Breaking News: EPA Ruling - Coal Plants Must Limit CO2?

Posted by Nate Hagens on November 13, 2008 - 6:37pm
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Tomorrow we continue looking at the IEA WEO 2008. Tonight there is a press release by the Sierra Club. (Hat tip Jerome)

> In a move that signals the start of the our clean energy future, the Environmental Protection Agency's Environmental Appeals Board (EAB) ruled today EPA had no valid reason for refusing to limit from new coal-fired power plants the carbon dioxide emissions that cause global warming. The decision means that all new and proposed coal plants nationwide must go back and address their carbon dioxide emissions.

Huge Legal Ruling Blocks US Coal Development

> The ruling in the Bonanza coal plant permitting case (pdf) ruled with the Club's lawyers that since the Mass. v EPA Supreme Court ruling said Carbon Dioxide is a pollutant under the Clean Air Act, new coal-fired power plants must implement "Best Available Control Technology" (BACT for short) for CO2.

Here is some more mainstream press on this news event:
http://www.usatoday.com/money/industries/energy/2008-11-13-coal-plants-e...

http://blogs.wsj.com/environmentalcapital/2008/11/14/environmental-bonan...

> The EPA ruling wasn't a clear smackdown of the coal plant, but more of a punt. In its ruling, it basically told its regional office to rethink the permitting process, and this time to keep in mind the Supreme Court ruling.
>
> But for all practical purposes, the EPA's decision does mark a sea change.

http://www.sltrib.com/news/ci_10982551

Despite initial rhetoric from anti-coal and coal friendly blogs (of which we are neither...;-), here is what the actual ruling (pdf) said (thanks Rembrandt):

> 5. Summation Regarding the CO2 BACT Limitation Issue
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> Thus we find no evidence of a Congressional intent to compel EPA to apply BACT to pollutants that are subject only to monitoring and reporting requirements. Nevertheless, as explained in detail above, we conclude that the Region's 2 rationale for not imposing a CO BACT limit in the Permit – that it lacked the authority to do so because of an historical Agency interpretation of the phrase "subject to regulation under this Act" as meaning "subject to a statutory or regulatory provision that requires actual control of emissions of that pollutant" – is not supported by the administrative record as defined by 40 C.F.R. § 124.18. Thus, we cannot sustain the Region's permitting decision on the grounds stated in the Region's response to comments
>
> We also decline to sustain the Region's permitting decision on the alternative grounds it argues in this appeal, that regulations promulgated to satisfy Congress' direction set forth in section 821 of the 1990 Public Law are not "under" the CAA. As we explain above, this argument is at odds with the Agency's prior statements regarding the relationship between section 821 and the CAA, including statements in EPA's Part 75 regulations, and those statements preclude our acceptance of the Region's argument in this proceeding.
>
> Accordingly, we remand the Permit for the Region to reconsider 2 whether or not to impose a CO BACT limit in light of the Agency's discretion to interpret, consistent with the CAA, what constitutes a "pollutant subject to regulation under this Act." In remanding this Permit to the Region for reconsideration of its conclusions regarding 2 application of BACT to limit CO emissions, we recognize that this is an issue of national scope that has implications far beyond this individual permitting proceeding. The Region should consider whether interested persons, as well as the Agency, would be better served by the Agency addressing the interpretation of the phrase "subject to regulation under this Act" in the context of an action of nationwide scope, rather than through this specific permitting proceeding.64 In any event, the Region's analysis on remand should address whether an action of nationwide scope may be required in light of the Agency's prior interpretive
> statements made in various memoranda and published in the Federal Register and the Agency's regulations. The Region should also consider whether development of a factual record to support its conclusions may be more efficiently accomplished through an action of nationwide scope, rather than through this as well as subsequent permitting proceedings. (See, e.g., Kenneth C. Davis & Richard J. Pierce, Jr., 1 Administrative Law Treatise at 262-64 (3rd ed. 1994)

Thoughts, implications, discussion?