



What Next on Climate in Washington, DC?

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GHG REGULATION: HOW MUCH PAIN?



"Sorry, Harold, but I'm reducing our carbon footprint."

Is Cap-and-Trade Kaput?

- Waxman-Markey passed House in June 2009, five months after new Admin took office
→ 219-212 vote with last minute maneuvering presaged fate in Senate
- 60 votes never existed in Senate
→ Kerry-Boxer reported from Committee, but all Rs refused to attend mark-up and one D voted against
- Last-gasp effort at utility-only bill failed before August recess
- Speculation about a move during lame duck, but unlikely

Is Cap-and-Trade Kaput?

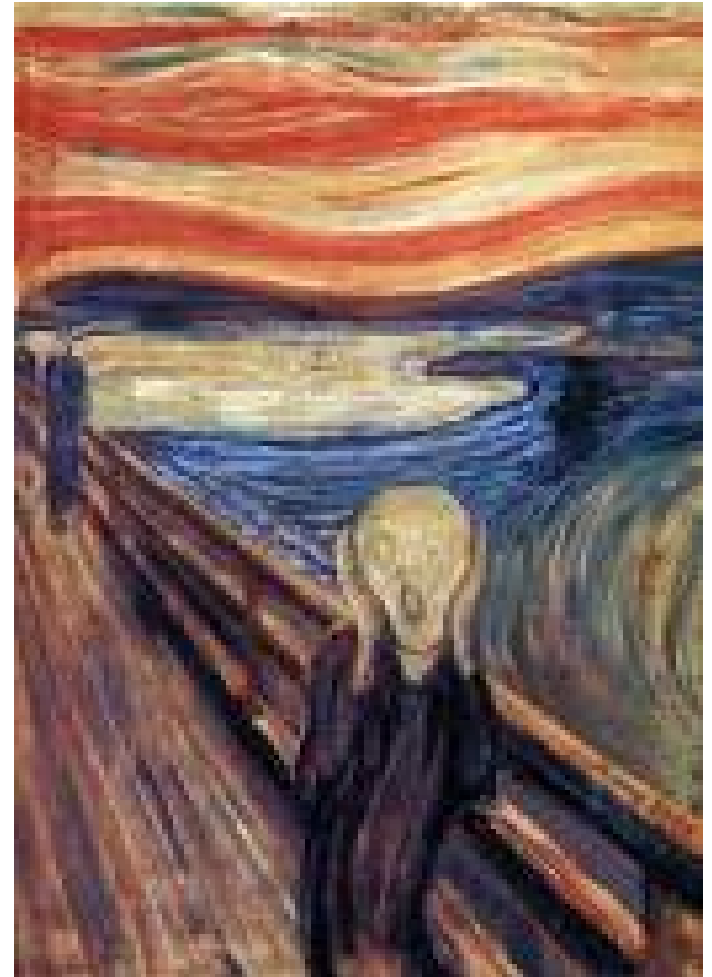
- Difficulty of enacting Cap-and-Trade will only get worse with more Rs in Congress, and no chance if Rs take House
 - Successfully branded as cap-and-tax
 - Incredible complexity of bill – too many winners and losers
 - Regional as well as partisan issues
 - The green jobs message never sold
 - Hard to increase energy prices in a recession...and hard to argue bill wouldn't have increased energy prices

Utility Only Bill in Next Session?

- “4-P” bill – return to “Clear Skies” debate
- But:
 - Hard to reach a deal between industry and environmentalists: what will be acceptable to industry will be seen as regulatory rollbacks by environmentalists who think they may have whip hand at EPA
 - Even if deal reached, the middle may not hold to secure enactment – Right-wing will still see as cap-and-tax and left wing will see as not strong enough
 - And may not see much spirit of compromise in run-up to next Presidential election

Enter EPA

- Endangerment Finding
- Mobile source regulation
- Stationary source regulation



Endangerment Finding

- Elevated concentration of 6 GHGs (principally CO₂) in atmosphere constitutes “air pollution” endangering public health and welfare
 - Emission of four of these substances from autos contributes to this air pollution
 - Trigger for regulation – not just of cars but numerous sources across economy – because CO₂ is the inevitable byproduct of combusting fossil fuel and fossil fuel constitutes 85% of all energy used in economy
- EPA as regulator of everything

Mobile Source Regulation

- Joint EPA (g/m) /DOT (mpg) standards for new cars and light-duty trucks for MYs 2012-15; they have begun developing the MY 2016+ standards
- Developing heavy duty truck standards
- Developing renewable fuel standards

Stationary Source Regulation – PSD and Title V

- Beginning Jan. 2, 2011, new and modified facilities emitting GHGs above certain thresholds will be required to obtain “PSD” pre-construction permits and Title V operating permits
- Permits (mostly) issued by states require Best Available Control Technology
- EPA “Tailoring Rule” phases in requirements, step one on Jan. 2, 2012, step two on July 1, 2011, and steps three and four TBD, but no one with potential to emit less than 50,000 tons of GHGs will be subject to permitting for at least 6 years (IF the rule is legal)

Tailoring Rule Controversy

- Rewrites the statutory thresholds for regulation, which are much lower and which, if used, would potentially regulate millions of small sources
- Many states do not have legal authority to issue permits for GHGs or to apply the high Tailoring Rule thresholds – many trying to change their regs, but may not make it by January 2
- Big issue about whether states have the staff to administer this
- And does anyone know what BACT for GHGs is?

GHG Litigation

- 4 lawsuits against EPA in D.C. Circuit – more than 50 business associations, numerous businesses, conservative policy groups, and 17 states on one side – EPA, 17 states, environmental groups on other side
- Motions to stay the regulation filed last week – may be decided by end of year
- Underlying lawsuits may not be decided until 2012

More Stationary Source Regulation to Come

- Sector-by-sector New Source Performance Standards
- Apply to new and modified facilities
- Ultimately, in some sectors, will be applied to existing facilities whether or not they modify
- Utility sector proposals likely by the Spring

What GHG Controls Will Facilities Have to Install?

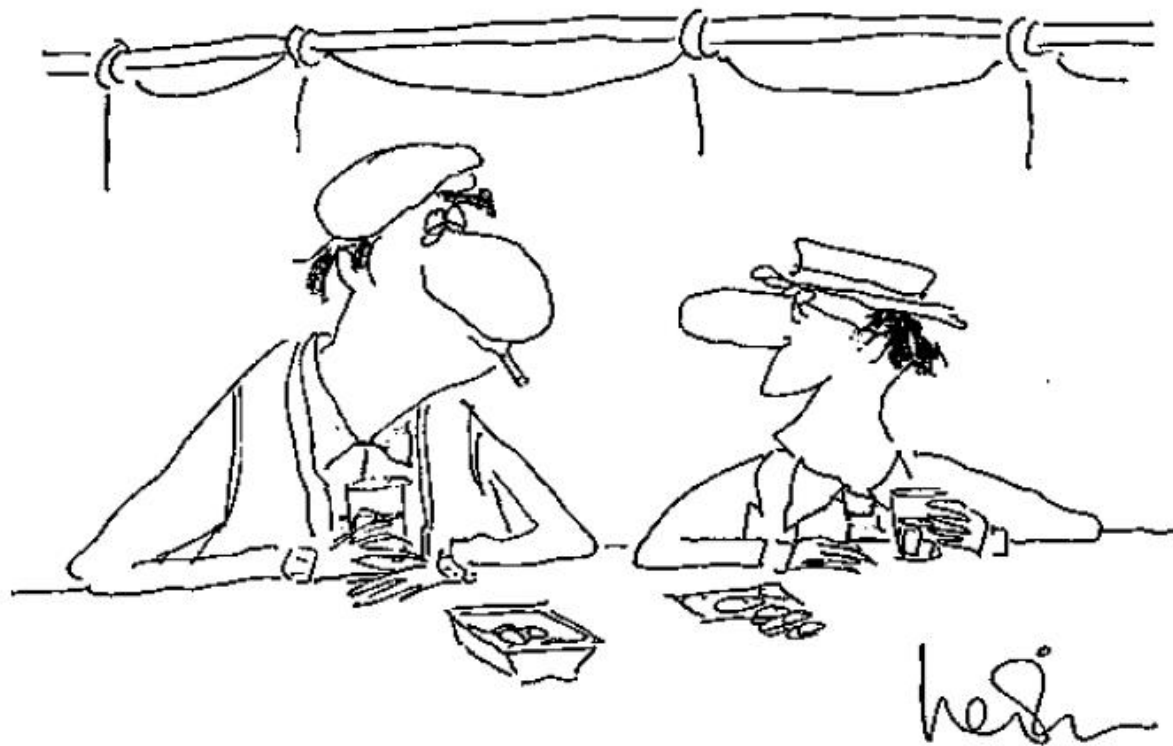
- BACT Guidance expected shortly
- NSPS and BACT standards will likely be similar, at least initially
- EPA is highly focused (at least publically) on efficiency
- Environmental community will want carbon capture and fuel-switching

Will Congress Stop EPA from Regulating GHGs?

- Probably more than 50 votes in Senate to delay EPA regulation for some period of time
- Won't pass House
- Won't survive veto
- Possible attempt to attach to appropriations bill
- Don't count on it

Moral of the Story

- Legislation not likely in next session
- We are at the beginning of a long, painful process of EPA regulation of GHGs – it won't be pretty, but it's what will happen unless Congress or courts step in



"It's certainly refreshing to meet someone with no energy policy."