NAAQS/NSR/GHG: A National Perspective
An Industry Perspective
Air & Waste Management Association, Louisiana Section
Fall Conference
Baton Rouge, LA
October 26, 2010

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Overview

• An Industry Perspective on EPA Tailoring Rule and Related Activities

• Litigation Developments
  – Litigation Over EPA GHG Rules
  – Nuisance Cases
Potential Issues with Tailoring Rule Implementation

• Tailoring Rule contains no grandfathering provisions and no exemptions for PSD applications pending when Step One begins
• Uncertainty about BACT
• Uncertainty about modeling
• Lack of resources at states and EPA to handle GHG permitting
Potential Issues with Tailoring Rule Implementation, Cont’d

• “SIP-Gap”
  – Meet federal or state requirements?
  – Timing of FIP Implementation
  – States refuse to implement FIP
  – Potential construction freeze

• Costs of permitting and uncertainty

• Legality of EPA’s approach and outcome of litigation challenging GHG rules
Litigation Developments: Challenges to EPA GHG Regulations

• Numerous suits have been filed in the D.C. Circuit challenging EPA’s GHG regulations
  – Endangerment finding – 16 cases consolidated
  – EPA’s denial of administrative petitions to reconsider endangerment finding – 9 cases consolidated
  – Johnson memorandum rule – 18 cases consolidated
  – Light duty vehicle rule – 17 cases for review of LDVR consolidated; 12 cases for review of related rules consolidated
  – Tailoring rule – 25 cases consolidated
Litigation Developments: Motions to Stay GHG Regulations

• 3 Separate Motions to Stay Filed Sept. 15, 2010
  – Coalition for Responsible Regulation, et al. – requests stay of all 4 GHG rules
  – Texas – requests stay of all 4 GHG rules
  – National Assn. of Manufacturers, et al. – requests stay of effects of GHG rules on stationary sources (no challenge to Endangerment Finding or rules as applied to light-duty vehicles)

• Motions supported by over 30 declarations and 100 other exhibits and provide comprehensive insight into impacts of GHG regulations across all sectors

• Briefing Schedule
  – EPA’s response due Oct. 28
  – State and enviro. intervenors’ and auto intervenors’ responses due Nov. 1
  – Movants’ replies due Nov. 8
Litigation Developments: Motions to Stay GHG Regulations – Major Arguments

• Structure of these rules is legally flawed
• CAA requires PSD permitting only for NAAQS pollutant in attainment area
• EPA unnecessarily invoked disfavored doctrines where the agency can interpret the CAA in an otherwise reasonable manner
Litigation Developments: Motions to Stay GHG Regulations – Major Arguments, Cont’d

• Tailoring Rule treats the states as “vassals,” not equal sovereigns
• Rules create uncertainty across the U.S. economy
• The rules and the uncertainty they create will impose hundreds of millions of dollars in costs on stationary sources
Litigation Developments: Climate Change Nuisance Lawsuits

• *Comer v. Murphy Oil* – Fifth Circuit
• *Connecticut v. American Electric Power Co.* – Second Circuit
• *Native Village of Kivalina v. ExxonMobil Corp.* – Ninth Circuit
• *North Carolina v. TVA* – Fourth Circuit