

POST

How to Reduce Clean Air Act Litigation

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One of the central focuses of the Congressional Clean Air Act Forums so far has been the crazy amount of litigation on air quality matters. At one point the question came up about what we could do to reduce litigation. The room was silent.

Here is the answer.

You can't stop litigation from occurring, but you can significantly reduce the number of circumstances that lead to litigation. It's quite simple. It's just like arguments with our significant others. We can't stop arguments from happening. But we can significantly reduce the number of circumstances that lead to arguments. I for example can take the garbage out next time without being asked. I can elect not to tell an embarrassing story at our next dinner party.

Exact same strategy with air quality litigation. Right now you can sue on where the NAAQS are set, what nonattainment designations are made, all the various parts of the SIP, the underlying control measures in the SIP, the Federal approval of the control measures that should be in the SIP, the Federal approval of the State control measures in the SIP, the State re-approval of the Federal disapproval of the State

control measures in the SIP, the Federal approval of the State-reapproval of the Federal disapproval of the control measures in the SIP, etc. Just need to reduce the number of opportunities for litigation and the litigation will decrease. It's that easy.

Anyone re-reviewed the recommendations in “Breaking the Logjam” (see attached)? If not, I would encourage you to look at it again. Just think about the decreases in potential litigation this simplified air quality management process would provide versus our current paradigm. A significant portion of the recommendation is a Federal multi-pollutant market based system. Lawyers by the way hate programs like the Acid Rain Program. Why? Too simple. Not enough complexity, ambiguity, and steps in the process to argue over.

“Any intelligent fool can make things bigger, more complex, and more violent. It takes a touch of genius—and a lot of courage—to move in the opposite direction.” —E.F Schumacher”

Time to reduce the number of opportunities for time-consuming and resource-intensive litigation. Time to transform the SIP process. We can make it happen.

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