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SELECTED PROVISIONS FROM FEDERAL ENVIRONMENTAL STATUTES CONFERRING JURISDICTION ON THE D.C. CIRCUIT (AND THE D.C. DISTRICT COURT)

Introduction

To help highlight the significance of appointments to the United States Court of Appeals for the District of Columbia Circuit, we have assembled a set of provisions from federal statutes that provide for jurisdiction by the D.C. Circuit (and/or the United States District Court for the District of Columbia) over environmental matters. For details on this research, please contact Jay Austin (austin@eli.org, 503-775-5705) or Scott Schang (schang@eli.org, 202-939-3865).

We have identified statutory language that provides for direct appeal of federal agency actions to the D.C. Circuit, as well as provisions that create exclusive jurisdiction in the D.C. District Court, often with a right of appeal to the D.C. Circuit. We have also included numerous provisions that give a plaintiff the option to seek judicial review in either the plaintiff's home jurisdiction or in the D.C. Circuit. These concurrent jurisdiction provisions are important because they may give plaintiffs an opportunity to forum-shop for courts that are perceived as more or less sympathetic to environmental concerns.

These provisions include most of the major national environmental statutes, including:

- Clean Air Act
- Comprehensive Environmental Response, Compensation, and Liability Act
- Emergency Planning and Community Right-to-Know Act
- Endangered Species Act
- Federal Water Pollution Control Act ("Clean Water Act")
- Oil Pollution Act
- Resource Conservation and Recovery Act
- Safe Drinking Water Act
- Surface Mining Control and Reclamation Act
- Toxic Substances Control Act

Additional language bearing on the environmental jurisdiction of the D.C. federal courts appears in federal court venue provisions and in the Government in the Sunshine Act.

Note also that even when an environmental statute lacks express jurisdictional provisions governing judicial review, the D.C. District Court and D.C. Circuit may nonetheless become the venue for a lawsuit by virtue of the general venue provisions of the United States Code. 28 U.S.C. § 1391, subsection (b). For example, although the Clean Water Act largely lacks specific

venue provisions directing cases to the D.C. Circuit, plaintiffs will often select that forum by naming the EPA Administrator as a defendant who “resides” in the District of Columbia.

Statutory Provisions

1. Clean Air Act (CAA)

Exclusive jurisdiction provision. A petition for judicial review of certain actions taken by the EPA Administrator under the CAA may be filed only in the U.S. Court of Appeals for the District of Columbia Circuit. This Court has exclusive jurisdiction over petitions that challenge:

- any national primary or secondary ambient air quality standard;
- any emission standard or requirement under 42 U.S.C. § 7412 (hazardous air pollutants);
- any standard of performance or requirement under 42 U.S.C. § 7411 (standard of performance for new stationary sources);
- any standard under 42 U.S.C. § 7521 (emission standards for new motor vehicles or new motor vehicle engines), with some exceptions;
- any control or prohibition under 42 U.S.C. § 7545 (regulation of fuels);
- any standard under 42 U.S.C. § 7571 (aircraft emission standards);
- any rule issued under 42 U.S.C. § 7413 (federal enforcement provisions), § 7419 (primary nonferrous smelter orders), or § 7420 (noncompliance penalties); and
- any other nationally applicable regulations promulgated, or final action taken, by the Administrator under the CAA.

Additionally, petition for judicial review of a final action of the EPA Administrator that is locally or regionally applicable – but which the Administrator expressly finds at the time of the action is based on a determination of nationwide scope or effect – may be filed only in the U.S. Court of Appeals for the District of Columbia Circuit. *42 U.S.C. § 7607 (CAA § 307), subsection (b).*

Persons against whom certain **civil penalties and administrative penalty orders** are assessed under the CAA may seek review of such assessment in the U.S. District Court for the District of Columbia, or in the district in which the violation is alleged to have occurred, in which such person resides, or where such person’s principal place of business is located. *42 U.S.C. § 7413 (CAA § 113), subsection (d)(4); 42 U.S.C. § 7524 (CAA § 205), subsection (c)(5).*

2. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Exclusive jurisdiction provision. The U.S. Court of Appeals for the District of Columbia Circuit has exclusive jurisdiction over judicial **review of regulations promulgated** under CERCLA. *42 U.S.C. § 9613 (CERCLA § 113), subsection (a).*

Subject to certain exceptions, the U.S. district courts have exclusive original jurisdiction over all controversies arising under CERCLA. Venue lies in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has its principal office. For

purposes of this section, **the CERCLA Superfund “resides” in the District of Columbia.** *42 U.S.C. § 9613 (CERCLA § 113), subsection (b).*

Citizen suits brought against the President or any other officer of the United States (including the EPA Administrator and the ATSDR Administrator) for failure to perform a non-discretionary act or duty under CERCLA may be filed in the U.S. District Court for the District of Columbia. *42 U.S.C. § 9659 (CERCLA § 310), subsection (b)(2).*

Judicial review of certain **administrative penalties** assessed under CERCLA may be had in the U.S. Court of Appeals for the District of Columbia Circuit, or for any other circuit in which the aggrieved person resides or transacts business. *42 U.S.C. § 9609 (CERCLA § 109), subsection (b)(5).*

3. Emergency Planning and Community Right-to-Know Act (EPCRA)

Civil suits against the EPA Administrator brought by citizens, states, or local governments under EPCRA may be filed in the U.S. District Court for the District of Columbia. *42 U.S.C. § 11046 (EPCRA § 326), subsection (b)(2).*

4. Endangered Species Act (ESA)

Exclusive jurisdiction provision. Judicial review may be had of any decision of the Endangered Species Committee (the “God Squad”) in the U.S. Court of Appeals for any circuit where the agency action concerned will be, or is being, carried out. However, when such agency action will be, or is being, carried out outside of any circuit, review must be taken in the U.S. Court of Appeals for the District of Columbia Circuit. *16 U.S.C. § 1536 (ESA § 7), subsection (n).*

5. Federal Water Pollution Control Act (“Clean Water Act” or CWA)

Under the CWA **citizen suits** may be brought against the EPA Administrator for failing to perform a non-discretionary act or duty. *33 U.S.C. § 1365 (CWA § 505), subsection (a)(2).* Although the CWA citizen suit provision makes no specific mention of the D.C. federal courts, general venue provisions in the U.S. Code often have the practical effect of diverting cases to the D.C. Circuit when plaintiffs choose to name the EPA Administrator as a defendant who “resides” in the District of Columbia. *28 U.S.C. § 1391, subsection (b).* This sort of forum shopping may potentially occur under other environmental statutes, as well, though this is beyond the scope of our research.

A person may seek judicial review of **civil penalties** assessed or proposed under the CWA in either (1) the U.S. District Court for the District of Columbia, or the district where the violation is alleged to have occurred (class I civil penalties); or (2) the U.S. Court of Appeals for the District of Columbia Circuit, or any other circuit in which such person resides or transacts business (class II civil penalties). *33 U.S.C. § 1319 (CWA § 309), subsection (g)(8).*

6. Oil Pollution Act (OPA)

Exclusive jurisdiction provision. The U.S. Court of Appeals for the District of Columbia Circuit has exclusive jurisdiction over judicial review of **regulations promulgated** under the OPA. *33 U.S.C. § 2717 (OPA § 1017), subsection (a).*

7. Resource Conservation and Recovery Act (RCRA)

Exclusive jurisdiction provision. The U.S. Court of Appeals for the District of Columbia Circuit has exclusive jurisdiction over petitions for **review of any action of the EPA Administrator** in promulgating any regulation or requirement under RCRA, or in denying any petition for the promulgation, amendment, or repeal of any regulation under RCRA. *42 U.S.C. § 6976 (RCRA § 7006), subsection (a)(1).*

Citizen suits brought against the EPA Administrator for failure to perform a non-discretionary act or duty under RCRA may be filed in the U.S. district court for the district where the alleged violation occurred, or in the U.S. District Court for the District of Columbia. *42 U.S.C. § 6972 (RCRA § 7002), subsection (a).*

8. Safe Drinking Water Act (SDWA)

Exclusive jurisdiction provision. The U.S. Court of Appeals for the District of Columbia Circuit has exclusive jurisdiction over petitions for **review of actions pertaining to the establishment of national primary drinking water regulations**, including maximum contaminant level goals. *42 U.S.C. § 300j-7 (SDWA § 1448), subsection (a).*

Administrative orders issued or proposed under the SDWA may be appealed in the U.S. District Court for the District of Columbia, or in the district where the violation is alleged to have occurred. *42 U.S.C. § 300h-2 (SDWA § 1423), subsection (c)(6).*

9. Surface Mining Control and Reclamation Act (SMCRA)

Exclusive jurisdiction provision. The U.S. District Court for the District of Columbia has exclusive jurisdiction over judicial **review of any action by the Secretary of the Interior promulgating national rules or regulations**, including standards under 30 U.S.C. § 1251 (environmental protection standards), § 1265 (environmental protection performance standards), § 1266 (surface effects of underground coal mining operations), and § 1273 (federal lands). *30 U.S.C. § 1276 (SMCRA § 526), subsection (a).*

10. Toxic Substances Control Act (TSCA)

Judicial **review of civil penalties** assessed under TSCA may be sought in the U.S. Court of Appeals for the District of Columbia Circuit, or in any other circuit in which the aggrieved person resides or transacts business. *15 U.S.C. § 2615 (TSCA § 16), subsection (a)(3).*

Petitions for judicial **review of a rule promulgated** under 42 U.S.C. § 2603(a) (testing of chemical substances and mixtures); § 2604(a)(2) or § 2604(b)(4) (manufacturing and processing notices); § 2605(a) or § 2605(e) (regulation of hazardous chemicals and mixtures); or § 2607

(reporting and retention of information); or under TSCA subchapters II (asbestos hazard emergency response) or IV (lead exposure reduction); may be filed in the U.S. Court of Appeals for the District of Columbia Circuit, or in the circuit in where the petitioner resides or where the petitioner's principal place of business is located. *15 U.S.C. § 2618 (TSCA § 19), subsection (a)(1).*

Citizen suits brought against the EPA Administrator to compel performance of a non-discretionary act or duty under TSCA must be filed in the U.S. District Court for the District of Columbia, or the U.S. district court for the district where the plaintiff is domiciled. *15 U.S.C. § 2619 (TSCA § 20), subsection (a).*

11. Judicial Review of Certain Federal Agency Actions

Venue of proceedings brought to review certain final orders and other actions by designated federal agencies – including, among others, the Department of Agriculture and the Department of Transportation – is in the judicial circuit where the petitioner resides or has its principal office, or in the U.S. Court of Appeals for the District of Columbia Circuit. *28 U.S.C. § 2343.*

12. Government in the Sunshine Act

Federal agency meetings, subject to certain exceptions, are open to the public. Any person may bring proceedings in the U.S. Court of Appeals for the District of Columbia Circuit to challenge agency regulations that do not comply with the Government in the Sunshine Act, and to require promulgation of regulations that comply with the Act. *5 U.S.C. § 552b, subsections (g) and (h).*