



Global Warming Legislation and EPA Rules: Their Impact on State and Local Air Agencies

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Overview of Presentation

□ Climate Legislation

- ◆ American Clean Energy and Security Act of 2009 (H.R.2454)
- ◆ Clean Energy Jobs and American Power Act (S.1733)

□ EPA Global Warming Rules

◆ GHG Endangerment Finding

- ✓ Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases (GHGs) under the Clean Air Act (4/17/09)

◆ GHG Mobile Sources Rule

- ✓ Proposed Rulemaking to Establish 2012-2016 Light-Duty Vehicle CAFE and GHG Standards (9/15/09)

◆ Permitting “Tailoring” Rule

- ✓ Rule proposes new thresholds for GHG emissions for determining when Clean Air Act permits under PSD and Title V operating permits programs would be required (10/27/09)

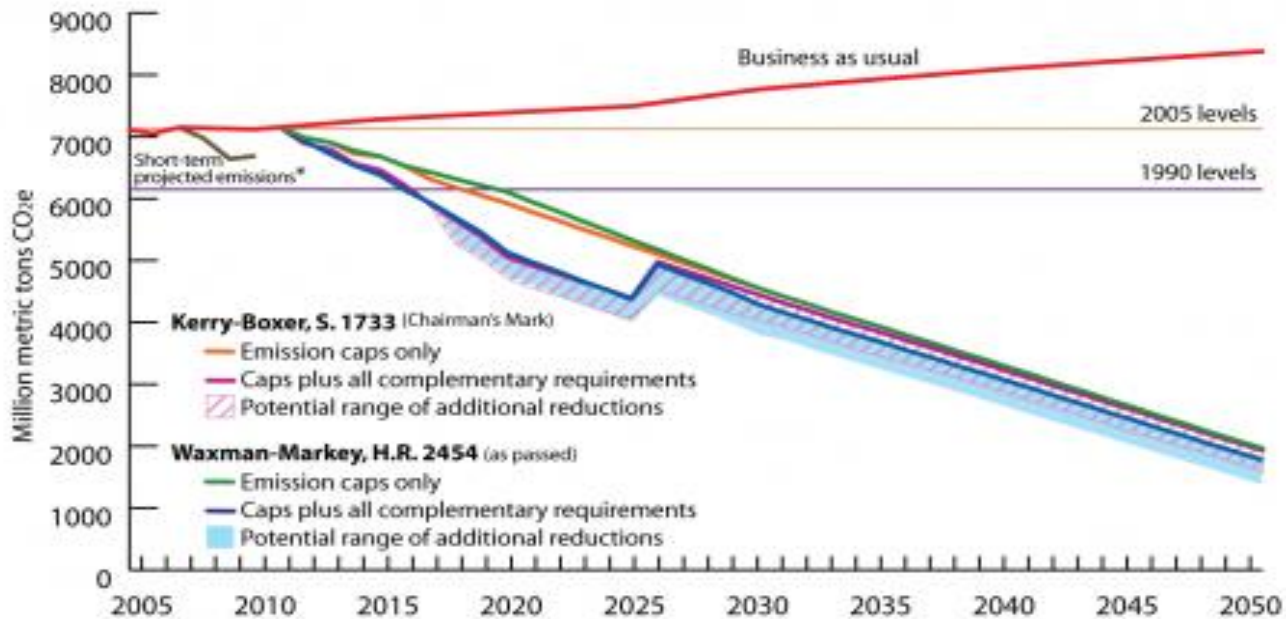
Climate Legislation Status

- House passed American Clean Energy and Security Act of 2009 (H.R.2454) on June 26, 2009, by a vote of 219-212
 - ◆ NACAA sent letter of support
- Senators John Kerry (D-MA) and Barbara Boxer (D-CA) introduced Clean Energy Jobs and American Power Act (S.1733) on September 30, 2009
 - ◆ Hearings held Oct. 27-29 in Environment and Public Works Committee
 - ◆ Committee approved bill November 5, 2009
 - ◆ Five other committees also have jurisdiction: Agriculture, Commerce, Energy and Natural Resources, Finance and Foreign Relations
 - ◆ Majority Leader Harry Reid (D-NV) will reconcile work

Climate Legislation: GHG Provisions

- ❑ Both House and Senate bills create GHG cap-and-trade programs that cover approximately 85% of US GHG emissions
- ❑ Capped sectors include the industrial sector, the electricity generation sector, the transportation sector (through fuels), the residential and commercial sectors (to the extent they burn oil or natural gas)
 - ◆ EXEMPT – agricultural & forestry sectors
- ❑ Emission reduction targets:
 - ◆ 3% below 2005 levels in 2012
 - ◆ 20%(Senate)/17% (House) below 2005 levels in 2020
 - ◆ 42% below 2005 levels in 2030
 - ◆ 83% below 2005 levels in 2050

Emission Reductions Under Cap-and-Trade Proposals in the 111th Congress, 2005-2050
 October 28, 2009



WORLD RESOURCES INSTITUTE

For a full discussion of underlying methodology, assumptions and references, please see <http://www.wri.org/usclimatetargets>.
 * "Business as usual" emission projections are from EPA's reference case for its analysis of the Waxman-Markey Discussion Draft. "Short-term projected emissions" represent EPA's most recent estimates of emissions for 2008-2010.

Comparison of Emission Reductions under Bills

Climate Legislation: Clean Air Act Authorities

- Permitting Provisions and Major Stationary Source Thresholds
 - ◆ H.R. 2454 and S.1733 prohibit EPA from requiring Title V permits from sources solely because they emit less than 25,000 tons per year of GHGs
 - ◆ H.R. 2454 also preempts EPA from regulating GHGs under the PSD permitting provisions
 - ◆ S. 1733 does NOT preempt EPA in the PSD permitting arena and changes threshold for determining what is a major emitting facility for GHGs to 25,000 tons per year

Climate Legislation: Clean Air Act Authorities

- NAAQS
 - ◆ Both H.R. 2454 and S.1733 prohibit EPA from setting a NAAQS for a GHG solely for climate reasons
- HAP
 - ◆ Both H.R. 2454 and S.1733 prohibit EPA from deeming a GHG a HAP solely for climate reasons
- NSPS
 - ◆ H.R. 2454 prohibits EPA from setting NSPS for capped GHG emissions, but sets a schedule for EPA for setting NSPS for uncapped GHG emissions
 - ◆ S.1733 provides that EPA may not before January 1, 2020, promulgate NSPS for GHGs for any stationary source that emits uncapped GHG emissions and qualifies as an eligible offset project

Climate Legislation: State and Local Authorities

- ❑ Existing savings clause in the Clean Air Act (section 116) already protects the rights of states and localities to regulate GHGs just as they would a criteria pollutant
 - ◆ Supreme Court in *Mass. v. EPA* held that GHGs are an air pollutant under the Clean Air Act
 - ◆ Examples of the type of state/local regulation allowed: GHG emission limits on sources or performance standards
- ❑ Both H.R.2454 and S.1733 expand §116 to expressly protect the right of a state or local government to cap GHG emissions and require the surrender or use of allowances or offset credits
- ❑ However, both bills preempt state and local cap-and-trade programs during 2012-2017
 - ◆ S.1733 provides that if the federal program is delayed, then the preemption of state/local cap-and-trade programs is similarly delayed
 - ◆ All our other authorities are retained even during this period

Climate Legislation: State and Local Roles

- ❑ Both House and Senate bills require Title V permits of covered sources to include a requirement that the owner/operator hold sufficient GHG emission allowances or offset credits to cover the source's capped GHG emissions
- ❑ This gives state and local authorities inspection, monitoring and enforcement authorities over those sources
- ❑ House bill prevents EPA from requiring sources without Title V permits to obtain Title V permits due to GHGs
- ❑ Neither contains language authorizing collection of Title V fees for GHG emissions
- ❑ Senate bill requires EPA to consult with states in RGGI, WCI and Midwest Governors Accord in developing and implementing regulations (§708)

Climate Legislation: Funding

- ❑ Both House and Senate bills authorize EPA to make grants to air pollution control agencies under section 105 for purposes of assisting in implementation of programs to address global warming established under the Act
- ❑ No other source of funding for implementation of responsibilities under the Act, but there is funding available for adaptation and (in Senate bill only) for GHG reduction measures (more on this later)

Climate Legislation: Offsets

- ❑ Different types of offsets allowed:
 - ◆ Domestic offsets
 - ◆ International offsets
- ❑ Two billion tons in offset allowances available to be used each year
- ❑ BUT a covered entity is limited in how many offsets it can use
- ❑ AND beginning in 2018, for international offsets, a 1.25 credit to 1 ton turn-in ratio

Climate Legislation: State/Local Role in Offsets Program

□ Early action offsets

- ◆ One offset credit shall be issued for each ton of CO₂e registered under a government-established or Administrator-approved program established before January 1, 2009 as long as certain requirements are met

□ Audits

- ◆ Section 738(b) provides that the President may delegate to a state or tribal government the responsibility for conducting audits of
 - ✓ offset projects
 - ✓ offset credits and
 - ✓ the practices of third-party verifiers

Climate Legislation: Performance Standards for New Coal-Fired Power Plants

- ❑ Plants that are initially permitted (S.1733)/finally permitted (H.R.2454) between 2009 and 2019 must achieve a 50-percent reduction in emissions by 2025 (or sooner if commercial large-scale carbon capture and sequestration is already in use)
- ❑ Plants that are initially/finally permitted on or after 1/1/2020 on must achieve a 65-percent reduction in emissions
- ❑ Implication for state/local agencies: if House language prevails, may see coal plants with permits in the pipeline rush to get finally permitted prior to 2020 so that more lax GHG emissions standards apply to them

Climate Legislation: State Climate Change Response Plans

- ❑ S.1733, § 210 makes funding available (through emission allowances) for implementation of projects to reduce GHG emissions and build resilience to climate change
- ❑ To receive these funds, states must prepare Climate Change Response Plans every 5 years and report on how using funds every two years
- ❑ Examples of the types of programs that can be funded include programs that build resilience to climate change impacts, including impacts such as:
 - ◆ Increased wildfire risk
 - ◆ Increased air pollution
 - ◆ Reduced productivity of agricultural or ranching operations
 - ◆ Extreme weather events
 - ◆ Stronger and longer heat waves

Climate Legislation: State Climate Change Response Plans

- ❑ Section 210(h)(2) specifies that the allowance proceeds shall be used by the state “exclusively” to fund the following categories of activities; must be in compliance with provisions of approved state climate change response plans
- ❑ Included in this list are:
 - ◆ Programs and projects addressing adverse impacts of climate change affecting agriculture or ranching activities
 - ◆ Programs or projects addressing air pollution or air quality impacts caused or exacerbated by climate change
 - ◆ Programs or projects to reduce GHG emissions that result in a decrease in emissions of other air pollutants
 - ◆ Programs addressing the risk of wildfires for one or more of the purposes listed in section 383(e)(2)

Climate Legislation: Transportation Planning

- ❑ Both bills require the establishment of goals to reduce GHG emissions from the transportation sector, at national level and at state/MPO level
- ❑ Both provide for grants to states and MPOs to support the development and updating of transportation GHG reduction targets and strategies and to support implementation of strategies

Climate Legislation: Resources

- ❑ NACAA's web site – legislation, NACAA testimony and related documents (www.4cleanair.org)
- ❑ Georgetown State-Federal Climate Resource Center (www.law.georgetown.edu/gcc/)
- ❑ World Resources Institute (www.wri.org)

EPA GHG Regulation: GHG Endangerment Finding

- ❑ Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Clean Air Act published April 17, 2009 and comment period closed June 23, 2009
- ❑ Proposed to find that six GHGs endanger public health and welfare: CO₂, methane, nitrous oxide, HFCs, PFCs and sulfur hexafluoride
- ❑ Proposed to find that combined emissions of CO₂, methane, nitrous oxide and HFCs contribute to air pollution endangering public health and welfare under section 202(a)
- ❑ Finalize finding later this year

EPA GHG Regulation: Motor Vehicle GHG Emission Limits

- ❑ Proposed Rulemaking to Establish 2012-2016 Light-Duty Vehicle CAFE and GHG Standards (9/15/09)
- ❑ EPA's proposed standards estimated to achieve a fleet-wide level of 250 grams/mile of CO₂ in model year 2016
 - ◆ Standards would phase in beginning in model year 2012
 - ◆ Ramps up to CA's standards (adopted by 13 other states) by 2016
 - ◆ From 2012-2015 CA has agreed to allow compliance with less stringent federal standards serve as compliance with CA standard
 - ◆ Fleetwide CO₂ standard could be met partially through credits from improved air conditioner (A/C) operation
- ❑ No preemption of states or localities; EPA to grant CA waiver; Pavley states can enforce CA standard 2009-2011
- ❑ Finalize by March 2010 for 18-month CAFE lead time

EPA GHG Regulation: Tailoring Rule

- ❑ Once GHGs a “regulated” pollutant under Clean Air Act, PSD and Title V triggered
- ❑ Prevention of Significant Deterioration and Title V GHG Tailoring Rule (10/27/09)
 - ◆ Rule proposes new thresholds for GHG emissions that define when Clean Air Act permits under PSD and Title V operating permits programs would be required
 - ◆ Title V
 - ✓ Major source applicability threshold of 25,000 tpy CO₂e
 - ◆ PSD
 - ✓ Major stationary source threshold of 25,000 tpy CO₂e
 - ✓ Significance level between 10,000 and 25,000 tpy CO₂e

EPA GHG Regulation: Tailoring Rule

- Tailoring Rule (cont.)
 - ◆ EPA estimates approximately 400 new sources and modifications would be subject to PSD review each year for GHG emissions; less than 300 of these would be new
 - ◆ EPA estimates that approximately 14,000 large sources would need Title V permits; about 3,000 would be new (mostly municipal solid waste landfills)
 - ◆ After 5 years, EPA will review whether administratively feasible to lower threshold
 - ◆ Need to finalize this rule by time finalize mobile sources GHG emissions rule because then GHGs will be “regulated”

THANK YOU

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