

CONSIDERATIONS REGARDING THE TAILORING RULE
GEORGIA DNR BOARD MEETING
- October 27, 2010 –

- I. The Tailoring Rule is part of efforts by U.S.EPA to reduce greenhouse gases (GHGs) and address climate change through Clean Air Act (CAA) permitting.**
- Unfortunately, the CAA is a bad fit for GHGs, and EPA realizes it. EPA is “tailoring” the CAA to fit GHGs to avoid “absurd results” and permitting gridlock, with much less stringent permitting thresholds than what Congress enacted in the CAA.
- II. Adopting EPA’s higher thresholds to avoid gridlock has substantial appeal; but, caution is in order.**
- Tailoring Rule has appeal – but it is also being appealed; along with several of EPA’s related actions.
 - Stay motions being briefed on an expedited schedule.
 - In one case, Georgia has filed a Motion to Intervene.
 - EPA’s efforts to regulate GHGs under the CAA have come on in a rush. Several administrative and regulatory actions since December 2009.
 - Difficult to understand and reliably predict unintended consequences.
 - Is Georgia Adopting Too Much? The Proposed GHG Rules adopt by reference the entirety of the U.S. EPA’s new definition of the term “subject to regulation”, not just the elevated permitting thresholds. A two-edged sword:
 - GHGs **will not be** regulated until Jan. 2011;
 - GHGs **will be regulated** starting Jan. 2011.
 - U.S. EPA’s new definition is currently being challenged, including the case in which the Georgia Attorney General has filed a Motion to Intervene.
 - Adopting the entirety of the new definition in Georgia may not be necessary. Adopting the elevated permitting thresholds may be sufficient.
- III. Probably better to get it right than to do it fast.**
- Important to act expeditiously, but don’t adopt too much.
 - If possible, give the stakeholders and public more opportunity for input.
 - Maintain flexibility in view of appeals.

CONSIDER:

1. Revising the Proposed GHG Rules to avoid adopting the entirety of the new definition, subject to regulation, and only adopting the elevated permitting thresholds and severability provisions;
2. Including in the regulatory record an express reservation of rights and statement of non-waiver;
3. Keeping the public notice and comment period open until after the November GHG Workshops.

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