

Advocacy Update: Climate Change

Regulatory Developments

Advanced Notice of Proposed Rulemaking on Greenhouse Gases

- In July of 2008, EPA published an Advance Notice of Proposed Rulemaking on the merits of regulating greenhouse gas emissions under the Clean Air Act. The agency acted in response to an earlier Supreme Court ruling that it had an obligation to provide a reasoned explanation for finding that greenhouse gases either may or may not be reasonably expected to endanger public health or welfare.
- In November of 2008, AGC submitted detailed comments explaining that an endangerment finding could trigger a broad range of regulatory requirements, and indeed, that it could compel EPA to broadly regulate the entire economy.
 - Such regulatory requirements could include National Ambient Air Quality Standards (NAAQS), New Source Performance Standards, and new permits intended to prevent any significant deterioration of the environment, and “Title V” operating permits.
 - An ambient air quality standard for greenhouse gases could easily throw the entire country into “nonattainment,” complicating the already complex process of State Implementation Plans and threatening federal transportation funding.
 - New Source Performance Standards would be new federal standards for any new or modified building or other stationary source of greenhouse gases, and would be very likely to increase the cost of operating buildings or other facilities within the U.S.
 - To prevent significant deterioration of the environment, EPA could be compelled to require anyone intending to construct or modify any major stationary source of greenhouse gases to obtain a special federal permit, before starting work. Studies suggest that over one million office buildings, warehouses, health care facilities, hotels, motels food service facilities churches and other places of worship, and even farms, would have to obtain such permits.
 - In accordance with current rules, the number of facilities that require Title V operating permits is between 15,000 and 16,000. If EPA made an endangerment finding for greenhouse gases, that number could well exceed 1.2 million.

Mandatory Greenhouse Gas Reporting Rule

- EPA was required to develop a mandatory GHG reporting rule in the FY2008 Consolidated Appropriations Act requires EPA to adopt a rule that will require future reporting on source of greenhouse gases.
- In September 2009, EPA finalized the rule, which requires a broad range of facilities, including all facilities that manufacture or produce cement, lime, iron or steel, to monitor and report their annual emissions of greenhouse gases. The rule requires other facilities to monitor and report their emissions only if their emissions meet or exceed 25,000 ton per.
- While it would appear that most AGC members will be exempt from the reporting requirements, it would also appear that many project owners and producers of materials used in construction will have to report.
- The covered facilities must start monitoring emissions in January 2010 and submit their first reports by March 31, 2011.

Proposed Endangerment Finding

- On April 24, 2009, EPA proposed to make an “endangerment finding” that current and projected concentrations of certain greenhouse gases threaten the public health and welfare. As this report is written, EPA has not finalized the proposed finding.
- While the proposal focuses on new motor vehicles and motor vehicle engines, it opens the door for EPA to regulate all sources of the same GHGs under the CAA.
- Such EPA regulation is likely unless Congress moves ahead with legislation addressing climate change.
- AGC has strongly opposed any effort to regulate GHG emissions under the CAA, as that heavy-handed approach could impede the construction and/or expansion of most buildings (as EPA established new source performance standards and began to require both construction and operating permits). Even EPA Administrator Lisa Jackson has agreed that the Clean Air Act is the wrong instrument for regulating GHGs, stating in a press release that EPA prefers Congress to take the lead.
- AGC submitted comments on this proposal.

Proposed Prevention of Significant Deterioration/Title V Greenhouse Gas Tailoring Rule

- September 30, 2009, EPA announced the release of its draft “tailoring rule” for the Prevention of Significant Deterioration/Title V under the Clean Air Act for Greenhouse Gas. The proposed rule would use the Act to regulate greenhouse gas emissions from large sources --- 25,000 metric tons per year carbon dioxide equivalent or more. This is the same threshold amount that EPA is using in the Mandatory Reporting Rule (see update above) and the same threshold identified in recent legislation. If finalized, facilities that meet the emissions threshold would need to obtain CAA construction and operating permits.
- The public will have 60 days to comment from when the proposed rule is published in the *Federal Register*.
- EPA seeks to raise the emissions threshold for covered stationary sources under the existing Prevention of Significant Deterioration program from its current level of 250 tons per year to 25,000 metric tpy CO₂e. EPA proposed this tailoring rule in anticipation of the extended regulation of greenhouse gases from stationary sources under the Clean Air Act, which is triggered once the Agency begins regulating mobile sources under the Act as it has proposed with its new standards for motor vehicles.
- Under the lower and current threshold of 250 tons per year, the U.S. Chamber of Commerce estimated that over a million buildings would be affected by the PSD permitting program, which requires lengthy and expensive permits for new construction and significant upgrades to existing structures.

Legislative Developments

Climate Change Bill

- The U.S. House of Representatives passed a comprehensive climate and energy bill this past summer. The bill would establish a cap and trade program intended to cut U.S. greenhouse gas emissions below their 2005 levels.
- Under this program, covered entities would need tradable federal permits, called "allowances," for each ton of CO₂ they emitted into the atmosphere.
- The bill would also:
 - Direct EPA to set emissions standards for sources outside the program, including standards for the black carbon that construction equipment emits;
 - Require EPA to set greenhouse gas emission standards for a variety of on-road vehicles; and
 - Permit EPA to set emission standards for off-road equipment.
- AGC's analysis shows a significant impact on construction in the form of higher energy prices, higher raw materials prices, and potential EPA regulation of land use (including local planning decisions) and transportation planning.
- The U.S. Senate is debating a draft comprehensive climate and energy bill (introduced on September 30). AGC is still analyzing the impact on the construction industry, however, the draft bill is similar to the House bill passed earlier this year.
- AGC has met with leaders of other groups in the building and development industries to develop a list of "threats and opportunities" in climate legislation. These "threats and opportunities" have led to a draft set of "guiding principles" that, once approved, AGC and other groups can distribute to Senate leaders (see below). AGC also coordinated visits with staff of Senate committees tasked with reviewing and editing the draft bill.

News and Information

Draft Guiding Principles for Climate Change Legislation for the Real Estate and Construction Industries and Related Groups

- The U.S. Congress is considering comprehensive energy and climate change legislation that aims to increase energy efficiency, address the risk of global warming through a "cap and trade" program that would enable the federal government to regulate greenhouse gas emissions (GHG), and transition the economy to the carbon-constrained future that many have come to expect. At the same time, the U.S. Environmental Protection Agency (EPA) is considering its options for regulating GHGs under the federal Clean Air Act.
- The real estate and construction industries, and related groups, are concerned that new federal legislation and/or regulations intended to control GHG emissions could increase the cost of building operations and deter new construction and renovation of existing buildings and other facilities. The diverse organizations that represent these industries and that have participated in the development of these guiding principles have considerable experience with the design, construction, and operation of the facilities on which the economy depends. They have come together to develop these principles in a joint effort to provide the basic guidance that public policymakers require. They agree:
 1. The Clean Air Act does not provide a workable solution to greenhouse gas emissions from either stationary or mobile sources. Any new legislation relating to GHGs should supersede the Clean Air Act insofar as it may apply to such emissions. The real estate and construction

industries would like to work with legislators to develop alternatives that promise to reduce emissions without further damaging the economy.

2. Without taking a position on the “cap and trade” program that Congress has yet to put into final form, the real estate and construction industries urge Congress to consider the negative consequences that such a scheme could have for the economy, if not properly structured. The U.S. economy is dependent on energy for electricity and fuel, and the economy will remain very sensitive to any significant changes in the production or delivery of the energy that it requires. Climate change legislation is likely to have serious and enduring impacts on the quality of American life, and should not be rushed. As a threshold matter, Congress should establish practical and achievable goals for such legislation, and should include such measures as are necessary to limit the risk that key prices will spike, or that important markets will grow volatile.
3. “Cap and trade” legislation should protect small businesses, setting thresholds high enough to exempt at least the vast majority of such businesses (100,000 metric tons per year of CO₂ equivalent). For the same reason, such legislation should not empower EPA to regulate small stationary emitters (i.e., those outside the “cap and trade” program). EPA’s analysis of its proposed reporting requirements reveals that the costs and burdens of federal regulation increase dramatically as the threshold drops. A 100,000 ton threshold captures 52.4 percent of all GHG emissions but covers only 6,598 facilities. A 10,000 ton increases the percentage of captured emissions to 55.5 percent but dramatically increases the number of covered facilities to 20,765.
4. Legislation should include positive and voluntary incentives for property owners to design, construct, and operate their new facilities to be energy efficient, and just as importantly, to renovate their existing facilities to the extent necessary to improve their energy efficiency. Such legislation would encourage the investments necessary to improve the environmental performance of the nation’s private and public infrastructure.
5. The U.S. Department of Transportation should continue to take the lead in transportation planning and to direct the enforcement of any related requirements. EPA does not have the experience or the expertise needed to perform those functions, or to usurp state or local authority over most land use planning.
6. The private sector organizations that have developed the building codes and standards that make American buildings the safest in the world should be tasked by Congress to achieve higher energy efficiency in buildings. Achieving higher energy efficiency in buildings will be achieved by promoting the adoption and enforcement of existing codes and standards, and by using the existing process to achieve consensus on advanced energy efficiency goals, rather than by imposing requirements or specifications that are not life-cycle cost effective.

New Development: Diesel Advocacy Group Releases Paper on Climate Change, Black Carbon and Clean Diesel

- There has been an increased focus on black carbon and its potential impact on global warming. Diesel vehicles and equipment are one of the many sources of black carbon emissions. The Diesel Technology Forum recently published a new paper, "Climate Change, Black Carbon & Clean Diesel," that presents definitions, statistics and facts about black carbon. The paper explains how the introduction of new "clean diesel" technology is effectively shrinking black carbon emissions from U.S. transportation-related sources.
- Over the last decade, EPA has promulgated several new emissions standards for diesel fuel and diesel engines. While many, including the introduction of ULSD (ultra-low sulfur diesel) fuel

and the on-highway diesel rule, have already been implemented, others rules that apply to off-road diesel equipment, like construction equipment, are being phased in over the next several years. As a result of changes in domestic fuel composition, along with advances in engine design and emissions control technology, black carbon emissions have been virtually eliminated from new "clean diesel" trucks and buses manufactured in the United States. Since 2004, these changes brought about a 99 percent reduction in black carbon emissions from heavy-duty diesel vehicles. Over the next several years, the latest clean diesel technology will also be used in the manufacture of most new off-road diesel engines/equipment.

- With diesel's superior engine efficiency and the fuel's higher energy content, diesel equipment can do the same amount of work while burning less fuel than their gasoline counterparts, typically resulting in a notable reduction in greenhouse gas (GHG) emissions and less energy use. Many construction professionals are voluntarily taking steps to decrease their fuel consumption - through reduced equipment idling, equipment maintenance, and operator training - which further reduces energy consumption and GHG emissions. Some contractors are even opting to use alternative low-carbon fuels (like biodiesel and ethanol) that may significantly reduce GHG and other emissions when compared to petroleum diesel.
- As DTF's report notes, installing diesel particulate filters on diesel engines/machines that are currently out in the field can reduce diesel particulate and black carbon emissions. However, for the construction industry, the costs of retrofitting equipment are prohibitive, and financial assistance is therefore needed to facilitate such an initiative. AGC has been working hard to secure federal funding for diesel retrofit:
 - AGC's continues to urge Congress to fully fund EPA's Diesel Emissions Reduction Program, which provides grants/loans to government agencies and nonprofit groups (e.g., AGC Chapters) for reducing emissions from existing diesel engines through a variety of strategies.
 - AGC also recommends the creation of a federal investment tax credit to provide a financial incentive for contractors to retrofit or replace their existing diesel powered equipment. Implementing a targeted investment tax credit would encourage contractors to upgrade their equipment to the current engine technology.
 - AGC and the non-profit Clean Air Task Force jointly called on Congress to give state contracting officials both the authority and funding to require the use of clean construction equipment at federally-funded transportation projects. The groups are urging Congress to include the agreement in an upcoming six-year surface transportation reauthorization bill. (See related update below.)