

NOx Regulation -- Is This a Tunnel or a Cave?

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Summary

Recently EPA won its case for the NOx control SIP call, so things may finally be progressing toward turning NOx control from a policy issue to a technology issue. But the SIP call still faces some tall hurdles, including the Presidential election. And since the regulatory SIP call deadline has passed, a new rule making and probably a new compliance schedule are in order.

EPA has invoked the Clean Air Act Section 126 petitions against coal burning power plants, and included a trading program. EPA has also sued several Midwestern and Southern coal burning utilities for alleged violations of the New Source Review provisions of the CAA, and has announced a new rule making to reform the NSR regulations and resolve the definition of major modification. At the kickoff meeting for NSR reform, discussion of a national cap and trade program, possibly even a voluntary program, dominated the discussion.

The Commonwealth of Pennsylvania is proposing to regulate the quality of air flowing into the state. They too are targeting the Midwestern coal burners, basically laying out a regional cap and trade program. The Canadian province of Ontario proposes to set emission performance standards for any power plant, including those in the U.S., that sells electricity into the province. This proposal includes an international cap and trade feature, based on regional airsheds.

It appears that emissions trading is becoming accepted by all sides, despite disagreements about details. This struggle is taking us into uncharted legal territory, perhaps even a rewrite of the Clean Air Act.