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Environment

AIR REGULATION

Van Ness Feldman has an unparalleled depth of experience in air quality policy-making and analysis. While serving as counsel to congressional committees and as senior officials in federal agencies, the firm's lawyers drafted primary sections of the Clean Air Act and later played key roles in the design of the SO₂ Emissions Trading Program. Van Ness Feldman puts this extensive air regulatory experience to use for its clients, assisting them with legislative matters; agency rulemakings; enforcement proceedings; compliance planning; and facility permitting and siting.

In addition, Van Ness Feldman is poised to work on emerging air quality policy issues. Many interests now believe that the Clean Air Act's pollutant-by-pollutant approach and piecemeal regulatory development are hampering planning by companies and a range of industries. In the next few years, there are likely to be new initiatives to reform the Act, establish new market-based and incentive-based approaches, and introduce controls on carbon dioxide. With the firm's policy analysis and design experience — and with its pioneering global climate change practice group — Van Ness Feldman is ideally situated to represent clients' interests in what will be a complicated, high-stakes legislative process.

Legislative Matters

Clients rely on Van Ness Feldman to represent their interests in congressional debates on air quality-related issues. Van Ness Feldman is active on Capitol Hill, representing electric utilities, automakers, and manufacturers in various matters related to Clean Air Act implementation.

Attorneys from Van Ness Feldman played key roles in the development of the original Clean Air Act in the 1970s and have represented clients in every major legislative initiative related to the Act and other air laws since that time. Most recently, the firm has participated in the debate over the use of methyl tertiary butyl ether and the future of the reformulated gasoline program. We also have played a central role in the development of key provisions in energy and tax legislation that affect clients' environmental compliance planning.

Monitoring of and Participation in Agency Rulemakings

Van Ness Feldman identifies new state and federal regulatory developments that could affect clients' interests and represents them throughout the promulgation process. We develop comments on proposed regulations and testimony for public hearings. Where necessary, we represent clients in judicial challenges to final rules. In many cases, Van Ness Feldman works directly with agency staff to develop alternative approaches that better serve clients' interests.

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The firm's rulemaking experience dates from the development of the initial mobile source program at EPA in the early 1970s. Since then, Van Ness Feldman has been involved in every major rulemaking implementing the 1990 Clean Air Act Amendments. Recently, the firm has represented clients in rulemakings related to the EPA NO_x SIP Call, the mobile source provisions of the California Federal Implementation Program, EPA's proposed revisions to the Federal Test Procedure for light-duty vehicles, and numerous initiatives regarding MACT standards.

Enforcement Proceedings

The firm's experience and understanding of state and EPA enforcement policies and personnel have allowed Van Ness Feldman to advise clients on creative ways of responding to enforcement proceedings. We counsel clients in actions brought by agencies and in review proceedings concerning conditions (or denials) of permits. In each case, we help clients evaluate the merits of agency claims and the risks of litigation. The firm then develops litigation, regulatory, and/or legislative strategies for prompt resolution of the matter.

Most recently, we are representing electric utilities and refineries targeted by the EPA New Source Review enforcement initiatives. Previously, we represented automakers in responding to allegations that they violated federal and California on-board diagnostic and fuel regulations. Van Ness Feldman also successfully negotiated a settlement on behalf of truck manufacturers in EPA's enforcement initiative against the diesel truck industry.

Compliance Planning

Our attorneys help clients determine the air quality regulatory requirements that apply to them and help develop cost-effective compliance strategies. For example, we advise companies that own or operate stationary sources on how to meet relevant permit requirements. We assist vehicle and engine manufacturers on procedures for certification; warranty language; sale/distribution questions in Northeast states; and on state inspection/maintenance programs.

Typically, we work with in-house technical and legal staff on these issues, as well as with representatives of companies and trade associations. Our understanding of EPA and state policies and relationships with agency personnel help us provide prompt, cost-effective responses to clients' inquiries. Clients also benefit from our detailed knowledge of new market-based mechanisms and streamlined procedures under development by federal and state agencies.

Facility Permitting and Siting

Van Ness Feldman assists clients in preparing and obtaining necessary pre-construction and operation permits required under the Clean Air Act and state air quality laws. Our attorneys prepare assessments of environmental impacts associated with projects. We help develop strategies for overcoming objections to permits raised by agencies and citizen groups.