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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