



REGULATORY LAW

Water and Energy

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Today's Presentation

- Regulatory Issues in the News
- Legislative v. Regulatory Process
- Statutes vs. Regulations
- Federal Register
- Wyo. Administrative Procedures Act
- EPA Regulation of Greenhouse Gases
- Potential Legislation

Regulatory Issues in the News

- March 5th: Interior Department says Sage Grouse Deserves – But Won't Get – Protection
- March 9th: EPA Seeks Public Comment on the 15th Annual U.S. Greenhouse Gas Inventory
- April 26th: WGF Approves Wildlife Guidelines for Wind Power

Legislative v. Regulatory Process

- Legislative = Lobbyists
 - Ensure client's voice is heard
 - Educate legislatures
- Regulatory = Comments
 - Rules and Regulations
 - Interpret Law, Set Agency Priorities

Statutes vs. Regulations

- Endangered Species Act
 - Statute = 34 Pages
 - Rules and Regulations = 1660 Pages
- National Environmental Policy Act
 - Statute = 18 Pages
 - Rules and Regulations = 70 Pages
 - CEQ Guidance Documents

NEPA Litigation

- 2001 - 136 Cases Filed
 - Judgment for Defendant: 20
 - Settled: 24
 - Pending: 135
- 2008 – 132 Cases Filed
 - Judgment for Defendant: 77
 - Settled: 26
 - Pending: 233

Federal Register

- Federal Register Act - 1935
- Official Journal of the Federal Government
- Daily Publication
- Online since 1994

Federal Register

- Contents:
 - Proposed rules and regulations
 - Final rules
 - Changes to existing rules
 - Notices of meetings and adjudicatory proceedings
- 2008 Federal Register = 80,700 pages
 - Average = 316.47 pages/day

Wyoming Administrative Procedures Act

- W.S. 16-3-101 through 16-3-115
- Includes:
 - General Rulemaking Requirements
 - Contested Case Hearing Provisions
 - Judicial Review

WAPA Definitions

W.S. 16-3-101(b)

- (i) - Agency
- (v) - Local Agency
- (viii) - Registrar of Rules
- (ix) – Rule
- lx) – State Agency

WAPA Rulemaking

W.S. 16-3-103

- Notice of Intent
- Comment Period – 45 Day Minimum
 - Hearing can be requested
- Emergency Rule Provision
- Filing with Registrar of Rules

EPA Regulation of Greenhouse Gases

- Massachusetts v. EPA et al
- EPA's Advanced Notice of Proposed Rulemaking
- EPA's Endangerment Finding
 - Subsequent Litigation
- EPA's Subsequent Regulations
- "Cap & Trade" Bill - Congress

Greenhouse Gases

- Carbon Dioxide (CO₂)
- Methane (CH₄)
- Nitrous Oxide (N₂O)
- Hydrofluorocarbons (HFCs)
- Perfluorocarbons (PFCs)
- Sulfur Hexafluoride (SF₆)

EPA's Regulation of Greenhouse Gases - Timeline

- October 20, 1999: Petition for Rulemaking filed with EPA
- April 2, 2007: USSCt issues Opinion in Massachusetts v. EPA
- December 5, 2007: Draft Endangerment Finding to OMB
- July 11, 2008: EPA issues ANPR
- November 28, 2008: Comment Period for EPA's ANPR Ends (200,000 comments)
- April 24, 2009: Proposed Endangerment Finding published in Federal Register
- May, 2009: Public Hearings Held (Arlington, Seattle)
- June 23, 2009: Comment Period on Endangerment Ends (380,000 comments)
- December 7, 2009: EPA issues Final Endangerment Finding

Clean Air Act

Definition of “Pollutant”

- EPA is required to regulate any emissions that “cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare”

Massachusetts v. EPA et al

- Petition filed with EPA to Regulate GHG under the Clean Air Act
- EPA Denied Petition
- USSCt Held: (5-4 Decision)
 - Massachusetts has Standing
 - Definition of Pollutant
 - Dissenting Opinions (Roberts and Scalia)

Massachusetts v. EPA et al

- EPA is to respond:

Whether, under Section 202(a)(1) of the Clean Air Act, CO₂ and other greenhouse gas emissions from a class of new motor vehicles cause or contribute to air pollution which may be reasonably anticipated to endanger public health or welfare

EPA's ANPR

- Preliminary Notice – Agency is “Considering” Regulatory Action
- Issued in Response to US SCt Decision
 - Energy Independence and Security Act of 2007
- 564 page Document
- Mobile Sources vs. Stationary Sources

EPA's Endangerment Finding

December 7, 2009

- EPA found that:
 - elevated concentrations of the six GHS in the atmosphere endanger both the public health and public welfare of current and future generations
 - Combined emissions of GHGs from new motor vehicles and new motor vehicle engines contribute to the GHG air pollution which endangers both public health and welfare

Key Scientific Findings

Endangerment Finding

- Concentrations of GHG are at unprecedented levels compared to the recent and distant past.
- Effects of climate change impact public health and welfare within the meaning of the CAA.
- Emissions of GHGs from on-road vehicles contribute to climate change.

Effects of Climate Change Endangerment Finding

- More frequent and intense heat waves
- More severe wildfires
- Degraded air quality
- More heavy downpours and flooding
- Increased drought
- Greater sea level rise
- More intense storms
- Harm to water resources
- Harm to agriculture
- Harm to wildlife and ecosystems

Endangerment Finding

- EPA did no Independent Scientific Research
 - Relied on 2007 Report of the United Nations' Intergovernmental Panel on Climate Change
 - Finding is 0.70 degrees Celsius since 1950 (0.10 degree per decade)
 - Scientific Criticism

Potential Consequences Endangerment Finding

■ Automobiles

- Ave Fuel Efficiency of 35.5 mpg by 2016
- Cost automakers \$50 billion
- Increase vehicle prices by average of \$1,000

Potential Consequences Endangerment Finding

- Factories/Commercial Buildings
 - Major Source = Potential to Emit 250 tons/year
 - Increase number of required air pollution permits “more than 140 fold”
 - Any building with more than 40,000 sq feet
 - Applicant Permit Cost = hundreds of thousands of dollars
 - Regulatory Agency = 300 hours/permit

Endangerment Litigation

- 16 Petitions Challenging Finding filed by February 16, 2010 Deadline
 - Coalition of 16 States and NYC have asked to intervene on behalf of EPA

Other GHG Regulations

- CEQ's Guidance Document
- EPA's GHG Reporting Rule

Cap and Trade Legislation

- Markey-Waxman Bill
 - June, 2009 – Passed House
 - Caps GHG Emissions Starting in 2012
 - Goal = Reduce Pollution
 - 17% by 2020
 - 80% by 2050
- Senate Version
 - Separate Caps for Utilities, Manufacturers
 - Carbon Tax on Gasoline
 - Carbon Tariff



Questions?

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