

US EPA ARCHIVE DOCUMENT

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

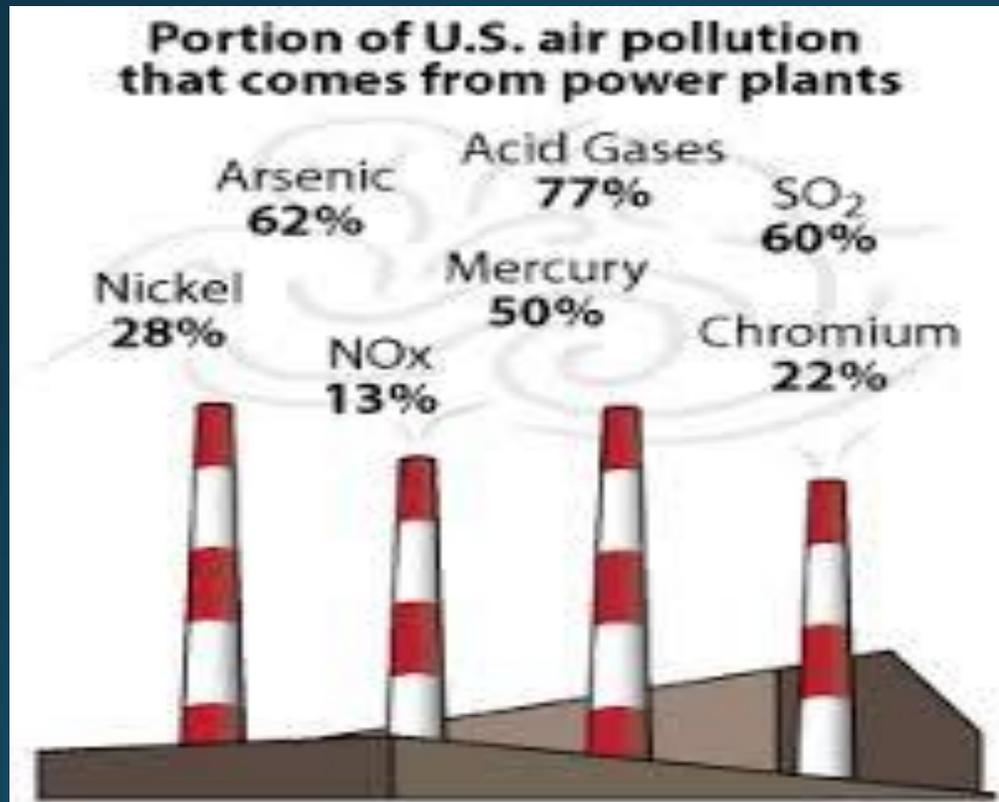
EPA v. Homer City Generation (S.Ct. April 29, 2014)



- 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 v. U.S. EPA (D. Neb., October 6, 2014)



- 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.



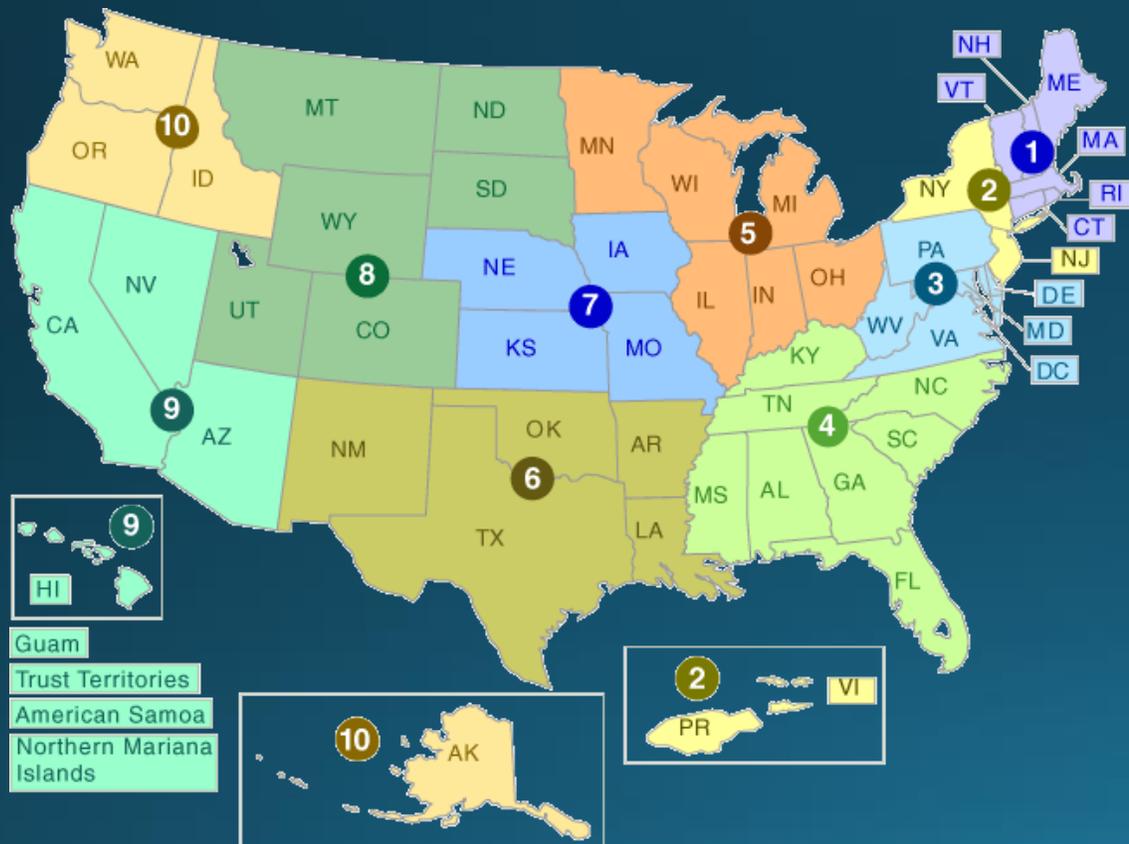
Murray Energy Sues Over EPA's Duty to Evaluate Potential Job Losses from Clean Air Act Administration or Enforcement.

Murray Energy Corp. v. McCarthy (D. W. Va., pending)

- 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.

Nat'l Env'tl. Dev. Ass'ns Clean Air Project v. EPA (D.C. Cir. May 30, 2014)



- 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.