

Environmental Laws and Alternative Dispute Resolution: Tools for Environmental Justice

Clean Air Act

Introduction

The Clean Air Act (CAA) enables the federal government and the states to regulate air quality and to promote air quality standards.

Purpose

The purpose of the CAA is to regulate emissions into the air from stationary (not able to move) and mobile (able to move) sources to protect public health and decrease air pollution.

Types of Issues Addressed

The Clean Air Act authorizes the Environmental Protection Agency (EPA) to set national ambient air quality standards (NAAQS) for certain air pollutants. NAAQS are levels of pollution in the outside air that research indicates will not harm even individuals who are particularly sensitive to pollutants.

The EPA also sets national standards that must be met by all stationary facilities that have air emissions. These include standards for new stationary sources of pollution (known as new source performance standards or NSPS). EPA lists categories of sources of certain hazardous air pollutants (HAPs), and sets national emission standards for them (known as NESHAPs). EPA has a specific program (known as the Urban Air Toxics Program or Urban Air Strategy) to develop a strategy for reducing emissions of HAPs in urban areas.

These national standards are applied to an individual facility with a stationary source of air emissions through a permit. Although historically, a variety of permits were issued under the CAA, there has been a move toward consolidating all requirements into a single operating permit under Title V of the CAA. Facilities that do not yet have a Title V operating permit may be operating under a new source review (NSR) permit or a prevention of significant deterioration (PSD) permit (which is issued in "attainment" areas). States can apply to EPA for authority to administer the Title V permit program within their boundaries.

EPA also regulates mobile sources, which include automobiles, trucks, buses, aircraft, and non-road engines. It regulates motor vehicle and heavy-duty truck emissions, hazardous air pollutant emissions from motor vehicles and motor vehicle fuels and fuel additives, and sets urban bus standards.

Framework

The Clean Air Act addresses the following:

Public Notice and Participation

- Public notice and comment on draft Title V permits (40 C.F.R. §70.7(h)).
- Public notice and comment on EPA's proposal to approve state Title V permit program (40 C.F.R. §70.7(b)).
- Public notice and comment before EPA approval of SIP (§110(a), 42 U.S.C. §7410(a)).
- Public notice and comment before EPA approval of SIP revision (§110(l), 42 U.S.C. §7410(l)).
- Public notice and comment before a PSD area is redesignated (§164(b), 42 U.S.C. §7474(b)).
- Opportunity for public notice and comment before U.S. enters into a consent order or settlement agreement under the CAA (§113(g), 42 U.S.C. §7413(g)).
- Opportunity for public hearing on draft Title V permit (40 C.F.R. §70.7(h)).
- Public hearing on draft PSD permit (§165(a)(2), 42 U.S.C. §7475(a)(2)).
- Public hearing before EPA approval of SIP revision (§110(l), 42 U.S.C. §7410(l)).
- Public hearing before any PSD area is redesignated (§164(b), 42 U.S.C. §7474(b)).
- EPA to consult with advisory committees before issuing various air quality standards and regulations (§117(a), (b), 42 U.S.C. §7417(a), (b)).
- Meaningful community participation in siting solid waste incineration units (§129(a)(3), 42 U.S.C. §7429(a)(3)).
- Any body that approves permits or enforcement orders to have a majority of members who represent the public interest (§128(a), 42 U.S.C. §7428(a)).

Available Information

- Databases of information on emission control technology (§108(h), 42 U.S.C. §7408(h))
 - (a) Clean Air Technology Center (<http://www.epa.gov/ttn/catc>).
 - (b) RACT/BACT/LAER Clearinghouse - information on air pollution emission standards (<http://cfpub1.epa.gov/rblc>) (RACT, BACT, and LAER are acronyms for different program requirements under the CAA. They stand for Reasonably Available Control Technology, Best Available Control Technology, and Lowest Achievable Emission Rate.)
- Great Lakes atmospheric deposition monitoring network; monitoring stations for Chesapeake Bay and Lake Champlain; atmospheric deposition monitoring networks for coastal waters and watersheds (§112(m), 42 U.S.C. §7412(m)).
- Revised inventory of actual emissions for ozone non-attainment areas (every three years until attainment reached); ambient monitoring of various air pollutants (§182, 42 U.S.C. §7511a).
- EPA-sponsored air quality monitoring stations in major urban areas (§319, 42 U.S.C. §7619).
- Air toxics clearinghouse and center (technical information and assistance to states and local agencies; information to be available to the public) (<http://www.epa.gov/ttn/atw>) (§112(l)(3), 42 U.S.C. §7412(l)(3)).
- National Urban Air Toxics Research Center (<http://es.epa.gov/ncercqa/nuartrc.html>) (§112(p), 42 U.S.C. §7412(p)).

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Public Education

- Education and outreach efforts to inform public about integrated urban (air toxics) strategy (§112(k), 42 U.S.C. §7412(k)).
- Annual notification of public by state of areas in which NAAQS are not attained (§127(a), 42 U.S.C. §7427(a)).

Legal Rules and Opportunities

Standard-setting:

- Air quality criteria for specific air pollutants.
- Primary and secondary NAAQS (5-year review of NAAQS) (§109, 42 U.S.C. §7409).
- Performance standards for NSPS (§111(f), 42 U.S.C. §7411(f)).
- Performance standards for solid waste incineration units (§129, 42 U.S.C. §7429).
- NESHAPs (§112(c), (d), 42 U.S.C. §7412(c), (d)).
- Urban air toxics program/integrated urban strategy (§112(k), 42 U.S.C. §7412(k)).
- Standards for air pollutant emissions from new motor vehicles (§202(a)(1), 42 U.S.C. § 7521(a)(1)); and emissions from heavy duty engines (§ 202(a)(3)(B), 42 U.S.C. §7521(a)(3)(B)).
- Motor vehicle emission standards for urban buses (§219(a), 42 U.S.C. § 7554(a)).

Rulemaking:

- EPA to list categories of stationary sources that cause or contribute significantly to air pollution (§111(b), 42 U.S.C. §7411(b)).
- Periodic review of hazardous air pollutants list (§112(b)(2), 42 U.S.C. §7412(b)(2)).
- Requirements to control hazardous air pollutant emissions from motor vehicles and motor vehicle fuels (§202(l), 42 U.S.C. §7521(l)).
- Requirements for fuels, fuel additives, diesel fuel and reformulated gasoline (§211, 42 U.S.C. §7545).
- EPA to promulgate federal implementation plan when state does not meet minimum criteria or SIP or permit program is disapproved (§110(c)(1), 42 U.S.C. §7410(c)(1)).
- Requirements regarding accidental releases (prevention, detection, correction, monitoring, recordkeeping, reporting, training, equipment, etc.) (§112(r)(7), 42 U.S.C. §7412(r)(7)).

Permitting and other approvals:

- New air pollution source may request waiver from new source performance standard for use of innovative technology or continuous emission reduction system (§111(j), 42 U.S.C. §7411(j)).
- Risk management plans required for owner/operator of stationary air pollution source to minimize accidental releases and provide prompt emergency response (§112(r), 42 U.S.C. §7412(r)).
- Title V air pollution permit program (§504, 42 U.S.C. §7661c).
- Preconstruction review of new sources or modification of existing sources of air pollution (NSR permits required in non-attainment areas) (§173(a), 42 U.S.C. §7503(a)).
- Permits for new sources or modification of existing sources of air pollution in attainment areas to protect PSD (§160(1), 42 U.S.C. §7470(1)).
- Emissions trading authorized for sulfur dioxide and nitrogen oxides (§403(b), 42 U.S.C. §7651b(b)).

Siting:

- EPA to designate geographic areas as attainment or non-attainment for NAAQS; non-attainment areas further classified as marginal, moderate, serious, severe, or extreme (§181(a), 42 U.S.C. §7511(a)).
- EPA may require state to redesignate areas as non-attainment for NAAQS, or change significance classification within non-attainment area (§107(d)(3), 42 U.S.C. §7407(d)(3)).
- Siting requirements for solid waste incineration units (cumulative impacts) (regulations published at 40 C.F.R. § 60, subpart Cc) (§129(a)(3), 42 U.S.C. §7429(a)(3)).
- NSR permit decision to include siting considerations (§173(a)(5), 42 U.S.C. §7503(a)(5)).

Legal Rules, continued

Enforcement and compliance assurance:

- EPA to require use of low-polluting fuels if urban buses do not meet emission standards (§219(c)(2), 42 U.S.C. §7554(c)(2)).
- EPA may impose highway sanctions and offsets as consequence for state's inadequate administration of air program (§§502(i), 179, 42 U.S.C. §§7661a(i), 7509).
- EPA civil action and civil penalty authority (§113(b), (e), 42 U.S.C. §7413(b), (e)).
- EPA may dictate required revisions of SIP (§110(k)(5), 42 U.S.C. § 7510(k)(5)).
- "Imminent and substantial endangerment" authority (§303, 42 U.S.C. §7603).

Using the Clean Air Act to Achieve Environmental Justice

The Clean Air Act provides many opportunities for community residents to become involved in government decisions on activities regulated by this law. These activities include opportunities to provide public comments, participate in public hearings, and other miscellaneous activities.

Community residents can provide public comments on the following:

- Draft Title V permits;
- EPA's proposal to approve state Title V permit program;
- EPA approval of a state implementation plan (SIP);
- EPA approval of a SIP revision;
- Before a PSD area is redesignated; and
- Before U.S. enters into a consent order or settlement agreement under the CAA.

Community residents can participate in public hearings on the following:

- Draft Title V permit;
- Draft PSD permit;
- Before EPA approval of a SIP revision; and
- Before any PSD area is redesignated.

Community residents can also participate in the following additional types of activities:

- Citizen advisory groups;
- EPA consultation with citizen committees before issuing various air quality standards and regulations;
- Meaningful community participation in siting solid waste incineration units; and
- Any board or body that approves permits or enforcement orders is to have at least a majority of members who represent the public interest.

Facility monitoring is another important activity for community residents. Community residents should obtain and review copies of documents that address the regulated facility, such as the following:

- Stationary air pollution source's risk management plan (risk management plans found at <http://www.epa.gov/emergencies/content/rmp>, and at facility) (§112(r)(7)(B)(ii), 42 U.S.C. §7412(r)(7)(B)(ii)).
- Title V permit recordkeeping requirements (§504(c), 42 U.S.C. §7661c(c)).
- Facility-specific recordkeeping and monitoring requirements (must be available to public) (§114(a), 42 U.S.C. §7414(a)).
- Ambient air quality monitoring required as part of PSD permit review (continuous air quality monitoring data; data to be made available at public hearing (§§165(e)(1), 165(a)(7), 42 U.S.C. §§ 7475(e)(1), 7475(a)(7))).
- Emissions monitoring by solid waste incineration units (copies to be available for inspection and copying during business hours) (§129(c), 42 U.S.C. §7429(c)).

In addition to opportunities to participate in government decision-making, it is also important for community residents to understand where they can obtain information that will assist them achieve their goals.

Information sources include clearing houses and databases. One source is EPA's website:

"The Plain English Guide to the Clean Air Act," which includes a glossary of terms.

Please see www.epa.gov/oar/oaqps

Clean Air Act and Public Participation:

Community residents should keep in mind that public participation regulations require that all relevant comments offered by the public must be taken into consideration before final decisions are made.