



# **Stuck at The Intersection of Energy and the Environment: How Environmental Law is Influencing The Cross Border Flow of Energy**

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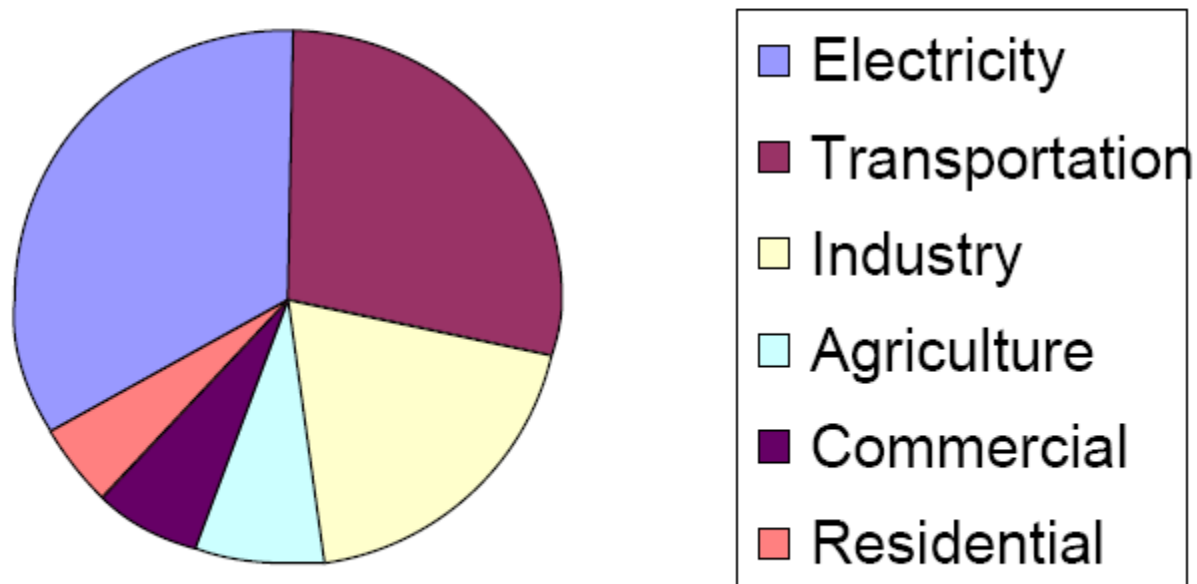
# The Influence of Environmental Law on Energy Trade

- The Rise of Federal Environmental Regulations Impacting Energy Choice and Use
- The Reach of State Environmental Regulations Impacting Cross-Border Energy
- The Emergence of a Citizen Group Strategy Utilizing Environmental Laws

# The Rise of Federal Environmental Regulations Impacting Energy Choice and Use

# State of Play: 2006-08

**Figure VI-1**  
**U.S. GHG Emissions Allocated to**  
**Economic Sectors (2006)**



# The Suite of Recent Air Regulations Impacting Energy

| Name                    | Effective  | New Sources  | Existing Sources |
|-------------------------|--|--|------------------|
| GHG PSD                 | 1/2/2011   | Yes  | No               |
| CSAPR                   | vacated  | Yes  | Yes              |
| Utility MACT            | 4/16/2012  | Yes  | Yes              |
| GHG NSPS                | 4/12/2012  | Yes, at time of proposal (except for transitional sources) | ?                |
| NAAQS                   | PM, and upcoming SO <sub>2</sub> , and Ozone revisions |  |                  |
| Oil and Gas NSPS/NESHAP | June 2012  | Yes  | Yes              |

# December 2008

## What Does the Bonanza Decision Mean?

By David Robinson, Chief Climate Counsel for Sevens LLC



**R**ule 11, which states that it is an ongoing process, and in the interim rule we're doing for existing, but means we building any more coal-fired power plants, the leading commercial carbon dioxide emissions rule in the U.S. and worldwide. We know that we have due to technology components among better source emissions opportunities in developing the world's climate. That's why the Bonanza decision on Thursday, November 13, 2008, from the Environmental Protection Agency's Environmental Appeals Board (EAB), an agency we have put down the door. (And maybe a hole in ours.)

### Background

Technically, all EAB did was return the PSD permit for a relatively small (110 megawatt proposed) power plant and send it back to the permit writer for further consideration. But that would be kind of boring, for William W. Mathews was all about what the William Mathews got in for a Charter of Columbia issues of the past. That is because the new source national EPA, and in following to impose carbon dioxide emissions limits on the Bonanza plant has been used by EPA and some permitting authorities to essentially stop start of the doors of other coal-fired PSD permits or to shut things down the capacity. And by imposing limitations it more like it's also possible, every one of them when permits from the same time around for the agency to try and come up with a more plausible scenario for our imposing carbon dioxide limits, as there will take a different position.

Agency action will take months. They're months. Perhaps up and put on ice. For all of them. Think

what we have a lot for coal-fired generation for better, because it get better a blank slate, as in some to they will say it that I smoking or other power plants. The rule had to make it very small PSD permit, even January. It will be more under because it's still

So what next? Logic Source Performance for plants, for each one EPA, and it is the upper green plant emissions?

But would permit or other only way we can employ carbon capture technology retrofitted to plants, effective 2016 or so, approximately 200 lb carbon dioxide per unit of generation or 90% CCS? thinking about how to under Section 111(d) of the Act.

Right now we have a lot for coal-fired generation and coal power plants, a blank slate on which the Obama Administration can begin writing its global warming policy and some breathing room in which to work it.

So what next? Logically, I think the answer is New Source Performance Standards for fossil-fuel fired power plants. Just such a rulemaking is sitting in limbo at EPA, and it is the appropriate vehicle for limiting new power plant emissions to 800 lb. CO<sub>2</sub>/MWh.

This would permit new gas-fired plants but would effectively stop any new coal-fired ones that did not employ carbon capture and sequestration (CCS). Perhaps this rulemaking could also contain a second phase, effective 2016 or so, tightening the standard to approximately 250 lb. CO<sub>2</sub>/MWh. This would be achievable via either combined gas/solar or gas/wind generation or 90% CCS. And then they could start thinking about how to deal with existing power plants under Section 111(d) of the Act. But one thing at a time.

# February 2009

## **ACESA (cap and trade proposal) Draft Section 116**

- Sets performance standard of 1,100 CO<sub>2</sub>/MWh as of 2015 and 800 CO<sub>2</sub>/MWh as of 2020. Effectively required fuel switching to natural gas.
- Required facilities permitted after January 1, 2009 to adapt to carbon capture and sequestration.
- Preserved lawsuits against existing coal fired power plants, even after bill is passed.
- Preserved EPA's authority to regulate existing plants.

December 2010

**NSPS Consent Decree Deadlines**

**Utilities**

**Proposed Rule** July 26, 2011

**Final Rule** May 26, 2012

**Refineries**

**Proposed Rule** December 10, 2011

**Final Rule** November 10, 2012



# March 2012

## **EPA GHG NSPS Proposal for EGUs**

- Sets performance standard of 1,000 CO<sub>2</sub>/MWh.

# The Obama EPA: 2009-2013

- **Transportation Sector:** Mission Accomplished
  - **MPG:** CAFE/GHG Standards (35.5 MPG by 2016; 54.5 MPG by 2025)
  - **Fuels:** Renewable Fuel Standard, E-15
  
- **Utility Sector:** Four Years in the Bulls Eye
  - **Permits:** GHG standards under Prevention of Significant Deterioration Program (PSD)
  - **No New Coal:** GHG standards under New Source Performance Standards
  - **Ozone and PM:** CSAPR and CAIR
  - **Mercury:** Utility MACT
  - **Proposed Rules:** Coal ash, 316(b)
  - **Coal:** Mountaintop Mining
  
- **Manufacturing Sector:** On the Backburner, for a Time
  - **Permits:** GHG standards under PSD
  - **Greenhouse Gases:** Consent decree to regulate under NSPS for refineries
  - **Boilers:** Boiler MACT proposed, stayed
  - **NAAQS:** Ozone abandoned, PM delayed
  - **Sectors:** Proposals to regulate specific sectors and approach via sector-specific rules on the table, but deferred

# The Obama EPA: 2013 and Beyond

- **Transportation Sector:** Play Defense
  - **MPG:** “Hands Off” new standards; strict enforcement
  - **Fuels:** Shore up defense on RFS2, E-15; petroleum the new coal?
  - **Other sectors:** Turn to aircraft, marine vessels for GHG regulation
- **Utility Sector:** Existing Sources in the Target
  - **New Coal:** Finalize NSPS for new sources – or maybe not?
  - **Existing Coal:** Ratchet GHG efficiency standards on existing facilities
  - **Permits:** Strict NSPS standards creep into PSD permits
  - **Finalize Rules:** Coal ash, 316(b)
  - **Hydraulic Fracturing:** EPA enters the field
  - **CSAPR 3.0:** Will EPA push the envelope a third time?
- **Manufacturing Sector:** The new utilities?
  - **Permits:** Utility NSPS/BACT standards creep into manufacturing sectors
  - **Greenhouse Gases:** First proposals under NSPS—who will be first?
  - **NAAQS:** Reduced standards + strict implementation = backdoor regulation
  - **Sectors:** Roll out new sector-wide rulemakings combining NSPS/NESHAPs

# The Reach of State Environmental Regulations Impacting Cross-Border Energy

- Low Carbon Fuel Standards
- Cap and Trade Programs
  - Import/Export of Energy
  - Cross Border Linkage
- Life Cycle Analysis

# The Emergence of a Citizen Group Strategy Utilizing Environmental Laws

- National Environmental Policy Act
- Endangered Species Act
- Project Challenges
- Regulatory Challenges
  - “Sue and Settle”
  - Climate Change Petitions
  - Aggregation
- Litigation
  - Public Nuisance Cases
  - Public Trust
  - 526 Challenge

# The Emergence of a Citizen Group Strategy Utilizing Environmental Laws



# State of Play: Today

