# ELI SUMMER SCHOOL: CLEAN AIR ACT

Sara Colangelo Georgetown University Law Center

# 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 1963Air Quality Act of 1967



Image used under license from Shutterstock

### 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

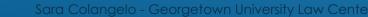


## CLEAN AIR ACT STRUCTURE

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

Sara Colangelo - Georgetown University Law Center

### 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

Sara Colangelo - Georgetown University Law Center

### 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



Sara Colangelo - Georgetown University Law Center - Image used under license from Shutterstock

### 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 nonattainment 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)



Sara Colangelo - Georgetown University Law Center - Image used under license from Shutterstock

## 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!

#### sac54@law.georgetown.edu



Image used under license from Shutterstock