



SWANA ADVOCACY UPDATE
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CLIMATE CHANGE LEGISLATION

Many different bills have gone through Congress this year, but none have received enough support for passage.

CLIMATE CHANGE LEGISLATION

- On March 17, 2010 Senators Kerry, Lieberman and Graham released details of their proposed bill to regulate greenhouse gases. The bill would include eight separate titles which would do the following:
 - Set an emissions reduction target of 17 percent by 2020, increasing to 80 percent by 2050.
 - Create a combination for the regulated sectors of a cap-and-trade model, under which polluters could trade pollution permits on an open market.
 - Phase-in approach: power sector first then manufacturing. Transportation addressed separately.
 - Establish 25,000 tons per year of carbon dioxide as the threshold for regulation.
 - Create one federal system to control emissions, pre-empting individual state programs.



CLIMATE CHANGE LEGISLATION (CON'T)

- No Indication yet as to how this bill will affect the ability of solid waste facilities to achieve carbon credits for their emissions reduction projects.
- Additional provisions rumored to be added in an attempt to gain additional support from Republicans:
 - Nuclear incentives
 - Additional Coastline open to offshore drilling
- Language was scheduled to be released this week.
- But.....



POTENTIAL FOR PASSAGE?

On Sunday, Graham pulled his support for the bill, citing differences over immigrations reform

So will they pass it?

○ **Factors in Favor of Passage**

- Still one of the Administration's top Domestic Agenda Priorities
- Preferable alternative to command and control approach

○ **Hurdles to Passage**

- Costs of implementing cap-and-trade
- Lack of constituent support for climate change measures
 - Mid-Atlantic Blizzards
 - Possible Errors in IPCC reports
- Loss of Key Republican support
- 2010 is an election year and increasing public skepticism makes cap-and-trade a “hard sell”





TAILORING RULE

The Tailoring Rule is EPA's attempt to regulate GHGs through the provisions of the Clean Air Act

EPA TAILORING RULE


- On September 30, 2009, EPA issued the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule, which would require facilities with emissions over 25,000 tons of CO₂e to comply with the Title V and PSD provisions of the Clean Air Act.
- This rule is just one of a series of GHG rulemakings that EPA is pursuing that began with the MRR.



WHAT ARE TITLE V OPERATING PERMITS?

- A legally and federally enforceable permit document which includes all federal, state, and local air quality requirements that apply to the source under Title V of the Clean Air Act.
- Currently Title V permits are applicable only to “major sources” as defined in the Act, which includes facilities subject to the NSPS or EG rules.

WHAT IS PSD?

- A pre-construction permitting program under New Source Review that is designed to minimize emissions of attainment pollutants from new sources and existing sources making major modifications.
 - Currently the triggering threshold for PSD for new sources or modifications to existing minor sources is 250 tpy for most sources, including landfills and waste to energy plants.
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EPA TAILORING RULE – A BRIEF HISTORY

- EPA proposed this ruling to be promulgated in tandem with the light duty vehicle rule under Title II of the Clean Air Act, which now sets emission limits for GHGs from new motor vehicles.
- EPA has determined that the promulgation of this rule triggers other CAA provisions for GHG.
- In order to prevent hundreds of thousands of new permits applications EPA has proposed raising the triggering threshold from 100 tpy to 25,000 tpy of GHG emissions.
- Thus the “Tailoring Rule”



EPA TAILORING RULE (CON'T)

What were SWANA's main concerns with the proposed version of the rule?

- Alternative thresholds proposed by EPA for the first phase are too low
- Best Available Control Technology (BACT) development. We understand that workgroups are currently developing presumptive BACTs. The solid waste industry must be represented on these workgroups and the presumptive BACTs should be promulgated as regulations with notice and opportunity for comment.
- EPA's has not recognized the differentiation between biogenic and anthropogenic carbon dioxide emissions.
- There is potential unfair treatment of waste-to-energy facilities under this ruling.



CHALLENGES TO THE TAILORING RULE

- EPA has faced a number of significant challenges to their proposed use of the Clean Air Act to regulate GHGs.
 - Endangerment Finding Challenges
 - 16 separate lawsuits filed
 - Resolutions introduced in Congress to nullify EPA's authority to regulate GHGs
 - Light Duty Vehicle Challenges
 - VA Attorney General has threatened to Sue EPA
 - Tailoring Rule Challenges
 - Rockefeller Bill to delay EPA



CHALLENGES TO THE TAILORING RULE (CON'T)

- Senator Rockefeller's Letter to Lisa Jackson requesting clarification on the rule.
- Jackson's Response Letter and Senate Hearing
- Senator Rockefeller's "Stationary Source Regulations Delay Act" which would bar EPA from issuing any new permitting or performance standard regulations with respect to CO₂ or CH₄ from stationary sources for a period of two years.
- This bill would have no impact on the LDV rule.
- On March 19, SWANA sent a letter to Rockefeller in support of this legislation.



CHANGES TO THE TAILORING RULE

- On March 29, 2010, EPA released details of the final version of the rule, which include many changes from the proposed version. These include:
 - Threshold raised to 75,000 tons of CO₂e
 - Phase-in will not begin until at least January 2, 2011
 - According to EPA only those facilities that must already apply for permits under the Clean Air Act as a result of non-GHG emissions will be subject during the first half of 2011. EPA estimates this to be 400 sources.
 - Between the latter half of 2011 and 2013 EPA would begin phasing in other sources using the higher threshold indicated.



CHANGES TO THE TAILORING RULE (CON'T)

- So who would this effect?
 - Landfills?
 - Waste-to-Energy Plants?
- The effect on solid waste operations has yet to be determined.
- SWANA has contacted EPA to schedule a meeting to determine the impact this rule would have on our members.



WHAT SHOULD YOU DO?

- Don't Panic
- Stay Informed and Stay tuned
- Tell your Senators to support Rockefeller's Bill and your Representative to support Rep. Rahall's Bill.





QUESTIONS? COMMENTS?

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