

GREENHOUSE GAS REGULATIONS OVERVIEW:

Federal, State of New Mexico and
Local (Albuquerque-Bernalillo County)

Presentation to Albuquerque - Bernalillo County
Air Quality Control Board

September 8, 2010

Adelia Kearny, Deputy City Attorney

PRESENTATION OUTLINE

- Greenhouse Gas (GHG) Snapshot
- GHG regulation at the Federal level
- GHG regulation at the N.M. state level
- GHG regulation at the local Albuquerque-Bernalillo County level

GREENHOUSE GAS SNAPSHOT

FEDERAL	NEW MEXICO	ALBUQUERQUE - BERNALILLO COUNTY	IMPACT TO AIR BOARD
<p>April 2, 2007 <i>Mass v. EPA</i> U.S. Supreme court decision – Carbon dioxide is an air pollutant covered by Clean Air Act; EPA can regulate CO2 & other GHGs</p>	N/A	N/A	N/A
<p>October 30, 2009 publication; Effective 12/29/09. Mandatory reporting of GHG from large GHG emissions sources</p>	<p>Current NM state reg requires GHG reporting. Proposed NM reg. hrs. to expand GHG reporting for proposed cap & trade reg.</p>	<p>Current Air Board regulation requires GHG reporting for electric utilities, refineries and cement manufacturing</p>	<p>Federal mandatory reporting of GHGs does not require additional Air Board action</p>
<p>December 7, 2009 EPA issues “Endangerment” and “Cause or Contribute” Findings for GHGs under the Clean Air Act</p>	N/A	N/A	N/A
<p>June 3, 2010 publication; Effective 8/2/10. Prevention of Significant Deterioration and Title V permits: Greenhouse Gas Tailoring Rule</p>	<p>New Mexico EIB permitting regulations: amendments proposed to be consistent with the EPA GHG Tailoring Rule</p>	<p>Air Board permitting regulations: amendments proposed to be consistent with the EPA GHG Tailoring Rule.</p>	<p>Air Board hearing re proposed amendments expected to occur December 8, 2010</p>
<p>Federal GHG Cap and Trade efforts have been stalled in Congress</p>	<p>New Energy Economy (cap only) & NMED cap & trade Petitions NM EIB. Hearings Nov. 2010</p>	N/A	<p>To Be Determined</p>

FEDERAL Supreme Court Decision

- On April 2, 2007, after years of litigation, the U.S. Supreme Court ruled in *Massachusetts v. EPA* that carbon dioxide (a greenhouse gas) is an air pollutant defined by the Clean Air Act (CAA), and the US EPA must determine whether emissions of greenhouse gases from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.

FEDERAL EPA Endangerment & Cause or Contribute Findings

December 7, 2009, the EPA Administrator signed two findings regarding greenhouse gases under section 202(a)(1) of the Clean Air Act:

- **Endangerment Finding:** The Administrator found that current and projected concentrations of the **six** key well-mixed **greenhouse gases** — carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆) — in the atmosphere threaten the public health and welfare of current and future generations.
- **Cause or Contribute Finding:** The Administrator found that the combined emissions of the six well-mixed GHGs from new motor vehicles and new motor vehicle engines contribute to GHG pollution which threatens public health and welfare.
- These findings by themselves do not impose requirements on industry or other entities. However, the findings were prerequisites to finalizing the EPA's proposed GHG emission standards for light-duty vehicles, which the EPA proposed with the Department of Transportation's proposed CAFE (corporate average fuel economy) standards on September 15, 2009.

FEDERAL

Mandatory Reporting of Greenhouse Gases

- **10/30/09, the EPA published a final rule that was effective 12/29/09. The rule requires mandatory reporting of GHGs from large GHG emissions sources in the United States. The program is referred to as the Greenhouse Gas Reporting Program (GHGRP).**
- **The resulting nationwide emissions data provides a more comprehensive understanding of where GHGs are coming from and will guide development of policies and programs to reduce emissions. The publically-available data will allow reporting entities to track their own emissions, compare them to similar facilities, and aids in identifying cost-effective opportunities to reduce emissions in the future.**
- **The GHGRP rule applies to direct GHG emitters, fossil fuel suppliers, and industrial gas suppliers.**
 - **An estimated 85-90% of the total U.S. GHG emissions from approximately 10,000 facilities are covered by this final rule.**
 - **Most small businesses will fall below the 25,000 metric ton reporting threshold, so are not required to report GHG emissions to the EPA.**
- **Reports are submitted annually to the EPA and are accepted by AEHD to meet local GHG reporting requirements.**

FEDERAL EPA “Tailoring” Rule

- **6/3/10 the EPA issued a final rule that establishes a several-step approach to addressing greenhouse gas emissions from stationary sources. The rule sets thresholds for GHG emissions that establish when New Source Review (NSR) Prevention of Significant Deterioration (PSD) permits and Clean Air Act Title V Operating Permit permits are required for new and existing industrial facilities. (In ABQ-Bernalillo Co., the PSD permitting reg. is 20.11.61 NMAC. The Title V permitting reg. is 20.11.42 NMAC.)**
- **The rule “tailors” permitting requirements by limiting the type and size of GHG-emitting facilities required to amend or obtain PSD and Title V permits. Facilities responsible for nearly 70 % of U.S. GHG emissions from stationary sources are subject to tailoring rule permitting requirements, including the largest GHG emitters: power plants, refineries and cement production facilities.**
- **The rule establishes a two-step schedule that initially focuses on the largest GHG-emitting sources with the most CAA permitting experience. The focus then expands to require permits for other very large sources of GHGs, although the sources may not have been required to obtain PSD or Title V permits previously. Additional federal GHG regulations are expected.**

FEDERAL

EPA “Tailoring” Rule cont.

- **The CAA PSD and Title V thresholds (triggers) for permits for criteria pollutants such as lead, sulfur dioxide and nitrogen dioxide are 100 and 250 tons per year (tpy). Although the thresholds may be appropriate triggers for criteria pollutant permits, the thresholds are extremely low permit triggers for GHG emissions because GHGs are emitted in much higher volumes.**
- **Under existing federal law, effective 1/2/11, unless the states and local agencies adopt the Tailoring Rule, GHG emissions from stationary sources will automatically trigger (require) complex and costly new PSD and Title V permits for tens of thousands of sources, including sources/businesses that otherwise were required to obtain only minor source permits (e.g., 20.11.41 NMAC, *Authority-to-Construct*) or no permits at all. For example, PSD permits require “best available control technology” (BACT). A 100 tpy/250 tpy permitting trigger for GHGs PSD and Title V permits would overwhelm state and local agencies and impact the agencies’ ability to manage their air quality programs.**

FEDERAL

EPA “Tailoring” Rule cont.

- **Step 1 of the Tailoring Rule (1/2/11-6/30/11): Re PSD permits:** During Step 1, no new Tailoring Rule permitting actions will be triggered based solely on GHG emissions. Only sources taking permitting actions “anyway” for other pollutants must also address GHGs under the Tailoring Rule. During Step 1, the “anyway” sources will be subject to PSD requirements only if the sources increase GHG emissions by 75,000 tpy CO₂e or more. **Re Title V permits:** Only sources that have already have Title V permits, or that must obtain a new Title V permit for non-GHG pollutants must address GHGs in Step 1.
- **Step 2 of the Tailoring Rule (7/1/11-6/30/13): Re PSD permits:** During Step 2, GHG sources that emit or have potential to emit at least 100,000 tpy CO₂e will be subject to PSD requirements. If a physical change or a change in the method of operation at a 100,000 tpy CO₂e source will result in a net GHG increase by at least 75,000 tpy CO₂e, the source also will be subject to PSD permitting. **Re Title V permits:** Sources subject to GHG permitting under Step 1 will continue to be subject to GHG permitting requirements under Step 2. GHG sources that emit or have potential to emit at least 100,000 tpy CO₂e will be subject to Title V requirements.
- **Step 3, PSD and Title V:** In the Tailoring Rule, EPA committed to complete another rulemaking by 7/1/12, after soliciting comment on streamlining and exclusion of certain sources. Step 3 will not require permitting of sources with GHG emissions < 50,000 tpy CO₂e before 4/30/16.

NEW MEXICO

Mandatory Reporting of Greenhouse Gases

- A current New Mexico Environmental Improvement Board (EIB) regulation requires GHG reporting for electric utilities, refineries and cement manufacturing, which is consistent with current Albuquerque-Bernalillo County Air Quality Control Board reporting regulation requirements.
- New Mexico Environment Department (NMED) is proposing additional GHG reporting regulations re the NMED-proposed GHG Cap and Trade program
 - Reporting Rule based on the Western Climate Initiative's requirements
 - Verification Rule requires third party verification to ensure integrity of emissions data for capped sources

NEW MEXICO

Addressing EPA Tailoring Rule

- Amendments to NM EIB's PSD and Title V permitting regulations are being proposed to meet the EPA GHG Tailoring Rule requirements.
- New Mexico Environment Dept. (NMED) is conducting stakeholder process.
- NMED plans to present proposed amended permitting regulations to the New Mexico EIB in November 2010.

NEW MEXICO

GHG Cap and Trade

- Two proposed Greenhouse Gas Cap and Trade regulations are being heard by the NM EIB:
 - New Energy Economy (NEE)-proposed GHG Cap-only Reg.; and
 - NMED-proposed GHG Cap and Trade Regulation.
 - NM EIB is gathering public comment on both proposed regulations and is conducting extended hearings.
 - The EIB hearing on the NMED-proposed cap & trade reg begins 9/20/10. The EIB hearing on the NEE-proposed cap-only reg will reconvene 10/4/10.

ALBUQUERQUE-BERNALILLO COUNTY

Mandatory Reporting of Greenhouse Gases

- Current Albuquerque-Bernalillo County Air Quality Control Board regulation 20.11.48 NMAC (Part 48) requires GHG reporting by electric utilities, refineries, and cement manufacturing, which is consistent with the existing New Mexico EIB regulation.
- No amendments to local Part 48 are pending or being proposed by AEHD.

ALBUQUERQUE-BERNALILLO COUNTY

Proposed new Tailoring Rule

- AEHD will be proposing amendments to 20.11.61 NMAC, *Prevention of Significant Deterioration*, and 20.11.42, *Operating Permits*, to be consistent with the EPA GHG Tailoring Rule requirements and to meet the January 2, 2011 federal deadline by which the local agency must have authority to apply the Tailoring Rule and issue GHG PSD & Title V permits.
- On 8/27/10, AEHD sent the proposed amendments to the EPA for comment and released the amendments for stakeholder review. Proposed amendments also include changes to definitions in 20.11.1 NMAC, *General Provisions*.
- 10/13/10 AEHD expects to present the Air Board with a Petition requesting amendments to Parts 61, 42 and Part 1, and will propose a December 8, 2010 Air Board hearing re the amendments.

CONCLUSION

Regulation of greenhouse gases

- is moving forward on the federal, state and local levels, and
- is an evolving, developing area of law.

Questions & Discussion

