and methods used to collect the data
 - Detail processes and methods for quality assurance, maintenance of data collection devices
- **BAMM and BAMM Extension Requests**
 - Petroleum and Natural Gas Systems
 - Through June 30, 2011 (automatic)
 - April 30, 2011 - Extension requests due
 - September 30, 2011 - Second extension request due



Appendix - 2011 Deadlines (cont.)

- **Geologic Sequestration or CO2 Injectors**
Through March 31, 2011 (automatic)
January 28, 2011 - Extension Requests due
- **Additional BMM timelines applicable for other subparts**
- One-time report for a fluorinated GHG production facility or importer that destroys fluorinated GHGs is due March 31, 2011 or within 60 days of commencing fluorinated GHG destruction



Questions?

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