

5 CLEAN AIR ACT CASES TO WATCH IN 2014

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U.S. SUPREME COURT



UARG v. EPA – the GHG Timing and Tailoring Rules

- Can GHG emissions trigger the requirement to obtain a PSD permit?
- If not, is BACT applicable to GHGs when other regulated pollutants trigger the requirement to obtain a PSD permit?
- The question is not *whether* GHGs can be regulated under the CAA, but *how*.

EME Homer City v. EPA – the Transport Rule, aka the Cross State Air Pollution Rule

- Do regional (multi-state) nonattainment problems justify controls based on cost-per-ton of reductions, or must mandated controls be limited to a given State's "significant contribution" to a downwind State's nonattainment?
- FIP vs. SIP; Can U.S. EPA impose source-specific control obligations before allowing States to formulate implementation plans they deem appropriate?

U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT



White Stallion Energy Center v. EPA – The Utility Mercury and Air Toxics (MATS) Rule

- First ever national emission standards for Hazardous Air Pollutant emissions from coal and oil fired power plants.
- One of the most expensive and controversial rules in EPA's history.
- NERA estimates annual compliance costs of \$10 billion beginning in 2015, and retirement of 20-28 GW of generating capacity east of the Mississippi by 2015.

U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT



Bell v. Cheswick – Nuisance liability for emissions authorized by CAA permits

- Class action on behalf of residents within one mile of a coal-fired power plant.
- The District Court dismissed because the nuisance claims “impermissibly encroach on and interfere with” the “comprehensive statutory and regulatory scheme that establishes the standards with which the Cheswick Generating Station must abide.”
- The Third Circuit reversed, holding that the CAA does *not* preempt tort actions based on the host State’s common law.
- In February, Cheswick filed a petition for Supreme Court review of the Third Circuit’s decision.

U.S. DISTRICT COURT FOR EASTERN DISTRICT OF MICHIGAN



U.S. v. Detroit Edison Co. – Projecting Emissions to Determine Whether PSD Permitting is Required

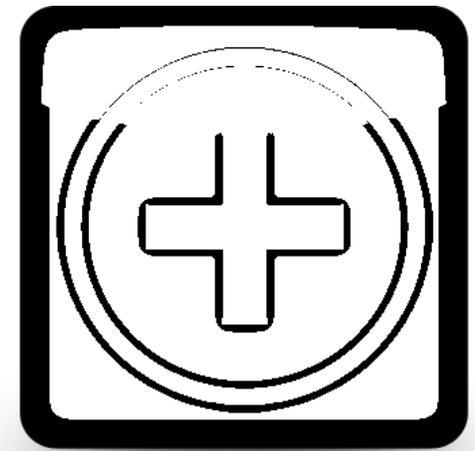
- Source operators must project future emissions caused and not caused by NSR projects following rule-based requirements “at a basic level.”
- EPA is only entitled to conduct a surface review of a source operator’s preconstruction projections, to determine whether they comport with the letter of the law; EPA is not allowed to “second-guess” the source operator’s calculations or demand-growth exclusions.
- Only actual post-project emissions “traceable to the construction” trump a source operator’s preconstruction emission projections.

**THE GOOD,
THE BAD,
AND
THE
UNFINISHED BUSINESS
IN THE OHIO**

AIR PROGRAM, 2014

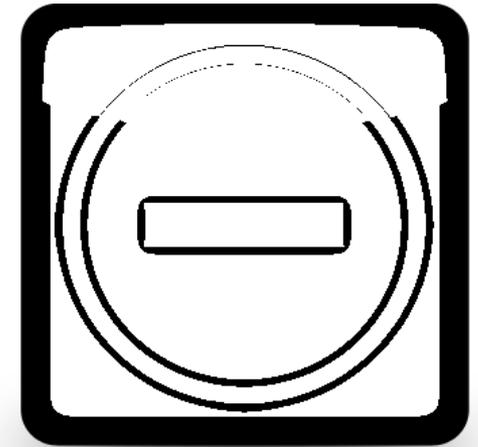


THE GOOD



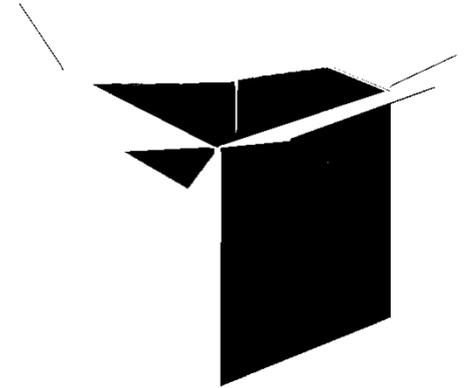
- New Best Available Technology (BAT) guidance – more in line with SB 265 and the longstanding statutory definition of BAT
- Revisions to the Modeling guidance, Engineering Guide 69 – to eliminate features more stringent than federal modeling guidance

THE BAD



- **Region 5 enforcement – independent, misguided, and overreaching**

THE UNFINISHED BUSINESS



The electronic Library of permit terms and conditions – a host of issues:

- Can be tantamount to substantive regulations
- regulation by software
- no notice and participation opportunity
- sometimes less than ideal drafting
- sometimes bad law and/or policy