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Post-Election Environmental Outlook Obama – Part 2

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Agenda

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2. Election overview
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4. What election means for environmental policy
5. Obama environmental legacy
6. Regulations not legislation
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8. What role will Congress play
9. What the election means beyond the beltway
10. Questions

Environmental Policy Group Panel



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Déjà vu All Over Again?

More Gridlock?



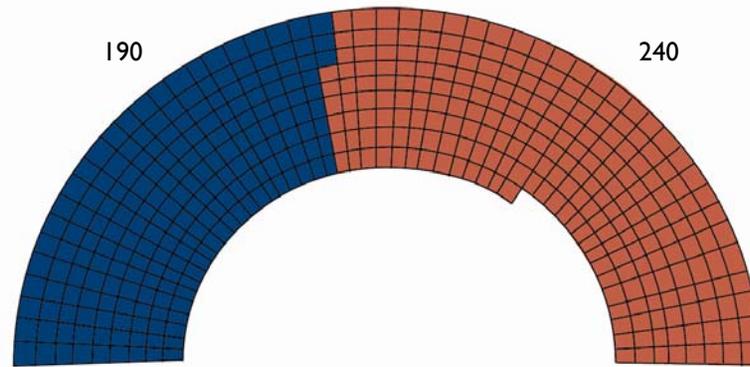
More Cooperation?

112th Congress vs. 113th Congress

- 112th Congress
 - House
 - R - 240 to D - 190 (5 vacancies)
 - Senate
 - D - 51 to R - 47 to I - 2

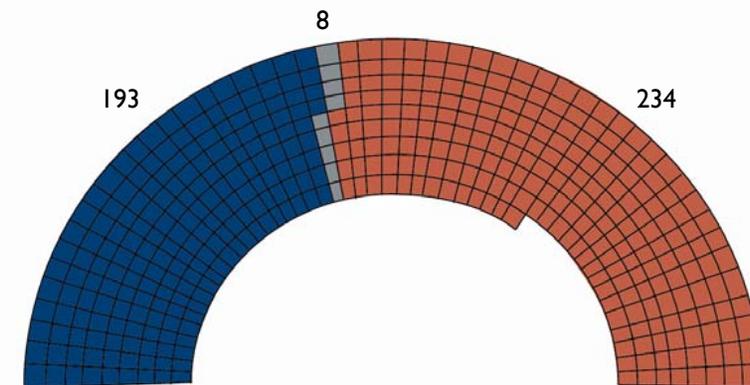
- 113th Congress (numbers as of now)
 - House
 - R - 234 to D - 195 (6 undecided)
 - Senate
 - D - 53 to R - 45 to I - 2

Former House Makeup



- Dem Seat
- Republican Seat
- Unknown

New House Makeup

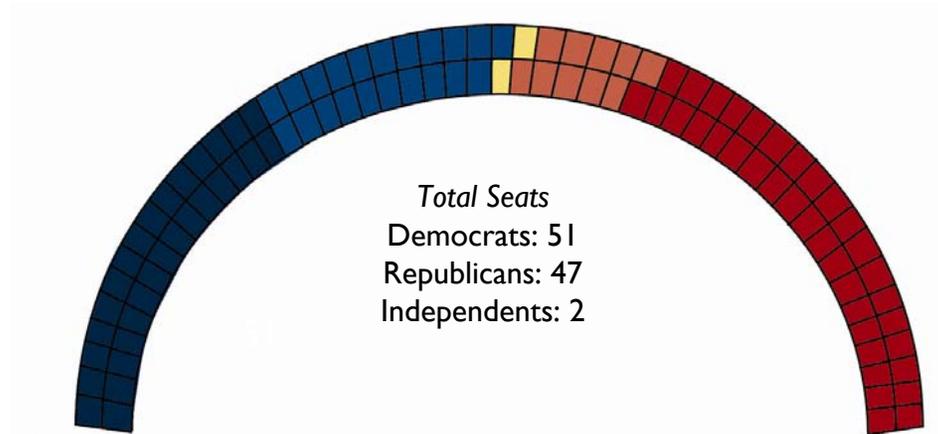


Quick Takeaways

- The Republicans were expected to, and did, keep their majority in the House
- Partisan expectations aside, there are early signs of a willingness to work across the aisle...
- Speaker John Boehner (R-Oh.), said Tuesday's mandate from voters was to work together: "Divided we fail; not just next session but the next two months."

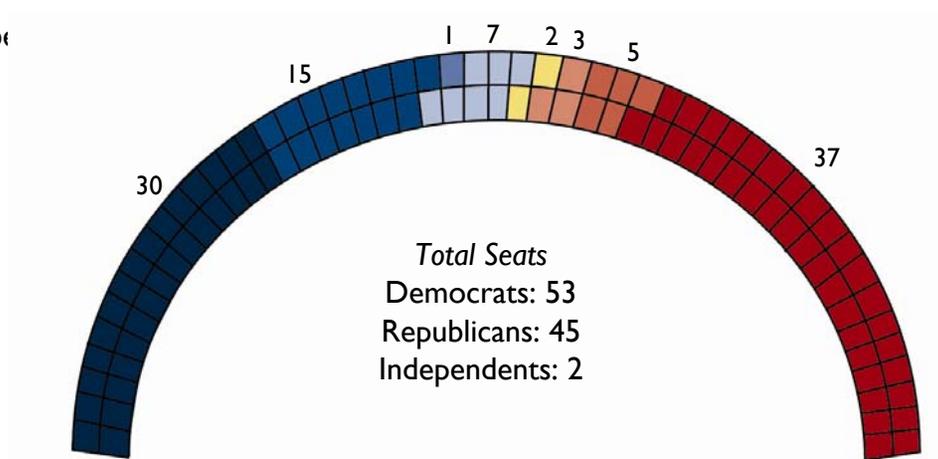
Source: National Journal, 2012, "Boehner to House Repubs: 'Divided We Fail,' Billy House.

Former Senate Makeup



- Dem Not Up for Reelection
- Dem Maintained Seat
- Dem Defeated Incumbent
- Dem Won Open Seat
- Republican Not Up for Reelection
- Republican Maintained Seat
- Republican Defeated Incumbent
- Republican Won Open Seat
- Independent

New Senate Makeup



Quick Takeaways

- While GOP remains the minority, retains filibuster power
- Expect GOP soul-searching after failure to knock down 2006 Dem Senators
- Sens.-elect Joe Donnelly of IN, Ted Cruz of TX, and Elizabeth Warren of MA may be brightest stars in new Senate

Source: National Journal, 2012.

Staking Out Positions: Elected Officials

"We want our kids to grow up in an America...that isn't threatened by the destructive power of a warming planet."

President Obama

"... climate change is an extremely important issue for me and I hope we can address it reasonably...It's something, as we've seen with these storms that are overwhelming our country and the world, we need to do something about it."

Senator Reid

"Hurricane Sandy is exactly the type of extreme weather event that the climate scientists have said will become more frequent and more severe if we fail to reduce our carbon pollution."

Reps. Waxman and Rush



"President Obama has presided over a green team administration that works every day to crucify oil and gas companies and make sure that ...if you want to build a coal plant you got a big problem."

Senator Inhofe

Staking Out Positions: Industry

“There is a lot of pent-up environmental energy, call it caged up, if you will, that is going to get released, because there will be lawsuits if it isn’t ...the rules EPA writes are likely to be left of center.”

ClearView Energy Partners

“Four more years of President Obama translates into additional pressure on the coal industry from the EPA and numerous environmental groups.”

Simmons & Co (energy investment bank)

“API will look to the administration to streamline drilling permits and avoid actions to stymie or limit hydraulic fracturing.”

American Petroleum Institute



“We still have a divided Congress, we still have a Senate with a strong bipartisan support for coal, and we still have a House anchored largely in opposition to EPA policies.”

National Mining Association

Staking Out Positions: Environmentalists

"...voters didn't buy what the polluters were selling... Over the next four years, there are very specific things that we're calling on the president to do...Number one: let EPA finish its job."

Sierra Club

"champions of clean air and public health will be at the battle stations in the United States Senate next year - not only to promote smart policies that move America forward but also to fight any efforts by extremists in the House to continue its reckless assault on our health and the environment. Obama and Congress must now turn their attention to addressing climate change, a need which is amplified by Hurricane Sandy's devastation."

Natural Resources
Defense Council



A year ago, he [President Obama] said they needed a year to study it [Keystone XL oil pipeline]... That year turned out to be the warmest in American history, with a melted Arctic and flooded Manhattan... We'll see if Obama has it in him, to actually keep some carbon in the ground."

Climate Action Group
350.org

What the Election Means for Environmental Policy

- Obama environmental legacy
- Regulations not legislation
- New faces in the crowd
- Cooperation or confrontation in Congress

Climate Change – A Changing Physical and Political Climate

Historic Droughts

8/1/2012 By David Mercer CHAMPAIGN, Ill. (AP) — The United States is in the midst of the worst drought in decades, and the dry weather and soaring temperatures are taking a toll on people living and working in Ohio west to California and Texas north to the Dakotas. Farmers have watched their corn wither and their cattle go hungry. Homeowners have seen their lawns turn brown and gardens wilt. Communities in the Midwest that rarely experience water shortages have enacted restrictions, and businesses are looking for ways to stay afloat as sales fall off.

Extreme Storms



Climate Change - A Legacy Issue for the President

What form will it take?

- NOT Cap & Trade
- GHG regulations and other rules targeting coal use
- Potential new ideas
 - Carbon Tax?
 - Incentives

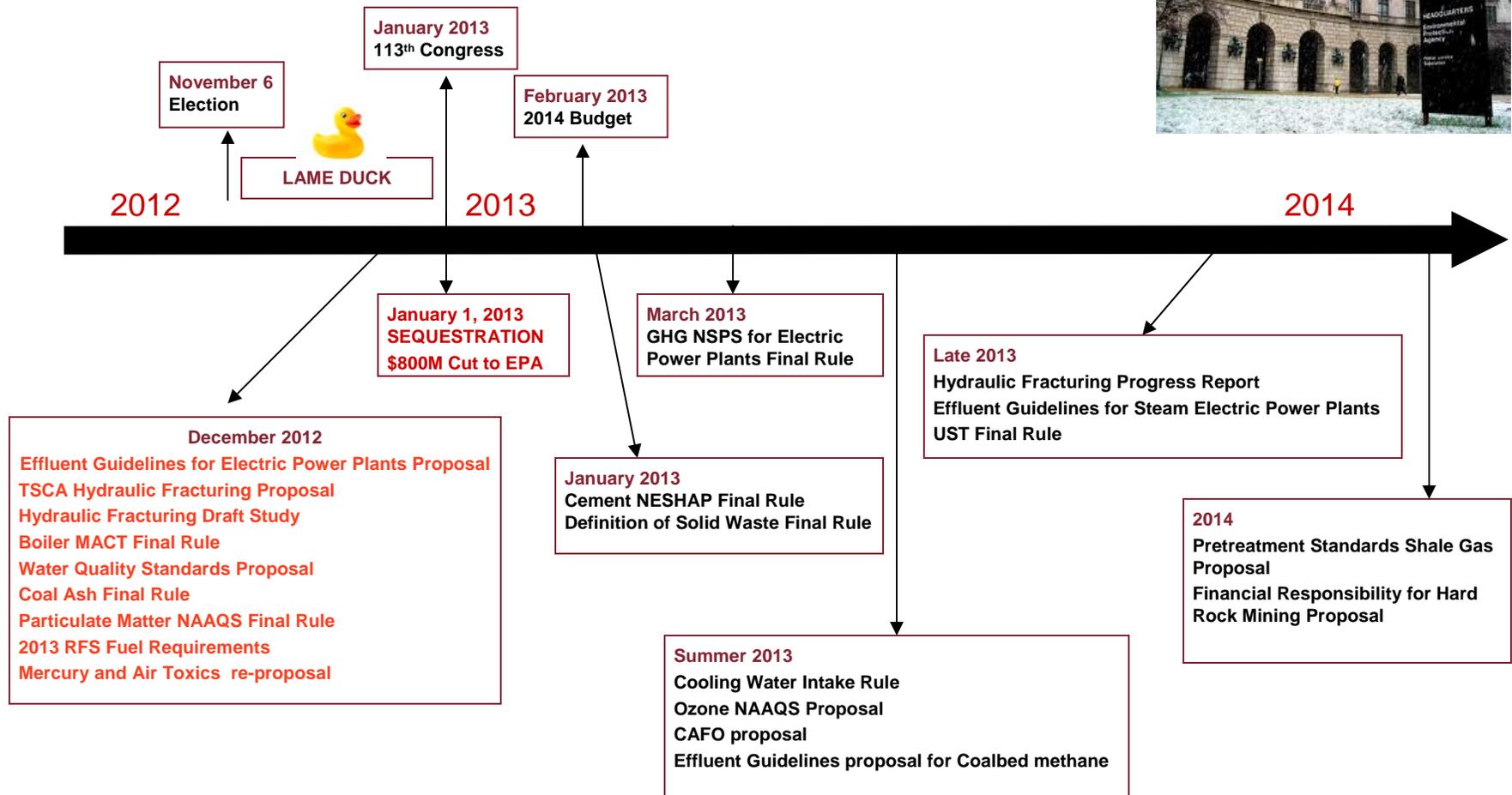
Environmental Agenda Driven by Regulation Not Legislation



EPA's regulatory agenda will likely explode

- Doubling down on climate change, greenhouse gas regulations, coal-fired utilities, and hydraulic fracturing
- Renewed focus on ozone emissions, particulate matter, and air toxics
- Continued focus on environmental justice
- Aggressive enforcement policy
- Exhaustive permit reviews
- Extensive NEPA reviews

EPA's Post-Election Agenda



EPA Regulation - By the Numbers

	Rulemakings (Pre-proposal & Proposal Stage)
Air NESHAP	16
Air NSPS – Greenhouse Gas Emissions	7
Air NAAQS	7
Air Motor Vehicle and Fuel Standards	4
Water Quality Criteria & Standards	6
Water Effluent Guidelines	4
Water NPDES	5
Drinking Water Standards	5
Waste Management	5
TSCA Chemical Regulation and Reporting	13
Pesticides	6
Miscellaneous	15
Total	93

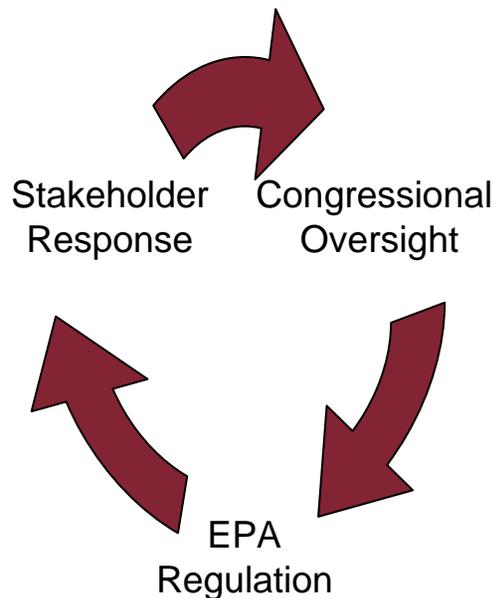
EPA Regulations – By Industry

EPA Rules Impacting the Energy Sector
<p><u>Utilities</u> – (Primarily Coal-Fired Power Plants)</p> <ul style="list-style-type: none">•Mercury and Air Toxics Rule•Cooling Water Intake Rule•GHG NSPS•Coal Ash•GHG permitting and reporting•Clean Water Effluent Guidelines•Tailoring Rule
<p><u>Biomass and Biofuels</u></p> <ul style="list-style-type: none">•Boiler MACT & NHSM Rules•EPA Tailoring Rule•RFS Rule•Tailoring Rule
<p><u>Hydraulic Fracturing</u></p> <ul style="list-style-type: none">•TSCA Chemical Disclosure•EPA Study•Effluent Guidelines•SDWA permitting guidance for use of diesel fuel•Clean Air NSPS and NESHAPs final rule

New Faces in the Administration

- New EPA Administrator
- New EPA Regional Administrators
- New EPA Assistant Administrators
- New OMB Director
- CEQ
- Same Career Staff

113th Congress In Action: Cooperation or Confrontation?



Expect Senate Democrats to provide “firewall”

Expect continued efforts by Republicans to push back on EPA and attempt to overturn regulations and limit spending through extensive oversight hearings, Appropriation riders, Congressional Review Act

Expect some new legislation

- Water Resources Development Act (WRDA)
- Toxic Substances Control Act (TSCA)
- Brownfields

Mid-term election will impact positions

Congressional Changes on Environmental Issues

Senate Committees

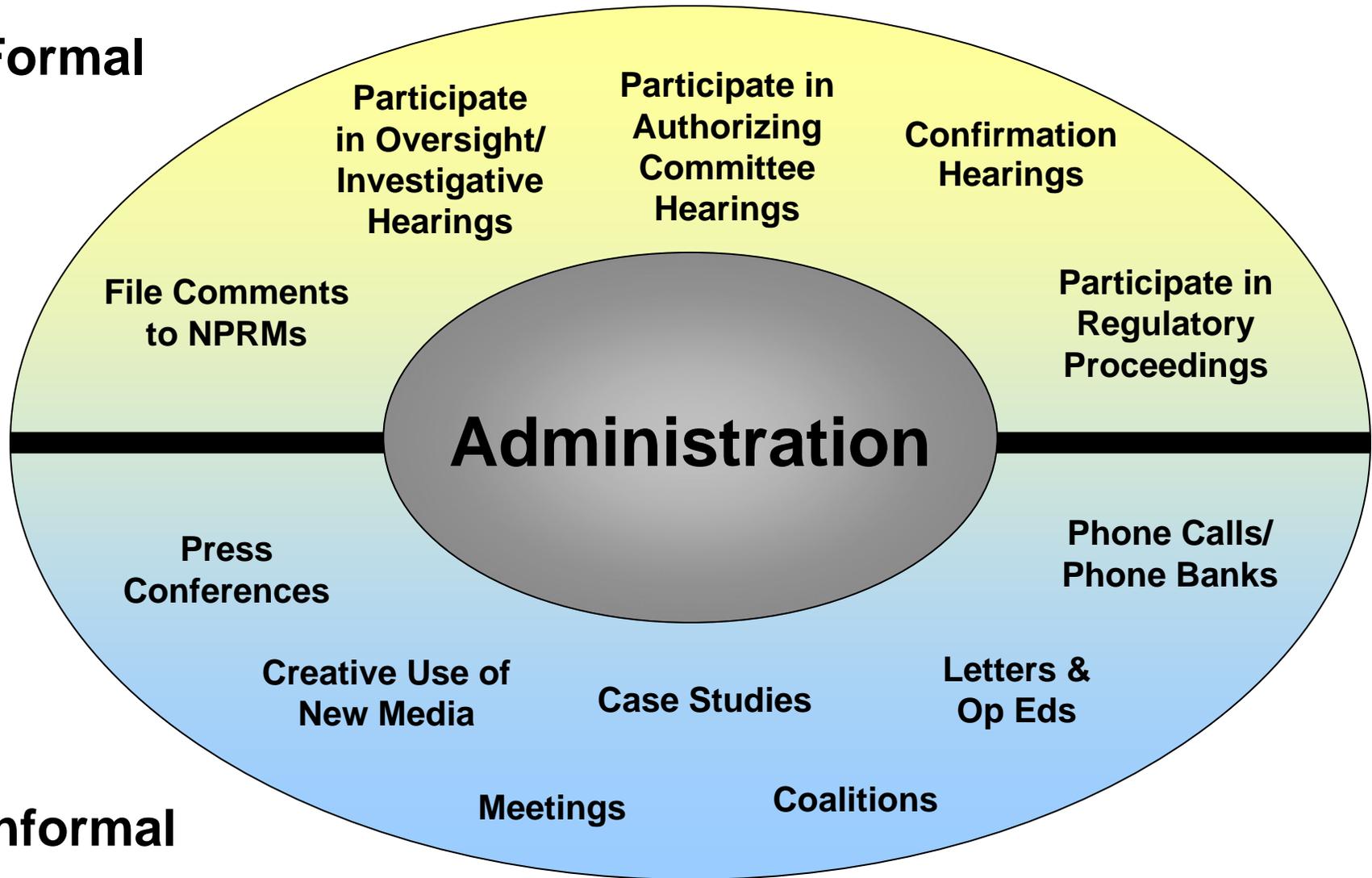
- Environment and Public Works
- Appropriations

House Committees

- Energy and Commerce
- Transportation and Infrastructure
- Appropriations

Election Provides New Opportunities for Engagement

Formal



Informal

What the Election Means Beyond the Beltway

Think Locally - Act Globally

↓

- More permit conditions likely
- Aggressive enforcement expected
- Continued focus on environmental justice
- Extensive NEPA reviews

↓

- Minimize new risks
- Maximize new opportunities

Questions?



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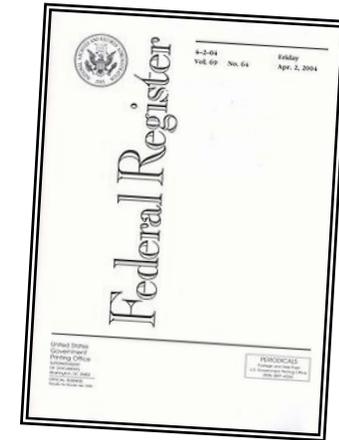


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Appendix – Major Regulations

Mercury and Air Toxics “MATS”

- On December 16, 2011, EPA issued final standards to control emissions from power plants. The rule will effect 1,350 coal and oil fired units at 525 power plants.
- Covers units owned by cooperatives, municipalities, the federal government and investor-owned units with a capacity of 25 megawatts or more, that burn coal or oil for the purpose of generating electricity for sale and distribution to the public through the national electric grid.
 - For coal-fired units rule sets emission limits for mercury, particulate matter and hydrogen chloride.
 - For oil-fired units sets emission limits for total metals, hydrogen chloride and hydrogen fluoride.
- The economic impact of the Utility MACT rule will be significant, costing \$11B annually and increasing the average retail price of electricity by up to \$4 per month. EPA expects that some coal-fired utilities will switch to natural gas to reduce emissions and minimize the cost of the rule.
- The rule gives utilities up to 4 years to comply to minimize the impact.



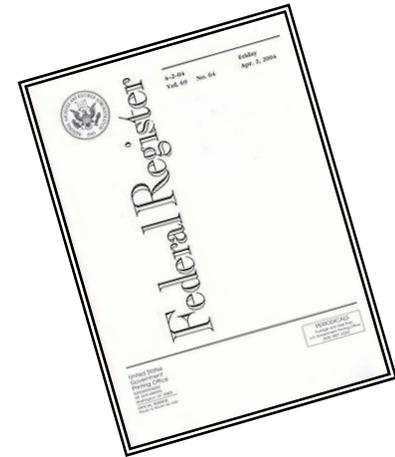
Utility MACT – Congressional and Legal Push Back

- Congress is very concerned with EPA's Utility MACT rule.
- S.1883 and H.R. 2401 extend the compliance period and delay the rule.
- Senator Inhofe (R-OK) filed a joint resolution of disapproval on February 16, 2012 under the Congressional Review Act (CRA).
 - CRA requires 30 supporters to be placed on the Senate Calendar and a majority in the House and Senate for passage, but it also requires the President's signature, making an overturn of the Utility MACT rule unlikely.
- On February 16, several entities filed lawsuits challenging the Utility MACT over whether the hazardous air pollutant listing was appropriate and necessary to comply in order to minimize the impact.
- EPA reconsidered the rule and submitted it to OMB for review on November 8, 2012.



Boiler MACT, CISWI & NHSM

- On February 21, 2011, under court order, EPA issued four related rules to control hazardous air emissions. These four rules cover 200,000 boilers and 88 incinerators:
 - Boiler MACT - Covers major sources (10 tons per year of any HAP or 25 TPY of any combination) and requires very stringent Maximum Achievable Control Technology.
 - The rule set emissions limits for mercury, hydrogen chloride, particulate matter, carbon monoxide, and dioxins/furans for 15 different subcategories of boilers and process heaters.
 - Area Source Boiler - Requires less stringent Generally Achievable Control Technology and has been less controversial.
 - Commercial and Industrial Solid Waste Incinerators (CISWI) - Applies to units that burn waste and require very stringent emissions controls and getting more attention because of the Secondary Materials rule.
 - Non-Hazardous Secondary Materials Definition (NHSM) - Defines which materials are wastes and subject to CISWI and which are fuels and subject to the Boiler MACT.



Boiler MACT – Congressional and Legal Push Back

- Responding to pressure from Congress and industry, EPA agreed to reconsider and stay the Boiler and Incinerator MACT rules to consider more public comments and revise the rules.
- In early January, the DC District Court vacated EPA's stay of the rule. EPA has since agreed to use enforcement discretion until the final rule is issued.
- EPA re-proposed the MACT and NHSM rules in December and expects to issue a final rule anytime after the election.
- In Congress, both House and Senate Members have introduced bipartisan legislation directing EPA to revise rules and provide additional time for compliance. The House overwhelmingly passed H.R. 2250. The Senate companion bill has over 40 co-sponsors.
- Several attempts were made to include H.R. 2250 as an amendment on the payroll tax extension but failed. Another attempt to include it as an amendment to the Senate transportation was also unsuccessful.



NSPS for Utilities

- On December 23, 2010, EPA announced a schedule for issuing regulations controlling GHG emissions from electric generating units and petroleum refineries.
- EPA agreed to the schedule as part of a settlement with states and environmental organizations who sued EPA over failure to update emissions standards for power plants and refineries required by Section 111 of the CAA.
- Section 111 requires EPA to issue New Source Performance Standards that set emissions limits for new facilities and address emissions from existing facilities. Factors EPA can consider in setting standards include: cost, non-air quality health and environmental impacts, and energy requirements.
- On March 27, 2012, EPA proposed NSPS for utilities. The proposal applies to all new sources (not existing or modified sources) greater than 25 megawatt electric. The proposal requires utilities to meet a performance standard of 1,000 pounds of CO₂/MWh. To minimize the impact the proposal allows a 30 year average compliance option with higher emission in earlier years and significantly lower emission in the out-years.



NSPS – Congressional and Legal Push Back

- In anticipation of a proposal, about 200 House members sent letters to OMB raising concerns over the rule's impact on jobs and the economy.
- Several bills in Congress have been introduced to overturn EPA authority to regulate greenhouse gas emissions. If any of the bills become law, although unlikely, it would have a cascading impact on other air rules.
- Several lawsuits are also pending that challenge EPA's authority to regulate greenhouse gas emissions as part of a settlement agreement with states, municipalities and environmental groups.

Coal Ash Rule

- On June 28, 2010, EPA proposed a rule to regulate coal combustion residue – “Coal Ash”.
 - EPA proposed two options and left the biggest question unanswered –
Will coal ash be defined a hazardous waste and regulated under Subtitle C of RCRA or a non-hazardous waste under RCRA Subtitle D?
- The environmental community strongly supports Subtitle C regulation but the list of opponents is growing larger, including coal producers, recyclers, wall board and concrete manufacturers, and highway construction contractors.
- EPA has been strongly criticized for overstating the risk of coal ash and not measuring job impacts. They issued a Notice of Data Availability on additional information that became available during the comment period which may be used to develop the final rule.
- EPA has not set a date for issuing a final rule but is currently in agency options selection and internal agency review. A rule is not expected until late 2012.
- Last October, the House passed H.R. 2273 which mandates national standards for regulating coal ash but not as a hazardous waste. Senator Baucus introduced a bill S.3512 with 24 bipartisan cosponsors



Clean Water Effluent Guidelines

- Section 304 of the Clean Water Act requires EPA to issue Effluent Guidelines (ELGs) and review them every 5 years.
- Pursuant to a 2010 consent decree over a 2009 lawsuit against EPA from environmental groups, EPA agreed to propose revised power plant ELGs by July 23, 2012 and finalize the rules by January 31, 2014. Latest schedule is to propose rule by November 2014 and take final action by April 2014.
- The proposal is expected to address wastewater discharges from coal ash and air pollutant controls. Proposal may require zero discharge from coal ash surface impoundments effectively ending this practice.



National Ambient Air Quality Standards

- Under sections 109 and 110 of the Clean Air Act, EPA is required to set National Ambient Air Quality Standards (NAAQS) for different pollutants and states adopt SIPs.
- EPA has been developing NAAQS for several pollutants including ozone, particulate matter (PM), and SO₂ & NO₂
- Ozone NAAQS: On January 19, 2010, EPA proposed a revision for the NAAQS for ozone which would have lowered the standard from 75 ppb to as low as 60 ppb, costing up to \$90 billion. In September, EPA announced its decision to delay the issuance of the NAAQS ozone until 2013.
- PM NAAQS: The PM NAAQS includes standards for fine particulates PM 2.5 and course particulates PM10. EPA originally expected to propose a rule by December 2010 and a final rule by August 2011 but now expects a proposal by June 2012 and a final rule by June 2013.
- SO₂ & NO₂ NAAQS: In 2010, EPA issued NAAQS standards for SO₂ & NO₂. Beginning this year, states will face a 1 hour standard for SO₂ & NO₂ resulting in more non-attainment areas that ultimately could mean tighter emissions controls.



Cooling Water Intake Rule

- On March 8 2011, EPA proposed regulations under Section 316(b) of the CWA that set national standards for cooling water intakes. In response to comments EPA extended the comment period until August 18, 2011 and will issue the final rule anytime after the election.
- Rule protects against harm caused when utilities withdraw water for cooling that impinge and entrain fish and aquatic organisms
- Rule proposed after lengthy history of legal challenges and remands including a U.S. Supreme Court ruling that EPA has authority to consider costs and benefits in setting standards
- Industry feared that EPA would require costly re-circulating cooling water towers but EPA's proposed rule surprised everyone by giving states and utilities options for reducing impingement and minimizing entrainment.
 - Impingement options: (1) reduce water intake velocity to <0.5 feet/second, or (2) monitoring that demonstrates that performance standards are being met
 - Entrainment options: (1) Facilities that withdraw > 2 million gallons of water per day require site-specific controls based on local circumstances (2) Facilities that withdraw >125 million gallons per day must also conduct a study and establish a process for receiving public input on the controls
 - New units at existing facilities must use closed-cycle cooling towers
 - Ultimately states authorized to issue NPDES permits, or EPA in unauthorized states, determine the best technology for meeting the regulations

GHG Permitting – Tailoring Rule

- On January 2, 2011, permits issued for large stationary sources must address GHG emissions and use BACT to control emissions.
- Beginning in July 2011, all new sources with GHG emissions >100,000 tons per year or modified sources with >75,000 tons per year of GHG emissions will need a permit. EPA recently proposed to continue to focus on large emitters and not lower the GHG permit trigger levels.
- What constitutes BACT is still unclear but EPA is leaving BACT determinations to states.
- In response to significant pushback, EPA waived permit requirements for 3 years for facilities using biomass until EPA completes a study of the life-cycle GHG emissions of biomass based power. The study is expected to be completed in 2013.
- In August 2011, five environmentally oriented groups sued EPA over its 3-year biomass permit deferral.



Cross State Air Pollution Rule

- In July 2011, EPA issued a new rule and supplemental rule in December 2011, to reduce air emissions from 28 eastern states known as CSAPR. CSAPR replaced EPA's 2005 Clean Air Interstate rule (CAIR) which was remanded to the Court of Appeals for failing to control upwind states from polluting downwind states.
- CSAPR regulates SO₂ and NO_x emissions and expects to reduce SO₂ emissions by 73% from 2005 levels and NO_x emissions by 54%. To achieve these reductions EPA expects power plants to use low sulfur coal, switch fuels or install or upgrade pollution control equipment.
- CSAPR was scheduled to take effect on January 1, 2012 but on December 30, 2011, the DC Circuit Court of Appeals issued an order staying the rule and retaining CAIR pending judicial review.
- On August 21, 2012 the Court of Appeals decided that EPA exceeded its authority and voided CSAPR, so CAIR remains in place. On October 5, 2012 EPA filed a petition seeking en banc rehearing of the August 21, 2012 decision.



Hydraulic Fracturing

- In 2010, Congress directed EPA to study the impacts of hydraulic fracturing for natural gas development on groundwater and drinking water. EPA's study is well underway and expected in late 2012. It could be a regulatory game changer.
- EPA also has several regulatory actions underway:
 - Clean Air NSPS and NESHAPs directed at emissions from hydraulic fracturing operations, issued on April 17, 2012.
 - Safe Drinking Water permitting guidance to control the use of diesel fuel used in hydraulic fracturing operation; draft issued in May 2012.
 - Effluent guidelines and wastewater treatment standards for hydraulic fracturing under the Clean Water Act, expected 2014.
 - Chemical disclosure requirements under the Toxic Substances Control Act, expected December 2012.

