

## Requested Wheeler Presentations

- a. How to Conduct Congressional Oversight (2017) [**a copy of handouts used**]
- b. Preparing for the New Administration (2017) [**no materials available**]
- c. The Air Up There: Developments and Opportunities for Clean Air, Coal, Energy and Climate (2016) [**no materials available, agenda attached, please note there was a typo on the date, the conference occurred in 2015, not 2016**]
- d. Preparing for the Change in Administration (2016) [**a copy of handouts used**]
- e. Focusing on What Really Should be Debated: The Cases of Boiler MACT, Utility MACT and CSPAR (2012) [**copy of Powerpoint attached**]
- f. The Waxman-Markey American Clean Energy and Security Act: Cap-and-Trade (2009) [**copy of Powerpoint attached**]



# FAEGRE BAKER DANIELS

## Andrew Wheeler

As a principal and the team leader of the energy and environment practice group at FaegreBD Consulting and Of Counsel at Faegre Baker Daniels law firm, Andrew Wheeler employs his extensive background in energy, environmental, and infrastructure policy. He helps lead the firm's practice by advising numerous types of clients on comprehensive legislative, regulatory and operational strategies. His knowledge and insider understanding of the Senate, House and various federal agencies allows Andrew to develop tailored, comprehensive strategies that assist clients in realizing their federal affairs goals and build lasting relationships with key policymakers.

Andrew came to FaegreBD Consulting from the Senate Committee on Environment and Public Works where he served as Majority Staff Director, Minority Staff Director and Chief Counsel. In those roles, he worked on every major piece of environmental and infrastructure related legislation over fifteen years. Prior to his work at the full Senate EPW Committee, Andrew served in a similar capacity for six years for the Subcommittee on Clean Air, Climate Change, Wetlands and Nuclear Safety. He started his career at the Environmental Protection Agency working on toxic chemical, pollution prevention and right-to-know issues. Andrew completed his law degree at Washington University, his MBA at George Mason University, and his undergraduate work at Case Western Reserve University.

Andrew R. Wheeler  
*Principal*

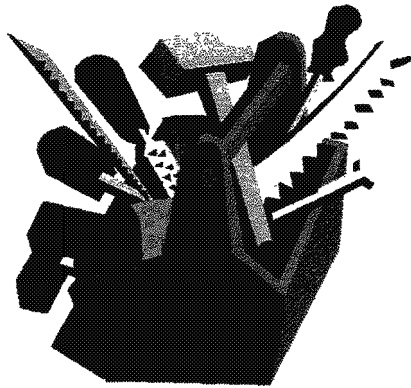
[andrew.wheeler@FaegreBD.com](mailto:andrew.wheeler@FaegreBD.com)

D: +1 202 312 7424 | M:  | F: +1 202 312 7460

**FaegreBD Consulting**

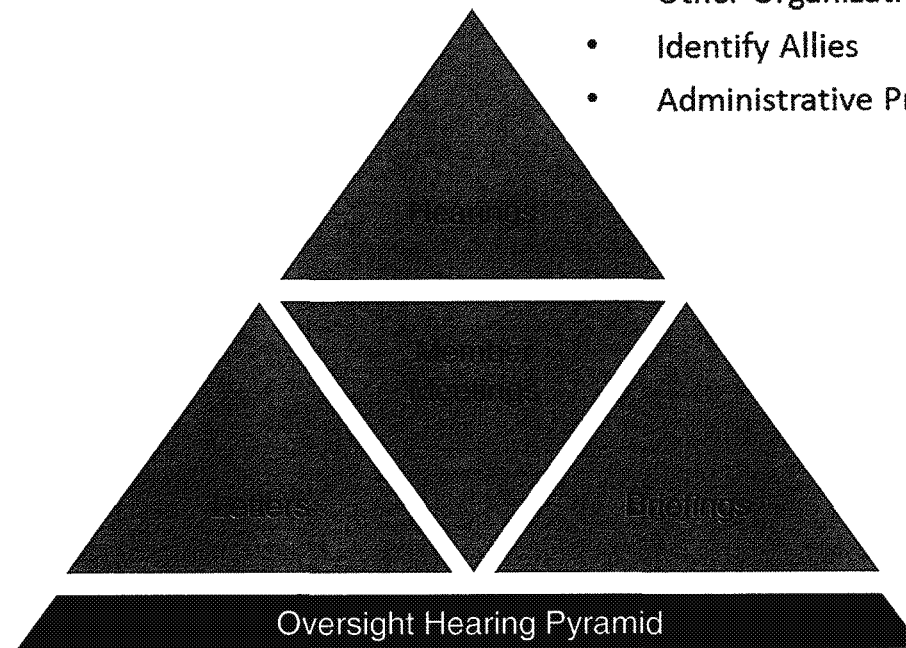
1050 K Street NW | Suite 400 | Washington, DC 20001, USA

How to Conduct  
Congressional  
Oversight  
- Bipartisan Policy  
Center 2017



# Oversight Toolbox

- Letters to Agencies.
- Committee Briefings, Office Briefings
- Member Meetings
- Other Organizations (GAO, NAS, Commissions, IGs)
- Identify Allies
- Administrative Procedures Process



RECENT ADMINISTRATIVE CHANGES AND JUDICIAL DECISIONS  
RELATING TO SECTION 404  
OF THE FEDERAL WATER POLLUTION CONTROL ACT  
THURSDAY, JUNE 26, 1997

Senator Inhofe. Let me start by asking Mr. Davis the question. In your testimony, both your written testimony and your oral testimony, you talked about the 14 days as the average time the takes the Corps to approve a general permit and 104 days for the approval of individual permit, but I've heard all kinds of scary stories from the field saying it has been much, much longer than that.

One of the reasons that I understand is that it takes the Corps quite a number of days before it decides when an application is complete, so that you don't start the clock running until that point, and then maybe after that point it's 104 days.

Now, I would like to ask you, have you done any studies to determine how long it is from the time the application is first submitted and is granted, not when it's accepted as an application of proper form?

Mr. Davis. I don't think, Mr. Chairman, we've done any specific studies. We have, though, encouraged our field, through training and guidance, to expedite the process and to not allow this initial phase, which is obviously very important to get a complete application before we can go out with a public notice and advertise to the public the proposed project, we have encouraged them to keep that moving.

If you look at the literally tens of thousands of actions a year, I'm sure there are some abuses of that. But, on balance, when you look at the way the program is working --

Senator Inhofe. It's striking an average here. If it's 104 days, do you think that maybe at an average it would take 200 additional days from the time it's submitted until it's considered to be complete?

Mr. Davis. Absolutely not. I mean, the law requires us to submit a -- to publish a public notice within 15 days of complete application. My experience has been that a large majority of them come in relatively complete and we're ready to go with that and we meet that 15-day requirement. So I think it would be much less than 200 days.

Now, there are projects that are very, very large projects -

Senator Inhofe. No. I'm talking about just average, because --

Mr. Davis. No. On average it would not be 200 days.

Senator Inhofe. This is my concern. I know there are exceptions. All right.

ENVIRONMENTAL PROTECTION AGENCY'S CLEAN AIR BUDGET  
AND THE ARMY CORPS OF ENGINEERS' WETLANDS BUDGET  
TUESDAY, MARCH 28, 2000

Senator Inhofe. Okay. That's not the figure that I have.

Let's go to this chart up here. At our last wetlands hearing three years ago, we asked you to start keeping track of the length of time it takes for the Corps to review and act on an individual permit. I know you kept track on the periods between the time of application -- why don't you go up there and point to this -- the time of application is deemed complete, and the time it is approved. But the period of time -- that's 127 days -- the period of time that I'm concerned about is the period from which it is submitted to the time it is approved.

Now, we had asked for that information. Do you have that information for us?

Mr. Davis. Mr. Chairman, I don't believe we have that information.

Senator Inhofe. All right. That's a good, honest answer. Let's get it.

# Justification for 2000 WRDA Amendment

## Timeline on Permits Requests

- June 26, 1997      Hearing where you first asked Mr. Davis about the process timing for individual permits.
- August 29, 1997    Corps answered Hearing followup questions regarding the average time for individual permits.
- Jan 26, 1998        Staff requested in briefing that they track the individual permits processing time.
- Feb 20, 1998        Corps responded that it would be difficult to track
- March 5, 1998       Staff reiterated in briefing that Senator Inhofe would like the data tracked.
- Oct 9, 1998         Staff reiterated in briefing that Senator Inhofe would like the data tracked.

From 2000 WRDA

Sec. 214. Regulatory Analysis and Management Systems Data.

This provision requires the Secretary to publish on the Army Corps' Regulatory Program website, quarterly reports that include all Regulatory Analysis and Management Systems (RAMS) data, including the date on which an individual or nationwide permit application under Section 404 of the Federal Water Pollution Control Act is received, the date on which the application is considered complete, the date on which the Corps either grants or denies the permit. Also, if an application is not complete when first received by the Corps, a description of the reason the application is not complete should be included in the RAMS. This provision was an amendment offered by Senator Inhofe and adopted by unanimous consent.

**SEC. 2027. FISCAL TRANSPARENCY REPORT.**

(a) **IN GENERAL.**—On the third Tuesday of January of each year beginning January 2008, the Chief of Engineers shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on—

- (1) the expenditures by the Corps for the preceding fiscal year and estimated expenditures by the Corps for the current fiscal year; and
- (2) for projects and activities that are not scheduled for completion in the current fiscal year, the estimated expenditures by the Corps necessary in the following fiscal year for each project or activity to maintain the same level of effort being achieved in the current fiscal year.

(b) **CONTENTS.**—In addition to the information described in subsection (a), the report shall contain a detailed accounting of the following information:

(1) With respect to activities carried out with funding provided under the Construction appropriations account for the Secretary, information on—

(A) projects currently under construction, including—

- (i) allocations to date;
- (ii) the number of years remaining to complete construction;
- (iii) the estimated annual Federal cost to maintain that construction schedule; and
- (iv) a list of projects the Corps of Engineers expects to complete during the current fiscal year; and

(B) projects for which there is a signed partnership agreement and completed planning, engineering, and design, including—

- (i) the number of years the project is expected to require for completion; and
- (ii) estimated annual Federal cost to maintain that construction schedule.

10 USC 3036

note.

121 STAT. 1080 PUBLIC LAW 110-114—NOV. 8, 2007

(2) With respect to operation and maintenance of the inland and intracoastal waterways identified by section 206 of the Inland Waterways Revenue Act of 1978 (33 U.S.C. 1804)—

- (A) the estimated annual cost to maintain each waterway for the authorized reach and at the authorized depth;
- (B) the estimated annual cost of operation and maintenance of locks and dams to ensure navigation without interruption; and

- (C) the actual expenditures to maintain each waterway.
- (3) With respect to activities carried out with funding provided under the Investigations appropriations account for the Secretary—
  - (A) the number of active studies;
  - (B) the number of completed studies not yet authorized for construction;
  - (C) the number of initiated studies; and
  - (D) the number of studies expected to be completed during the fiscal year.
- (4) Funding received and estimates of funds to be received for interagency and international support activities under section 234 of the Water Resources Development Act of 1996 (33 U.S.C. 2323a).
- (5) Recreation fees and lease payments.
- (6) Hydropower and water storage receipts.
- (7) Deposits into the Inland Waterways Trust Fund and the Harbor Maintenance Trust Fund.
- (8) Other revenues and fees collected by the Corps of Engineers.
- (9) With respect to permit applications and notifications, a list of individual permit applications and nationwide permit notifications, including—
  - (A) the date on which each permit application is filed;
  - (B) the date on which each permit application is determined to be complete;
  - (C) the date on which any permit application is withdrawn; and
  - (D) the date on which the Corps of Engineers grants or denies each permit.
- (10) With respect to projects that are authorized but for which construction is not complete, a list of such projects for which no funds have been allocated for the 5 preceding fiscal years, including, for each project—
  - (A) the authorization date;
  - (B) the last allocation date;
  - (C) the percentage of construction completed;
  - (D) the estimated cost remaining until completion of the project; and
  - (E) a brief explanation of the reasons for the delay.

Permits  
Section

MEMORANDUM

TO: Interested Parties

FROM: Michael W. Evans

DATE: January 14, 2005

SUBJECT: How to Refer to Statutory Provisions

When you are working on legislation, it often is necessary to refer to a specific provision of a statute. In order to help you do so, this outline explains how to refer to the various provisions. It will help you be more precise. It also will allow you to adopt an air of superiority whenever someone else refers to clause two as “two little eye.”

Sec. 101. This is a section.

(a) This is a subsection.

(1) This is a paragraph.

(A) This is a subparagraph.

(i) This is a clause. It is referred to as “clause one.” For some reason, lower case Roman numerals come before upper case Roman numerals.

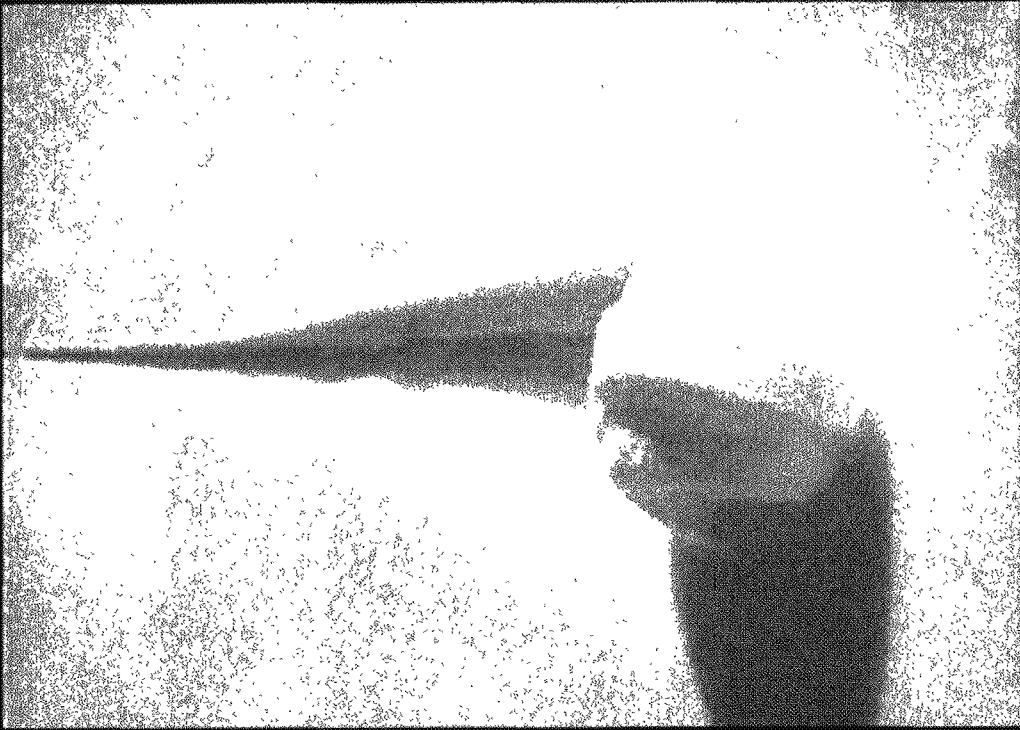
(I) This is a subclause. It is referred to as “subclause one.”

(aa) This is an item. It is referred to as “item a.”

There is no official designation for a provision beyond an item. It’s probably a subitem. Anyway, if you get to that level of detail, your draft probably is too complex.



IT'S A SHORT TRIP FROM RIDING THE WAVES OF CHANGE TO  
BEING TORN APART BY THE JAWS OF DEFEAT.



A FEW HARMLESS FLAKES WORKING TOGETHER CAN  
UNLEASH AN AVALANCHE OF DESTRUCTION.



# Indiana University Robert H. McKinney School of Law

## Events

Friday, March 6, 2015

### IU McKinney School of Law's Eighth Annual Environment, Energy & Natural Resources Symposium The Air Up There: Developments and Opportunities for Clean Air, Coal, Energy, and Climate

CLE: 6.5 HOURS

**Speaker:** Janet McCabe, Air Official at US Environmental Protection Agency, Washington, DC

**Time:** 10:00 am - 6:00 pm

**Location:** Wynne Courtroom and Atrium, Inlow Hall, 530 W. New York Street, Indianapolis, IN

**Contact:** enlaw@iu.edu

**"Too many Americans continue to breathe dirty air. And political paralysis has plagued further progress against air pollution. We have to break this logjam by applying more than just Federal leverage. We must take advantage of the innovation, energy, and ingenuity of every American."**

- President George H. W. Bush

**"We've got to pause and ask ourselves: How much clean air do we need?"**

- Lee Iacocca

IU Robert H. McKinney School of Law's **Eighth Annual Spring Environmental Symposium** will focus on the legal challenges and opportunities in the management of air quality – including an exploration of proposed new rules regarding greenhouse gas emissions from coal-fired power plants, energy industry responses to regulatory changes, and opportunities for renewable energy in Indiana.

Our Keynote, **Janet McCabe**, is the top Air Official at US Environmental Protection Agency in Washington, DC, and she will be joined by experts and industry leaders from the private sector, government, and public interest organizations.

Other experts and officials from state and federal government and from the private sector will join panels to discuss:

- **Proposed Greenhouse Gas Rules** – Clean Air Act Draft **111(d)** Regulations
- **Renewable Energy & Air:** The Market and Legal Policy Response to the move from Fossil Fuels
- **The Private Sector Response** to Clean Air Regulatory Changes

We will also have legal **ethics panels** on climate change and environmental justice as well as an expert introduction to the science of climate change.

#### **Admission:**

- \$75 Attorney w/CLE (6.5 hours, including 1.0 ethics, pending approval)
- \$25 General Admission
- Free (w/ID) for students, teachers & non-profit employees

#### **Registration:**

» **Online Registration for Outside Attendees**

- \$75 Attorney w/ 6.5 CLE Credit hours (pending approval)
- \$25 General Admission

» **Online Registration for High School/College (IU, McKinney and Other) Students, Faculty, Staff and Non-Profit Employees**

**Agenda:**

9:30am - Noon	Registration
10:00am-10:15am	<b>Welcome &amp; Introductions</b>
10:15am-10:45am	<b>Setting the Stage - The Air Up There: Science, Policy, and Legal Ethics Challenges</b> <ul style="list-style-type: none"> <li>• <b>Eric Dannenmaier</b>, Professor of Law, IU Robert H. McKinney School of Law, Indianapolis, IN</li> </ul>
10:45am-11:30am	<b>Panel One - Climate Change – A Science Primer for Law and Policy Leaders</b> <ul style="list-style-type: none"> <li>• <b>Dr. Gabriel Filippelli</b>, Professor, IUPUI Department of Earth Sciences</li> </ul>
11:30am-12:00pm	<b>LUNCH</b>
12:00pm-1:00pm	<b>KEYNOTE - National Clean Air Regulatory Priorities</b> <ul style="list-style-type: none"> <li>• <b>Janet McCabe</b>, Acting Assistant Administrator for Air and Radiation, US EPA, Washington, DC</li> </ul>
1:15pm-2:15pm	<b>Panel Two - Proposed Greenhouse Gas Rules – Clean Air Act Draft 111(d) Regulations</b> <ul style="list-style-type: none"> <li>• <b>Jodi Perras</b>, Indiana Representative for Sierra Club's Beyond Coal Campaign, Sierra Club</li> <li>• <b>Mark Maassel</b>, President Indiana Energy Association [invited]</li> <li>• <b>Bob Martineau</b>, Commissioner, Environmental Counsel of the States [invited], Commissioner, Environmental Counsel of the States [invited]</li> </ul>
2:30pm-3:30pm	<b>Panel Three - Renewable Energy &amp; Air: The Market and Legal Policy Response to the move from Fossil Fuels</b> <ul style="list-style-type: none"> <li>• <b>Nick Melloh</b>, President, Johnson Melloh Solutions</li> <li>• <b>Dr. M. Razi Nalim</b>, Ph.D., P.E., CSO, Aerodyn Combustion, LLC</li> <li>• <b>Dr. Peter J. Schubert</b>, Ph.D., P.E. Principal, Biomass Unit Ops, LLC</li> <li>• <b>Angela Weber</b>, Commissioner, Indiana Utilities Regulatory Commission</li> </ul>
3:30-4:00pm	<b>Special Presentation – Legal Ethics in the Air: What is a Lawyer's Duty to Environmental Justice</b> <b>Dr. Carlton Waterhouse</b> , Professor, IU Robert H. McKinney School of Law – Indianapolis, IN
4:15pm-5:15pm	<b>Panel Four - The Private Sector Response to Clean Air Regulatory Changes</b> <ul style="list-style-type: none"> <li>• <b>Edward L. "Skipp" Kropp</b>, Of Counsel, Steptoe &amp; Johnson, PLLC</li> <li>• <b>Michael Allen</b>, Associate General Counsel, Citizens Energy Group</li> <li>• <b>Kelly Carmichael</b>, Managing Director, Environmental Safety &amp; Sustainability, NiSource</li> <li>• <b>Andrew Wheeler</b>, Principal, FaegreBD Consulting</li> </ul>
5:15pm-6:00pm	<b>Final Plenary - Prospects for Air's Future: How Can and Should the Law Adapt</b> <ul style="list-style-type: none"> <li>• <b>Eric Dannenmaier</b>, Professor of Law, IU Robert H. McKinney School of Law, Indianapolis, IN</li> </ul> <p>Panelists from throughout the day will be invited to respond and comment</p>
6:00pm	<b>RECEPTION - All Invited</b>

## Parking:

Parking is available for a nominal fee at the campus Gateway Garage, located on the corner of Michigan and California Streets (Address is 525 Blackford Street).

Parking is also available for a nominal fee at the Natatorium Garage two blocks west of the law school.

## Special Accommodations:

Individuals with disabilities who need special assistance should call [\(317\) 274-8036](tel:3172748036) no later than one week prior to the event. Special arrangements can be made to accommodate most needs.

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[« Event List](#)



# FAEGRE BAKER DANIELS

## Andrew Wheeler

As a principal and the team leader of the energy and environment practice group at FaegreBD Consulting and Of Counsel at Faegre Baker Daniels law firm, Andrew Wheeler employs his extensive background in energy, environmental, and infrastructure policy. He helps lead the firm's practice by advising numerous types of clients on comprehensive legislative, regulatory and operational strategies. His knowledge and insider understanding of the Senate, House and various federal agencies allows Andrew to develop tailored, comprehensive strategies that assist clients in realizing their federal affairs goals and build lasting relationships with key policymakers.

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Andrew R. Wheeler  
*Principal*

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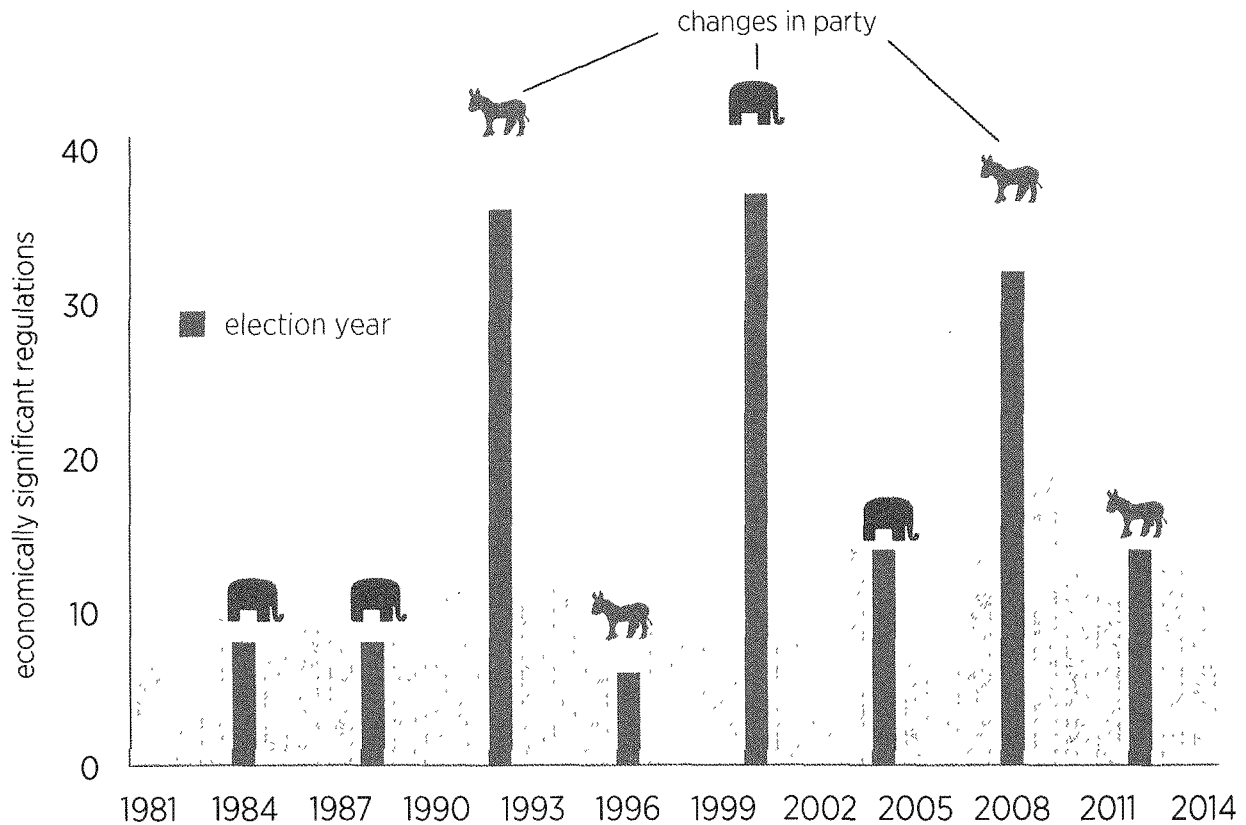
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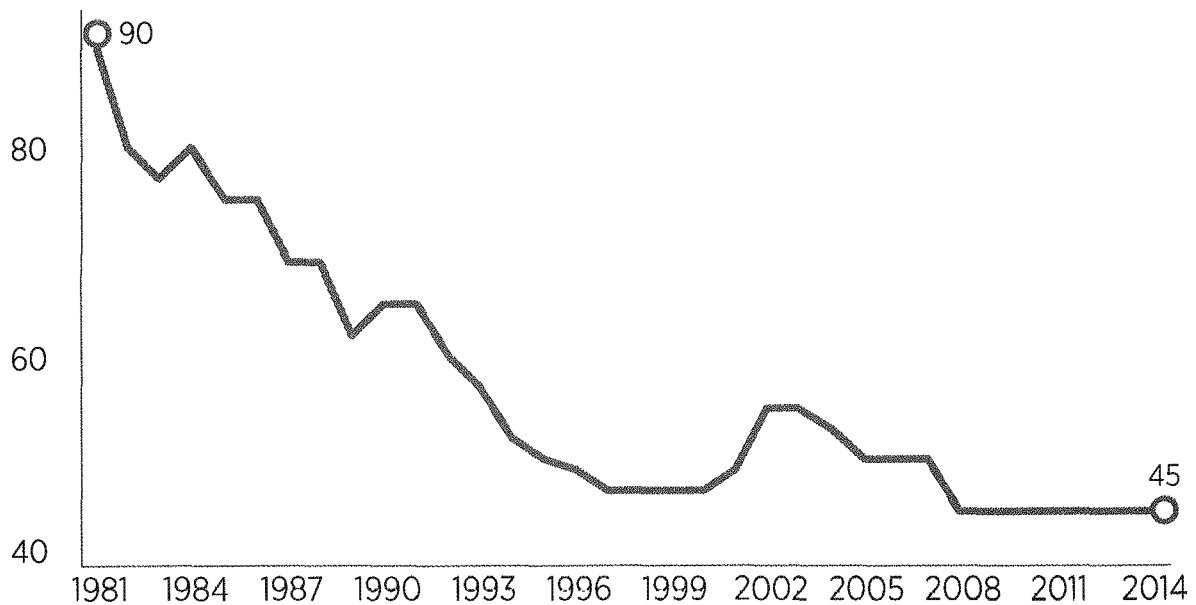
*Preparing for the  
Change in Administration  
- Western Caucus  
2016*

# Midnight Regulations and the Decrease of OIRA Staff

Every four years, the number of new general regulations surges during the "midnight" period between the presidential election day and Inauguration Day. This surge is seen when an incumbent president is reelected; however, it is considerably higher when there is a change in party.



### OIRA Full-Time Employees



[read more \( \)](#)



Data notes: Secondary chart does not cross horizontal axis at 0.  
 Sources: OIRA's online "review counts" database;  
 Appendix to the Budget of the United States for FY 1981-2014.  
 Produced by Sherzod Abdukadirov and Rizqi Rachmat, January 2016.

# Congressional Review Act

---

- Congress is given 60 legislative days<sup>1</sup> to disapprove.
- Agencies (promulgating a covered rule) must submit a report to each House of Congress and to the Comptroller General.
  - copy of the rule
  - concise general statement describing the rule
  - the proposed effective date of the rule
- Resolution of Disapproval introduced in the Senate
- Resolution is referred to Committee of jurisdiction
- After 20 days it can be discharged by written petition of 30 Members and placed on Senate Calendar
- Debate is limited to 10 hours with no amendments, requires simple majority to pass.
- A resolution passed by one body of Congress cannot be referred to Committee in the other body.

1. There is an extended time frame for rules submitted in the final 60 days of a congressional session. These rules can be disapproved within 75 legislative days of when the next session of Congress convenes.

## **EPA Issues New Pollution Rule for Diesel Trucks, Buses**

**By Brian Hansen**

**WASHINGTON, DC, December 21, 2000 (ENS)** - In a bold move that drew accolades from environmental groups and objections from the trucking industry, the outgoing Clinton/Gore administration today unveiled a new air pollution control rule. It will force drastic reductions in heavy duty truck and bus emissions over the next decade....

...Carol Browner, administrator of the U.S. Environmental Protection Agency, announced the sweeping new standards at a news conference in Washington. Browner said the new diesel rule could not have been enacted without the leadership of President Bill Clinton and Vice President Al Gore, who she said have "fought tirelessly to make clean air a reality."...

...Others see the new rule quite differently. Senator James Inhofe, a Republican from Oklahoma, has signaled that he and other GOP lawmakers will try to roll back the new diesel rule and other so-called "midnight regulations" that the Clinton administration has enacted in the waning weeks of its final term

"What is most disturbing is that the Clinton/Gore administration will promulgate these regulations at any cost," Inhofe wrote in a recent op-ed piece published in the "Washington Times" newspaper. "This last minute regulatory push serves two purposes: first, it panders to special interest groups for political gain and second, it preempts regulatory decisions which should properly be made by the next administration."

President-elect George W. Bush and Vice President-elect Dick Cheney will be sworn into office on January 20. Sources tell ENS that Christine Todd Whitman, New Jersey's Republican Governor, is the incoming administration's top choice to head up the Environmental Protection Agency.

Bush has not said whether his administration would support Inhofe's efforts to roll back the EPA's newly enacted diesel rule. Browner, asked about the possibility, said, "I certainly hope that they would not delay or undo this. This is much needed. This is about cleaner air for every person in this country."

"These standards are about providing a level of public health protection, and it would be my strong hope that the next administration will share our commitment to clean air for all Americans," Browner added....

THE TENSION BETWEEN ENVIRONMENTAL  
REGULATION, JOB GROWTH AND THE ECONOMY  
– The Clean Air Act –

Andrew Wheeler  
Principal  
FaegreBD Consulting  
June 1, 2012

**FAEGREBD**  
Consulting

▶ Overall impact of EPA Clean Air Rules

▶ UMACT

▶ CSAPR

▶ NSPS

▶ What's Next

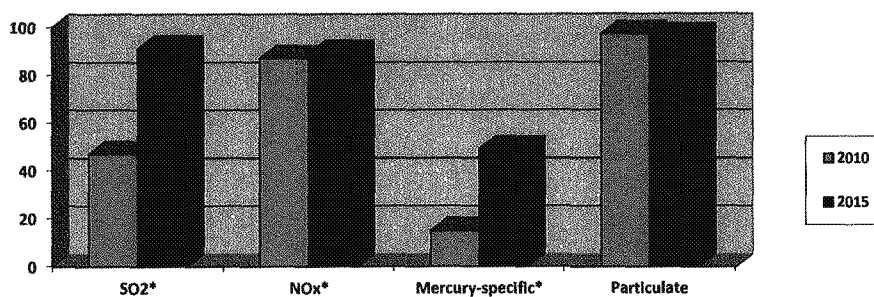
**FAEGREBD**  
Consulting

- ▶ Employment losses total 2.15 million job-years by 2020. Counting job gains, net employment losses total 1.65 million job-years.
- ▶ Annual employment losses average 239,000 jobs. Counting job gains, net employment losses average 183,000 jobs per year.
- ▶ Job losses outweigh job gains by three to one.
- ▶ Cumulative GDP loss of \$190 billion by 2020.
- ▶ The average U.S. family loses \$270 per year in disposable income, a total of \$1,750 by 2020.

▶ Analysis by National Economic Research Associates (NERA), October 2011

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Consulting

### Percentage of Coal Units with Advanced Controls, 2010 and 2015



**\*The combination of SO<sub>2</sub> scrubbers and selective catalytic reduction controls for NO<sub>x</sub> also reduces mercury, eliminating the need for mercury-specific controls at many power plants.**

Source: NERA analysis of U.S. EPA, "IPM Analysis of the Final Mercury and Air Toxics Standards (MATS)."  
<http://www.epa.gov/airmarkets/progress/epa-ipm/toxics.html>

### EPA Misery Index

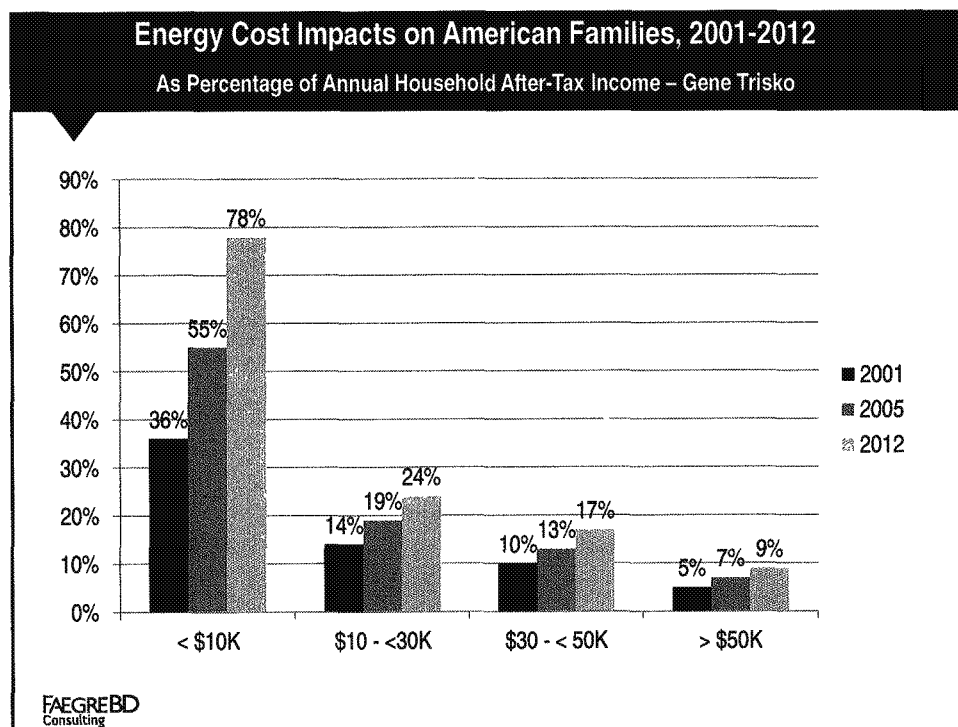
**Coal Plant Retirements due to EPA Regulations**

The Environmental Protection Agency (EPA) has dangerously underestimated the impact of its backdoor mandates on affordable coal-based electricity generation. Instead of the 4.9 to 7.5 gigawatts (GW) of electric plant retirements predicted by EPA, 57 power plants with 25.1 GW of generating capacity have already gone on the chopping block due to LDCAT and CCAPI. That means more than 29,000 workers are losing their jobs, millions of consumers will be paying more for their electricity and the reliability of our electricity supply is being compromised.

**25.1 GW!**

State	County	Plant Name	Owner	Capacity (MW)
Georgia	GA-9	Yarrow	Georgia Power	41
Georgia	GA-10	Harles Branch	Georgia Power	581
Illinois	IL-15	Metcalfville	Ameren	150
Illinois	IL-18	Harwood	Ameren	203
Indiana	IN-11	Stess Little	Dominion	795
Indiana	IN-9	Tarrow's Creek	AP&E	488
Indiana	IN-1	Leban River	LS&E	187
Indiana	IN-3	Cane Run	J&G&E	619
Kentucky	KY-6	Big Bend	AP&E	439
Kentucky	KY-4	Yoncos	AP&E	75
Massachusetts	MS-6	N. Paul Smith	FirstEnergy	100
Massachusetts	MA-6	Staten Harbor	Dominion	606
Michigan	MI-7	B. G. Cobb	CP&S	312
Michigan	MI-4	O. E. Kern	CP&S	115
Michigan	MI-7	J. A. Whelan	CP&S	345
Minnesota	MN-2	Black Dog	Xcel	204
Missouri	MO-3	Macon	Ameren	924
New Mexico	NM-3	Four Corners	Arizona Public Service	633
New Mexico	NM-2	Chula Park	Progress Energy	277
North Carolina	NC-6	H. Lee	Progress Energy	297
North Carolina	NC-7	LV Station	Progress Energy	604
North Carolina	NC-1	Waldenwood	Progress Energy	177
Ohio	OH-1	Miami Fort	CP&S	163
Ohio	OH-2	VVC Beckjord	CP&S	100
Ohio	OH-7	Palmyr	AP&E	100
Ohio	OH-19	Not Shora	FirstEnergy	499
Ohio	OH-11	Lake Moha	FirstEnergy	300
Ohio	OH-11	Avon Lake	CP&S	277
Ohio	OH-14	Altamaha	FirstEnergy	456
Ohio	OH-17	Shaw	FirstEnergy	417
Ohio	OH-18	Conestoga	CP&S	165
Ohio	OH-18	Huntington River	AP&E	97
Oregon	OR-2	Boardman	Portland General	601
Oregon	OR-3	Armonda	FirstEnergy	355
Oregon	OR-4	New Linn	CP&S	330
Pennsylvania	PA-5	Shenando	CP&S	597
Pennsylvania	PA-6	Tier	CP&S	443
Pennsylvania	PA-12	Portland	CP&S	401
Pennsylvania	PA-18	Strano	CP&S	460
South Dakota	SD-1	Ben Branch	Black Hills	25
South Dakota	TX-4	Monticello	Lynchburg	1,186
Texas	TX-18	T. T. Denny	CP&S Energy	697
Texas	VA-1	Wickett	Dominion	376
Texas	VA-4	Chaswell	Dominion	613
Virginia	VA-9	Catch River	AP&E	235
Virginia	VA-9	Chen Lun	AP&E	238
Virginia	VA-9	Alexand	FirstEnergy	278
Virginia	VA-61	Kennamer	AP&E	714
West Virginia	WV-6	Chickadee	FirstEnergy	210
West Virginia	WV-2	Wilson Island	FirstEnergy	212
West Virginia	WV-2	Kanawha	AP&E	240
West Virginia	WV-2	Robin Sheen	AP&E	1,108
Wisconsin	WI-3	Alma	Dairyland Power Coop	45
Wyoming	WY-1	Ned Simpson	Black Hills	35
Wyoming	WY-1	Osage	Black Hills	35
			<b>Total</b>	<b>25,138</b>

25.1 gigawatts is enough electric generating capacity to power 18.8 million homes. All retirements based on publicly available information.



- ▶ EPA claims “up to \$2 Trillion in annual economic benefits by 2020” but..
  - ▷ EPA uses “willingness to pay” questionnaires asking people how much they would consider paying for less sick days or less risk has no bearing on the economy or the impact on real jobs.
  - ▷ The EPA’s macroeconomic analysis actually shows the cumulative impact of their regulations on the GDP to be a range between \$110 billion **loss** to just a \$5 billion gain by 2020.
  - ▷ The same analysis showed that the overall impact to the GDP in 2010 by the previous EPA Clean Air regulations was a loss of \$32 billion to \$79 billion.

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- ▶ The EPA’s Utility MACT regulation is supposed to control HAPs but...
  - ▷ The monetized benefits of controlling HAPs amount to only 0.0004% of the benefits of the proposal, the rest are from PM which is already controlled by existing regulations.
  - ▷ Utility MACT would have a “negligible impact on mercury exposure” because most mercury exposure in our country comes from non-US sources. Mercury emissions have been cut in half over the past 30 years.
  - ▷ The other HAPs in the proposal would change the background cancer risk from .33 as it is currently to 0.330001

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Southern Company Services, Inc.  
601 Pennsylvania Avenue, NW  
Suite 800  
Washington, D.C. 20004  
Tel: 202 261.5000



Southern Company has not said that compliance with the Utility MACT rule will be achieved by 2016. In fact Southern does not expect to have a compliance plan finalized until later in the summer of 2012. What Southern has said is that while the capital cost for compliance with the Utility MACT rule may be somewhat less than projected from the proposed rule because the final rule may require fewer baghouses, they have NOT said that compliance will be achieved by 2016. Time beyond the 3 year compliance period will still be needed due to the need for new scrubbers, baghouses, new gas pipelines, fuel conversions and transmission projects to comply with the rule's provisions plus address potential reliability problems. Southern remains concerned about the short time frame in the rule.

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- ▶ "The United Mine Workers of America and other unions met with EPA officials repeatedly over the course of the rulemaking to share our analysis of the rule's potential impacts and to recommend several improvements to it. **Our study suggested that up to 56,000 megawatts of electric generating capacity at smaller and older plants could be "at risk" of premature closure.** We told EPA that as many as 54,000 direct jobs were at risk in the utility, mining and rail transport sectors, in addition to 200,000 jobs in related industries and communities impacted by plant closures."... Estimates I've seen of **lost tax revenues as a result of already-announced closures are devastating for these communities**, such as more than \$2 million in Oregon, Ohio, and \$6.5 million in Eastlake, Ohio. That's a lot of new police cars, fire trucks and textbooks that won't be available where they are needed."

▶ *-Cecil E. Roberts, President of the UMW March 13, 2012*

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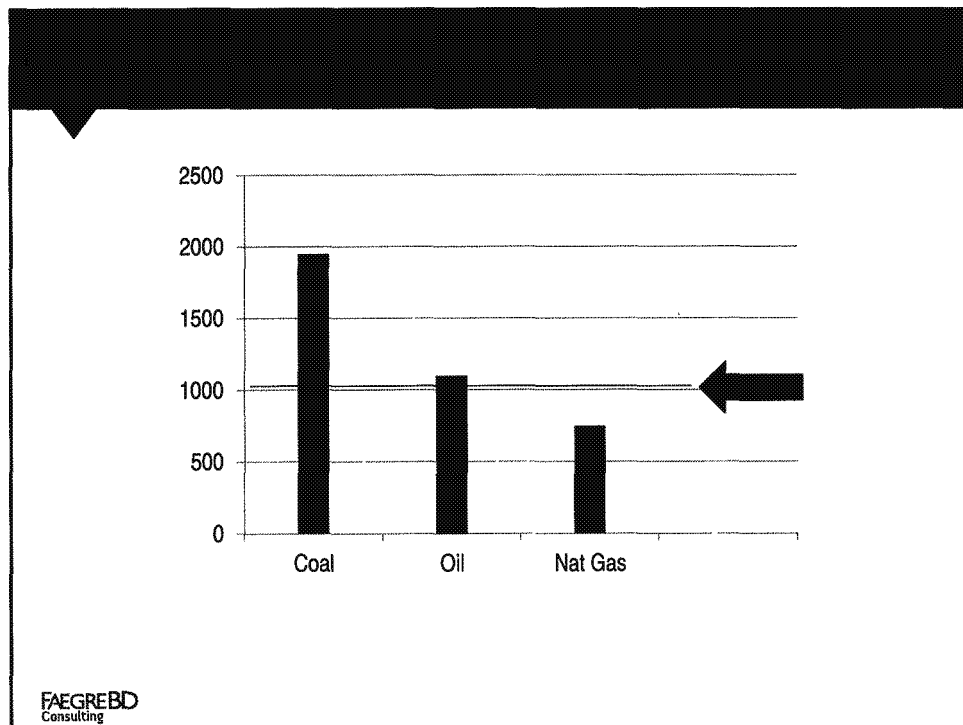
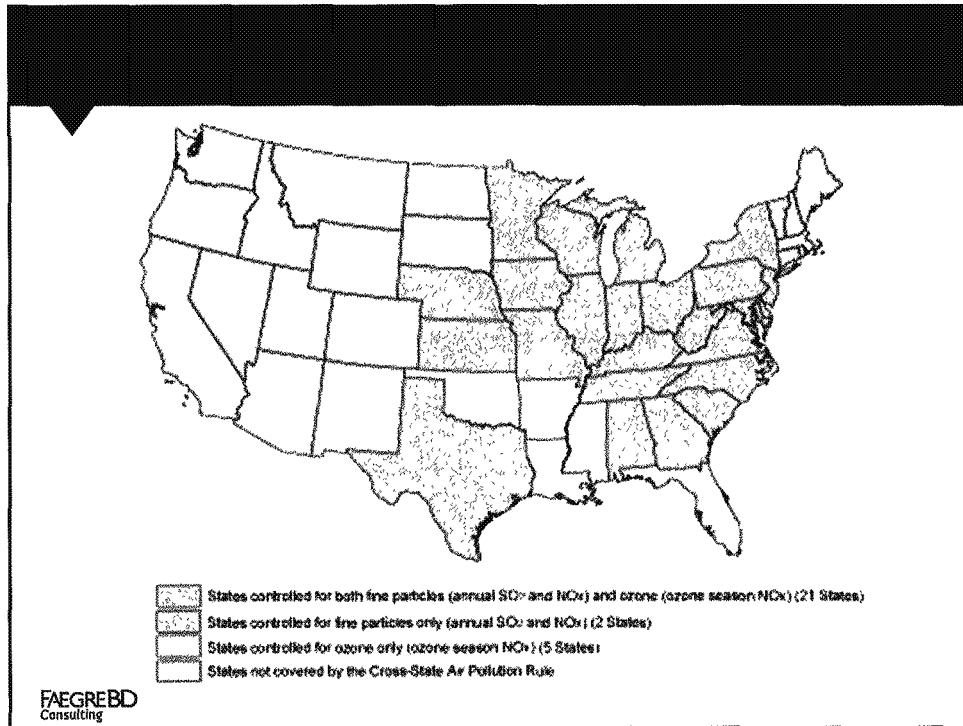
- ▶ This is the most expensive power sector EPA regulation in history and all of the costs will get passed onto us, the consumer – yet Congress has failed to act. And, this is only one of several new costly EPA utility regulations. **Unless this regulation is changed, it will have a severe impact on manufacturing competitiveness and jobs.** Even without this new regulation, electricity costs have been rising at an alarming rate. According to the EIA, U.S. industrial electricity costs have risen 4.5 percent per year since 2000. Despite lower natural gas costs for gas-fired power generation, industrial electricity prices rose in 2011. Even a 1 cent/kWh increase in the cost of electricity imposes additional costs of approximately \$9 billion per year on manufacturing facilities...If the Utility MACT rule goes into effect as currently finalized, billions of dollars of investment will be required in upgrades to existing electricity production facilities, new generation facilities and transmission upgrades. **In 2015 alone, EPA estimates that the rule will cost consumers \$9.6 billion annually (in 2007 dollars).** Others in the electric power industry have estimated that costs will be much higher.”

▷ - Industrial Energy Consumers of America, February 16, 2012

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- ▶ CSAPR's Timeline is unrealistic.
  - ▷ Although CATR proposed a January 2014 implementation date, CSAPR only allowed a 5 month implementation window which would result in unnecessary electric generating unit retirements.
- ▶ CSAPR is inflexible and attacks states rights.
  - ▷ EPA is initially enforcing the new rule through Federal Implementation Plans, which are less flexible than state-specific State Implementation Plans and contrary to the implementation of most Clean Air Act rules.
- ▶ The final version of CSAPR was significantly different than the proposed rule.
  - ▷ The final rule added Texas to the annual SO<sub>2</sub> and NO<sub>x</sub> programs and Iowa, Missouri, and Wisconsin were added to the ozone-season NO<sub>x</sub> program. The states did not have an opportunity to comment on these substantial changes.
  - ▷ The final version also included much stricter emission reduction requirements. EPA significantly lowered NO<sub>x</sub> emission levels in the base case (without CSAPR) from approximately 3 million tons in the proposal to 2.1 million tons in the final. Additionally, the SO<sub>2</sub> reduction mandates in CSAPR are 20 percent by 2012 and 50 percent by 2014, far more strict than the proposal, 5 percent and 20 percent, respectively.
- ▶ EPA's air quality modeling was flawed.
  - ▷ EPA's air quality modeling did not take into consideration the emission reductions achieved under the CAIR framework established in 2005. From 2005 to 2009, SO<sub>2</sub> emissions fossil-fuel power plants declined 44 percent and NO<sub>x</sub> declined by 45 percent.

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“He was as lame as a duck. Not the metaphorical lame duck, either, but a real duck that was actually lame, maybe from stepping on a land mine or something.”

▷ From a collection of the best high school similes and metaphors.



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# **The Waxman-Markey American Clean Energy and Security Act (ACES): Cap-and-Trade**

a presentation on the draft bill's cap-and-trade title  
under discussion by the House Energy and  
Commerce Committee

**Andrew Wheeler and Andy Ehrlich**  
*Energy and Climate Change practice group*  
B&D Consulting

## Who We Are

- ***B&D Consulting:*** A national advisory and advocacy firm headquartered in Washington, D.C.
- ***Andrew Wheeler:*** Former Staff Director and Chief Counsel of the Senate Environment & Public Works Committee
  - Led Senate cap-and-trade debate in 2003, 2005 and 2008
- ***Andy Ehrlich:*** Energy & Climate Change practice group leader, former Chief of Staff in the leadership of the House of Representatives
  - Successfully advocated on numerous aspects of last years Lieberman-Warner Climate Security Act



## The Full ACES Bill

- Bundles comprehensive energy reform with climate change legislation
  - Title I: Clean Energy
  - Title II: Energy Efficiency
  - **Title III: Reducing Global Warming Pollution**
  - Title IV: Transitioning to a Clean Energy Economy

The RES is getting almost as much attention as the climate piece.

While Title 3 focuses on Climate, there are climate related provisions sprinkled throughout.

## Greenhouse Gases Covered

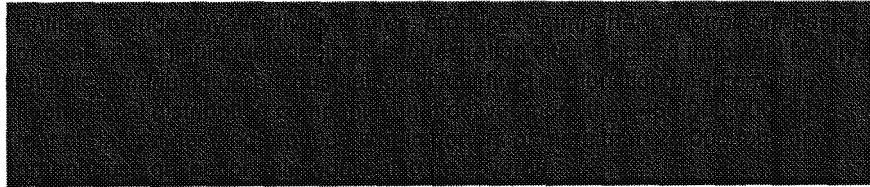
- The cap covers seven of the primary industrial greenhouse gases plus room to expand:
  - Carbon Dioxide
  - Methane
  - Nitrous Oxide
  - Sulfur Hexafluoride
  - Hydrofluorocarbons
  - Perfluorocarbons
  - **Nitrogen trifluoride**
  - Any other anthropogenic gas designated as a GHG by the Administrator

used in plasma etching of silicon wafers

Used predominantly in the high volume production of liquid crystal displays and silicon-based thin film solar cells.

## Coverage of the Cap

- The draft's covered entities are responsible for 85% of U.S. global warming emissions.
  - Entities that emit less than 25,000 tons per year of CO<sub>2</sub> equivalent are not covered by this program.
  - Entities emitting over 10,000 tons of CO<sub>2</sub> equivalent must report to a GHG registry

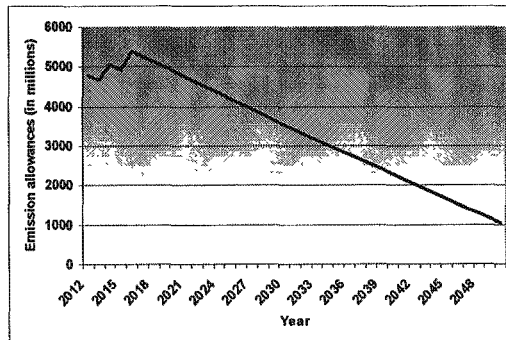


- Inslee is working with Mike Doyle to include more provision to prevent job leakage by giving free permits to domestic energy-intensive manufacturers

for 10K to 25K EPA is to develop performance standards which may include registaring

## Declining Cap

- The 2012 cap is set at 4% below the 2005 emissions level.
- The 2020 cap is 20% below the 2005 emissions level.
- The 2030 cap is 45% below the 2005 emissions level.
- The 2050 cap is 83% below the 2005 emissions level



source: American Clean Energy and Security Act of 2009, draft from 3/31/09


This is more stringent than LW  
 It follows Obama Promise  
 of 83% by 2050  
 but not mid term goal  
 2020 is 14% below 2005

## How the Cap Works

- Each year's cap is expressed as a total number of greenhouse gas emissions allowances.
- Each emission allowance authorizes the emission of one metric ton of CO<sub>2</sub>-equivalent in one year.

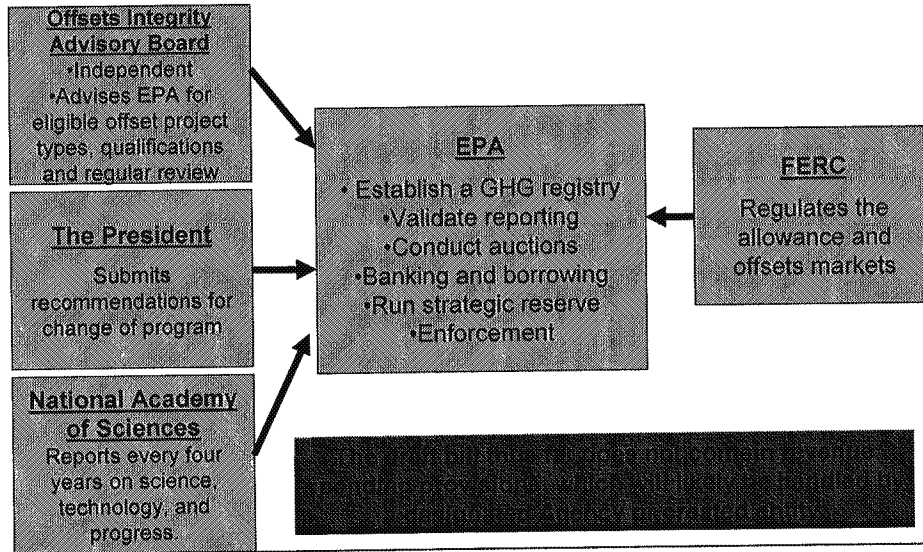
Greenhouse gas (1 metric ton)	Carbon dioxide equivalent (metric tons)
Carbon dioxide	1
Methane	25
Nitrous oxide	298
HFC-23	14,800
HFC-125	3,500
HFC-134a	1,430
HFC-143a	4,470
HFC-152a	124
HFC-227ea	3,220
HFC-236fa	9,810
HFC-4310mee	1,840
CF <sub>4</sub>	7,390
C <sub>2</sub> F <sub>6</sub>	12,200
C <sub>4</sub> F <sub>10</sub>	8,860
C <sub>6</sub> F <sub>14</sub>	9,300
SF <sub>6</sub>	22,800
NF <sub>3</sub>	17,200

## How the Cap Works (cont'd)

- Each covered electric power and industrial entity must hand over to EPA a number of allowances equal to the number of metric tons of CO<sub>2</sub>-equivalent that the entity emitted.
  - Each importer or refiner of transportation fuels must hand over to the EPA a number of allowances equal to the number of metric tons of CO<sub>2</sub>-equivalent contained in the fuels that it put into commerce.
- 

*date can be changed*

# Who Does What?



## **Allocations in 2012**

- The draft bill leaves this section blank.

Draft proposal is expected to be released April 24.

## **Auction Revenues: Where Do They Go?**

- The draft bill leaves this section blank.

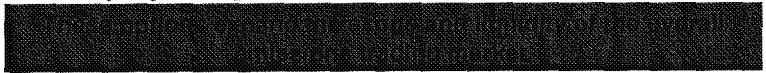
## **Cost Containment**

- The draft has a number of cost containment measures:
  - Trading
  - Offsets
  - Banking
  - Borrowing
  - Strategic Reserve
  - Carbon Market Assurance and Oversight


## Cost Containment: Trading

- Because cap-and-trade allows allowances to be bought and sold freely or saved for use in the future years, a market for allowances will develop and will create a uniform price.
- Covered entities with emission allowances may exchange, transfer or hold these allowances or ask the Administrator to retire the allowance.
  - The Administrator will establish a tracking system and all transactions must be reported.
  - Covered entities that cannot reduce their own emissions without incurring a cost (per-unit of GHG reduction) higher than the market price of an allowance will purchase allowances on the secondary market in lieu of reducing their own emissions.

## Cost Containment: Offsets

- The draft allows covered entities to increase their emissions above their allowances if they can obtain "offsetting" reductions at lower cost from other sources.
  - The total quantity of offsets allowed in any year cannot exceed 2 billion tons, split evenly between domestic and international offsets.
    - This amount reduces as the years progress.
  - Covered entities using offsets must submit five tons of offset credits for every four tons of emissions being offset.
  - All offsets must go through a certification process.
    - Effective agreements are required with other countries to assure international offset quality.
  - Offsets projects go back to 2001.
- 

## **Cost Containment: Banking**


- A covered entity may use an emission allowance to meet the compliance obligation requirements for the vintage year of the allowance, or in any subsequent calendar year.
    - Allows unlimited banking.
- 

## Cost Containment: Borrowing

- Two types of borrowing:
  - Borrowing without interest 1 year in advance
  - Borrowing with interest between 1 to 5 years in advance
    - ♦ Interest is calculated using the formula of 0.08 times the number of years between the calendar year in which the allowance is being used to satisfy a compliance obligation and the vintage year of the allowance.
- Borrowing is limited to 15% of compliance obligation.



## **Cost Containment: Strategic Reserve**

- Once each quarter, the Administrator shall auction off allowances from the Strategic Reserve to covered entities.
    - The Administrator sets the minimum strategic reserve auction price.
  - Filling the reserve is done by saving:
    - 1% from 2012-2019
    - 2% from 2020-2029
    - 3% from 2030-2050
    - Unsold allowances
  - Proceeds are used to purchase additional allowances to replenish the reserve supply.
  - Compliance obligations may only constitute 10% from the Strategic Reserve.
- 

## **Cost Containment: Carbon Market Assurance and Oversight**

- The Federal Energy Regulatory Commission (FERC) regulates the cash market in emission allowances and offsets.
- The President delegates regulatory responsibility for the derivatives market to an appropriate agency (or agencies), based on the advice of an interagency working group.
- Any entity cannot control more than 10% of the allowance market.
- The President may recommend lowering the threshold for covered entities, but not lower than 10,000 metric tons.
- The President may recommend increasing the number of allowable offsets.
- Creates an Offsets Integrity Advisory Board and an offsets registry.

## Additional GHG Standards

- Allows the EPA Administrator to set standards of emissions for stationary sources that have uncapped GHG emissions greater than 10,000 tons of CO<sub>2</sub> equivalent and were responsible for emitting 20% of uncapped GHGs.
- HFCs are in a separate auction.
- EPA may use the CAA to regulate black carbon.

HFC language follows closely to the LW and its various problems.

- Bipart leg intro this week to identify sources + emissions reductions for Black Carbon

Corps, Inhofe, Boxer, Kerry

## Clean Air Act Preemption

- §831 – Criteria Pollutants
  - Provides that GHGs may not be listed as criteria air pollutants on the basis of their effects on climate change.
- §832 – Hazardous Air Pollutants
  - Provides that GHGs may not be listed as hazardous air pollutants on the basis of their effects on climate change.
- §833 – New Source Review
  - Provides that New Source Review does not apply to GHG emissions.
- §834 – Title V Permits
  - Provides that GHGs won't be considered when determining whether a stationary source is required to operate pursuant to a permit under Title V of the Clean Air Act.

## Other Provisions

- *Supplemental Emissions Reductions.* Emissions are reduced further through international agreements to slow tropical deforestation (which accounts for a fifth of global carbon emissions), funded by auctioning a fraction of the emissions allowances. Criteria are included to set declining rates of deforestation as the baseline for supplemental emission reductions.
  - By 2020, the goal is to achieve supplemental annual emission reductions equal to 10 percent of U.S. 2005 emission levels.
- *Scientific Review.* The National Academy of Sciences is tasked to review the targets periodically in light of the best available science, and the President is to recommend program changes to Congress.

## More Important Provisions

- §334 and 335 – State Authority
  - The draft bill strenuously protects state authority to establish GHG control programs that are more stringent than Federal requirements.
    - Except from 2012 through 2017, states do not have authority to preempt a Federal cap-and-trade program.
- §116 – New Source Performance Standards for new coal plants
  - New coal plants are capped at 1,110 lbs of CO<sub>2</sub> per MWh after 2015 and 800 lbs after 2020. EPA may impose stricter standards not later than 2025.
- §336 – Citizen Suit Provision
  - The draft allows any person who "perceives some risk" from "any incremental increase in a greenhouse gas emission" to sue to stop the offending project under the Clean Air Act.

### Key Court Signals High Standing Bar For Activists' Climate Suits

Wednesday, April 22, 2009

[http://www.insideepa.com/secure/docnum.asp?docnum=4222009\\_standing&f=epa\\_2001.ask](http://www.insideepa.com/secure/docnum.asp?docnum=4222009_standing&f=epa_2001.ask)

The U.S. Court of Appeals for the District of Columbia Circuit -- the appellate court that hears most regulatory challenges -- appears to have set a high bar for environmentalists and other citizens to sue the government over actions that worsen global warming, hindering their efforts to bring climate suits under a host of environmental laws. In its April 17 ruling in *Center For Biological Diversity [CBD] v. U.S. Department of Interior [DOI]*, the court ruled that the Supreme Court's landmark decision in *Massachusetts v. EPA* did not grant citizens standing to sue on the merits of their climate claims. The appellate court only granted plaintiffs standing to sue on climate matters when the government has violated a procedural requirement.

## Policy vs. Politics

- Legislative Prospects
  - Differing dynamics of House and Senate
  - Influential groups and caucuses
  - Bipartisanship and areas for compromise
- Legislation Timing
  - House timetable vs. Senate timetable
  - Obama Administration
  - Copenhagen
- EPA's Endangerment Finding
  - Administrator Jackson is at the G8 Environment meeting

Democratic lawmakers have touted an EPA analysis released Tuesday that expects carbon permits to be sold for between \$13 and \$17 per ton of carbon dioxide emitted. It does not, however, detail whether business would have to buy all or some of the allowances. "How were you able to do that analysis while the bill has no allocation-cost scheme in it?" Texas Rep. Joe L. Barton, ranking Republican of the House Energy and Commerce Committee, asked Mrs. Jackson.

"We had to make assumptions," Mrs. Jackson said. Mrs. Jackson did not say whether the analysis included a determination of how many allowances would be sold, only saying that analysts assumed 40 percent of auction proceeds would be returned to consumers.

When she was pressed later by Rep. Steve Scalise, Louisiana Republican, she repeated the president's preference for selling all of the carbon permits. Mr. Obama spent Earth Day in Iowa touting a wind turbine manufacturing plant and the green jobs he hopes to create through investments in renewable energy projects, but said that a cap on carbon emissions is necessary to push the nation away from fossil fuels.

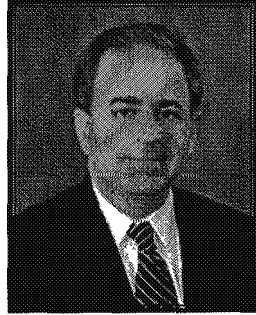
### **Barton Eyes Air Act 'Performance Standard' As Cap-And-Trade Alternative**

Wednesday, April 22, 2009

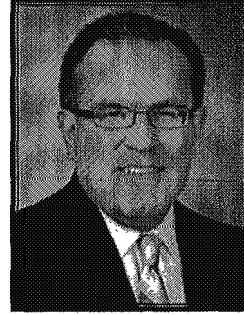
[http://www.insideepa.com/secure/docnum.asp?docnum=4222009\\_barton](http://www.insideepa.com/secure/docnum.asp?docnum=4222009_barton)

House Energy & Commerce Committee Republicans are drafting alternative legislation to Democrats' cap-and-trade plan that would impose a Clean Air Act "performance standard" on climate change pollutants that at least initially would be focused on new power plants, according to ranking member Rep. Joe Barton (R-TX). Speaking to reporters April 22, Barton said that while he does not believe carbon dioxide is a pollutant "there are others that do [and] we are looking at a regulatory standard based on performance." Barton's comments come as the committee was holding three days of hearings on a cap-and-trade bill in advance of an energy and environment subcommittee mark-up possibly next week.

## Questions?



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