



THE ADMINISTRATIVE WATCH

ADMINISTRATIVE WATCH ADDRESSES ENVIRONMENTAL, HEALTH & SAFETY ISSUES

BCCZ

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Federal Air and Climate Change Developments

Significant federal Clean Air Act (“CAA”) and climate change regulatory developments have occurred in recent days that are of importance to the regulated community. Interested persons should contact BCCZ to discuss these recent developments in further detail.

Clean Air Act Interstate Rule Vacated by the D.C. Circuit

On July 11, 2008, the federal D.C. Circuit Court of Appeals issued an opinion vacating U.S. EPA’s Clean Air Act Interstate Rule (“CAIR”). North Carolina v. EPA et al, No. 05-1244. CAIR was issued by U.S. EPA in March 2005 and applied to electric generating units in 28 eastern states and the District of Columbia. See 70 Fed. Reg. 25162. The rule was designed to reduce NO_x and SO_x emissions from electric generating units by 70 percent, through a step-wise cap and trade program, while also addressing interstate pollution issues between up-wind and down-wind states. In its opinion, the D.C. Circuit concluded “EPA’s approach – regionwide caps with no state-specific quantitative contribution determinations or emissions requirements – is fundamentally flawed. . . . No amount of tinkering with the rule or revising of the explanations will transform CAIR, as written, into an acceptable rule.” See No. 05-1244 (July 11, 2008), at 59-60.

Greenhouse Gas Advanced Notice of Proposed Rulemaking Issued

U.S. EPA issued its much anticipated Advanced Notice of Proposed Rulemaking (“ANPR”) for the regulation of greenhouse gas emissions under the existing CAA on July 11, 2008. The ANPR was issued in response to the U.S. Supreme Court’s April 2007 holding in the landmark Massachusetts v. EPA (549 U.S. 497) case, in which the Court determined greenhouse gases meet the definition of “air pollutant” under the CAA. U.S. EPA’s ANPR does not address the Court’s holding regarding the need for an endangerment finding as a precondition to whether or not to regulate greenhouse gases under the CAA. The ANPR details at length the potential ramifications of regulating greenhouse gases under the CAA for both mobile and stationary sources, as well as the anticipated wide-ranging affects on the U.S. economy. U.S. EPA’s ANPR also discusses various regulatory approaches and alternatives to address greenhouse gases under the CAA, but concludes all are less desirable than new federal legislation. No concrete

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regulatory package is put forth in the ANPR. The ANPR provides an opportunity for industry to comment on the first attempt by the U.S. EPA to address climate change. The comment period ends 120 days from the yet-to-be-determined date of publication in the *Federal Register*.

Proposed Underground Injection Control Program Rulemaking

The White House Office of Management and Budget has completed its review of U.S. EPA's proposed Underground Injection Control ("UIC") program rulemaking for carbon dioxide geologic sequestration wells. The proposed rule would establish new minimum federal requirements for UIC programs under the Safe Drinking Water Act. Geologic sequestration, in deep formations, of carbon dioxide captured from emission sources, such as fossil fuel-fired electric power plants, is seen as a possible large-scale control technology for major CO₂ emitters. The proposed rule follows U.S. EPA's issuance in March 2007 of guidance to assist state and regional UIC programs in addressing pilot sequestration projects. U.S. EPA is expected to release the proposed rule for public comment in the near future.

New U.S. EPA Report on Climate Change Impacts on Ozone Attainment

On July 10, 2008, U.S. EPA published a notice in the *Federal Register* (73 Fed. Reg. 39695) of the release of and 45-day public comment period for its report entitled "Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Preliminary Synthesis of Climate Change Impacts on Ground-Level Ozone." The report indicates climate change may significantly hamper efforts in some regions of the country to achieve or maintain attainment standards for ozone, necessitating more stringent source controls than are currently required. U.S. EPA is accepting public comment on the interim report until August 24, 2008.

BCCZ's Environmental Health and Safety and Climate Change Groups actively track Clean Air Act and climate change legislative, regulatory, and policy developments at all levels of government, and advise clients as to the impacts of these developments. Our Climate Change Group will continue to closely monitor the progress of the ANPR and policy developments that flow from it. For more information regarding the developments discussed above, please contact Michael H. Winek (412) 394-6538 or mwinek@bccz.com or Seth A. Rice (412) 394-5490 or srice@bccz.com.