

ELI SUMMER SCHOOL: CLEAN AIR ACT

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OUTLINE

- Why we need federal legislation of air pollution
- Historical context of modern Clean Air Act
 - Goal
 - Structure
- Themes, issues, and regulatory design choices echoed throughout federal environmental law
 - NAAQS and SIPs as example



ENVIRONMENTAL HARMS

- ▶ Why air pollution occurs
 - ▶ Externalities
 - ▶ Tragedy of the commons
- ▶ Why federal legislation
 - ▶ Mobility of pollution and common media
 - ▶ Transaction costs, lack of information, coordination
 - ▶ Free rider problem
 - ▶ Race to the bottom

PRECURSORS TO MODERN CLEAN AIR ACT



- ▶ Common law doctrines – nuisance, trespass, etc.
- ▶ Air Pollution Control Act of 1955
- ▶ Clean Air Act of 1963
- ▶ Air Quality Act of 1967

MODERN CLEAN AIR ACT

- ▶ 42 U.S.C. § 7401 *et seq.*
- ▶ Goal is “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population” 42 U.S.C. § 7401 (b)
- ▶ Tools provided
 - ▶ Regulations/rules & permits – enforcement
 - ▶ Voluntary incentives
 - ▶ Information gathering and sharing

CLEAN AIR ACT STRUCTURE

- ▶ Title I – Air Pollution Prevention and Control
 - ▶ Air quality planning; PSD and Nonattainment; New Source Performance Standards; Air Toxics; and Enforcement
- ▶ Title II – Mobile Sources
- ▶ Title III – General Provisions
- ▶ Title IV – Noise Pollution
- ▶ Title IV(a) – Acid Rain Program
- ▶ Title V – Operating Permits
- ▶ Title VI – Stratospheric Ozone Protection

CAA REGULATORY DESIGN CHOICES & THEMES FROM FEDERAL ENVIRONMENTAL LAW

- ▶ Technology-forcing or technology-based
- ▶ Cooperative federalism and regionalism tensions
- ▶ Command and control v. innovative and incentive-based techniques
- ▶ New v. existing sources; stationary and/or mobile sources
- ▶ Challenges of health-based regulation, incl. scientific uncertainty (is there a safe level to pollute?)
- ▶ Transboundary pollution
- ▶ Current events – climate, environmental justice, energy transition

NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS)

- ▶ Cooperative federalism approach
- ▶ EPA responsible for listing “Criteria Pollutants”
 - ▶ widespread air pollutants that reasonably may be expected to endanger public health or welfare
 - ▶ presence of these pollutants in ambient air is generally due to numerous, diverse sources
 - ▶ ground level ozone, particulate matter, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide
- ▶ Establishing NAAQS
 - ▶ National numerical air quality standard for each “criteria pollutant” sufficient to protect public health and allowing an adequate margin of safety

NAAQS ACHIEVEMENT THROUGH SIPS

- ▶ § 107 – each state shall designate all areas within the state as either nonattainment, attainment, or unclassifiable for each criteria pollutant
- ▶ § 110 – each state shall create an implementation plan to achieve the NAAQS and shall submit it to EPA for approval



STATE IMPLEMENTATION PLANS & PROCESS

§ 110(a)(2) – A SIP must include:

- ▶ “enforceable emissions limitations and other control measures, means, or techniques . . .as well as schedules and timetables for compliance” to achieve NAAQS
- ▶ Incorporation of emissions limits established for nonattainment and attainment areas through New Source Review and New Source Performance Standards
- ▶ Air quality monitoring plan
- ▶ Enforcement program
- ▶ Prohibition on emissions that will contribute significantly to non-attainment in other states or interfere with other states’ SIPS

SIPS FOR NONATTAINMENT AREAS

- ▶ Demonstrate that it will make “reasonable further progress” toward achieving attainment. §172(c)(2)
- ▶ Require a pre-construction permit for any “new or modified major sources.” §172(c)(5)
- ▶ Require offsets. §173(a)(1)



ACCOUNTABILITY IN SIP PROCESS

- ▶ § 110(c): If EPA does not find that a SIP is adequate then it can:
 - ▶ Impose a Federal Implementation Plan
 - ▶ Increase the amount of offsets required for any new or modified source
 - ▶ Direct withholding of federal transportation funds
- ▶ SIP revision process

FINAL THOUGHTS

- Complexity
- Modern challenges

Thank you!

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