Clean Air Act – Basics
Permitting, Enforcement, & Litigation

ELI Summer School 2021

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Clean Air Act Basics – Major Permit Programs

• New Source Review (NSR) Program (Preconstruction Permit)
  – NSR
  – Prevention of Significant Deterioration (PSD)
  – Minor NSR

• Title V Permit Program (Operating Permit)
  – “Major” stationary sources
  – Title V-by-law sources

• Administrative Process & Procedures

• Key Players (States/Tribes, U.S. EPA, & Public)
Clean Air Act Basics – Enforcement

• Types of CAA Enforcement:
  – Administrative (U.S. EPA)
  – Civil Judicial (U.S. DOJ, U.S. EPA, & States/Tribes)
  – Criminal (U.S. DOJ & U.S. EPA)
  – Citizen Suits

• Investigation Authority
  – Inspections (in-person or virtual)
  – Monitoring
  – Information Requests
  – Administrative Subpoena
Clean Air Act Basics – Enforcement (cont.)

• Typical Anatomy of Admin./Civil Enforcement Action
  – Notice and/or Finding of Violation
  – CAA § 113 Conference
  – Negotiations
  – Resolution (administrative or judicial)
  – Litigation

• Admin./Civil Enforcement-Related Relief
  – Civil Penalties (~$50,000 / day / violation)
  – Injunctive Relief (includes mitigation)
  – Supplemental Environmental Projects
Clean Air Act Basics – Litigation & Judicial Review

• CAA Rulemaking Challenges & Related Litigation
  – Two basic pathways:
    1. Petitions for review of U.S. EPA rulemakings filed in D.C. Circuit Court of Appeals (“nationally applicable regulations”)
    2. Alleged failures by U.S. EPA to perform a non-discretionary act filed in U.S. District Courts

• Recent Significant U.S. Supreme Court Decisions