

Climate Change and Clean Technology Blog

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EPA Defends Proposed GHG Plan But Extends Timeline

By [Kyndra Joy Casper](#)

In September of 2009, the U.S. Environmental Protection Agency (the "EPA") revealed a new proposal to regulate greenhouse gas ("GHG") emissions from power plants, factories and refineries, which are considered large GHG emitters. In a response to questions from Senate Democrats, EPA Administrator Lisa Jackson issued a letter on February 22, standing by the agency's plans to develop the first-time Clean Air Act ("CAA") regulations for GHGs and attacking pending efforts in Congress to overturn the EPA's finding that GHGs endanger public health and welfare.

The regulations being developed would require the use of best available control technology ("BACT") to compel large emitting sources to curb GHG emissions whenever a new facility is constructed or a major modification takes place. The proposal would require large industrial facilities that emit at least 25,000 tons of GHGs a year to obtain construction and operating permits. (For more information about the September 2009 proposal please see previous article, "[EPA Uses the Clean Air Act to Propose New Rules Intended to Reduce GHG Emissions from Large Emitters.](#)").

In a letter dated February 19, 2010, the senators asked a number of questions regarding the impacts of the agency's pending GHG regulations and the impact a resolution to overturn the endangerment finding would have on other climate efforts.

Jackson's response letter, issued only a three days later, outlines a number of ways that she intends to ensure that the EPA regulates GHGs in "sensible ways that are consistent with the call for comprehensive energy and climate legislations."

First, no facility will be required to address GHG emissions in CAA permitting of new construction or modifications before 2011. Also, for the first half of 2011, only facilities that are

already required to apply for CAA permits as a result of their non-GHG emissions will need to address their GHG emissions in their permit applications.

Second, EPA is considering a modification to the rule announced in September requiring large facilities emitting more than 25,000 tons of greenhouse gases a year to obtain permits demonstrating they are using the best practices and technologies to minimize GHG emissions.

EPA may raise that threshold substantially to reflect input provided during the public comment process.

Further, smaller facilities will not be subject to CAA permitting for GHG emissions any sooner than 2016.

Jackson also uses her response letter to attack Senator Lisa Murkowski's pending resolution to undo the endangerment finding. The endangerment finding triggers a duty under the CAA to regulate GHGs. If the endangerment finding is overturned, the EPA cannot regulate GHGs under the CAA at all, including the GHG standards proposed for light-duty vehicles. The resolution is co-sponsored by 38 Senators and is currently pending in the Senate.

Jackson also appeared before the U.S. Senate Environment and Public Works Committee on February 23. She admitted that the EPA would support congressional legislative efforts to regulate GHGs and that legislation "adds certainty to the process."

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