Clean Air Act Litigation Update
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Supreme Court Partially Upholds EPA’s Greenhouse Gas Permitting Requirements

*Utility Air Regulatory Group v. EPA* (S.Ct., June 23, 2014)

- Stationary sources cannot be required to obtain a Clean Air Act permit based solely on their greenhouse gas emissions.

- EPA reasonably determined that the Clean Air Act requires best available control technology for greenhouse gases for sources otherwise subject to Prevention of Significant Deterioration review.
Supreme Court Upholds Cross-State Air Pollution Rule

*EPA v. Homer City Generation (S.Ct. April 29, 2014)*

- Rule requires 28 states to reduce emissions that contribute to ozone or fine particle pollution in other states.
- D.C. Circuit had vacated rule on basis that it violated the Clean Air Act.
- Supreme Court reversed.
- October 23, D.C. Circuit lifted stay.
- Briefing schedule set for remaining issues; oral argument in March 2015.
- EPA plans to adjust compliance dates.
D.C. Circuit Upholds Mercury & Air Toxics Rule
White Stallion Energy Center v. EPA
(D.C. Cir., April 15, 2014)

- Rule sets emission limits for coal- & oil-fired electric generating units.
- Addresses mercury, filterable particulate matter (surrogate for toxic metals) and hydrogen chloride (surrogate for acid gases).
- D.C. Circuit rejected challenges from industry and environmental petitioners, giving deference to what it said are the EPA’s reasonable decisions.
D.C. Circuit Upholds PM$_{2.5}$ NAAQS

*National Association of Manufacturers (NAM) v. EPA*
(D.C. Cir. May 9, 2014)

- Industry petitioners challenged EPA’s 2013 PM$_{2.5}$ NAAQS as arbitrary and capricious.
- Court upheld all of EPA’s decisions as reasonable.
- Significantly, Court gave “great deference” to EPA’s evaluation of scientific data.
Too Early: Court Dismisses Nebraska’s Challenge to EPA’s Proposed Carbon Standards for New Plants


- Nebraska claimed that by basing the proposed rule in part on information from energy facilities that have received federal assistance, EPA violated the Energy Policy Act of 2005.

- State challenged proposal under APA.

- Dismissed: “The State has jumped the gun.”

- Clean Air Act governs challenge; action must be final; challenge goes to D.C. Circuit.
Murray Energy & 9 States Sue in D.C. Circuit to Block Proposed Carbon Standards for Existing Plants (pending)

- In one lawsuit, Murray Energy seeks “extraordinary writ” under the All Writs Act blocking EPA action on the proposal.
- In another lawsuit, Murray Energy seeks review of the proposed rule on the basis that preamble statements constitute final agency action.
- State lawsuit challenges settlement agreement leading to the proposal as unlawful. Ask Court to enjoin EPA from finalizing rule.
- Claim that EPA lacks authority to regulate existing power plants under CAA section 111(d) because they are already regulated under section 112.

- Plaintiff contends that EPA is in violation of non-discretionary duty under CAA Section 321 to “conduct continuing evaluations of potential loss or shifts in employment which may result from the administration or enforcement of” the Clean Air Act.”

- Sept. 16, 2014: Court denied EPA’s motion to dismiss.
D.C. Circuit Holds That EPA Air Permitting Directive Was Contrary to EPA’s Regional Consistency Policy.


- In December 2012, EPA issued memo stating that EPA would not apply the 6th Circuit decision in Summit Petroleum Corp. v. EPA to entities outside the 6th Circuit.

- Court held memo invalid because it was contrary to EPA’s Regional Consistency regulations.
Court Strikes Affirmative Defense From Portland Cement MACT

*NRDC v. EPA* (D.C. Cir. April 18, 2014)

- Upheld emissions-related provisions of EPA’s 2013 Rule as permissible.
- Vacated the Rule’s affirmative defense because it exceeds EPA’s statutory authority.
D.C. Circuit Upholds EPA’s Denial Of Petition Seeking NSPS for Coal Mines

*WildEarth Guardians v. EPA (D.C. Cir. May 13, 2014)*

- Environmental groups petitioned EPA to issue Federal new source performance standards for coal mines.
- EPA denied petition, explaining that it must prioritize other actions given limited resources.
- Court held that EPA has discretion to determine the timing and priorities of its regulatory agenda, and EPA provided a reasonable explanation as to why it cannot or will not exercise its discretion to regulate coal mines at this time.