



Updates in Environmental Law

**SLMA Annual Meeting
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Discussion Outline

- Clean Water Act
- Clean Air Act
- Endangered Species
- Trump & Pruitt's EPA, Year 2

Clean Water Act Update

- WOTUS Rule
 - Original Rule issued in May 2015
 - EPA Reconsideration Rulemaking
 - Ongoing Litigation of 2015 Rule:
 - January 2018, Supreme Court states that District Courts are proper jurisdiction
 - February 2018, Sixth Circuit lifts prior Stay
 - Cases proceeding in multiple District Courts
 - January 2018, EPA issued 2-year delay
 - New Litigation against Stay
 - Challenges to Switching Interpretations
 - Scalia’s “continuous connection” vs. Kennedy’s “significant nexus”
 - When resolved?

Clean Water Act Update cont.

- Forest Road Permitting
 - Silviculture Rule is likely settled; NPDES permits are not required
- Wetlands Nationwide Permits
 - Final Rule effective 3/19/17
- State Water Quality Criteria
 - December 2017, EPA finalized stringent WQ standards for Maine
 - Petition for Reconsideration pending for final rule in Washington
 - Similar path likely for Idaho

Clean Air Act Update

- Plywood/Composite Wood MACT
 - Comments on ICR submitted February 2018
 - EPA to conduct site visits?
 - Schedule?
- 2015 Ozone Standard
 - Oral argument on standards delayed indefinitely
 - Possible EPA Reconsideration?
 - March 2018, CA Court orders EPA to issue designations by April
 - Implementation rules for 2008 and 2015 are in jeopardy
- Biogenic Carbon Neutrality
 - Progress for use as fuel and in federal procurement

Clean Air Act Update cont.

- **Boiler MACT**
 - Primary case is done, but litigation re Reconsideration is ongoing
 - EPA still working on Remand of portions of Rule
- **SSM SIP Call**
 - SIP revisions were due 11/22/16
 - Briefing complete
 - Oral Argument delayed indefinitely in April 2017
 - Possible EPA Reconsideration?
- **NHSM Rulemaking**
 - February 2018, EPA issues Rule listing treated railway ties as fuel, i.e., not a solid waste
 - March 2018, D.C. Circuit opinion adds flexibility to waste/fuel determination factors

Clean Air Act Update cont.

- Clean Power Plan
 - October 2017, EPA Proposes Repeal
 - Comments submitted by January 2018
 - Original litigation is Stayed

Endangered Species Act Update

- Tri-Colored Bat
 - 12-month status review underway
 - Very similar to NLEB situation
- Northern Long-Eared Bat
 - Section 4(d) Rule finalized in January 2016
 - Allows certain “incidental takes” from tree removal activities within WNS Zone with restricted areas
 - Environmental groups challenge both designation and 4(d) flexibility
 - Oral argument for designation issue scheduled for April
- Eastern Diamondback Rattlesnake (and other pending species determinations)
 - New listings not likely
 - Statutory deadlines may impose schedule

EPA – Predictions from Early 2017

- Flurry of Executive Orders
- Proposed Budget and Staff Cuts
- Climate Change Denials/Friendly to Fossil Fuel Industry
- Reign in Federal Overreach
- Halt “Sue and Settle” practices and “Rulemakings by Guidance”
- Repeal WOTUS

EPA Today

- Significant Deregulatory Efforts Ongoing
 - “Temporary” freeze and/or “Reconsideration” of multiple Obama Era Rules, e.g. WOTUS, Clean Power Plan, etc.
 - Cessation/pause of litigation to defend Obama Era Rules
 - “1 In, 2 Out” Regulatory Rulemakings
 - Solicitation of Public Comments on Regulatory Reform

EPA Today, Policy Changes

- Significant changes to:
 - “Once In, Always In” Policy
 - “Guidance-based Enforcement”
 - “Sue and Settle” Practices in Deadline Suits
 - NSR Permitting
 - Prohibition on Settlement Payments to 3rd Parties

EPA Today, cont.

- 25% - 50% Budget Cut?
- 20%+ Workforce Reduction?
- Eliminate 2 of 10 Regional Offices?
- Enforcement down in first year
 - Centralized enforcement decisions in HQ
 - CERCLA actions immune?

What Does This Mean?

- Federal activity down, but will States fill the gap? Or citizen groups?
- Uncertain Impacts on Ongoing Rulemakings and Litigation
 - Organized resistance, statutory limitations, and strict Courts
- Unintended consequences/backlash from Industry?
- Regulatory War Against California?


QUESTIONS?

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