HUNTON& WILLIAMS

Client Alert

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EPA Tries Again To Regulate Carbon Dioxide Emissions from New Power Plants

Today, the US Environmental Protection Agency (EPA) issued its re-proposed, 463-page carbon dioxide emissions standards for new fossil fuel-fired power plants, rescinding its previous April 2012 proposed standards. Among other measures, the proposed rule would require all new coal-fired power plants to incorporate carbon capture and sequestration (CCS) technology.

Specifically, the proposal would limit carbon dioxide emissions from new fossil fuel-fired steam generating units (utility boilers and integrated gasification combined cycle) to 1,100 lbs. CO_2/MWh on a 12-operating-month rolling average; or to 1,000-1,050 lbs. CO_2/MWh on an 84-operating-month rolling average. It would also limit carbon dioxide emissions from new natural gas-fired stationary combustion turbines to 1,000 lbs. CO_2/MWh for larger units (those with a heat input rating greater than 850 mmBtu/hour), and 1,100 lbs. CO_2/MWh for smaller units (those with a heat input rating less than or equal to 850 mmBtu/hour).

EPA attempts to justify these standards by determining that the "best system of emission reduction adequately demonstrated" for new fossil fuel-fired steam generating units is partial implementation of CCS, and is natural gas combined cycle without CCS for natural gas-fired stationary combustion turbines. In making this determination, EPA relies on five electric generating projects incorporating CCS that are currently operational, near operational, or planned. EPA primarily relies on the Kemper County Energy Facility in Mississippi, which is approximately 75% complete. The other projects cited by EPA as evidence that CCS is "adequately demonstrated" are the Texas Clean Energy Project (TX), the Hydrogen Energy California Project (CA), the W.A. Parish CCS Project (TX), and the SaskPower Boundary Dam CCS Project (Canada).

The rule does not apply to sources undertaking modification or reconstruction, simple-cycle "peaking" stationary combustion turbines that sell less than one-third of their potential electrical output to the grid, power plants that primarily fire biomass and oil, and a few projects EPA has identified as being under development. EPA has dropped the "transitional source" category it created in the April 2012 proposal, which included sources that had been permitted but had not yet commenced construction.

This rule will apply to any new plant that commences construction after the date the proposed rule is published in the *Federal Register*. This publication is expected to occur in October 2013, at which point a 60-day public comment period will commence.

EPA re-proposed the standards for new power plants in large part because industry and others identified numerous legal infirmities with the April 2012 proposal. It does not appear that EPA has resolved many of those problems in the proposed rule, and it is almost a certainty that industry will challenge it in court.

Please do not hesitate to contact us for further information on EPA's proposed standards for new power plants or any other issue related to regulation of greenhouse gases under the Clean Air Act.

Contacts

F. William Brownell
bbrownell@hunton.com

Norman W. Fichthorn
nfichthorn@hunton.com

Craig S. Harrison
charrison@hunton.com

Henry V. Nickel
hnickel@hunton.com

Joseph C. Stanko, Jr.
jstanko@hunton.com

Tauna M. Szymanski
tszymanski@hunton.com

William L. Wehrum
wwehrum@hunton.com

Allison D. Wood
awood@hunton.com