

REGULATING CO₂:

Applying Old Laws to New Pollutants

Can a 40-year-old Act regulate a global pollutant like carbon dioxide? Unless Congress enacts a law saying otherwise, the federal Clean Air Act (CAA) will apply to greenhouse gases (GHG)—adding layers of regulatory complexity for American industry.

The Environmental Protection Agency (EPA) has stated that the CAA is an awkward and inefficient tool to address GHG and expressed a preference for cap-and-trade legislation that would pre-empt CAA permitting requirements. Even so, the EPA is currently taking steps to regulate carbon dioxide and other greenhouse gases under the CAA, including:

- Creating new reporting requirements for industrial and commercial sources
- Issuing an “endangerment finding” stating that GHG presents an imminent threat to human health and welfare
- Proposing new greenhouse gas emission standards for automobiles
- Proposing a “tailoring rule” to mitigate some of the “absurd results” expected when GHG become regulated air pollutants (The “tailoring rule” may not survive legal challenge because it conflicts with the literal requirements of the CAA.)

State and federal regulators and industry groups have identified numerous problems with applying the CAA’s permitting programs to GHG.

For starters, the volume of carbon dioxide emissions exceeds the volume of all other traditional “air pollutants” by several orders of magnitude. And, the number of “sources” newly subjected to complex permitting program emission standards and reporting requirements will expand 10-fold according to EPA statements and 100-fold according to concerned state regulators.

Practical implications also abound. Traditionally exempt processes like space heating and small natural gas-fired boilers may now require permits and reporting. Additionally, many lightly regulated minor sources of traditional pollutants will become subject to more complex permitting programs as their GHG emissions vault them into “major source” status.

Commercial and industrial clients should evaluate their emissions of carbon dioxide both on an actual and a theoretical maximum potential basis. If you plan to install or modify any process that may emit air pollutants, allow sufficient time to acquire new permits that may be required.

We are closely monitoring the rapidly evolving GHG regulation

requirements which are expected as early as this April. Call the author or Paul M. Collins at 517.483.4908 if we can help.

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