



Air Regulation

RECENT EPA AIR DEVELOPMENTS

Enhanced EPA Enforcement of Air Regulations and New Air Rulemakings

Much attention has been paid to the climate change debate in the U.S. Congress. Critically, however, imminent administrative and enforcement activity by the Environmental Protection Agency (EPA) under existing Clean Air Act (CAA) statutes will have far reaching and more immediate impacts on the energy sector.

Van Ness Feldman has prepared a memo with more background information on EPA's enhanced enforcement and a matrix that summarizes key CAA-related rulemakings and the anticipated timelines for each.

Our Services

Van Ness Feldman's professionals in Washington, DC, and Seattle, WA, are uniquely positioned to assist clients in navigating this new era of environmental regulation. We offer extensive expertise and knowledge of the CAA and evolving greenhouse gas (GHG) regulations, a network of contacts with key staff in EPA and Congress, and a wealth of experience handling complex project development, permitting and enforcement matters. Our clients benefit from our sophisticated legal counseling and government relations capabilities, our thorough understanding of the business and operational mandates of the energy and industrial sectors, and decades of hands-on experience – in government positions as well as the private sector – with the development and implementation of environmental regulation.

Among the services we provide include:

Strategic Counseling. With multiple regulatory and legislative developments proceeding at different paces, it is important to understand the big picture and figure out how to understand the relationships among all the moving pieces. Van Ness Feldman excels at assisting our clients to understand the potential impacts of regulatory and policy developments, consider and prioritize appropriate enterprise-wide strategic responses, and implement and adjust those strategies over time.

Project Planning & Permitting. New projects, as well as modifications, expansions, and retrofits to existing projects and facilities, carry unique environmental planning and permitting considerations. Van Ness Feldman attorneys and technical advisors routinely participate in early strategy sessions with clients to help educate and explain changes in permitting requirements and to spot regulatory trends so that pending projects can be planned strategically and pitfalls can be anticipated and avoided. Once a project is underway, our attorneys work closely and efficiently with client environmental and engineering staff (and third-party consultants) to

navigate legal and technical issues and complications that can arise due to changing and shifting environmental laws, policies, and political pressures.

Key Rulemakings. The attorneys in our Environmental Practice are actively engaged in all the major rulemakings pertaining to EPA's regulation of traditional pollutants (e.g., revisions to NAAQS, air toxics standards, aggregation, and PM2.5 grandfathering regulations) as well as EPA's efforts to address GHG emissions (e.g., GHG Reporting Rule, Tailoring Rule). In many cases this has meant working closely with clients to develop comments and conduct follow-up meetings with agency staff to shape a workable rule. For other clients, we also have provided advice on how proposed and final regulations will impact their projects, existing facilities and operations. We undertake these efforts both on behalf of individual clients as well as on behalf of industry coalitions.

Compliance. Our in-depth knowledge of permitting requirements and emerging areas of regulation (e.g., GHG regulations) allow us to help our clients understand which rules apply to their facilities and how to effectively comply so as to reduce risk of future enforcement action. We also develop compliance programs, training programs, and assist in auditing ongoing compliance.

Enforcement. We have counseled clients through all aspects of EPA enforcement actions, from answering EPA's initial Section 114 information request to settlement negotiations. In some cases, the settlements were extremely complex deals that took a year or more to negotiate and involved reaching agreement on a package of system-wide emissions control requirements (including emissions trading restrictions) among multiple federal and state parties. Through these engagements, we have built effective working relationships with EPA enforcement staff.

Legislation. The entirety of this area is potentially subject to Congressional action – whether in the form of legislation eliminating GHG regulatory authority under the CAA, comprehensive climate change legislation, or other legislative approaches being developed, such as the so-called “3-pollutant” bill. Working alongside our bipartisan government relations practitioners, Van Ness Feldman's environmental team has an active presence on these initiatives on Capitol Hill, thus providing us with early insight on where Congress is headed and the ability to support our clients' interests in the legislative arena as needed.

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