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Regulatory Uncertainty: Confusing and Hardly Stimulating

These days, uncertainty abounds — whether it's about the global economy, global warming, or global terrorism, the list goes on and on. With uncertainty come real and perceived risks, and the costs to society for responding to these risks can be considerable. In the environmental realm, reducing the uncertainty about regulations can reduce risk and benefit everyone. However, over the past few years environmental regulatory uncertainty has risen at an unprecedented and dizzying pace, to the detriment of the taxpayer, the regulated community, and, ultimately, the protection of public health and the environment. Following are some of the most egregious examples:

- ◆ In October 2003, an equipment replacement provision rule was added to the federal New Source Review (NSR) air quality permitting rules only to be vacated in March 2006. And the NSR aggregation rule, promulgated in January 2009, has twice been stayed.
- ◆ The Clean Air Interstate Rule (CAIR), promulgated in May 2005, was vacated in July 2008 and then reinstated, but with a Court remand to EPA in December 2008 to remedy identified flaws.
- ◆ The Clean Air Mercury Rule (CAMR), promulgated in May 2005, was vacated in February 2008.
 - ◆ The hazardous air pollutant standards for industrial, commercial and institutional boilers (the Boiler MACT), promulgated in September 2004, was vacated in June 2007.
 - ◆ The ambient air quality standards for fine particles (PM_{2.5}), promulgated in October 2006, were remanded to EPA for further review in February 2009.



Ramifications of these actions have been far reaching. For example, in the case of CAIR, the power industry has invested billions of dollars in expensive emission control projects. Then CAIR was vacated, precipitating emission control project delays and suspensions as well as increasing volatility in the emissions allowance markets. When CAIR was reinstated, angst grew as power companies had to expedite control projects or acquire allowances to comply with CAIR's timetable. Further, with the remand to EPA, it is not clear what the final rule will entail.

In the case of mercury regulations applicable to electric utility plants, the Court not only vacated CAMR but also vacated EPA's previous decision to remove coal- and oil-fired electric utility steam generating units (EGUs) from the MACT category list. In a January 7, 2009 memorandum from EPA Headquarters to Regional Administrators, regulators were told to go forward with the preconstruction case-by-case MACT reviews of coal- and oil-fired EGUs that are major sources and that began actual construction or reconstruction between March 29, 2005 and March 14, 2008, the effective date of the Rule vacatur. Of course, this unprecedented series of regulatory reversals poses tremendous challenges to sources that have already finalized construction plans or have already commenced construction. Do they really have authorization

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FROM THE TRENCHES

When H&S and E Became EH&S for Me

Health and safety is mainly just common sense. Or is it? Whenever I play the bagpipes (I'm a member of Austin's Silver Thistle Pipes and Drums band), I always wear earplugs. That seems obvious — right? Well, not to my then 15-year old son. With the “what-me-worry” attitude common to most teenagers, the last thing on his mind was safety, and he just couldn't remember to put in the plugs when he played (although for some reason he always remembered them when he listened to me play!) It took the example of the other band members to finally get through to him.

So, why begin this article with a story about bagpipes? No, it's not because this article is about noise pollution! Actually, it's simply to make the point that safety affects everyone, whether they are at work, at home, or playing the bagpipes in a Scottish band. And, to be safe, you must be able to identify the risks and know how to minimize them.

While interning at a large company, I spent the summer stack sampling. We were handed the monitoring equipment and a description of the layout of the roof tops, and off we went. No one ever brought up safety; we were working with the environmental folks, not the health and safety group. Safety shoes? Safety glasses? Hardhats? Respirators? Forget it. This was before the OSHA hazard communication standard, so no one thought to prepare us for the hazards of the chemicals we could be exposed to. We were young and inexperienced and didn't ask enough questions. Luckily, we didn't get injured.

Over ten years ago, I moved from the environmental, health and safety (EHS) department at a multi-national company to the EHS group at a much smaller company. With that transition came more responsibility — not only for environmental (E) but also for health and safety (H&S) compliance. One of my first jobs was to characterize a formaldehyde-containing waste stream for disposal, and it quickly became apparent how environmental (E) issues overlap with health and safety (H&S) issues. Wearing my “environmental” hat, I documented the waste characterization, checked to make sure we had the proper shipping containers, shipping labels and markings, and completed the vendor waste profile. In my old “environmental” life, I would have been done. But, also wearing my “health & safety” hat, I couldn't stop there, especially considering the hazards of working with formaldehyde. I had to look at how the formaldehyde-containing waste was created, including how formaldehyde was initially delivered to the process, and how the waste was packaged for disposal. How else was I to determine if employees handling it were protected and if not, identify appropriate protective measures?



Shortly after I transferred to the smaller company, OSHA made significant changes to its Respiratory Protection Program requirements. So, now I had another hat to wear — that of the Respiratory Program Administrator. I started out by identifying and documenting all workplace tasks requiring respiratory protection. The good news was that the chemical technicians were already wearing respirators for some tasks. The bad news was that I was the new kid trying to convince “seasoned” workers to make some much needed improvements in their safety practices. I remember one worker in particular who showed up for respirator fit testing with a full beard and had to be ordered to go shave. After the fit testing, he just let the beard grow back, and the cycle started all over again.

To address the dismissive safety attitudes of some of the employees, I began noting the circumstances under which they chose to wear respirators and inquired about other tasks they performed. After conducting exposure assessments to confirm where their exposures actually put them at potential risk, the guys at the plant began to see that I was only interested in their wellbeing. We went a step farther and hired an outside company to perform fit testing and inspect their respirators. Just having this independent third party tell them what to do finally convinced the holdouts to lather up and shave. Some employees preferred the comfort of half-face respirators, but full-face respirators are required when working with formaldehyde since it can be absorbed through the skin and eyes. Once employees understood the exposure pathways for formaldehyde, they had no problem following the rules.

The longer I work in the EH&S field, the more I'm reminded that “health and safety” needs to be a part of everything I do. Ask yourself this the next time you are too busy to put on protective equipment: “Do I know the risks and am I willing to take a chance?” Or, as Clint Eastwood put it, “Do you feel lucky today?” 🌸

Bonnie Blam
Senior Project Scientist

Climate Change and Sausages

Otto Von Bismarck, Chancellor of the German Empire through much of the 19th Century, perhaps said it best: “To retain respect for sausages and laws, one must not watch them in the making.” The process is not pretty — and anyone with a delicate constitution may want to stop reading now.

Still with me? Okay, here is how the sausage known as the Maryland Greenhouse Gas Reduction Act of 2009 became law from the perspective of the lobbyist for the Maryland Industrial Technology Alliance — an alliance of manufacturers and power companies that was one of the key architects of the compromises that led to the Act. Those with especially iron constitutions can search for “SB278” on the Maryland General Assembly home page.

The bill itself — introduced in 2008 as the “Global Warming Solutions Act” — was clearly designed to be more stringent than any other enactment by any other state in the country. It authorized a state-only cap and trade system for carbon credits and required the Maryland Department of the Environment (MDE) to adopt regulations that would mandate a 25-percent reduction from 2006 levels of greenhouse gas (GHG) emissions by 2020 and a 90-percent reduction by 2050. The targets were selected despite — rather than as the result of — any analysis of economic or technical feasibility.

Some 60 percent of Maryland’s electricity is derived from coal. Almost no electricity is generated from hydroelectric sources, and there are no wind farms or large solar projects within the state boundaries. Poor wind and solar resources will make it difficult for renewable sources to contribute a large percentage of power. Maryland does boast a large nuclear plant — but the sponsor of the bill and many of his allies oppose any expansion of nuclear power.

The solution pushed by the sponsors and the MDE was simply to use less electricity. That is, of course, easier said than done. It is fairly easy to swap out light bulbs and turn off idle equipment, but how does a highly efficient manufacturer (inefficient manufacturers have already closed their doors) reduce GHG emissions by 90 percent or even 25 percent? For many manufacturers the answer would be unavoidable — simply reduce production in Maryland.

This, however, would have led to a rather perverse result. The products being made in Maryland would likely still be made — but somewhere else, probably in Asia or a third world country. GHG emissions would still be produced — and might even increase if production was moved to a less efficient plant. The only reduction

would be in Maryland jobs. The fact that these jobs were largely unionized brought organized labor to the party. Watching sausage being made has nothing on watching hundreds of hard-hat wearing Steelworkers confront earnest, mostly college-student, environmentalists in the hallways of the House of Delegates. The 2008 Act died in the last few hours before the end of the session.

But that is not the end of the story. The MDE spent the interim between legislative sessions bringing together the parties in an effort to reach a compromise. Out of those efforts came the Greenhouse Gas Reduction Act of 2009 — our sausage was now reincarnated into a smaller, slightly less spicy, version.

Unlike the 2008 version, the 2009 Act omits any specific cap-and-trade authority. The Act also includes a “look back” clause that will automatically repeal the reduction mandates in 2016 unless reaffirmed by the legislature. The biggest change in the sausage recipe, however, is a clause that forbids the MDE from requiring reductions from manufacturers.

The sausage recipe has been approved by the legislature — but still needs to be cooked and served by MDE. Maryland must develop and implement plans to reduce GHG emissions by 25 percent and strive for a 90-percent reduction. Cooking and serving this kielbasa is going to mean a lot of work for all of us.

The final plan will not be completed until 2012. However, we can see the outline in the carbon budgets now being developed by the Maryland Climate Change Commission. Annual GHG emissions from the production of electricity are expected to fall by 8.7 MMT (Million Metric Tons) by 2020 as the result of cap and trade agreements in addition to the 12.2-MMT reduction from increased renewables and the 12.4 MMT from increased conservation.

The outline also assumes that Maryland will see reductions of 6.2 MMT from more efficient cars, 11.2 MMT are expected from “Residential, Commercial and Industrial Programs,” 16 MMT from “Transportation and Land Use,” and 7.5 MMT from “Agricultural, Forestry and Waste Programs.”

Only time will tell whether this sausage turns out to be an award-winning dish or something that requires an emergency Heimlich maneuver. ✨

Michael Powell

Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC

News Briefs

national news

Recovery Act Includes Billions for the Environment

On February 17, President Obama signed into law the \$787 billion Recovery Act, an unprecedented effort to jumpstart the Nation's economy. Included in the Act are \$7.2 billion for projects and programs to be administered by EPA, as well as \$113.5 billion in various clean energy/green jobs initiatives. The EPA programs include assistance for water quality and wastewater infrastructure, cleanup of brownfields, reduction of diesel emissions, superfund hazardous waste cleanup, and cleanup of leaking underground storage tanks. The clean energy/green jobs category includes funding for projects related to energy efficiency, renewable energy, grid upgrades, carbon capture and sequestration, public transit, and transportation infrastructure. For further information, contact Jennifer Sharp Seinfeld at 410.312.7915 or jseinfeld@zephyrenv.com.

EPA Proposes Greenhouse Gas Reporting System

On March 10, EPA proposed a rule requiring mandatory reporting of greenhouse gas (GHG) emissions from large sources. The primary purpose of this reporting is to provide EPA with accurate GHG emissions data to inform future policy decisions. Under the proposed rule, suppliers of fossil fuels or industrial greenhouse gases, manufacturers of vehicles and engines, and facilities that emit 25,000 metric tons or more per year of GHGs would submit annual emissions reports to EPA. The gases covered by the proposed rule are carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and other fluorinated gases including nitrogen trifluoride and hydrofluorinated ethers. For more information, contact Brett Davis at 512.879.6628 or bdavis@zephyrenv.com.

Supreme Court Denies Petition to Reconsider Vacatur of Power Plant Mercury Rule

On February 23, the Supreme Court declined to hear a petition by EPA to reconsider the D.C. Circuit Court of Appeals' February 8, 2008 decision to vacate EPA's Clean Air Mercury Rule (CAMR). The high court's decision completely invalidates the rule, which would have controlled mercury emissions from coal-fired electric utility steam generating units (EGUs) using

emission standards under the EPA's New Source Performance Standard program in combination with an emissions cap-and-trade program. In response to the Court's decision, EPA will now likely undertake new rulemaking to promulgate MACT standards for existing and new coal-fired EGUs. In the interim, new coal-fired EGUs are subject to MACT standards determined on a case-by-case basis as part of the New Source Review permitting process. For more information, contact Curtis Harder at 512.879.6643 or charder@zephyrenv.com.

EPA Defines Testing Requirements for Predictive Emissions Monitoring Systems

On March 16, EPA approved changes to its Part 60, 61, and 63 emissions standards, adding Performance Specification 16 — a procedure that must be followed when a source owner or operator intends to use (with any necessary approvals) a predictive emission monitoring system (PEMS) to show compliance with an emission limitation under a new source performance standard or a national emissions standard for hazardous air pollutants. Performance Specification 16 describes relative accuracy testing and statistical tests that must be performed in the initial certification of the PEMS as well as ongoing quality assurance tests that must be conducted to ensure the PEMS is operating properly. For more information, contact Paul Little at 281.668.7347 or plittle@zephyrenv.com.

Air Quality Standard for Fine Particles Remanded to EPA

On February 24, the D.C. Circuit Court remanded the current air quality standards for fine particulate matter (PM_{2.5}) to EPA for review. The Court held that the EPA did not adequately explain why an annual level of 15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) is sufficient to protect public health, including the health of vulnerable subpopulations (e.g., children), while providing an adequate margin of safety. The EPA, in late-2006, reduced the then daily PM_{2.5} standard of 65 to 35 $\mu\text{g}/\text{m}^3$, but did not adjust (lower) the annual standard, as recommended by the EPA's Clean Air Scientific Advisory Committee (CASAC). Based on CASAC findings, the remand ultimately could result in the EPA lowering the standard from 15 $\mu\text{g}/\text{m}^3$ to between 12 and 14 $\mu\text{g}/\text{m}^3$. The Court also found that the EPA unreasonably concluded that the current PM_{2.5} standards are adequate to protect public welfare from adverse effects on visibility. For more information, contact Lou Corio at 410.312.7912 or lcorio@zephyrenv.com.

EPA Rules on, then Reconsiders Source Aggregation for NSR Purposes

On January 15, EPA amended its PSD and Nonattainment New Source Review (NSR) rules to clarify when separate physical changes and changes in the method of operation must be considered together, or aggregated, in determining whether NSR is triggered. The aggregation amendments interpret the regulation to mean that sources should combine emissions when activities are “substantially related,” and adopt a rebuttable presumption that source activities can be presumed not to be substantially related if they occur three or more years apart. However, in response to a Natural Resources Defense Council petition, EPA announced, on February 13, its intention to reconsider the NSR aggregation amendments and postponed the effective date of the final rule until May 18, 2009. In a follow-up action, on March 13, EPA proposed to further delay the effective date of the final rule until November 18 to allow more time for public and stakeholder review and comment on the reconsideration. For more information, contact Lou Corio at 410.312.7912 or lcorio@zephyrenv.com.

EPA Amends Boiler New Source Performance Rules

On January 28, EPA amended its four boiler New Source Performance Standards (Subparts D, Da, Db, and Dc). These amendments include, for Subpart D, an alternate sulfur dioxide (SO₂) limit; for Subpart Db, an alternate SO₂ limit for facilities firing coke oven gas during SO₂ control system maintenance and allowance for the use of parametric monitoring of nitrogen oxide emissions for owners and operators of coke oven gas-fired steam generating units; and, for all four subparts, elimination of the opacity standard for certain facilities voluntarily using particulate matter continuous emissions monitoring systems. In addition, the amendments clarify specific provisions and correct unintentional technical omissions and terminology, typographical, printing, and grammatical errors. For more information, contact Ed Rapiere at 512.879.6649 or erapier@zephyrenv.com.

EPA Withdraws Extension on SPCC Plan Compliance Dates

The January edition of *Currents* reported that EPA had extended deadlines for affected facilities to comply with the November 20, 2008 amendments to its spill prevention control and countermeasure rules. However, on January 29, EPA withdrew these extensions, restoring the previous deadline of July 1, for all facilities other than farms. For more information, contact Robin Cosgrove at 512.879.6623 or rcosgrove@zephyrenv.com.

SO₂ Emissions Limits Raised for Biogas-Fired Combustion Turbines

On March 16, EPA amended its New Source Performance Standards applicable to new, modified, and reconstructed stationary combustion turbines fired with biogas, raising the SO₂ emissions limit from 0.06 to 0.15 pounds per million British thermal

unit of heat input. According to EPA, the reason for this rule change is to enable biogas firing to be an economically viable component of a greater number of landfill gas recovery projects. For more information, contact David Cabe at 512.879.6644 or dcabe@zephyrenv.com.

EPA Amends Refinery Hazardous Air Pollutant Emissions Standards

On January 16, EPA issued final amendments to its Subpart CC hazardous pollutant emissions standards for petroleum refineries. The amendments require that emissions from heat exchangers be controlled with a leak detection and repair program. In addition, the amendments implement fitting controls and associated inspection, recordkeeping, and reporting requirements for Group 1 external floating roof storage vessels. For more information, contact Shahjabeen Hashim at 281.668.7359 or shashim@zephyrenv.com.

EPA Proposes Changes to HAP Emissions Standards for Engines

On March 4, EPA proposed changes to its Subpart ZZZZ hazardous air pollutant emissions standards for reciprocating internal combustion engines (RICE) to add requirements for each existing stationary RICE at area sources and for existing engines less than 500 horsepower at major sources. The proposed rule would establish operating requirements; emissions limits; and monitoring, testing, recordkeeping and reporting requirements for the subject engines. In addition, it would establish emissions limits for periods of startup and malfunction for engines subject to both the existing rule and proposed rule. The only RICE engines not covered under the proposed rule are existing lean burn engines at major sources. For more information, contact Doug Jordan at 281.668.7352 or djordan@zephyrenv.com.

EPA Changes TRI Reporting Requirements

The Omnibus Appropriations Act of 2009, signed into law by President Obama on March 11, restores the more comprehensive Toxic Release Inventory (TRI) reporting requirements that were in effect for the 2005 reporting year. Under the new law, information for all persistent, bioaccumulative, and toxic (PBT) chemicals must be submitted using a “Form R”, the more detailed form. The shorter form, “Form A”, may only be used for a non-PBT chemical if 1) it is released in an amount of 500 pounds or less and 2) it is manufactured, processed, or otherwise used in an amount less than one million pounds. These changes affect TRI reports due July 1, 2009. For more information, contact Kimberly Brandt at 512.879.6641 or kbrandt@zephyrenv.com.

President Puts Endangered Species Rule Changes on Hold

On March 3, President Obama blocked a Bush administration rule concerning interagency consultation over endangered spe-

cies issues, pending the results of a review of the rule by the Departments of Interior and Commerce. The regulation would have allowed federal agencies to bypass the step of consulting with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service that they were previously required to take before funding projects, such as new dams or highways that could pose a risk to rare species. For more information, contact Clay Fischer at 512.879.6629 or cfischer@zephyrenv.com.

EPA Proposes Revisions to Methods for the Measurement of Filterable and Condensable Particulate Matter Emissions

On March 16, EPA proposed to revise its Method 201A to facilitate the testing of PM_{2.5} emissions from stationary sources and to revise its Method 202 to make it possible to measure condensable particulate matter (CPM) more accurately. The proposed changes to Method 201A would add a particle-sizing device to allow for the sampling of particles with mass aerodynamic diameters less than or equal to 2.5 microns. The proposed Method 202 changes would revise the sample collection and recovery procedures to reduce the formation of reaction artifacts that lead to inaccurate CPM measurements. In addition, hardware and analytical options would be reduced, thereby increasing the precision and consistency of measured results. EPA also asked for comments related to ending the transition period to develop emissions limits and regulations for condensable PM_{2.5} for use in PM_{2.5} NAAQS compliance demonstrations on a date earlier than January 1, 2011. For more information, contact Paul Little at 281.668.7347 or plittle@zephyrenv.com.

state news

Governor Requests EPA Designate More Texas Counties as Ozone Nonattainment

On March 10, Texas Governor Rick Perry submitted to the EPA the list of counties recommended for designation as nonattainment with the 8-hour ozone air quality standard. The list includes all counties recommended for nonattainment designation in a December 11, 2008 letter from the TCEQ to the Governor. If approved by the EPA, the number of counties designated nonattainment will increase to 27, with the addition of Bexar, Gregg, Hood, Rusk, Travis and Smith counties. For more information, contact Brett Davis at 512.879.6628 or bdavis@zephyrenv.com.

TCEQ Revises Remediation Rules for Leaking Petroleum Storage Tanks

On February 25, the TCEQ reinstated the use of its Chapter 334 rules to regulate corrective actions for leaking petroleum storage tanks (LPSTs), removing requirements related to corrective actions for LPSTs from its Chapter 350 Texas Risk Reduction Program (TRRP) rules. The rule change signals a return to a more streamlined, flexible, and cost-effective process

for owners or operators of LPSTs to follow in addressing contamination. The rule change went into effect on March 19. For more information, contact Paul Moore at 512.879.6642 or pmoore@zephyrenv.com.

TCEQ Proposes Enforcement Discretion for Refinery MSS Permits

Previous TCEQ rules allowed facilities to claim an affirmative defense from enforcement for unauthorized emissions resulting from maintenance, startup, and shut down (MSS) activities if they met certain specified criteria. In January 2006 rulemaking the TCEQ required facilities to submit timely permit applications to authorize MSS emissions. The rule provided the TCEQ enforcement discretion until such time as it issued the MSS permits. However, the petroleum refining industry expressed concern that MSS activities that are new or that result in increased emissions after permit issuance would be considered unauthorized and, therefore, subject to enforcement. In response to this concern, the TCEQ issued a February 12 memo, extending, to refiners only, the period of enforcement discretion to one year after their MSS permits are issued to allow them to amend their permits. The TCEQ, however, will only extend this grace period to the refinery if the refinery accepts its draft permit conditions without question by March 31. For more information, contact Ed Fiesinger at 281.668.7353 or efiesinger@zephyrenv.com.

TCEQ Approves Alternative Monitoring Option for Engines and Turbines

On February 11, the TCEQ amended its Chapter 117 rules for sources in the Beaumont-Port Arthur and Houston-Galveston-Brazoria ozone nonattainment areas to include output-based monitoring as an additional alternative to requirements to install fuel flow meters on stationary reciprocating internal combustion engines and stationary turbines. The owners or operators of the affected equipment using output-based monitoring are required to maintain records of daily average horsepower and operating hours. This amendment is consistent with monitoring options currently offered to sources in the Dallas-Fort Worth ozone nonattainment area. For more information, contact Paul Little at 281.668.7347 or plittle@zephyrenv.com. ✨

New Directions at the EPA – The “Jackson Five”

Shortly after taking office, new EPA Administrator Lisa Jackson issued a memo highlighting her top five priorities for the agency and the philosophy she will use in setting policy. Each of her priorities is detailed below, followed by my comments.

Priority: Reduce greenhouse gas emissions. “The President has pledged to make responding to the threat of climate change a high priority of his administration. . . . As Congress does its work, we will move ahead to comply with the Supreme Court’s decision recognizing EPA’s obligation to address climate change under the Clean Air Act.”

Comment: In a recent letter to the Sierra Club, EPA agreed to reconsider last year’s opinion by the EPA Environmental Appeals Board (EAB) in the Deseret Power case and Administrator Johnson’s subsequent support of EAB’s conclusion that CO₂ emissions should not be evaluated in Prevention of Significant Deterioration permit actions. Ms. Jackson said the agency wants to answer soon the question of whether carbon dioxide and other greenhouse gases pose a danger to the public health and welfare and is expected to make an endangerment finding this spring.

Priority: Improve air quality. “The nation continues to face serious air pollution challenges, with large areas of the country out of attainment with air-quality standards and many communities facing the threat of toxic air pollution. Science shows that people’s health is at stake. We will plug the gaps in our regulatory system as science and the law demand.”

Comment: A recent circuit court ruling that remands the current EPA annual fine particulate matter (PM_{2.5}) air quality standard to the agency for review may lead to stricter standards. Ms. Jackson indicated that she will review the Bush administration’s changes to clean air standards for PM_{2.5} and ozone. “The key... is to be honest with the American people about what we know about the science behind the standards,” she said.

Priority: Manage chemical risks. “More than 30 years after Congress enacted the Toxic Substances Control Act, it is clear that we are not doing an adequate job of assessing and managing the risks of chemicals in consumer products, the workplace and the environment. It is now time to revise and strengthen EPA’s chemicals management and risk assessment programs.”

Comment: The government-spending bill for fiscal 2009 contains a provision that will require many industrial facilities to report detailed information to EPA each year about their releases of toxic chemicals, and will overturn the Bush Administration’s change to the Toxics Release Inventory (TRI) rules in late 2006 that allowed more facilities to use an abbreviated filing.

Priority: Clean-up hazardous-waste sites. “EPA will strive to accelerate the pace of cleanup at the hundreds of contaminated sites across the country. Turning these blighted properties into productive parcels and reducing threats to human health and the environment means jobs and an investment in our land, our communities and our people.”

Comment: In its first budget, the Obama administration proposed a budget of \$10.5 billion for EPA, the largest in the agency’s 39-year history and an increase of \$3 billion from 2008. “The president’s budget proposes critical resources to protect the American people where they live, work and play,” said Ms. Jackson. “With these proposed resources, and the president’s strong environmental agenda, it should be overwhelmingly clear that EPA is back on the job.”

Priority: Protect America’s water. “EPA will intensify our work to restore and protect the quality of the nation’s streams, rivers, lakes, bays, oceans and aquifers. The Agency will . . . strengthen drinking-water safety programs, and reduce pollution from non-point and industrial dischargers.”

Comment: Responding to last year’s large coal ash spill at a Tennessee Valley Authority facility in Kingston, Tennessee, EPA laid out plans to prevent future spills. The plan includes measures to gather information from facilities nationwide, conduct on-site assessments to determine vulnerabilities, order cleanup and repairs where needed, and develop new regulations for future safety. “Environmental disasters like the one last December in Kingston should never happen anywhere in this country,” said Ms. Jackson.

Conclusion: Just two months at the helm of EPA, Administrator Jackson has proposed bold changes in the direction of EPA policy. It remains to be seen whether these proposals will advance beyond the rhetoric of “let’s do things differently from the past,” gain traction, and produce concrete results. Stay tuned! ✨

Joe Zupan
President

Zephyr is a professional services firm providing worldwide consulting, training and data systems to the industrial, commercial and public sectors. The firm’s major areas of practice are air and water quality, waste issues, worker and community safety, and incident management.

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to start or continue construction without MACT permits? How will the money lenders react when they learn that the developer may not have all the required preconstruction authorizations? Time is money, and these uncertainties translate directly into additional costs for the power producer and for the customer.

Questions about policy directions for reducing the emissions of greenhouse gases (GHGs) to the atmosphere arguably raise more uncertainty for the regulated community and American society as a whole than any other environmental policy initiative today. The question is not whether GHG controls will be coming, but how, when, and to what extent. On April 2, 2007 the Supreme Court ruled EPA has the authority to regulate greenhouse gas emissions from vehicles and directed EPA to determine whether GHGs should be regulated under the Clean Air Act. But, on December 19, 2008, Bush EPA Administrator Stephen Johnson issued a memorandum clarifying EPA's position that CO₂ is not a regulated pollutant in response to a November 2008 EPA Environmental Appeals Board decision that the scope of the PSD program is ambiguous and that EPA had not explained why the program did not apply to CO₂. Then, on February 17, 2009, the Obama EPA granted a petition by environmental groups to reconsider the Stephen Johnson memorandum. And, in late March, EPA submitted a finding to the White House that GHG emissions are pollutants that endanger public health and welfare.

The economic consequences of GHG control uncertainties are potentially enormous, and projections of costs for different GHG reduction scenarios and mixes of traditional and alternative energy sources to achieve the reductions are all over the map. But, clearly, costly decisions are now being made based

on little more than best guesses by affected industries, local governments, and other parties. For example, in recent months, regulatory uncertainty was a factor in the decision by the Southern Montana Electric Generation & Transmission Cooperative to scrap plans for the 250-MW coal-fired Highwood Generating Station. And many power producers are now entering into contracts with more "carbon friendly" power producers to meet a portion of their future power generation requirements. For example, in fall 2008, Austin Energy signed a contract to buy 100 megawatts of power from a proposed biomass-fired power plant in East Texas.

The uncertainty continues. Environmental rules that have been "stuck in the pipeline" since days of the Bush administration are now under review by EPA. In a January 20, 2009 memorandum, White House Chief of Staff Rahm Emanuel requested that no proposed or final regulation be sent for publication until it has been reviewed by the new administration. In addition, he requested that the effective date of any rule already published but not yet in effect be extended and that public comment periods be reopened. This mandate is affecting such actions as the finalization of the NSR aggregation rule, reconsideration of the fine particulate matter standards, and granting of a waiver from the Clean Air Act for California tailpipe standards.

Clearly, and with apologies to Benjamin Franklin, in this world nothing is certain but death and taxes... and uncertainty in environmental regulations. ✨

Roger Brower
Principal

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Corporate Headquarters
2600 Via Fortuna
Suite 450
Austin, Texas 78746

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