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ENVIRONMENTAL LAW GROUP

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Air Permitting and Compliance Counseling

ELG attorneys have significant experience in Clean Air Act matters. We have assisted clients nationwide in negotiating air permits and in addressing potential compliance issues. We have been at the forefront of federal air regulation, helping clients devise innovative permit strategies and helping resolve national and state enforcement cases. The following are among the types of recent matters we have worked on:

PERMITTING ISSUES

Helping analyze rule applicability, establish permit strategy, craft permit application language and proposed conditions, review draft permits, and comment on proposed draft permits with an eye toward establishing a clear document that maximizes operational flexibility while allowing for long-term compliance.

ENFORCEMENT ISSUES

Responding to regulatory requests for information (both state requests and federal § 114 requests), responding to notices of violation, resolving alleged non-compliance, both formally and informally, and preparing for and responding to agency inspections.

STACK TEST ISSUES

Reviewing stack test plans, helping manage unexpected stack test results, framing stack test submittals with appropriate corrective action/compliance plan commitments to address potential non-compliance, managing the results of engineering test evaluations.

COMPLIANCE SYSTEMS

Ensuring processes are in place to allow responsible officials to certify compliance with air permit requirements without risk of a false certification, ensuring that any potential non-compliance is properly identified and disclosed, and that any "grey" issues are properly identified and discussed in the regulatory documents so the basis for any compliance certification is clearly stated.

REGULATORY INTERPRETATIONS

Evaluating potential applicability of state and federal air rules, providing guidance on regulatory interpretations, crafting and submitting applicability determination requests where appropriate, and following up with regulators as necessary.

RULE IMPLEMENTATION

Helping establish compliance programs to meet new regulatory requirements.

REVIEW PERIODIC SUBMITTALS

Reviewing quarterly, semi-annual, and annual reports to ensure any unusual issues are framed properly prior to submittal to agencies.

STARTUP, SHUTDOWN, MALFUNCTION PROCEDURES

Helping establish guidance for startup, shutdown, or malfunction events that may lead to excess emissions.

OTHER SPECIFIC RECENT AIR WORK INCLUDES:

- » Applying for and obtaining PSD permits for industrial facilities, including addressing GHG BACT requirements
- » Managing Endangered Species Act evaluations and cultural resource assessments for PSD permits
- » Negotiating a federal Consent Decree for company in industrial sector with previously unaccounted for VOC emissions—establishing nationwide compliance program relating to this issue
- » Responding to modeling challenges associated with new National Ambient Air Quality Standards
- » Addressing modeling boundary issues for multiple adjacent sources
- » Guiding Leak Detection and Repair (LDAR) program improvements, establishing criteria to meet LDAR sample system requirements for new construction, and establishing delay of repair criteria
- » Evaluating permit applicability for “routine” work and multiple simultaneous projects
- » Addressing flaws in construction permitting where a facility has started construction
- » Establishing criteria for allowable pre-construction activities for new facility construction
- » Reviewing facility source definition issues and addressing subsequent permitting consequences
- » Managing the permitting consequences of changed emission factors
- » Helping guide response to modeled non-attainment with ambient air quality standards
- » Assisting in air toxics evaluations

- » Responding to public comment in a permitting process
- » Establishing specific guidelines for new plant startup to mitigate regulatory risk
- » Repermitting a facility from Title V minor to major
- » Repermitting a facility from PSD minor to major
- » Negotiating injunctive relief for alleged historic NSR violations
- » Assisting with several backward-looking Clean Air Act Section 114 requests relating to historic NSR issues
- » Evaluating whether proposed facility changes necessitate permit modifications and, if so, determining the appropriate permit modification type
- » Resolving allegations involving the failure to obtain New Source Review (NSR) permits by several “major sources” prior to facility construction and operation



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