Houston Area Air Quality: Issues and Challenges

Matt Kuryla
February 17, 2017
Federal Action

**Power Plants**
- **Section 111(b) GHG NSPS** (Oct. 23, 2015)*
- **Section 111(d) Clean Power Plan** (Oct. 23, 2015)*

**Upstream Oil & Gas**
- **Methane NSPS** (June 3, 2016)*
- **Methane ESPS - Final ICR** (Nov. 10, 2016)

**Cars & Light Duty Trucks**
- **Phase I GHG and Fuel Economy Standards** (May 7, 2010)
  - MY 2012-2016
- **Phase 2 Midterm Evaluation** (Jan. 12, 2017)
  - Maintain current standards for MY 2022-2025

**Medium & Heavy Duty Trucks**
- **Phase 1 GHG and Fuel Economy Standards** (Sept. 15, 2011)
- **Phase 2 GHG and Fuel Economy Standards** (Oct. 15, 2012)
  - MY 2017-2025
- **Phase 2 Midterm Evaluation** (Jan. 12, 2017)
  - Maintain current standards for MY 2022-2025
- **Phase 2 GHG and Fuel Economy Standards** (Oct. 25, 2016)

**Aircraft**
- **Endangerment Finding** (Aug. 15, 2016)*

*Currently being challenged in litigation
NGO Action

Title V Petitions

Regulation- Forcing Actions

Citizen Suits

Rulemaking Challenges

Requests for Rulemaking

Public Trust Doctrine Suits

Challenges to prevent repeal or modification of existing regulations

Petition for rulemaking & challenge denial

Suit alleging EPA has a non-discretionary duty to regulate

Suit alleging EPA/States must regulate to protect public resources
Regional Haze Program

- Improve visibility in national parks and wilderness areas (Class I areas)
- Series of 10-year implementation plans
- Goal = natural visibility conditions by 2064
Status of Program

• First Implementation Period - ends 2018
• SIPs/FIPs focus:
  – BART sources
  – Reasonable progress controls for some sources
    • EGUs
Future of Program

• Second Implementation Period
  – Covers 2019-2028
  – SIPs due 2021?

• States must continue to show improvement in visibility
• Focus on reasonable progress controls
Ozone NAAQS: Current Status

DFW/HGB = Moderate Nonattainment

- 100 tpy major source
- 40 tpy major modification
- 1.15:1 offset ratio
- No 5 ton netting trigger
Uncertainties

South Coast Air Quality Mgmt. Dist. v. EPA, No. 15-1115 (D.C. Circuit) [challenging EPA's "redesignation substitute" process]

Trump Administration approach to 2015 ozone standard [May not timely revoke 2008 standard]

• If revoke 2008 NAAQS before redesignation to "Serious," HGB/DFW will stay at:
  ➢ 100 tpy major source
  ➢ 40 tpy major modification
  ➢ No 5 tpy netting

• If no or later revocation:
  ➢ 50 tpy major source threshold
  ➢ 25 tpy major modification
  ➢ 5 tpy netting trigger
# MSS SIP Call: Scenarios for D.C. Circuit Litigation

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Effect on states</th>
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<tbody>
<tr>
<td><strong>Victory</strong></td>
<td>Court holds that SIP call is inconsistent with CAA</td>
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<td></td>
<td>No need for state SIP changes</td>
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<td><strong>Defeat</strong></td>
<td>Court allows only narrowly-tailored SSM SIP provisions meeting new EPA policy requirements</td>
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<td>Same as original SIP call</td>
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<tr>
<td><strong>Partial Victory</strong></td>
<td>Court upholds some but not all types of SSM SIP provisions</td>
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<td>Some states need to change SIPS</td>
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<td><strong>Remand without Vacatur</strong></td>
<td>Court directs further action by EPA such as state-by-state findings of SIP adequacy</td>
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<td>Varies by state</td>
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Steps to Reconsideration

• Step 1: Filing of administrative petition for reconsideration
  – Under consideration by State of Texas; others may follow
• Step 2: EPA actions if decided to grant petition
  – Announce granting of the petition
  – Request D.C. Circuit to hold case in abeyance
  – Propose rule to reconsider/withdraw SIP call; public comment period
  – Finalize rule to reconsider/withdraw SIP call
• Step 3: Next steps if EPA withdraws SIP call
  – States withdraw pending SIP revisions or submit new SIP revisions
  – Environmental groups may challenge the withdrawal in court
Texas Rule

Pending SIP revision to 30 TAC 101.222:

- "(k) Federal court jurisdiction. Subsections (b) - (e) of this section are not intended to limit a federal court's jurisdiction or discretion to determine the appropriate remedy in an enforcement action."

- (l): (k) does not apply until "final and nonappealable court decision that upholds the SIP call."

Options:

1. Leave current rule language in place and seek SIP approval
2. Withdraw pending SIP revision and delete new (k)-(l) language
3. Rewrite rule to be more favorable and seek SIP approval