

# More Clean Air Policy Changes

Presented by ERM and Bracewell

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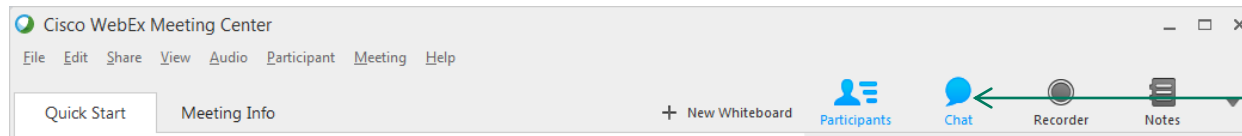
*The business of sustainability*

BRACEWELL



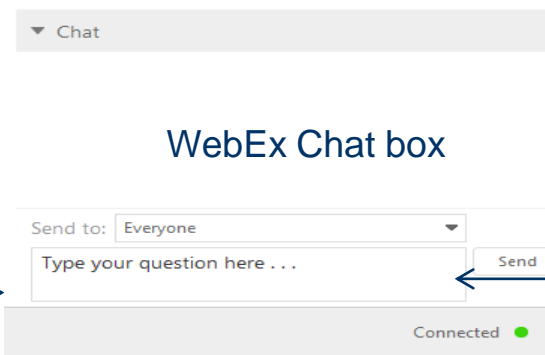
# Welcome

- This presentation will be recorded and all who registered will receive a follow-up email containing a link to the presentation within a week.
- Participants can ask questions throughout the presentation using the WebEx chat function and they will be answered during the last 15 minutes of the webinar in the order that they were received.



*Click on  
chat*

- Send your question to "Everyone" so that those answering the questions will be able to see them.



*Type your question  
and send*

*Select  
"Everyone"*

# Today's Webinar



Toby Hanna  
*ERM*



Jeff Holmstead  
*Bracewell*



Dave Jordan  
*ERM*



Ken Weiss  
*ERM*

01

NSR Reforms in Proposed ACE Rule

02

Project Aggregation Rule (w/ OMB since July 6th)

03

Cooperative Federalism and Enforcement

04

GHG Headlines: Clean Power Plan, Vehicle Stds, Methane

05

Crystal Ball – Progress to Date and What's Next



## **NSR Reforms in Proposed ACE Rule**

# What Triggers NSR

A modification is “any physical change in, or change in the method of operation of, a stationary source *which increases the amount of any air pollutant emitted by such source.*”



**NSPS** – Will it result in *any* increase the maximum achievable *hourly* emissions



**NSR** – Will it result in a *significant* increase in actual *annual* emissions

# Major Issues with NSR Annual Test



## **Very subjective**

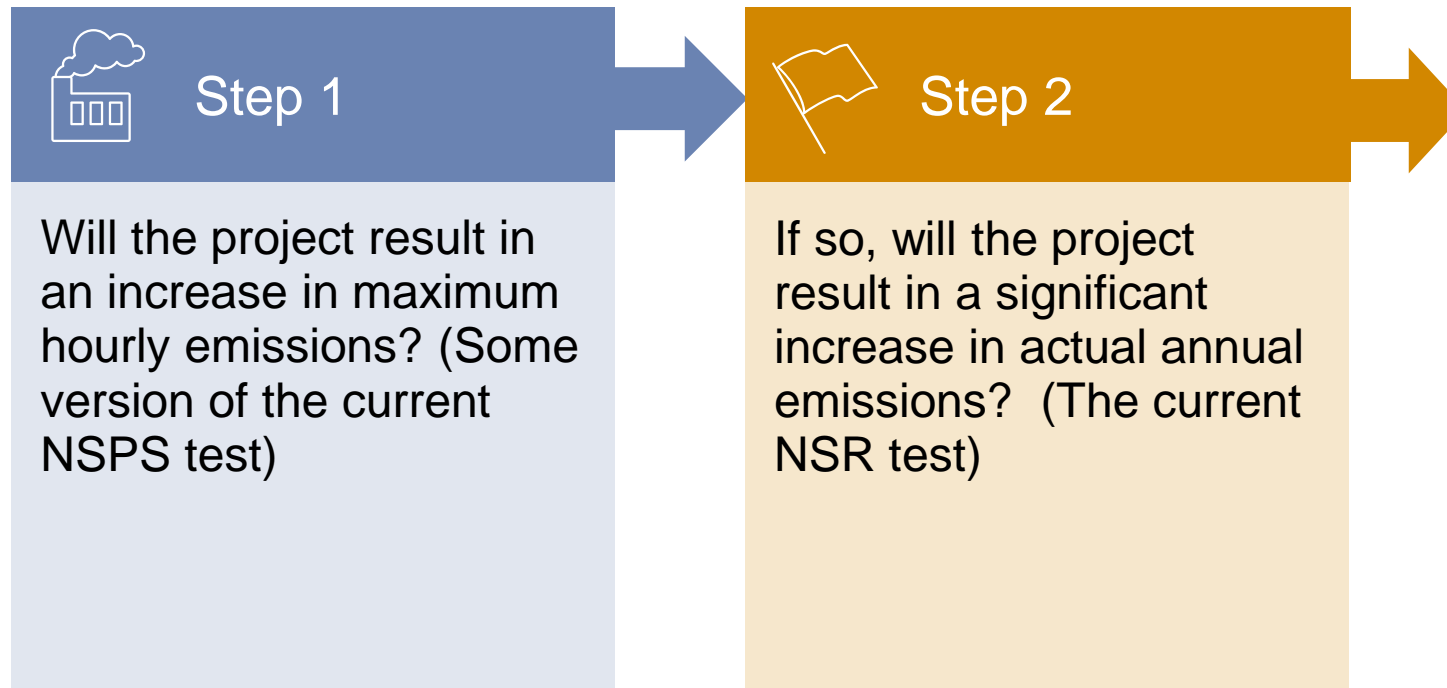
Many things affect annual emissions



## **According to EPA:**

- Replacing components (even with identical components) will almost always cause an increase in annual emissions
- Improving the efficiency of a plant will almost always cause an increase in annual emissions

# NSR Reform Proposed for EGUs in ACE Rule



# Issues to be Resolved

01

Achieved vs.  
Achievable

02

What's the  
baseline?

- Highest hour in last year? 5 years? 10 years?
- Statistical Approach (e.g. Upper Tolerance Limit)
- Hourly rate averaged over a representative period. 24 hours? A week? 30 days?

03

How to deal with  
pollutants not  
monitored by  
CEMs

04

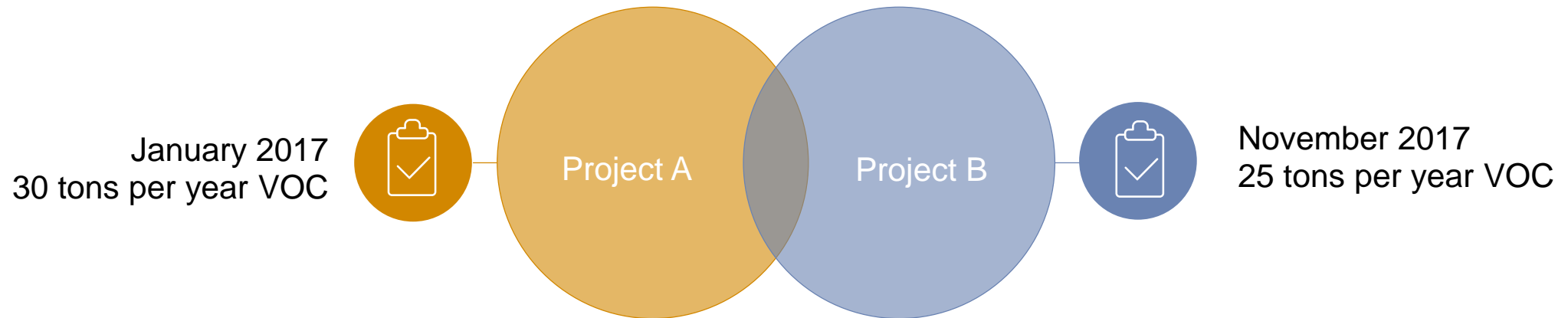
How to deal with  
post project  
emissions data





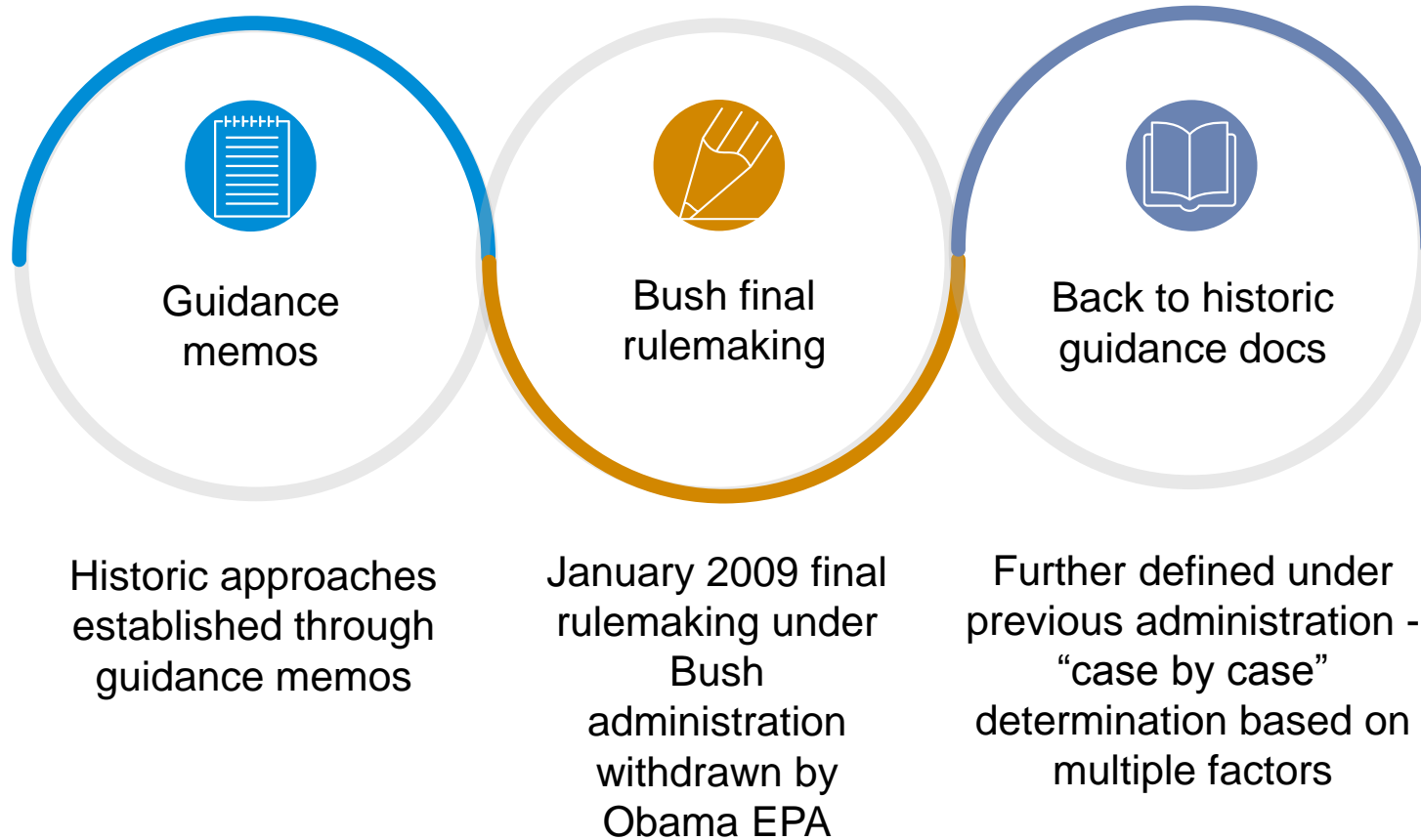
**Project Aggregation Rule  
(w/ OMB since July 6th)**

# What is Project Aggregation?



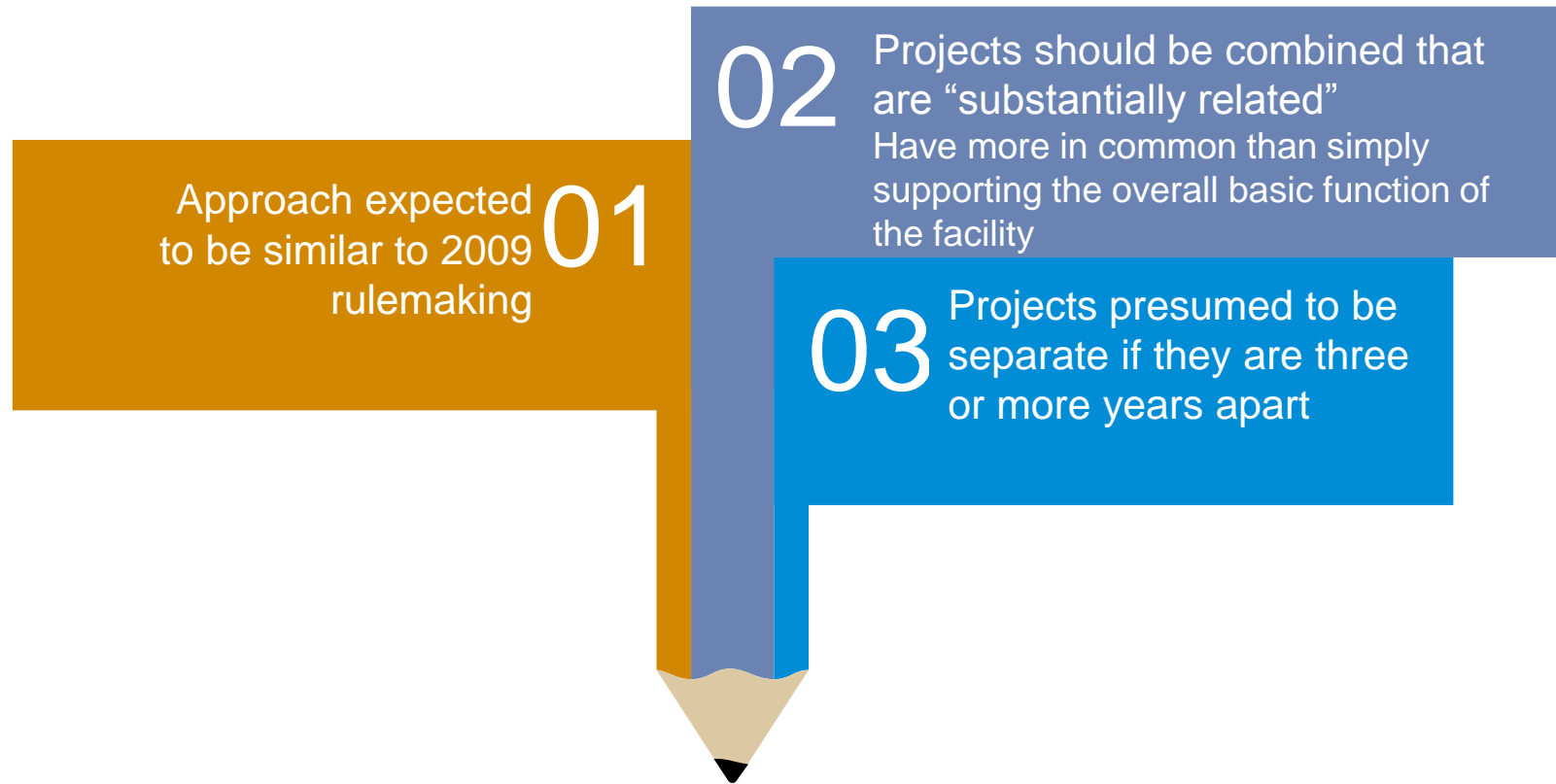
Should two separate projects be combined into a single permit application rather than permitted individually?

# What Has Been Historic Approach to Project Aggregation?



# What is Happening Now?

EPA has drafted rulemaking which is currently under OMB review





# Cooperative Federalism and Enforcement

# Cooperative Federalism at EPA

Core Goal of FY  
2018-2022 EPA  
Strategic Plan

Rebalance the power between Washington and the states to create tangible environmental results for the American people.

- Objective 2.1 – Enhance Shared Accountability
- Objective 2.2 – Increase Transparency and Public Participation

Goal 2:  
Cooperative  
Federalism

*Cooperative federalism – the relationship between states, tribes and EPA – is not just about who makes decisions, but about how decisions are made and a sense of shared accountability to provide positive environmental results*

# Cooperative Federalism and Enforcement

*The term “cooperative federalism” describes a system that “allow[s] the States, within limits established by federal minimum standards, to enact and administer their own regulatory programs, structured to meet their own particular needs.”*

Interim OECA Guidance on Enhancing  
Regional-State Planning and  
Communication on Compliance  
Assurance Work in Authorized States

The Bodine  
Memo  
January 22,  
2018

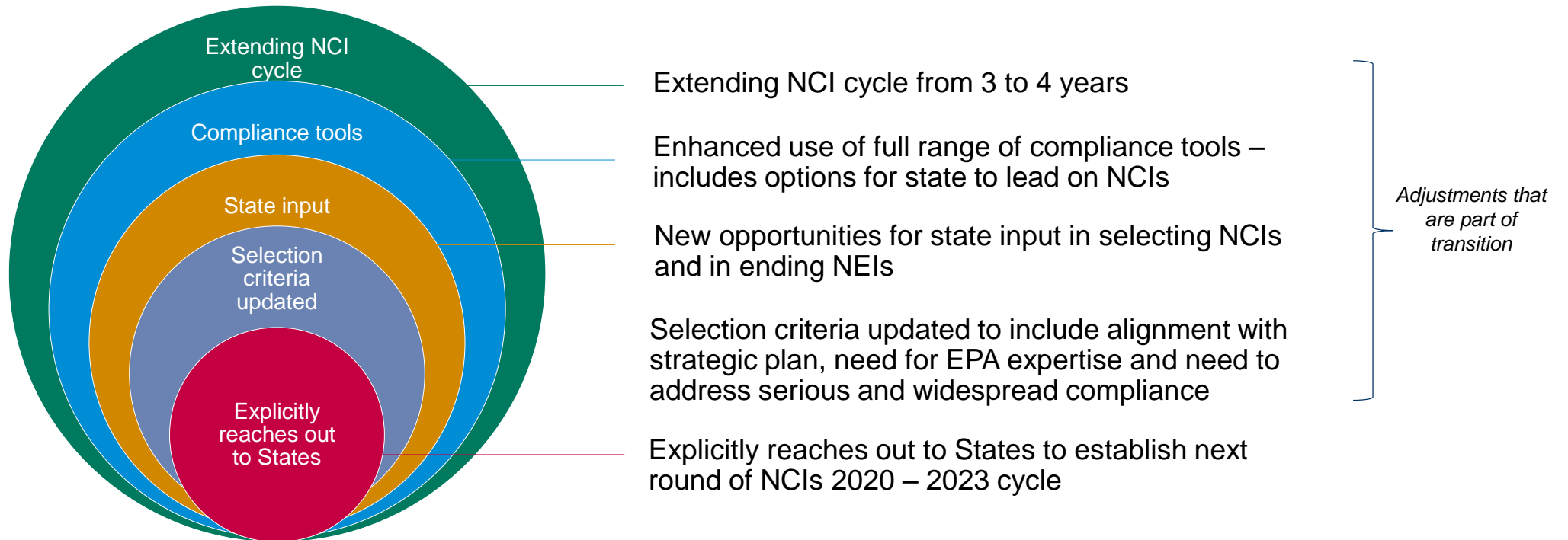
EPA will generally defer to  
States to implement  
delegated federal programs,  
except in specific situations.



When EPA identifies violations at  
a facility, but the State wants to  
take the lead on enforcement,  
EPA should defer to the state  
unless its involvement is  
specifically warranted.

# Evolving NEIs to NCIs

August 27, 2018 Bodine Memo – “Transition from National Enforcement Initiatives to National Compliance Initiatives





# Going Forward

01

EPA will generally defer to authorized States as the primary day-to-day implementer of their authorized/delegated programs except in specific limited situations. This includes inspections and enforcement actions.

02

NEIs that have been controversial and impacted many on this webinar seem to be fading away as they transition

03

Where states and EPA disagree – the decision is elevated to the OECAA.

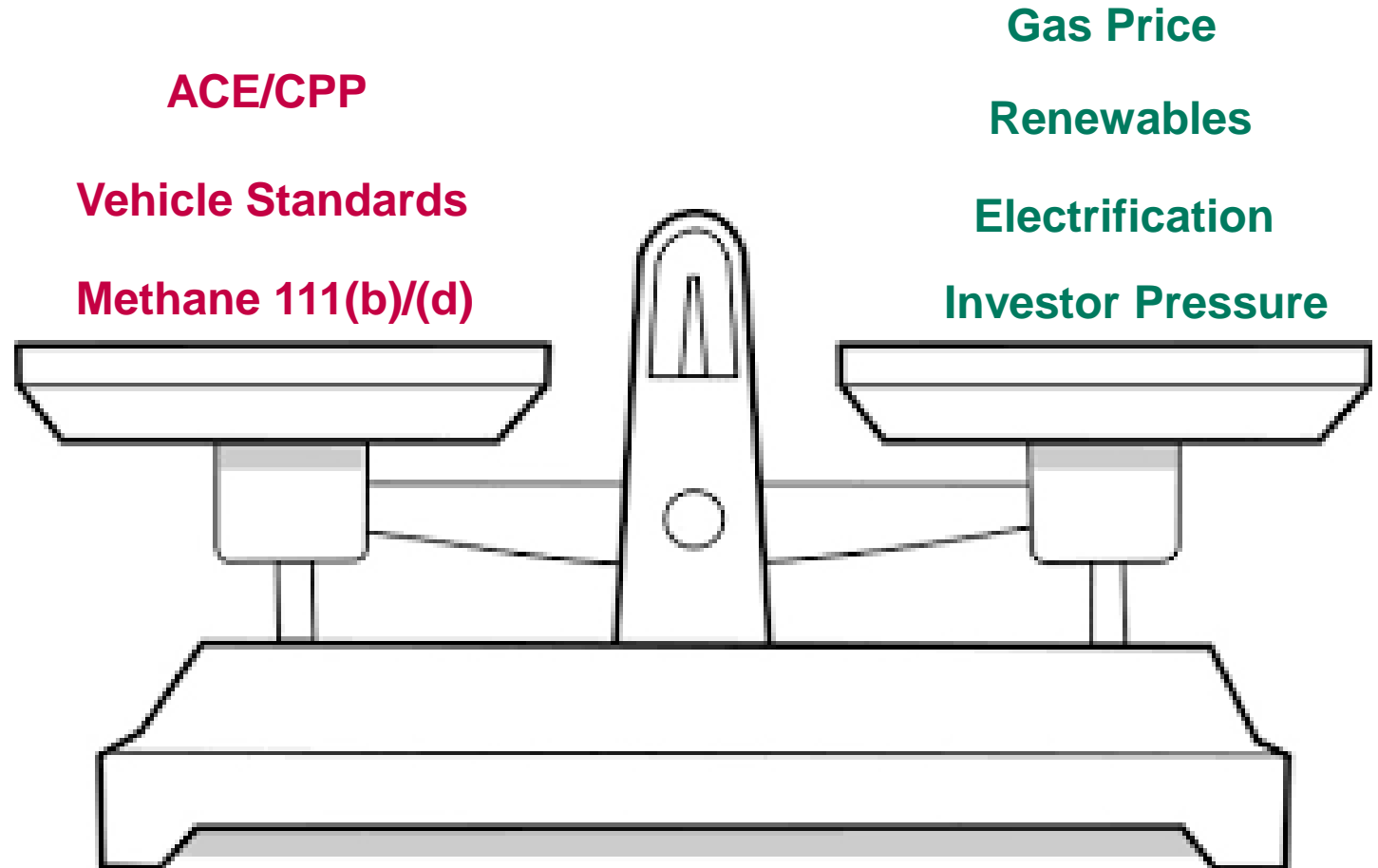


## **GHG Headlines: Clean Power Plan, Vehicle Stds, Methane**

# GHG Policy Shifts vs. Energy Market Shifts

*Precarious balance*

*Much uncertainty*



# Where is the Clarity?



Policy will take years to shake out



Vehicle standards will have minimal impact on industrial community



Markets & technology move much faster



Pressure to reduce methane remains, but with greater flexibility



Investor pressure - e.g. Task Force on Climate-related Financial Disclosures (TCFD)



More “game changers” to come from the open market



Stay close to your states on ACE response



Are you in California?



## **Crystal Ball & Questions**



**Thank you**

**Toby Hanna**  
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**Ken Weiss**  
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