



The U.S. Environmental Protection Agency is considering action that could halt the future construction and the major renovations of buildings nationwide, and could also jeopardize funding for highway and transportation projects.

AGC and many other industry groups are mobilizing members and chapters to stop EPA. We can only do this by sending as many individual comments as possible in response to EPA's Advanced Notice of Proposed Rulemaking (ANPR) on Using the Clean Air Act to Regulate Greenhouse Gas Emissions. Public comment is due November 28, 2008.

AT ISSUE

The issue is whether EPA should use the Clean Air Act to regulate greenhouse gas emissions, and the bottom line is that the economic implications of such action are staggering. The issue is NOT climate change or the potential effects of climate change. However you feel about climate change, the fact remains that the Clean Air Act is the wrong tool for future regulation of greenhouse gases.

BACKGROUND

In June, AGC reported that the U.S. Environmental Protection Agency (EPA) plans to issue an advance notice of proposed rulemaking (ANPR) to "discuss and solicit public input" on how to use the Clean Air Act to control greenhouse gas (GHG) emissions from engines in construction equipment, as well as broad range of other mobile and stationary sources. To read the full AGC article, which provides a background on the EPA's decision to issue an ANPR and some of the potential impacts, go to <http://newsmanager.commpartners.com/agcenv/issues/2008-06-25/>.

This summer, EPA released a 600 page ANPR that is backed up by more than 11,450 pages of technical materials, which in turn refer to more than 6,613 pages of core references and scientific studies. Public comment is due November 28, 2008.

IMPACT ON CONSTRUCTION

AGC's primary concern is that using the Clean Air Act to regulate greenhouse gas emissions could halt building construction. Once EPA controls a greenhouse gas under almost any section of the Act, most buildings in the U.S. that emit that "pollutant" would become subject to costly and time-consuming permitting and construction requirements.

- **Building contractors** of nearly any mid-sized to large structure from offices and schools to power plants will have less work, because building owners would be subject to new costly and time-intensive permits --- not only for new construction and renovation, but also onerous new operating permits that would seriously hamper decisions to build or expand.
 1. *National Ambient Air Quality Standards (NAAQS)* Most, if not all, states would be in nonattainment for CO₂, which would require every state to develop and submit a State Implementation Plan that includes: Reasonably Available Control Measures (RACT); areas for interim progress toward attainment; an emissions inventory; permits; and contingency measures to be implemented if the area does not meet the NAAQS by the

attainment deadline. In addition, the federal government may only provide financial assistance, issue a permit or approve an activity in a nonattainment area to the extent it conforms with an approved SIP, and all transportation plans, programs and projects must conform to an approved SIP.

2. ***New Source Performance Standards (NSPS)***. Under the Clean Air Act, EPA also will need to include a category of sources in the NSPS list. EPA will then publish regulations establishing federal standards of performance for new sources within such category. Current NSPS categories include boilers, landfills, petroleum refineries and turbines; there are 70 categories and sub-categories in all. Once EPA has established NSPS, states are required to submit to the agency a procedure for implementing and enforcing such standards for new or modified sources located in the state. Were EPA to issue plant-by-plant standards of performance for CO₂, businesses will have to install best demonstrated technologies pursuant to NSPS. If greenhouse gases were regulated, the categories would be limitless.
3. ***Prevention of Significant Deterioration (PSD)***. **As a general matter, no new or existing “major” stationary sources of greenhouse gases could be built or modified if the construction would increase net emissions, without first undergoing the PSD permitting process and installing best available control technology for each pollutant subject to regulation under Act. New office buildings, hotels, schools, churches, nursing homes, and hospitals could be considered a “major source” under this section of the Act. Also most large buildings heated by furnaces using fossil fuels or buildings of any size using natural gas or businesses that generate CO₂ as a component of their operations would likely be deemed “major sources.” *The Mill’s Study estimates that more than 1 million commercial buildings emit enough CO₂ to be considered new major sources and become regulated.***
4. Title V (operating permits). Title V applies to all sources that emit over 100 tons per year of an air pollutant, regardless of source categories. And Title V includes a citizen suit provision that could have severe consequences because each permit application could be challenged by any citizen. When a source becomes subject to Title V, it must apply for a permit within one year of the date it became subject. A Title V source generally may not operate without a permit.
 - **Highway and transportation contractors** may eventually be impacted by loss of federal funding for projects. The National Ambient Air Quality Standards (NAAQS) process includes penalties for areas in nonattainment and not in compliance with new standards for CO₂ emissions. Penalties include the loss of funding for future highway projects.
 - The construction of new **buildings** and improving our **highway and transportation** infrastructure ultimately will be the greatest way to reduce US greenhouse gas emissions. Construction and renovation is the only way to improve the energy efficiency of our vertical and horizontal infrastructure. Regulating greenhouse gas emissions through the Clean Air Act would likely “tie the hands” of construction firms and other businesses trying to reduce those emissions.

AVAILABLE RESOURCES

The EPA web page for the ANPR: <http://www.epa.gov/climatechange/anpr.html>

The U.S. Chamber of Commerce web page for the ANPR: <http://www.uschamber.com/co2/default> (The Mill’s Study, on the Chamber’s web site, provides an estimate of the stationary sources that would be impacted by the Prevention of Significant Deterioration program.)

The Heritage Foundation web page for the ANPR: <http://www.stopepa.com/>

National Association of Manufacturers web page on climate change:

<http://www.nam.org/climatechangetoolkit>