UPDATE: Cara discusses in this post some further developments that make the EPA's plans more concrete, and concludes that the EPA is backtracking significantly from its proposed rule by delaying the timetable and by regulating fewer facilities.

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Last fall, our Environmental Protection Agency appeared to be on the verge of moving very quickly to regulate greenhouse gases under the Clean Air Act's powerful Prevention of Significant Deterioration program, which would require major new sources of GHG emissions, and sources undergoing major modifications, to implement the "Best Available Control Technology" to reduce those emissions. As of this week, it's clear that no one should expect this regulatory initiative to move quickly. A new letter from EPA Administrator Lisa Jackson to a group of Senators makes this clear.

Some background: At the end of September 2009, EPA issued a proposed rule (called the "tailoring rule") and press release that expressed the agency's intent to move forward with regulating greenhouse gases under the PSD program. PSD requires major emitters of pollutants subject to regulation under the CAA to obtain preconstruction permits that require the use of the best available control technology to limit air pollution.

As I explained in an earlier post, the tailoring rule actually didn't subject any sources to the PSD permit program for GHG emissions, yet. Instead, it set new parameters for "tailoring" the PSD program to deal with GHG emissions in anticipation of future inclusion in the program, once GHGs become "subject to regulation" (a phrase that Obama's EPA still has not defined, although it plans to do so later this year). (As I've explained before, the inevitable future regulation of GHGs under the Clean Air Act would subject major GHG emitters to the PSD program anyway, and the tailoring rule actually would reduce the impact of this regulation by ensuring that only the even-more-major-than-major emitters would be covered.) But the EPA's media release promoted the proposal as if it imposed a permit requirement for major facilities' GHG emissions under the PSD program:

> The Administrator announced a proposal requiring large industrial facilities that emit at least 25,000 tons of GHGs a year to obtain construction and operating permits covering these emissions. These permits must demonstrate the use of best available control technologies

> and energy efficiency measures to minimize GHG emissions when facilities are constructed or significantly modified.

This media release, and a speech by Administrator Jackson that I attended a couple of days later with much the same language, made clear that EPA saw the tailoring rule as a major step towards aggressive regulation of GHGs under the PSD program.

Fast-forward less than six months, to another media release this week:

> Administrator Jackson Sends Letter to Senators
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> Release date: 02/22/2010
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> Contact Information: EPA Press Office 202-564-6794 press@epa.gov
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> WASHINGTON – U.S. EPA Administrator Lisa P. Jackson issued a letter responding to a letter sent to her the evening of February 19 by eight U.S. Senators asking about the agency's plans for 2010.
>
> In the letter, the administrator outlines several of the decisions she has made for 2010-2011:
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> No facility will be required to address greenhouse gas emissions in Clean Air Act permitting of new construction or modifications before 2011.
>
> For the first half of 2011, only facilities that already must apply for Clean Air Act permits as a result of their non-greenhouse gas emissions will need to address their greenhouse gas emissions in their permit applications.
>
> EPA is also 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 is considering raising that threshold substantially to reflect input provided during the public comment process.
>
> EPA does not intend to subject smaller facilities to Clean Air Act permitting

for greenhouse gas emissions any sooner than 2016.

Is EPA backtracking? Certainly, it is backtracking in its rhetoric. And in some respects, there will be backtracking in fact from what the agency promised last year. The letter (a response to another letter sent to Administrator Jackson by a group of Senators from coal-producing states) and the accompanying media release quoted above take a step back from the strong language of last fall.

First, the idea from last fall that under the tailoring rule, "large facilities would be required to adopt the best, most efficient technologies available when they are constructed or upgraded" – designed to send a message that the EPA is being aggressive – has been replaced by the new message from the administrator that "by April of this year, I expect to take actions to ensure that no stationary source will be required to get a Clean Air Act permit to cover its greenhouse gas emissions in calendar year 2010." Second, the 25,000-ton proposed threshold for permitting – one that EPA designed to require PSD permits for large sources such as coal-fired power plants, but not (at least for a long while) for small sources – may have fallen by the wayside: "[b]etween the latter half of 2011 and 2013, I expect that the threshold for permitting will be substantially higher than the 25,000-ton limit that EPA originally proposed."

So this regulatory effort will start later than the agency's rhetoric from last year implied, and will apply, at least at first, to fewer facilities than originally planned. It's not clear what got us to this point, but I suspect politics have something to do with it. Last September, some observers believed that aggressive regulation by EPA might push the Senate to act decisively to pass a new law to curb GHG emissions independent of the Clean Air Act. Now, hope for that plan has waned, and the political climate has changed such that EPA is on the defensive. It's likely, for example, that the timing and tone of the Senators' letter and Administrator Jackson's response were influenced by Administrator Jackson's appearance today to explain her agency's work and budget at a Senate committee hearing on EPA's 2011 budget proposal.

I suspect that under the circumstances, there will be plenty of opportunity for nascent efforts at state regulation of GHGs, such as California's AB 32 and the northeastern RGGI, to continue to play a role. The bad news is that as the prospect for stationary source GHG regulation under the Clean Air Act gets pushed further into the future, and as the regulation is weakened to apply only to larger and larger

facilities, we are losing time to reduce emissions enough to really make a difference before it’s too late.