

AMERICAN COAL COUNCIL ENVIRONMENTAL UPDATE

Industry Pressures in 2012

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PRESENTED BY

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2012 Environmental Pressure Areas

AIR:

- CSAPR remand
- EGU MACT
- 1 hr SO₂ NAAQS
- 2008 Ozone NAAQS nonattainment designations

WATER:

- Conductivity
- Selenium
- CWA 404 veto
- 316(b)

WASTE:

- CCR rule

2012 Environmental Pressure Areas

Air:

CSAPR remand

EGU MACT

1 hr SO₂ NAAQS

2008 Ozone NAAQS nonattainment
designations



CSAPR Remand:

- 12/30/2011: D.C. Circuit Court of Appeals granted motions to stay CSAPR pending resolution of petitions for review. Court Order directs EPA to continue to administer CAIR pending resolution of petitions for review.
- Court Order also:
 - Denies motion regarding advance notice of release of the court's decision;
 - Grants the motions for leave to exceed page limit
 - Refers motion to dismiss Texas' petition to merits panel and directs parties to address in briefs the issues presented in the motion;

CSAPR Remand (Cont'd):

- Court Order also (cont'd):
 - Grants EPA's motion to govern insofar as it requested court to designate the case "complex" and to direct Petitioners to identify lead or liaison counsel;
 - On its own motion, directs parties to "submit by January 17, 2012, proposed formats and schedules for the briefing of these cases that would allow the cases to be heard by April 2012;"
 - Puts case on fast track by directing parties to submit proposed briefing formats and schedules by January 17, 2012; and
 - Indicates that it wants to hear cases in April 2012, meaning a decision is likely before summer recess.



EGU MACT:

- 12/21/2011: EPA issued EGU Mercury and Air Toxics Standards, noting it is the first national standard “to protect American families from power plant emissions of mercury and toxic air pollution like arsenic, acid gas, nickel, selenium, and cyanide. EPA adds “the standards will slash emissions of these dangerous pollutants by relying on widely available, proven pollution controls that are already in use at more than half of the nation’s coal-fired power plants.”
- Rule effective 60 days after publication in Fed Reg (anticipated in March, 2012). Units have 3 years to demonstrate compliance, with states being able to grant an additional year upon request and demonstration of need.



EGU MACT (Cont'd):

- EPA says final “MATS” (MACT) rule is mostly unchanged from original proposal. Key changes include:
 - Some emissions limits are adjusted, including using filterable PM as a surrogate for the metal toxics limit
 - Revised definition of coal subcategories
 - Added subcategories for non-continental oil-fired units and limited use oil-fired units
 - Improved monitoring provisions for clarity and consistency; and
 - Provided an alternative compliance option for sources that plan to comply by averaging across multiple units.
- EPA estimates that approximately 1,400 units will be affected by this action -- approximately 1,100 existing coal-fired units and 300 oil fired units at about 600 power plants.
- Challenges due 60 days from publication in Fed Reg



1 Hour SO2 NAAQS:

- SO2 NAAQS revised June 22, 2010
- Requires use of dispersion modeling in addition to air quality data for nonattainment designations
 - Modeling is extremely problematic, resulting in significantly more nonattainment areas than is suggested by monitoring data.
- Result is more pressure on existing coal units



2008 Ozone NAAQS:

1. Nonattainment designations for 2008 Ozone NAAQS (75 ppb) proposed December 9, 2011.
2. May impact NOx controls at coal fired plants.
3. Economics may result in pressure to retire units



2012 Environmental Pressure Areas

Water:

Conductivity

Selenium

CWA 404 veto

316(b)



Water:

- Conductivity-
 - EPA is spearheading efforts to impose conductivity and /or total dissolved solids limits on discharges from coal mines in WV and Kentucky.
 - EPA claims that at low levels, unachievable by mining without unaffordable treatment(reverse osmosis), the types of aquatic insects in the streams change, and that the change constitutes a violation of State’s “narrative water quality standards”, which typically prohibit significant adverse effects to the ecology.



Water:

- Conductivity-
 - Little evidence exists that anything other than makeup of bugs changes (no real evidence that a robust fishery cannot exist).
 - The current effort by EPA and the Sierra Club is having two effects.
 - Citizens suits/NPDES permit appeals to enforce the narrative standard in permits by the imposition of limits on conductivity and TDS.
 - EPA using it as a basis for blocking new 404 and 402 permits



Water:

- Selenium-

- Compliance with the water quality standard of 5 ppb.
- Selenium was not known to exist in waters below eastern coal mines until about 10 years ago, long after mining had created the source.



Water:

- Selenium-

- Very expensive(a single valley fill site can cost millions in capital and long term O&M) to treat and there is little evidence that it is causing any harm, but EPA has stalled efforts to adopt either a “fish tissue” standard or adopt a useful method for adopting site specific standards.



Water:

- CWA 404 veto-
 - Spruce Permit: EPA has sought to exercise its so-called 404 “veto” authority over an application to the Corps for a “fill” permit over 2 years AFTER the permit was finally issued with EPA’s full knowledge and participation.



Water:

- CWA 316(b)
 - CWA 316(b) standard for cooling water intake structures is proposed
 - May impact economics of existing coal fired units sufficiently to impact early retirement of units



Waste:

- Coal Combustion Residuals
 - Rule proposed June 2010
 - Remove the Bevill exemption for CCRs disposed of in landfills and surface impoundments and surface impoundments
 - Listed as “Special Waste subject to Subtitle C – S001”
 - Cradle to Grave approach – generation, storage, transport, management and disposal
 - EPA received 450,000 public comments
 - Issued NODA October 12, 2011 with comments required by November 14, 2011.
 - HR 2273 (McKinley) passed House October 2011 and on Senate calendar
 - Would regulate under Subtitle D (nonhaz)

Waste (Con'td):

- June 7, 2010 memo to Regions from OWM Director James Hanlon provides “guidance” to NPDES permitting authorities to account for CCR constituents in NPDES permits
 - EPA states that data suggests that Aluminum, Arsenic, Cadmium, Chromium, Copper, Iron, Manganese, Nickel, Selenium, Thallium, Chloride, and Nitrate/Nitrite may be found in CCR discharge at levels above Water Quality Criteria.
 - EPA suggests that permitting authorities may impose water quality based effluent limits for these parameters
- Final impact unknown but could put pressure on older coal units to retire due to economics imposed by permits.

What can you do?

- Challenge rules
 - CSAPR stay due to challenge
 - MATS rule challenges due 60 days after Fed Reg publication
- Lobby
 - Ozone standard review postponed
 - Rand Paul suggested using the Congressional Review Act to overturn EPA's Cross-State Air Pollution Rule for power plants
 - Lobby EPA to help finalize a site specific criterion methodology.
 - Call for changes to the CWA to make it absolutely clear that EPA has to exercise this authority before the Corps finally issues the permit



What can you do?

- Support sound technical work, e.g.
 - Midwest Ozone Group updating of EGU inventory to base 2008, 2008 base case modeling (updated to reflect MOVES), perform source apportionment analysis for ozone and PM
 - Development of technical support for sound water quality criteria



QUESTIONS?

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