

TAKING THE CLEAN AIR ACT INTO THE 21st CENTURY AND BEYOND: A PROPOSAL TO STREAMLINE REGULATION TO IMPROVE U.S. ECONOMIC COMPETITIVENESS

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SUMMARY

- EPA GHG REGULATION THROUGH CAA
- REFINERY CAA COSTS
- THE RED ELEPHANT IN THE ROOM
- PROPOSAL FOR CAA “STREAMLINE”/REFORM
- PROGNOSTICATIONS

OVERVIEW OF GHG REGULATION

- CURRENT STATUS: EPA GHG REGULATION THROUGH CAA AND COSTS
- C/T WAXMAN/MARKEY BILL OF 2009 (H.R. 2454) – Passed 219 to 212
PROJECTED COSTS

Since 2009, climate change legislation has been in limbo because the proponents of climate change legislation have been unable to secure the votes necessary to pass a bill in the Senate.

CURRENT STATUS: EPA GHG REGULATION THROUGH CAA - PSD

- In 2010, EPA Adopted the PSD Tailoring rule – GHG permits only required for facilities that will show an emissions increase of more than 75,000 tons of CO₂e annually
- GHG thresholds trigger PSD permits which require BACT (Best Available Control Technology)
- BACT review requires review of more than fifty types of GHG controls including carbon capture and sequestration (CCS)

CURRENT STATUS: EPA GHG REGULATION THROUGH CAA - PSD

- On June 23, 2014, the United States Supreme Court handed down a decision in *Utility Air Regulatory Group v. EPA*, No. 12-1146 (U.S.)
 - The Court held that EPA had overstepped the bounds of its legal authority in issuing the “Tailoring Rule”
- The Court ruled that no additional PSD permits are required beyond those that were required before the 2012 Court of Appeals decision, however PSD permitted sources should include GHG emission controls

CURRENT STATUS: EPA GHG REGULATION THROUGH CAA - GHG NSPS

- EPA had determined that using New Source Performance Standards (NSPS) is best next step in regulating GHGs (AKA CPP)
- However, **EPA proposed repeal of CPP on October 16, 2017.**
 - EPA released a final rule to limit greenhouse gas emissions from new power plants on August 3, 2015
 - New gas power plants must install the latest combined cycle technology [technology](#)
 - New coal power plants must install CCS technology
- Under chapter 111(d) of the CAA, subject to certain exceptions, the EPA has authority to regulate existing sources of listed source categories
 - Requires coal utility boilers to implement CCS

CURRENT STATUS: EPA GHG REGULATION THROUGH CAA - GHG NSPS

- Refinery and petrochemical plant NSPS proposals has been delayed until utility rules are completed
- Probably indefinitely now (discussed under Red Elephant)

CURRENT STATUS: EPA GHG REGULATION THROUGH CAA - GHG NSPS

(EPA proposed 2 year stay and 3 month stay of fugitive emission, pneumatic pump and PE certification requirements on June 12, 2017). On July 3, DC Circuit vacated the 3 month stay [final decision remains pending before the court].

- On May 12, 2016, EPA issued a slate of final rules and an information request under the CAA directed at the oil and gas industry – **NSPS Quad O/Oa**
- Established regulations for methane and VOC emissions from new, modified, and reconstructed sources in the oil and gas sector, which impacts 13,000 oil wells, 94,000 well pads, and hundreds of compressor stations



WAXMAN-MARKEY BILL IMPACT ON U. S. REFINING

(BASED ON BID BY ENERGY POLICY RESEARCH FOUNDATION, INC.
(2009) [EPRI])

- Total refining capacity losses could be between **4.4 million barrels per day and 8.0 million barrels per day (25 to 50% of U.S. refining capacity)**
- Employment job losses could be between **180,000 and 400,000**
- Gasoline, and other petroleum based transportation fuels, could rise by over \$1 per gallon under some CO₂ allowance cost forecasts
- Reduce annual US refining investments
- Reduce refinery utilization rates

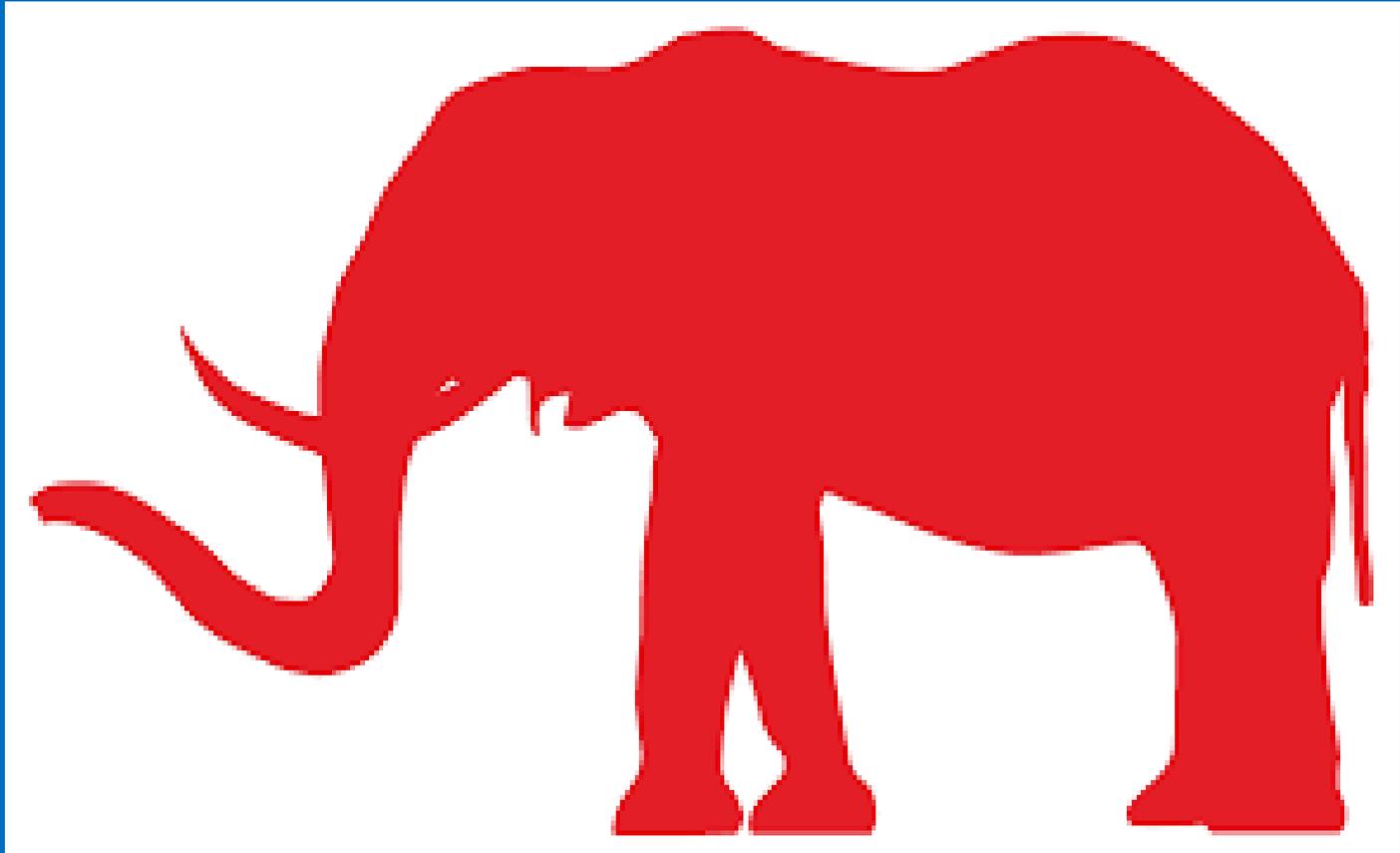
REFINERY CAA COST ESTIMATION

- Refinery CAA direct costs are estimated to be about 1.3% of sales (See summary table on next slide) {Background available upon request}
- “Soft” CAA costs estimated to be about 3 to 4% of sales
- Soft cost examples:
 - ❑ Permitting construction delays
 - ❑ EPA cost understatements during regulation development
 - ❑ Future regulations (Since 2012)
- Therefore, Refinery CAA total costs are estimated to be about 5% of sales
- CAA costs for the 28 listed PSD source groups are probably similar

REFINERY CAA DIRECT COST ESTIMATION SUMMARY TABLE

Regulatory Category Name	Total Estimated Annual Cost of Regulation to Refineries (Million \$/Year)
Total Nonattainment Costs	3485.4
Emission Standards for Mobile Sources (Fuels) Costs	967.7
Total 40 C.F.R. PART 61 – NESHAPs Costs	3.05
40 C.F.R. 63 MACT Standards Costs	652.02
NSPS 40 C.F.R. PART 60 Costs	194.45
Total Permits and Enforcement Costs	1000
Total GHG Costs (if Known)	572
Summary	
Total Refinery CAA Costs	6874.62
Total Annual Refinery Sales	521,463
Total Refinery CAA Cost Percent of Total Annual Refinery Sales	1.32%

THE RED ELEPHANT IN THE ROOM



THE RED ELEPHANT IN THE ROOM

- When President Reagan took office, environmentalists feared the worst
- They expected him to dismantle environmental regulation and give away public lands and resources
- As Philip Shabecoff wrote in his NY Times article (1/2/1989), the result after eight years was a “stalemate”
- To the disappointment of many conservatives, Reagan didn’t radically reshape the EPA, in part because his political appointees made some serious missteps, in part because they were beaten back in court
- Donald Trump has long talked about reining in the EPA
- There are several possible futures for the EPA under Trump
- Some of these scenarios are more likely than others — and they’re not all mutually exclusive

THE RED ELEPHANT IN THE ROOM

- **The EPA gets abolished altogether**
- At one point during the campaign, Trump expressed interest in eliminating the EPA entirely, though he later backpedaled
- Freshman Rep. Matt Gaetz (R-FL) introduced a bill to “terminate” the EPA
- Few in the House are taking the bill seriously
- Congress can’t just terminate the EPA and call it a day
 - ❑ There are dozens of sweeping environmental laws that have been enacted since 1970 (i.e., CAA, CWA) that require the federal government to limit pollution
 - ❑ Those don’t disappear just because EPA has been fired
 - ❑ Congress would either give some other agency **or the states** all of EPA’s responsibilities or repeal America’s bedrock environmental laws
- **Likelihood: Unlikely**

THE RED ELEPHANT IN THE ROOM

- **Congress says the EPA can no longer address climate change**
- In 2007, the Supreme Court ruled the EPA had the authority to regulate greenhouse gases under the Clean Air Act if it determined they pose a threat to public health or welfare
- Under Obama, the EPA determined that they do pose a threat, and adopted a number of climate regulations
- Trump wants to dismantle these policies and Pruitt would have some leeway to scale back rules like the Clean Power Plan for power plants
- EPA repropoed the CPP rule in October 2017
- So long as the Supreme Court's ruling stands, Pruitt would still be obligated to enforce some regulation of greenhouse gases
- However, in the House, 110 Republicans have signed onto a bill, HR 637, that would strip the EPA of all authority over greenhouse gases forever
- If it passed, then nearly every Obama-era climate regulation would vanish instantly - No more Clean Power Plan, et cetera
- No future president could tackle climate change through the EPA (barring a law that repeals HR 637)
- **Likelihood: Low, unless the Republicans pick up seats in the midterms**

THE RED ELEPHANT IN THE ROOM

- **Scott Pruitt tears up Obama's environmental policies**
- If Congress doesn't make fundamental changes to the way the EPA does business, then it will fall to Pruitt and his team to reshape the agency
- Pruitt must work within the confines of the CAA
- He could begin the process of rewriting the Clean Power Plan, which cuts CO₂ from power plants to emissions 30 percent below 2005 levels by 2030
- Pruitt's EPA could craft a more modest version that merely pushes coal-plant operators to improve their heat-rate efficiency that might lead to a smaller 2 to 4 percent cut in emissions
- Instead of Obama's rule that made it impossible for new coal plants to obtain permits unless they used CCS, a Pruitt version might merely require new coal plants to be ultra-efficient
- EPA is eventually supposed to regulate other sources of greenhouse-gas emissions, like refineries and chemical plants, but Pruitt could delay these rules indefinitely
- **Likelihood: High.**

THE RED ELEPHANT IN THE ROOM

- **Pruitt gives more deference to the states**
- Pursuant to the 1970 CAA, many US pollution rules are developed by the EPA but implemented by state agencies
- The EPA approves state implementation plans and steps in if they're not being assertive enough
- Pruitt has insisted he'd like the EPA to be more deferential to state agencies
- Approach is termed "cooperative federalism" and written into law in the 1970 CAA
- **Likelihood: High**

THE RED ELEPHANT IN THE ROOM

- **Trump, Pruitt and Congress handcuff the EPA through budget cuts**
- Trump administration will likely submit budget requests to Republicans in Congress to shrink the agency considerably
- Some suggestions are between 30 and 67% of EPA's workforce
- The 2018 House spending bill includes \$7.5 billion for the EPA, \$534 million (about 8%) below fiscal 2017 enacted levels, bringing the agency's budget in line with 2006 spending levels
- **Likelihood: Medium to high.**

PROPOSAL FOR U.S. CLEAN AIR ACT STREAMLINE FOR A GLOBAL WORLD

WHY SIMPLIFY AND MODERNIZE THE CLEAN AIR ACT?

- The cost required to comply is going up and hurts U.S. global economic competitiveness
- The SIP system relies ultimately on States to achieve attainment, but due primarily to EPA coopting “Cooperative Federalism” the authority and ability of States to achieve attainment is minimal
- The SIP system is cumbersome
- NSR and PSD permitting delays hurt U.S. global economic competitiveness
- New technologies are antiquating the current system that was adopted to fit the current CAA
- Regulatory requirements are:
 - Too numerous
 - Too difficult to understand
 - Too fluid
 - Too hard to find
 - “It takes a neuroscientist too figure them out” – Gina McCarthy

WHY SIMPLIFY AND MODERNIZE THE CLEAN AIR ACT?

- “Dollars per ton” of pollution controlled is going up
- The federal environmental statutes that Congress has addressed to EPA run to more than 2,700 pages in the two United States code volumes.
- The regulations issued by EPA to implement these statutes comprise 31 volumes of the Code of Federal Regulations.
- The guidance issued by EPA to interpret its regulations fill around one million pages.
- There are millions of pages of State and local statutes, rules, and guidance that implement the Federal statutes, rules, and guidance.
- There are millions of pages of “state only” regulations.

WHY SIMPLIFY AND MODERNIZE THE CLEAN AIR ACT?

DRAWBACKS OF CURRENT REGULATORY SYSTEM

- Inadequately designed rules are impractical, unrealistic and lack understanding of how industry operates.
- Unnecessary aspects of rules, or unnecessary stringency, that are not required to achieve environmental or other regulatory objectives.
- Overlap and duplication between permitting processes and agencies.
- Overly strict interpretations of guidance, policies or regulations.

The Clean Air Act Assumes that Air Pollution is Largely a Local Problem

- “Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such state by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained . . .” (Clean Air Act, Section 107(a))
- However, outside U.S. air pollution from Asia, Mexico, and Africa impacts U.S. air quality

Recommended Changes to the CAA

- Return to “Cooperative Federalism” to implement the CAA;
- Realign SIP responsibility and authority under the Act to increase the influence of State and Local control efforts;
- Streamline and simplify the SIP process;
- Streamline and simplify NSR and PSD permitting;

Recommended Changes to the CAA (Continued)

- Modernize, streamline and simplify the Act to make it easier to understand, and implement;
- Avoid referring to current technologies in the CAA;
- Make the Act a framework, much like the U. S. Constitution.

PROGNOSTICATIONS

- Over the next 4 to 8 years
- Scott Pruitt tears up Obama's environmental policies
 - Outside California and the East Coast, GHG control slows to a crawl
- Pruitt gives more deference to the states ("Cooperative Federalism")
- Trump, Pruitt and Congress restrict EPA through budget cuts
- The CAA gets streamlined
- A "Stalemate" is probably the best the environmentalists can hope for
- "Profitable", especially "Renewable energy", environmental projects continue

PROGNOSTICATIONS

- 2025 to 2050 time frame
- The Pendulum swings back the other way
- EPA makes a budgetary comeback of sorts
- The CAA is amended – again – to address issues missed during the 2020 era amendments
- Some form of Cap-and-Trade or Carbon Tax gets enacted
 - ❑ Because of the general perception that the climate is getting hotter (manmade or otherwise)
- Profitable, “Renewable Energy”, and quick fix controls (carbon soot , methane, and CO₂) will be implemented worldwide via International Agreements

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