



# **American Clean Energy and Security Act of 2009: Analysis and Discussion**

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# Key Issues

- ❑ Rights of States and Localities
- ❑ “Timeout” for State/Local Cap & Trade Programs
- ❑ Treatment of Offsets from Existing State Programs
- ❑ Performance Standards for Coal-Fired Power Plants
- ❑ Performance Standards for Industrial Sources of GHGs
- ❑ Applicability of Title V and NSR/PSD
- ❑ Motor Vehicle and Mobile Source Standards
- ❑ Transportation Planning Requirements
- ❑ Funding
- ❑ Greenhouse Gas Registry

# Rights of States and Localities

- ❑ Existing savings clause in the Clean Air Act (section 116) already protects the rights of states and localities to regulate GHGs just as they would a criteria pollutant (like ozone, particulate matter, lead, etc.)
  - ◆ Supreme Court in *Mass. v. EPA* held that GHGs are an air pollutant under the Clean Air Act
  - ◆ Examples of the type of state/local regulation allowed: GHG emission limits on sources or performance standards
- ❑ The bill expands section 116 to expressly protect the right of a state or local government to cap GHG emissions, require the surrender of emission allowances or offset credits, and require the use of such allowances or credits as a means of demonstrating compliance with requirements established by a state or local government

# “Timeout” for State/Local Cap & Trade Programs

- ❑ Section 335 adding section 861: Notwithstanding section 116, no State or political subdivision thereof shall implement or enforce a cap and trade program that covers any capped emissions emitted during the years 2012 through 2017
- ❑ Still preserves all other authorities during this time

# Treatment of Offsets from Existing State Programs

- Section 740 provides that EPA shall issue federal offset credits for state offset credits
  - ◆ Offset project must have started after 1/1/2001
  - ◆ State offset program must have begun prior to 1/1/2009
  - ◆ State offset program must include certain criteria (including 3<sup>rd</sup> party or state regulatory agency verification)
  - ◆ Only for emission reductions that occur after 1/1/2009
  - ◆ Only until the date that is 3 years after enactment or date EPA regulations detailing federal offset credit program take effect, whichever is sooner
- For other offset programs that were not established under state law or not established before 1/1/2009, EPA may issue a credit if certain criteria are met

# Performance Standards for Coal-Fired Power Plants

- ❑ New electric generating units (EGUs) permitted after January 1, 2009, but before January 1, 2020, must reduce CO<sub>2</sub> emissions by 50% annually, beginning either when carbon capture and sequestration (CCS) is commercially available, or by 2025 at the latest
- ❑ New EGUs permitted after January 1, 2020 must reduce CO<sub>2</sub> emissions by 65% annually
- ❑ EGU performance standards to be reviewed every 5 years after 2025
- ❑ The bill includes incentives for development and deployment of CCS technologies prior to 2020

# Industrial Sources of GHGs

- ❑ Bill requires that industrial sources of GHGs below 25,000 tpy (i.e., outside the cap) be subject to New Source Performance Standards (NSPS)
  - ◆ Highest priority given to sources that individually emit > 10,000 tons uncapped GHG emissions and in aggregate are responsible for emitting at least 20% annually of uncapped GHG emissions
- ❑ NSPS apply not just to new sources, but also to reconstructed and modified sources
  - ◆ NSPS would also apply to existing sources (through states)
- ❑ Industrial sources inside the cap – EPA is prohibited from setting an NSPS for capped GHG emissions from capped sources

# Other Clean Air Act Titles

- ❑ GHGs shall not be considered in determining applicability of Title V
  - ✓ Title V requires emitting facilities to obtain Title V permits, which list all applicable requirements, including emissions limits
  - ✓ However, those sources that already have Title V permits must have the GHG limits included in these permits
  - ✓ Inclusion in Title V permits gives state/local air agencies inspection and enforcement authority over source's GHG emissions
- ❑ Prohibits EPA from listing GHGs as criteria air pollutants or hazardous air pollutants under the Clean Air Act
- ❑ Exempts GHGs from New Source Review and other permitting provisions.
  - ✓ For example, EPA cannot require that new sources or sources making major modifications apply Best Available Control Technology for controlling GHG emissions



# Transportation Efficiency: Motor Vehicle Standards

- ❑ Calls on the President to use existing Clean Air Act authorities to set motor vehicle standards
  - ◆ “Achievable by automobile manufacturing companies”
  - ◆ Harmonize NHTSA CAFE, EPA and California standards “to the extent practicable”
  - ◆ “Achieve at least as much emissions reduction as would be achieved by implementation of California law AB 1493 if enforced in the State of California and the other states that have adopted the standards”
- ❑ Reaffirms California’s legal authority to adopt and enforce its own mobile sources emissions standards

# Transportation Efficiency: Mobile Source Standards

- Calls on EPA to set GHG emission standards for:
  - ◆ New heavy-duty vehicles and engines (by 12/31/10)
  - ◆ New nonroad vehicles and engines that contribute significantly to total GHG emissions from nonroad vehicles and engines and provide the greatest potential for significant and cost-effective reductions (by 12/31/12)
  - ◆ Other classes and categories of new nonroad vehicles and engines (no deadline)
  - ◆ New aircraft and new aircraft engines (by 12/31/12)
  - ◆ Other classes and categories of aircraft and aircraft engines (no deadline)
- (Note: Low Carbon Fuel Standard in discussion draft was deleted)

# Transportation Efficiency: Planning Requirements

- ❑ Bill includes planning requirements to achieve GHG emissions reductions through transportation efficiency
- ❑ Each state must develop goals for reducing transportation-related GHGs
  - ◆ Developed with “concurrence” of state air and transportation agencies, “in consultation” with MPO (>200,000 pop.) and applicable local air and transportation agencies and with public involvement
- ❑ MPO must develop a plan to achieve the goals
  - ◆ Developed with regional “coordination” among MPOs, the state, localities comprising MPO and state and regional air and transportation agencies; in “consultation with state and local environment, transp. and other public agencies
  - ◆ EPA to analyze the effects of each plan on GHG emissions and oil consumption and post plans and analysis on web site
  - ◆ EPA shall certify whether plan’s implementation is “likely” to meet GHG reduction goals. If plan cannot be certified, state or MPO must revise plan within 1 year.

# Transportation Efficiency: Planning Requirements

- ❑ If a state fails to submit goals or to ensure that the MPO submits the plan or revised plan, the EPA Administrator shall impose highway sanctions under the Clean Air Act
- ❑ EPA is required to issue regulations establishing standardized models and methodologies for developing goals, plans and strategies
- ❑ A list of transportation and land use planning strategies for reducing GHGs is included – states and MPOs should “consider” these when developing goals and plans
- ❑ Funds are authorized for competitive grants to states and MPOs to develop or implement plans

# Funding

- ❑ Manager's amendment includes provision authorizing EPA "to make grants to air pollution control agencies pursuant to section 105 for purposes of assisting in the implementation of programs to address global warming established under" the Act

# Greenhouse Gas Registry

- ❑ EPA is to issue regulations, within 6 months of enactment, establishing a federal GHG registry
- ❑ Regulations must:
  - ◆ Require electronic submission by sources to EPA of GHG emissions data on a quarterly basis
  - ◆ Take into account best practices and protocols of The Climate Registry and others
  - ◆ Provide for “immediate dissemination” of data to states ASAP after audit by Administrator
  - ◆ Require certification by sources

# Contact Information

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