



EPA's Biogenic CO₂ Deferral Rule– The Impact of Recent Court Action on Industry

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Scott Osbourn, P.E.
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Agenda

- **Background**
- **Recent Court Action**
- **Next Steps**





Background

Biogenic CO₂ Emissions

- Defined by EPA as:

“Emissions of CO₂ from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon.”

- Examples of biogenic fuels:

- Landfill gas
- Wood
- Agricultural material
- Biological fraction of MSW
- Ethanol

- Not included: Natural gas, coal, fuel oil





Background

GHG Tailoring Rule

PSD Review required:

- **Step 1: January 1, 2011** for “anyway” facilities with PTE $\geq 75,000$ TPY CO₂e or more
- **Step 2: July 1, 2011** for new facilities emitting $\geq 100,000$ TPY, or changes that increase GHG emissions by $\geq 75,000$ TPY

This rule initially included **ALL** GHGs.





Background

Biogenic CO₂ Emissions Deferral

- **July 20, 2011:** PSD and Title V permitting requirements for biogenic emissions deferred for 3 years.
 - A detailed examination of the science associated with biogenic CO₂ emissions from stationary sources was to be completed during this time
- State, local, & tribal permitting authorities were to adopt deferral at their option.
- Deferral intended to be a temporary measure to allow EPA time to determine what, if any, regulatory applicability of biogenic CO₂ emissions should be in the PSD and Title V programs.
- Intent was to have a final (permanent) rule in place prior to July 21, 2014 deadline.





Recent Court Action

- NGOs challenged the Deferral Rule as being in violation of the Clean Air Act:
 - EPA has no authority to exempt any sources of CO₂, including biogenic sources, from the PSD permitting program
 - Unique qualities can be accounted for at the BACT stage
- EPA argued it has authority to treat biogenic sources differently because they have unique characteristics that were “unquestionably unforeseen by [the] PSD” program.
- The CO₂ biogenic deferral was vacated by the DC Circuit Court on July 12, 2013.





Recent Court Action

- June 23, 2014, the Supreme Court ruled on the challenge to EPA's GHG regulatory authority.
- The current DC Circuit Court deadline for filing petitions for rehearing on the Deferral Rule was 30 days after SC decision, or July 23, 2014.
- Intervenors are requesting an addition 60 days (September 22, 2014) to evaluate the effect of the Supreme Court decision on the Deferral Rule.
- Possible that the SC UARG decision will render moot the need for further proceedings.





Implications of Court Decision

- PSD GHG applicability now only applies to “anyway” sources (GHG applicability threshold TBD)
- Many renewable projects have been characterized as “minor” sources under PSD, if not for GHG impact
- In this context, the effect of the biogenic deferral may not be significant





EPA Actions

- EPA has issued draft rules for GHG NSPS and ESPS
- The NSPS and ESPS imply equal treatment of fossil fuel and biogenic CO₂ emissions
- EPA states that they are drafting a biomass accounting framework (BAF) to credit biogenic CO₂ depending on the material used, the rate of regrowth, geographic area and other factors.
- The SAB has reviewed EPA's BAF and concluded that biogenic CO₂ cannot automatically be considered carbon neutral.





Conclusions

The uncertainty is having a chilling effect on the renewable appeal of biomass.

Until the EPA issues clear guidance, facilities can:

- Determine their worst-case classification
- Determine their PTE biogenic CO₂
- Consider capping other PSD pollutants to retain minor source status
- Defend biogenic emissions at the BACT stage

