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"Best Available Control Technology" for Greenhouse Gas Emissions: EPA Releases Guidance

On November 10, 2010, EPA released long-awaited guidance on determining "Best Available Control Technology" (BACT) for greenhouse gas (GHG) emissions. The guidance, *PSD and Title V Permitting Guidance for Greenhouse Gases*, is intended for use by applicants and permitting authorities as of January 2, 2011, when EPA regulations adopted earlier this year will require certain sources to obtain Prevention of Significant Deterioration (PSD) and Title V permits for GHG emissions. While current GHG permitting rules are expected to affect a relatively limited number of facilities, such as large fossil fuel power plants and large industrial facilities, the guidance document is of general interest in indicating the direction of current and potential future GHG regulation.

ENERGY EFFICIENCY FOCUS

As expected, the guidance highlights increased energy efficiency as essentially the only feasible BACT option at this time for nearly all sources. EPA views energy efficiency as a proxy for less combustion of fossil fuels and, therefore, lower emissions of GHGs.

The guidance makes no changes to the basic BACT process: (1) identify all available control technologies; (2) eliminate technically infeasible options; (3) rank remaining options by emission control effectiveness; (4) evaluate and winnow options on the basis of cost-effectiveness, energy impacts, and any collateral environmental impacts; and (5) select the most effective control option left. Within this framework, the guidance discusses new wrinkles presented by GHG emissions.

SCOPE OF TECHNOLOGIES TO BE ASSESSED

For identifying possible energy efficiency options in step 1, the guidance states that these "generally" should not entail a redefinition of the source (for example, changing a proposed coal-burning power plant to a gas-burning plant). However, it does support changing from one type of a certain fuel to another (for example, for a proposed coal-burning plant, changing the coal type to one expected to produce less GHG emissions). For certain industry sectors, EPA has also concurrently released several "white papers" that discuss specific potential energy efficiency measures. These sectors include electricity-generating units and large industrial/commercial/

institutional boilers.

COST-EFFECTIVENESS AND ENERGY IMPACTS

For assessing the cost-effectiveness of energy efficiency measures in step 4, the guidance notes that there is little history of BACT analyses for GHG at this time. Throughout the document, EPA emphasizes the "wide range of discretion" wielded by the permitting authority in the BACT process, subject to appropriately documenting the basis for each decision. As for considering energy impacts, the guidance calls for the step 4 analysis to assess potential changes in the amount of energy that must be produced at an off-site location to support the facility seeking the permit. Such off-site impact assessments typically have not been a focus of BACT analysis for non-GHGs.

Beyond these points, the guidance addresses various other GHG-specific considerations for BACT analysis, as illustrated by hypothetical examples. Beyond BACT, it also generally discusses when and how the PSD and Title V programs will apply to GHG sources.

EPA has said it will accept "public feedback" regarding any provisions of the guidance that need correction or "additional clarity." However, with GHG permitting to begin in January, the public comment period will be limited to two weeks. A *Federal Register* notice to initiate the comment period is expected shortly.

Copies of the guidance document and sector-specific white papers are available at <http://www.epa.gov/nsr/ghgpermitting.html>.

FOR MORE INFORMATION

Robinson & Cole LLP's Environmental and Utilities Practice Group is assisting a number of clients in identifying risks and opportunities in emerging climate change law. For questions regarding the GHG BACT guidance or other GHG issues, please contact one of the following attorneys:

[Brian C. Freeman](#)
Hartford Office
(860) 275-8310

[Kirstin M. Etela](#)
Stamford Office
(203) 462-7534

[Peter R. Knight](#)
Hartford Office
(860) 275-8387

[Earl W. Phillips, Jr.](#)
Hartford Office
(860) 275-8220

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