2013 Legislative & Regulatory Outlook

AWMA- Gulf Coast Chapter Meeting
May 7, 2013
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AFPM
Washington, DC
Election 2012: Status Quo
2nd Terms Often Disappoint

- First three-peat two-term Presidencies since Jefferson, Madison and Monroe (1800-1824)

- 2nd terms have not been so smooth lately
  - Nixon- Watergate- 1972-1974 leading to resignation
  - Clinton-Monica Lewinsky –Impeachment 1998

- Administrations run out of energy and focus on legacies

- Political appointees often different from 1st term
  - Significant departures by end of second term
Environmental Accomplishments and Timing Often Surprise

• Major environmental legislation signed mostly by Republican Presidents and three times during Presidential election years

  • Clean Air Act (1970) Nixon
    Clean Air Act Amendments (1977) Carter and (1990) GHW Bush

  • Clean Water Act (1972) Nixon

  • RCRA (1976) Ford

  • TSCA (1976) Ford

  • CERCLA (aka Superfund) passed during lame duck session after 1980 election
    Reauthorization (SARA) (1986) Reagan

• No major environmental legislation has passed in last 22 years
Big Picture

• Still relatively “gridlocked”
  • BUT, less so than last Congress
  • Desire to “get something done”

• Economy and jobs will remain top issues
  • Likely R focus: spending and tax, entitlement, and regulatory reform
  • Likely D focus: Raising revenue & “culture” issues (e.g. gun control, immigration reform)
Energy & Environment

• Will maintain a high profile

• Economic factors driving energy debate:
  • Management of shale oil & gas boom
  • Financial troubles of alternative energy space

• High level political factors driving energy debate:
  • President’s NGO base pushing for greater action
  • Jobs/economic benefits of oil & gas sector
  • More strategic House
  • More moderate Senate?
Round 1: Keystone XL

- State STILL reviewing
  - SEIS again concluded no significant environmental impact
  - BUT EPA raised objections

- POTUS Conundrum
  - Campaigned on “all of the above”
  - 62 Senators (17 Ds) voted for budget amendment to approve Keystone; 79% public approval
  - BUT touted GHG regulation in inaugural
  - NGO line in the sand?

- Final decision – August?
House Activity
Energy & Commerce Committee:

• Agenda slightly uncertain
• Oversight focused, but more strategic
• Ground zero for RFS activity & reg reform
• Q1 focus: Agency budgets, Keystone, Tier 3?

Ways & Means Committee:

• Tax reform & budget fights
• POTUS, Senate again calling for repeal of “oil industry subsidies”
• Targeted deductions: Sec. 199, LIFO, Dual Capacity, upstream (IDC, etc.)
Senate Activity

Senate Energy:

- Wyden Priorities: Natural gas exports, “clean energy”
  - Does not like the RFS, but does like LCFS
- Murkowski: OCS revenue sharing

Senate EPW:

- Boxer: New push on Climate
- Vitter: New Inhofe on climate
  - Will also look to advance oversight and transparency initiatives
Issue Outlook

RFS Debate:
• Many on both sides of the aisle/Capitol recognizes the RFS is unworkable
• Repeal/Reform debate will begin this year

Climate:
• POTUS & Ds will look to make a renewed push.
  – Carbon tax? LCFS?
  – Use of NEPA

• Energy Exports:
• LNG export debate precursor to broader energy export debate (including products)
The RFS

Billions of Gallons per Year

Source: API
The targets for cellulosic biofuels are very ambitious

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RFS Regulatory Options

• EISA requires lead time – obligations to be promulgated by Nov. 30 of previous year

• EPA should propose reasonable levels for 2014 soon and promulgate them by Nov. 30, 2013

• EPA should adjust the advanced biofuel and total RFS volumetric standards to ensure that E10 blendwall is not breached

• EPA should be realistic, not aspirational, when choosing the level for cellulosic biofuels
Regulations - Tier 3

Tier 3 proposal is out

• 10ppm- starting 1/1/2017

• Sulfur only, no RVP

• No octane target

• Suggests changing certification fuel to E15 in 2017

• Small refinery delay (<75Kbpd)
Air Issues - GHG Permitting

- DC Circuit Court of Appeals in June 2012 upheld EPA’s ability to regulate GHG emissions through the Clean Air Act

- Tailoring rule – GHG permits only required for facilities that will show an emissions increase of more than 75,000 tons of CO2e annually
  - New facilities – threshold of 100,000 tons
  - New Title V permits also required if thresholds exceeded
  - EPA will review thresholds in future years and will likely reduce thresholds over time
Air Issues- GHG Permitting (cont.)

• GHG thresholds trigger PSD permits which require BACT (Best Available Control Technology)
  - BACT review requires review of more than forty approaches to reducing GHGs including carbon capture and sequestration

• EPA determined in 2012 that thresholds would remain at current levels as states were not prepared for increased permitting
  - In 2011 only around 60 permits were requested or processed. EPA expected 600
Air Issues- GHG NSPS

• EPA has determined that using New Source Performance Standards (NSPS) is best first step in regulating GHGs
  – Focuses on specific industry sectors (88)
  – Incorporates best demonstrated technology and therefore cost-effectiveness taken into account
  – Under NSPS, periodic review to determine if rule is up to date for the industry sector
Air Issues- GHG NSPS (cont.)

• December 2010 settlement with NGOs established GHG NSPS rules for utilities and refineries

  – Utility rule was originally to be proposed in July 2011 with a final rule in June 2012

  • EPA put out a utility proposal in April 2012
    – Only applies to new facilities
    – EPA will address existing units at a later date
    – Under NSPS, the proposal date is the effective date for the rule

• Refinery proposal has been delayed until utility proposal is completed
Air Issues GHG NSPS (cont.)

• Since the election, EPA has moved slowly on utility proposal

• Likely that after the refinery NSPS rule is proposed, EPA will continue to use NSPS approach for other industries
Air Issues - NAAQS

• EPA sets National Ambient Air Quality Standards for 6 criteria pollutants- ozone, CO, lead, nitrogen dioxide particulate matter, sulfur dioxide

• Primary NAAQS focuses on health while secondary NAAQS focuses on public welfare (visibility, impacts on animals, crops vegetation and buildings)

• Two key NAAQS over the next two years are PM 2.5 (fine particulate) NAAQS which was finalized in December 2012 and Ozone NAAQS which will be proposed late this year and finalized in 2014
Air Issues-Ozone NAAQS

• Ozone NAAQS precursors include NOx and VOCs

• States with areas out of attainment develop State Implementation Plans (SIPs) to get these areas in attainment
  – Mobile source and transportation restrictions
  – Reformulated gasoline
  – Stationary source emission reductions
  – New permit controls

• Ozone NAAQS level can have a significant impact on a state’s economic activity
Ozone NAAQS

• 1997 Ozone NAAQS was 84 ppb
  – lowered to 75 ppb in 2008
  – 2009-Obama Administration reconsidered ozone NAAQS at a level between 60 to 70 ppb

• Reconsideration dropped 9/2011
• Decision to use standard 5-year review process
• Expect to EPA will propose a standard in the 60 to 70 ppb range

  – If as low as 60, most of the counties in the US will be out of attainment including a number of national parks
1997 Ozone Standard

Standard = 84 ppb

[Current: LA, Ark, MO, IL, IN, OH, now in attainment for total of at least 29 states in attainment]

Source: EPA Green Book
2008 Ozone Standard

Not Attaining the Current 75 ppb Standard

Monitored MSAs and Non-Urban Counties Exceeding 75 ppb 
(682 Counties; Based on 2006-2008 Data)
Not Attaining the Proposed 60 ppb Standard

Source: API reprinted w Permission

- Red: Monitored MSAs and Non-Urban Counties Exceeding 60 ppb (1108 Counties; Based on 2006-2008 Data)
- Orange: Unmonitored Areas Projected to Exceed 60 ppb
Air Issues - Ozone NAAQS

- Implications of a 60 ppb standard will be significant

- In many areas, any new construction will be difficult as would expanding existing facilities
  - In some states, NOx reductions would be so severe that essentially no new operations could be built or expanded
  - There will be conflicts with GHG emissions targets
    - Reducing NOx, VOCs requires an energy penalty
      - This also applies to reducing any further sulfur from gasoline
PM 2.5 NAAQS

• NGO challenge of EPA’s schedule for reviewing NAAQS forced Agency to complete final PM 2.5 rule in a compressed timeframe

• EPA issued final PM 2.5 NAAQS on December 14, 2012 and lowered the annual standard from 15 micrograms per cubic meter to 12 micrograms per cubic meter
  – The 24-hour standard was retained at 35 micrograms per cubic meter

• EPA claims that standard will only cost $69 million as the reductions will be made through other programs

• Long-term impacts on permitting may be significant
Boiler MACT

• EPA completed re-proposal in December 2012

• Generally satisfied with the final rule
  – Refinery and petrochemical gas units will only be subject to work practices
  – Island and remote boiler limits were significantly improved
Residual Risk

- Based upon a 2010 settlement agreement, rule was originally scheduled to be proposed in December 2011

- EPA amassed industry information through Information Collection Request (ICR) in 2011
  - Proposal Sent to OMB on 9/5/12
  - API/AFPM analysis of data showed risk levels similar to 2009 rule levels
    - 2009 EPA final rule determined no further action required
Residual Risk (cont.)

- EPA has indicated that the rule may require:
  - Fenceline monitoring to measure benzene emissions at all refineries
  - Depressuring coking units from 5 psi to 2 psi

- Rule withdrawn from OMB review on 3/12/13
  - Agency is performing multi-pathway analysis
  - Rule may not be proposed until late 2013
Uniform Standards

• In March 2012, EPA proposed emissions standards for storage vessels and transfer operations, equipment leaks, and closed vent systems and control devices (non-flare)

• EPA also proposed rules for heat exchange systems in January 2012

• Developed for refining and chemical sectors, but can be referenced by other industries
Uniform Standards (cont.)

- Heat exchange rules sent over for OMB review and will be incorporated into changes to refinery MACT rules

- EPA has communicated that other refinery uniform standard rules will be significantly delayed

- Uniform standard proposals for flares and wastewater systems have been indefinitely delayed
NSPS Ja

- EPA issued the refinery NSPS (AKA NSPS Ja) on 4/30/08
  - Concerns with flare and process heater provisions led to issuance of stay in July 2008
  - In December 2008, EPA issued amendments to NSPS Ja to address flare and heater provisions that had been stayed
    - EPA published final flare and process heater provisions in the Federal Register on September 12, 2012
    - AFPA and API filed petitions for Reconsideration and Review on November 12, 2012
      - Concern regarding EPA’s definition of “affected facility” and coking facilities
Flaring Efficiency

• EPA’s Office of Enforcement and Compliance Assurance (OECA) identified refinery and petrochemical flares being improperly monitored and operated
  – leads to lower combustion efficiency and potentially significant quantities of excess emissions of volatile organic chemicals

• Agency’s Air Toxics Enforcement Initiative targets companies operating inefficient flares
  – Using General Duty Clause as basis for enforcement
Flaring Efficiency (cont.)

• AFPM has assembled technical and legal working groups to develop cost-effective regulatory approach to flaring thermal efficiency
  
  – Regulatory approach provides greater consistency and transparency for petrochemical and refining members

• EPA has communicated that they will propose a new flaring regulation late in 2013
Other EPA Issues

Environmental Justice

- Impact of industrial emissions on surrounding communities
  - Often low income and minority populations

- Priority during first term
  - EPA to use EJ guidance in both setting emissions (i.e. MACT) as well as in Title V permits
  - While this continues to be a priority in second term, EPA has signaled that sequestration will affect EJ funding
2013 Regulatory Priorities

• Focus will be on:
  − Resolving NSPS Ja concerns
  − The development of a workable flaring regulation
  − Continued work with EPA staff on a realistic residual risk rule (refinery sector rule)
  − Continued advocacy on Ozone NAAQS proposal