

THE ADVANCED CLEAN AIR COMPLIANCE COURSE

Status Update on Clean Air Act Programs

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Overview/General Themes

- Counter-terrorism is huge focus
 - Resource drain on other programs (air)
 - Direct impact on 112(r) program
- Protection of Children
 - Asthma studies and statistics
 - Use in debate over PM standard and Clear Skies Initiative
- New Source Review
 - Reform
 - Enforcement

Bush Administration – First Year

- Accomplishments (self-proclaimed)
 - Reduce power plant emissions – Clear Skies
 - Cleaner diesel fuel and engines
 - Cleaner off-road vehicles
 - Improving visibility – Clear Skies
 - NSR Reform (?)
 - Strong enforcement (NSR, auto recalls)
 - Houston's air quality

EPA – Air Quality

- NAAQS - Based Regulation
 - Revised ozone and PM standards
 - Litigation is over
 - Implementation
- Regional Haze
 - April 1999 Final Rule
 - SIP controls to improve visibility
 - Impacts every state
 - Regional Approach
 - WRAP – focus on SO₂

EPA – Air Quality

- Transport of Pollutants
 - NOx SIP call – litigation is over (almost)
 - Section 126 Petitions – litigation is over
 - Coordinated deadlines
 - Clear Skies Impact??
- Air Toxics
 - MACT Standards
 - MACT Hammer
 - Residual Risk
 - Urban Air Toxics

EPA – Big Policy Issues

- Global Warming
 - EPA and U.S. vs. the world
- Utilities
 - NSR enforcement cases
 - NSR Reform
 - Clear Skies Initiative
 - Senate Legislation

EPA – Mobile Sources

- Still one of the biggest unsolved air quality problems
- EPA targeting more than cars and small trucks
 - Off-road vehicles
 - Marine vehicles
 - Airports
 - Recreational Vehicles
- Future of reformulated/“clean” gas

EPA – Science Issues

- Regaining comfort in D.C. Circuit
- Implementing internal procedures for peer review, etc. to further bolster future regulations
- Pressure from Congress and Administration for procedures to allow review of and challenge to science (outside of D.C. Circuit litigation and *Chevron* deference)

Congress and Environmental Issues

- Interest in CAA in general has waned
 - No looking for general overhaul of CAA
 - Who are the players?
- NSR and CAA implications on energy are the main focus

Litigation

- Recent developments – mixed bag
- Deference to EPA – appears to be bucking general trend away from deference
 - *State of Michigan* case (NO_x SIP call)
 - *A.T.A.* case (ozone and PM NAAQS)
 - Heavy Duty Diesel case
- Lesson: Follow the procedures and win the case

Litigation – Continued

- EPA must follow rulemaking procedures – cannot use policy/guidance/interpretive letters to make substantive rules
 - *Appalachian Power* case (periodic monitoring)
 - *General Electric* case (PCB Risk Assessment)
 - *Barrick Goldstrike* case (TRI case)
- Be careful what you wish for – guidance can be helpful

Litigation – Continued

- New team, new attitude
- New Assistant Attorney General – Justice is energized
 - Publicize successes
 - Build morale
 - Not backing away
- EPA General Counsel

Monitoring/Enforcement

- Increase monitoring frequency through Title V permits
 - Compliance Assurance Monitoring rule
 - Periodic Monitoring
 - Credible Evidence
- Enforcement being used to set CAA policy
 - NSR cases
 - Enforcement Alerts as notice of EPA interpretations
- What to expect from air enforcement office at EPA?