Survey of Pending Clean Air Act Cases: Arkansas Environmental Federation Convention Presentation

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10/07/2022

I undertook a presentation at the Arkansas Environmental Federation Convention and Trade Show in Hot Springs, Arkansas, on October 6th titled:

Survey of Pending Clean Air Act Cases ("Presentation")

The *Presentation* addressed:

- Judicial/Administrative Decisions/Actions
- Enforcement/Citizen Suit Actions Filed/Pending
- Consent Administrative Orders

The *Presentation* addressed:

- *West Virginia v. EPA,* 142 S.Ct. 2587 (2022)(discussing the challenge to the Obama Clean Power Plan and the ramifications):
- EPA agency power if there is a "major question" requires it and other federal agencies to base their regulations in clear Congressional statutory language
- Limits agency deference if there is economic and political importance
- EPA authority in future rules will be subject to a judicial precedent disallowing overreach (whatever that is?)
- When reviewing an agency's claim of extraordinary power to regulate issues of national importance:
- Does agency action indicate a major question?
- If so, where in the statute is this power provided?
- Clean Air Act National Ambient Air Quality Standards (noting citizen suits driving NAAQS issues)
- Regional Haze (developments)
- Issues that are debated
- How much do states have to depart from EPA's very detailed BART requirement?
- What reasonable further progress does the Clean Air Act require, such as: visibility, reducing emissions?
- What discretion or flexibility will states be given in determining what progress is reasonable for the second implementation period?
- EPA/Arkansas and other states moving on this issue.
- Startup, Shut Down, Malfunction
- State Implementation Plans
- Section 111 New Source Performance Standards
- Title V

- Ozone Exceptional Events Rule (discussing *Bharv Regan* which upheld EPA's application of 2016 Exceptional Events Rule to exclude six monitored exceedances of the ozone NAAQS in the Phoenix area)
- EPA Clean Air Act Enforcement (noting various enforcement issues including stationary engines)
- Arkansas Air Enforcement (identifies the various types of violations cited by Arkansas Department of Energy & Environment – Division of Environmental Quality in 2021-2022)
- Federal Clean Air Act Criminal Enforcement (recent federal examples)
- Coal-Fired Power Plant/Mine/Common Control (discussing Voigt v. U.S. Environmental Protection Agency aggregate issue)
- Federally Permitted Releases/CERCLA (discussing *Clean Air Council v. United States Steel Corporation* addressing whether a Clean Air Act permit notification qualifies)
- Environmental Justice Actions (discussing various environmental organizations' petitions to EPA regarding state agencies)
- Title V Operating Permit Objections (discussing various issues in which EPA granted petitions over the last two years)

A copy of the slides can be downloaded here.