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# 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
  - *Massachusetts v. EPA* (2007)
  - *Am. Electric Power Co. v. Connecticut* (2011)
  - *Utility Air Regulatory Group v. EPA* (2014)



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THANK YOU!

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