

The EPA and CO₂ emissions

THE TIME HAS COME TO DECIDE ON A REGULATORY FRAMEWORK FOR CUTTING CARBON

On April 2, the U.S. Supreme Court ruled that the Environmental Protection Agency (EPA) has the authority to regulate heat-trapping gases in automobile emissions. The court further ruled that the agency could not sidestep its authority to regulate the greenhouse gases that contribute to global climate change, unless it could provide a scientific basis for its refusal.

My first reaction to the issues is that they "convicted" the wrong guy. Why automobile tailpipe emissions?

Yes, they are a large contributor to CO₂ emissions, but there are other contributors that would be easier to tackle than these mobile sources. I guess the courts do not get to do target marketing and have no control over the plaintiff's pet ideas, but only a little over 20% of carbon emissions come from passenger cars and trucks. Power plants and industrial uses emit 52% of the total, with electric production accounting for 2/3 of that.

My second reaction is that this is the thin end of the wedge and that the whole question of applicable law in regard to CO₂ has been answered. That question has been whether Oil & Gas or Environmental Law would prevail in the various determinations that will be required to roll out the numerous proposed Greenhouse Gas (GHG) mitigation efforts.

And, while the decision was specific in its focus toward vehicles, it seems inevitable that this determination will be more broadly applied to large stationary sources including power plants. As if to drive that point home, the court also decided a second Clean Air Act case on the same day, adopting a broad reading of the environmental agency's authority over factories and power plants that add capacity or make renovations that increase emissions of air pollutants.

Asked "what is the impact," I can only say that I don't know. I don't think the EPA does either. The ruling only resolves a jurisdictional issue. In no way does it set policy.

The lack of direction at the federal level is well documented, and it is ironic that the administration has been asked to use science to demonstrate its refusal to rule. This general lack of direction to date has spawned many "roll your own" local and regional initiatives. On the bright side, this set of EPA decisions should begin the process of aligning these efforts into a more rational and a uniform nation regulatory framework that industry can use as a basis for the long term planning and commitments required to actually address the issues. One can only hope!

There are two outcomes that seem necessary. The first is that any new CO₂ regulations be applied using the existing oil & gas expe-

rience and regulatory processes so as not to add confusion on which applies, and to benefit from the considerable oil & gas experience at hand. There is interesting background material available in a 2006 Integrated Petroleum Environmental Consortium paper entitled "Assessing and Controlling Emissions of Greenhouse Gases: A Pragmatic Perspective for the Oil and Gas Industry" (see online edition for the paper).

The second is to create some mechanism for monetizing carbon to engage the market-based solutions so often referred to. I have been a fan of "Cap & Trade" programs, but have been convinced that an investment tax credit is a simpler and more effective way to go. The suggested rate would be 1.9% of any project that captures and sequesters 90% of the CO₂, and by definition would automatically include renewables.

There is a similar approach now being circulated with a recommended \$19-per-metric-tonne commodity tax credit for all captured CO₂ that is stored geologically. This has regulatory oversight and rate review at the federal and state level and for that reason seems less than a real market-based approach.

I liken the choice between Cap & Trade and investment tax credit to the two basic schemes for compensating sales people; a commission plan or today's more common place goal-bonus. The investment tax credit is like a straight commission plan where you only pay for success, and reward better performance; the more you sell the more you make.

The Cap & Trade approach is like a goal-bonus scheme. Negotiating the goal is half the battle and the reward goes to more skilled or influential negotiators, many times at the expense of the top performers when goals are set on simple year over year calculations.

Stray thought . . . I do wonder about how methane will be treated. It is 21 times the GHG impact of CO₂ and is used interchangeably with CO₂ in some oil & gas applications, specifically enhanced oil recovery. Will methane, by that extension, also come under EPA's jurisdiction as a GHG? **□**

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