

EPA CLIMATE CHANGE ANPR – THE BRITISH ARE COMING

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Climate Change ANPR “Tutorial”

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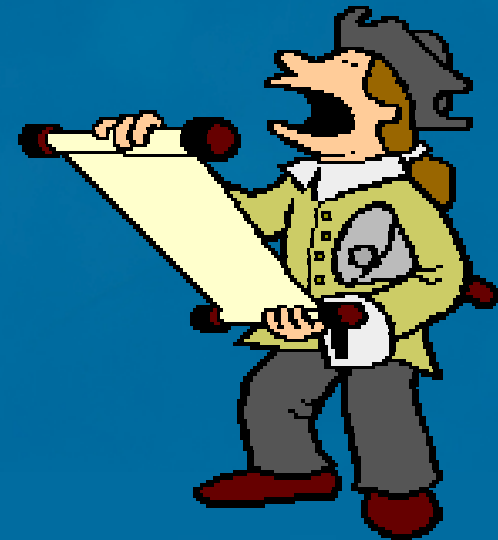


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TOPICS

- Background
- Threshold Issues
- CAA Programs
- Issues



What Is an ANPR?

- First step in developing rules
- Followed by NOPR and then Final Rule
- Seeks public comment prior to formulating proposed rules



Mass. v. EPA

- GHGs are CAA “Air Pollutant”
- EPA must regulate motor vehicle GHGs if it makes Endangerment Finding
- Remand for EPA to (1) make endangerment finding; (2) determine no endangerment; or (3) do neither and explain why not based on CAA
- Did not require endangerment finding or regulation
- Obvious precedent beyond motor vehicles – Pending requests to EPA to regulate GHGs in numerous sectors



Mass. v. EPA

Denial of Mandamus Petition

- EPA has not taken too long to respond to court
- Tatel concurrence: Reasonable for EPA to consider endangerment and regulation together – does not have to determine endangerment now and regulation later – but can



How Did We Get Here?

- EPA on track last year to propose endangerment finding and GHG regs in response to Mass.
- EPA decided instead in December to do ANPR
 - Enactment of EISA addressed motor vehicle goals
 - What is the impact of motor vehicle regulation, really?
- So, no even proposed regs in this Administration
- BUT - Still have to respond to Mass.



ANPR: TWO VISIONS

- Short and sweet, ask questions

Or

- Lengthy, detailed roadmap for regulation



THRESHOLD QUESTION: ENDANGERMENT

- ANPR fairly definitive – but EPA already on record in decision denying CA auto waiver
 - Asking for comment
 - heavy reliance on IPCC – Data Quality Act issues?
- But: next Administration likely to make endangerment finding



POLLUTION/POLLUTANTS

- Pollution: Enhanced greenhouse effect
- Pollutants: CO₂, nitrous oxides, methane, perfluorocarbons, hydrofluorocarbons, and sulfur hexafluoride
 - Water vapor and black carbon?
 - Consider GHGs as “class,” relative CO₂ equivalency?



POTENTIAL CAA REGULATORY PROGRAMS

- NAAQS
- On-Road Motor Vehicles
- Off-Road Sector
- Large Stationary Sources
- PSD: Just about anyone else
- Methane: Ag, Solid Waste, Coal Mines



NAAQS

System completely unworkable for GHGs

- What level is NAAQS? “Requisite” to protect public health (with margin of safety) and welfare, but not more than necessary
- Every state either attainment area or non-attainment area. Can never eliminate nonattainment or maintain attainment. So how is a SIP designed and reviewed?
- Can't consider costs



NAAQS

- Can EPA avoid setting NAAQS? 1978 *NRDC v. Train* case
- Can EPA make NAAQS more palatable by setting only secondary NAAQS? Regional haze program model. Does attainment “as expeditiously as possible” mean never?
- Cap and trade authority? NOX SIP Call, CAIR



ON-HIGHWAY MOTOR VEHICLES

- Passenger cars and light-duty trucks; heavy duty trucks and buses; motor cycles
 - Light-duty vehicles - \$2 trillion in savings in 2040 – major assumptions as to development of technology
 - Fuel economy
 - Renewable fuels
- Both just addressed in EISA



NON-ROAD SECTOR VEHICLES AND ENGINES

- Planes, trains, ships, boats, farm tractors, construction, farm and mining equipment, off-road RVs, lawn mowers, garden equipment, portable power generators, fork lifts, small construction machines, logging equipment, etc.
- Proposed options: engines, equipment redesign, operational changes



LARGE STATIONARY SOURCES

- Section 111 NSPS – best demonstrated technology: cost and availability of technology matters – new and modified + existing (if no NAAQS)
- Traditionally command and control
- Can they do cap and trade? CAMR
- If so, within source categories? Between source categories? Source categories for GHG emissions? “Super-categories?”
- Multi-tiered standards, with future tiers based on future, currently unavailable technology? “Demonstrated to be available in future”?
- Ability to prioritize? Discretion not to list or regulate?



PSD – YIKES!

- 100/250 tpy threshold – PTE
- New construction + modification if increase CO2 emissions by “significant amount”
- Any ~ 100,000 sq ft building (10 stories)
- One million new sources subject to permitting if they modify! All subject to BACT!
- Regulatory nightmare



PSD – CAN EPA GET AROUND?

(100/250 tpy is statutory)

- “Select a cut-off that optimizes the benefit-cost ratio”?
- Scaling? (!)
- Threshold based on “de minimis contribution to” climate change?
- GHG cutoffs used in GHG reporting programs?
- Can 250 tpy of CO₂ be made into a bigger number by using CO₂ equivalents?
- Phase-in?
- General permits?
- Presumptive BACT?



METHANE

- Special problem for Ag, Solid Waste and Surface Coal Mining
- Will 250 tpy of methane be transmuted into lower threshold through use of CO₂ equivalences?



Rearing cattle produces more greenhouse gases than driving cars, UN report warns

December 1, 2006

When emissions from land use and land use change are included, the livestock sector accounts for 9 per cent of CO₂ deriving from human-related activities, but produces a much larger share of even more harmful greenhouse gases. It generates 65 per cent of human-related nitrous oxide, which has 296 times the Global Warming Potential (GWP) of CO₂. Most of this comes from manure.

And it accounts for respectively 37 per cent of all human-induced methane (23 times as warming as CO₂), which is largely produced by the digestive system of ruminants, and 64 per cent of ammonia, which contributes significantly to acid rain.



LIST OF GRIEVANCES

What are the main problems with using CAA to regulate GHGS?



IT JUST DOESN'T WORK

- Hard to think of worse way of addressing climate change than CAA
- Rigid, inflexible, command-and-control
- Limited or no market-based opportunities
- Not part of international effort or system



“A GLORIOUS MESS”

- Multiple, simultaneous, costly, complicated, controversial rulemakings followed by unending litigation (hmm...)

E.g., NSPS rulemaking for each source category must be “functional equivalent of EIS”

- “Prioritizing” doesn’t do it



WHO'S IN CHARGE HERE ANYWAY?

- According to EPA, large-scale use of cap and trade to control GHGs "would entail working with a large number of diverse interest groups on difficult issues involving redistribution of wealth on a scale that typically is decided by Congress rather than the Executive Branch."
- Should EPA be able to implement a Lieberman-Warner-type cap and trade program in the absence of legislation? – who decides whether allowances are auctioned or allocated and where the auction revenue goes?



UNPRECEDENTED EPA CONTROL OVER THE ECONOMY

- Not just controlling emissions from a pipe
- Design and use of almost anything that uses energy
- And land use, trade policy, efficiency ... everything that is relevant to controlling GHG emissions



BENEFITS WAY OVERSTATED

- EPA cost-benefit analyses ignore fact that benefits are lost if other countries don't control
- Don't believe the \$2 trillion in benefits! It's a chimera
- But it's only going to get higher as the process moves along



PSD HELL

- Huge risk that you can't limit this to large sources because it may be tough to solve PSD and NAAQS without legislation
- But if EPA pretends that it can, we inject intolerable uncertainty into business activity

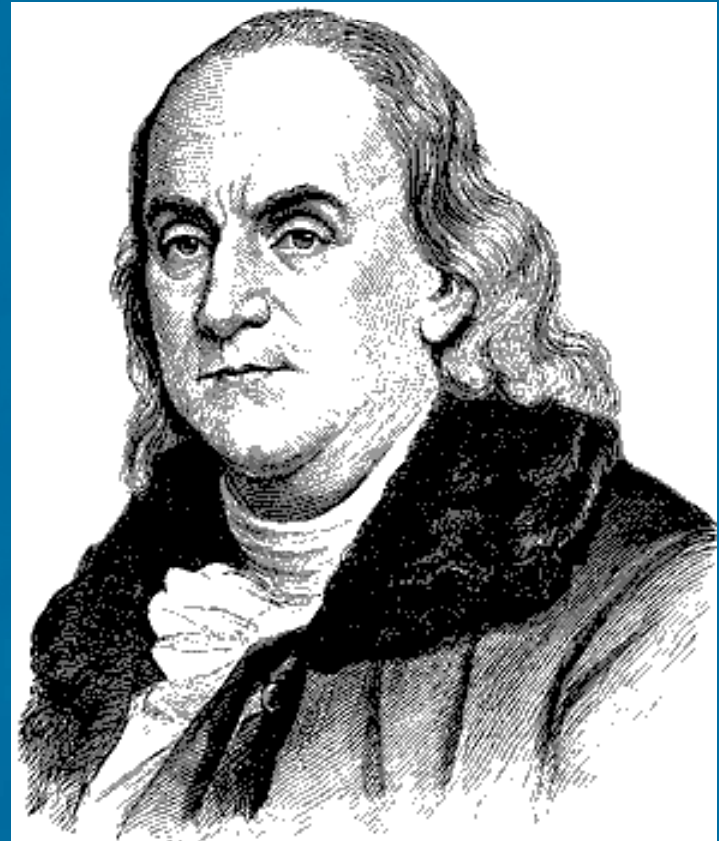


WHAT CAN BE DONE?

- We need to use ANPR process to signal to the next Administration that it needs to go slow on CAA regulation in light of high negatives in taking on the issue
- We need to at least continue pushing for a Congressional fix - whatever new climate change legislation is proposed should be the exclusive GHG control program



We must all hang together or most assuredly we will all hang separately.



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