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EPA Issues Guidance to States on Emissions Control Technology for Greenhouse Gases

On November 10, 2010, the U.S. Environmental Protection Agency issued its long-awaited guidance to States on how to conduct best achievable control technology (BACT) reviews under the Clean Air Act Prevention of Significant Deterioration (PSD) program for greenhouse gas (GHG) emissions. With barely six weeks to go before States must start applying the PSD permitting program to GHGs, the guidance offers mostly clear directions that – unfortunately, many will say – include little surprises. To help you digest the 97-page document efficiently, we offer the following list of key points:

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Surprises?

- EPA does not endorse fuel switching for coal-fired power plants: “[W]hen an applicant proposes to construct a coal-fired steam electric generating unit, EPA continues to believe that permitting authorities can show in most cases that the option of using natural gas as a primary fuel would fundamentally redefine a coal-fired electric generating unit.”
- Carbon-capture-and-storage (CCS) is “available” technology for any fossil-fuel-fired facility, although it may ultimately be eliminated by the end of the BACT analysis.

No Surprises

- States should consider energy efficiency measures as available BACT technologies.
- While States should not select measures as BACT solely on the grounds that they would reduce offsite (*e.g.*, electricity demand) GHG emissions, States should factor the potential for such reductions into the analysis.
- States should follow the Environmental Appeals Board’s ruling in *Desert Rock* in evaluating whether to exclude a technology on the grounds it would “redefine the source.”



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- Integrated gasification combined cycle (IGCC) should be listed for consideration when it is more efficient than the proposed technology for a coal-fired plant.
- Boilers with supercritical and ultra-supercritical steam pressures should be considered in BACT analysis when a permit applicant proposes a pulverized coal (PC) or circulating fluidized bed (CFB) boiler using subcritical steam pressure.
- Combined cycle combustion turbines should be available options for a proposed simple cycle turbine natural gas-fired facility.
- States should continue to use the “top-down approach” in conducting BACT reviews for GHGs.
- States should not require modeling or ambient air monitoring for GHGs under the PSD program.
- The GHG Reporting Rule is not an “applicable requirement” for Title V permits.

Most States have stated that they intend to apply PSD to GHG emissions from applicable facilities starting on January 1, 2011. In addition to the general guidance, EPA also issued specific guidance for facilities in the following sectors:

- Electric Generating Units
- Large Industrial/Commercial/Institutional Boilers
- Pulp and Paper
- Cement
- Iron and Steel Industry
- Refineries
- Nitric Acid Plants

King & Spalding counsels a number of companies and industry groups on greenhouse gas issues arising in the regulatory and litigation contexts, including applicability and feasibility of BACT and States’ plans for implementing PSD for GHGs. Please call Cynthia Stroman (202-626-2381), Patricia Barmeyer (404-572-3563) or Les Oakes (404-572-3314) if you have any questions about whether and how your facilities will be affected by this guidance.

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