



# Judicial Review Under the Clean Air Act

**NACAA Coffee Break**

**September 29, 2022**

**Karen Mongoven, NACAA**

# What I Will Cover

- ❑ What is judicial review
- ❑ Clean Air Act Section 307
  - Who can bring a CAA challenge
  - What types of actions can be challenged
  - Where and when a rule can be challenged
  - What issues can be raised in a challenge
- ❑ Related principles of administrative law
- ❑ Step-by-step walkthrough of a petition for review of a CAA rule in the D.C. Circuit

# Citizen Suits vs. Judicial Review

## □ Citizen Suits: CAA Section 304

### ◆ Authorizes two types of lawsuits:

- Against a polluter for past or ongoing violations of an “emission standard or limitation” (including permit violations).
- Against the EPA Administrator to compel agency action unlawfully withheld or unreasonably delayed.

### ◆ Filed in U.S. District Courts.

## □ **Judicial Review: CAA Section 307(b)**

### ◆ Petitions for review: facial challenges to EPA rules and other final actions.

- Includes final decisions of the Administrator that defer performance of any nondiscretionary statutory action to a later time.

### 3 ◆ Filed in U.S. Courts of Appeals.

## CAA Section 307

- Section 307 governs EPA development and federal court review of air regulations, including:
  - ◆ How a rule is written
  - ◆ What information is part of the rulemaking record
  - ◆ Procedures – notice and comment, administrative reconsideration
  - ◆ Judicial review

## Clean Air Act Section 307(b) (42 U.S.C. § 7607(b)): Judicial review.

(1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard or requirement under section 7412 of this title, any standard of performance or requirement under section 7411 of this title, any standard under section 7521 of this title (other than a standard required to be prescribed under section 7521(b)(1) of this title), any determination under section 7521(b)(5) 1 of this title, any control or prohibition under section 7545 of this title, any standard under section 7571 of this title, any rule issued under section 7413, 7419, or under section 7420 of this title, or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 7410 of this title or section 7411(d) of this title, any order under section 7411(j) of this title, under section 7412 of this title, under section 7419 of this title, or under section 7420 of this title, or his action under section 1857c-10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977) or under regulations thereunder, or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title, or any other final action of the Administrator under this chapter (including any denial or disapproval by the Administrator under subchapter I) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.

# What EPA actions are subject to judicial review?

- ❑ Final rules
- ❑ Other “final agency actions”
  - ◆ Two-part test (*Bennett v. Spear*, 520 U.S. 154 (1997)):
    1. The action “marks the consummation of the agency’s decision-making process.”
    2. The action is “one by which rights or obligations have been determined, or from which legal consequences will flow.”
  - ◆ Examples: Grants or denials of petitions for administrative reconsideration; Title V petition orders; RFS small refinery exemption decisions.
- ❑ Most EPA final rules and actions (or notice of such actions) are published in the *Federal Register*.

# What EPA actions are subject to judicial review?

- ❑ CAA guidance documents and memoranda?
  - ◆ Courts have consistently found that such documents are **not reviewable on their face**.
  - ◆ Examples:
    - Significant Impact Levels (SILs) Guidance: *Sierra Club v. EPA*, 955 F.3d 36 (D.C. Cir. 2019).
    - “Wehrum Memorandum” withdrawing the “once in, always in” policy. *California Communities Against Toxics v. EPA*, 934 F.3d 627 (D.C. Cir. 2019).
- ❑ EPA actions that rely on the guidance to impose a requirement (e.g., denial of a petition to object to a Title V permit) or that are applied in a binding manner as if they have the force of law **are** reviewable.

# What EPA actions are subject to judicial review?

## □ Proposed rules are not reviewable.

*In re: Murray Energy Corp.* (D.C. Cir. Jun 9, 2015):

- ◆ Proposed Clean Power Plan rule is not subject to judicial review because it is not final agency action.
- ◆ The All Writs Act (which authorizes federal courts to issue writs “in aid of their respective jurisdictions”) does not authorize a court to circumvent “bedrock finality principles” in order to review a proposed rule.
- ◆ EPA public statements about its legal authority to regulate CO<sub>2</sub> emissions are not final agency action.



## Who can file a petition for review?

- ❑ Any party with **standing**. (This is not found in the CAA; it is a Constitutional and jurisprudential requirement.)
- ❑ Three-part test for Constitutional standing:
  - ◆ **Injury in fact:** The party has suffered an injury that is both “concrete and particularized” and “actual or imminent,” not “conceptual” or “hypothetical.”
  - ◆ **Causation:** The injury is “fairly traceable” to the alleged unlawful action.
  - ◆ **Redressability:** The injury is likely to be redressed by the remedy the court would grant.

*Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

# Who can file a petition for review?

## □ Organizational standing

- ◆ **Direct organizational standing:** the action causes direct injury to the organization itself.

- ◆ **Representational standing:**

- Its members would otherwise have standing to sue in their own right;
- The interests at stake are germane to the organization's purpose; and
- Neither the claim nor the relief requires participation of the organization's individual members.

*Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs.*, 528 U.S. 167, 183 (2000).

# Who can file a petition for review?

## □ Organizational standing (cont.)

- ◆ In practice, an environmental group has standing to challenge a Clean Air Act rule if it has members who have an interest in, use or benefit from the environmental resource that is threatened and can otherwise demonstrate all three elements of standing.
- ◆ Similarly, a trade association has standing to challenge a rule if it imposes burdens/obligations on its members.
- ◆ Standing is a threshold jurisdictional issue and can be raised at any time. Nonetheless, it tends to be a more contentious issue in citizen suits than in rule challenge cases under Section 307.

# Where is the petition for review filed?

## □ U.S. Court of Appeals for the D.C. Circuit

### ◆ “Nationally applicable” regulations

- Expressly includes (but not limited to) NAAQS, NESHAPs, standards of performance, motor vehicle and fuel standards (see Section 307(b)(1) for full list).

### ◆ Actions that are:

(1) based on **“a determination of nationwide scope or effect”** AND

(2) the EPA Administrator finds and publishes that determination.

- *Sierra Club v. EPA* (D.C. Cir. Aug. 26, 2022): EPA’s decision as to whether to make and publish a finding of nationwide scope and effect is committed by law to agency discretion. A court may not “second-guess” EPA’s discretionary decision to make and publish (or not) a finding of nationwide scope and effect.

# Where is the petition for review filed?

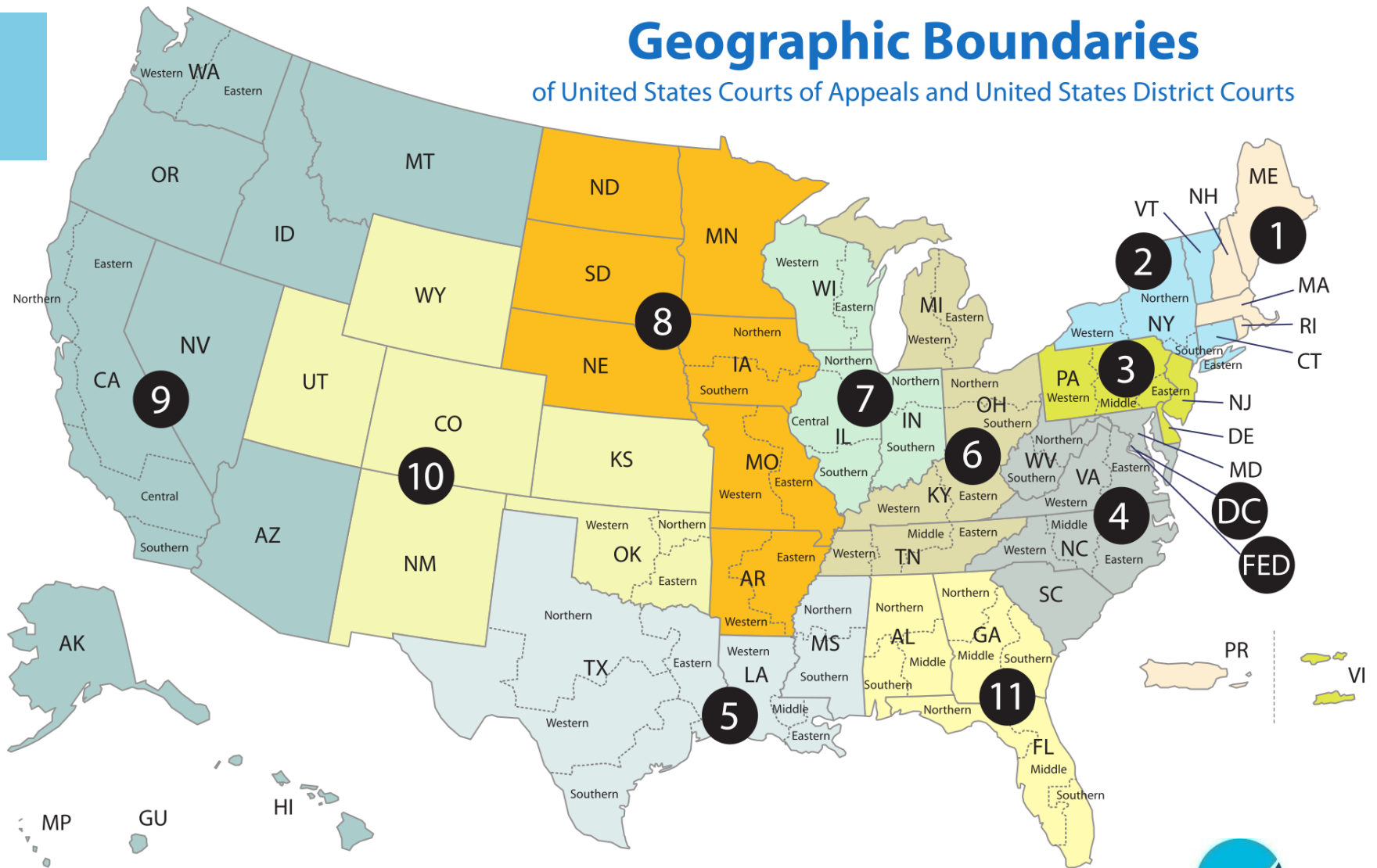
## □ **Appropriate Local Circuit**

### ◆ Rules that are “locally or regionally applicable”

- ✓ Expressly includes (but not limited to) approval or promulgation of a state implementation plan or 111(d) state plan (see Section 307(b)(1) for full list).

# Geographic Boundaries

of United States Courts of Appeals and United States District Courts



# Where is the petition for review filed?

## Venue is not always straightforward.

- ❑ Sometimes there is a dispute over whether an action is national or regional in scope.
  - ❑ Example: Denial of a small refinery exemption applies to a particular refinery but is part of a national action based on a national policy.
- ❑ A petitioner may prefer to have a challenge heard by the D.C. Circuit so that the court's decision has national effect, or vice-versa.
- ❑ If venue is at issue, a petitioner may file petitions for review in both the D.C. and the local circuit. The case in the petitioner's non-preferred venue is referred to as a "protective" petition for review.

# Where is the petition for review filed?

## ❑ **Interesting example: 2015 SSM SIP Call**

- ◆ Obama administration revised the startup, shutdown & malfunction (SSM) policy to align with recent court decisions and issued SIP Call for 35 states.
- ◆ SIP Calls were challenged in D.C. Circuit because EPA made and published a finding that they were “based on a determination of nationwide scope and effect” (revised SSM policy).
- ◆ Trump administration changed the policy and withdrew the SIP Call for three states.
- ◆ Environmental groups challenged the three state-specific withdrawals in D.C. Circuit on grounds that they were rules of “nationwide scope and effect” because they reinterpret national SSM policy.
- ◆ States argued they should be transferred to local circuits. D.C. Circuit decided all cases should be heard on same day before same panel as challenge to 2015 policy and deferred the venue issue to the merits panel.
- ◆ SIP Call withdrawal cases subsequently remanded without vacatur at request of Biden administration.



# When is the petition for review filed?

## CAA Section 307(b)(1):

- ❑ Within 60 days after publication in the *Federal Register*.
  - ◆ For purposes of judicial review, the time/date of any CAA “promulgation, approval or action” that is not published in the *Federal Register* is two weeks after the document is signed (unless the Administrator specifically provides otherwise). 40 C.F.R. § 23.3.

## OR

- ❑ If the challenge is based “solely on grounds arising after” those 60 days: Within 60 days after such grounds arise.
- ❑ The 60-day limit is jurisdictional; cannot be extended or forgiven.

## When is the petition for review filed?

- ❑ In “grounds arising after” cases, the petitioner must file a petition for administrative reconsideration with EPA first.
- ❑ Typically, the petitioner will file both the administrative and judicial petitions sequentially (can be done on the same day); the judicial petition will be placed in abeyance while EPA considers the administrative petition.

## On what grounds can a CAA rule be challenged?

- ❑ **Only objections which were raised with reasonable specificity during the public comment period may be raised during judicial review.** CAA Section 307(d)(7)(b).
- ❑ Exception: If a party raising an objection can demonstrate that it was “impracticable” to raise the issue during the comment period, or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review).
- ❑ To preserve issues for judicial review, comments typically raise far more issues than end up being raised in judicial proceedings.

## On what grounds can a CAA rule be challenged?

CAA Section 307(d)(9): The court may reverse any EPA action found to be:

- ❑ **Arbitrary, capricious, an abuse of discretion**, or otherwise not in accordance with law.
- ❑ Contrary to **constitutional** right, power, privilege, or immunity.
- ❑ In excess of **statutory** jurisdiction, authority, or limitation, or short of statutory right.

*(continues on next page)*

## On what grounds can a CAA rule be challenged?

CAA Section 307(d)(9) (*continued from previous page*):

- ❑ Without observance of **procedure** required by law, if:
  - (i) such failure to observe such procedure is arbitrary or capricious,
  - (ii) the procedural exception was raised during the comment period (or when it became reasonably practicable), AND
  - (iii) there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

## The “Arbitrary and Capricious” Standard

- “Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”

*Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*,  
463 U.S. 29, 43 (1983).

## The “Arbitrary and Capricious” Standard

- ❑ The arbitrary and capricious standard in the CAA is the same as in Section 706 of the Administrative Procedure Act (APA) (5.U.S.C. § 706).
- ❑ “The scope of review under the ‘arbitrary and capricious’ standard is narrow, and a court is not to substitute its judgment for that of the agency.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).
- ❑ The court must “affirm the EPA’s rules if the agency has considered the relevant factors and articulated a rational connection between the facts found and the choice made.” *NEDACAP v. EPA*, 891 F.3d 1041 (D.C. Cir. 2018).
- ❑ **In sum: the arbitrary and capricious standard is deferential to EPA.**

# Statutory Interpretation: *Chevron* Deference

- ❑ Courts must defer to an agency’s reasonable interpretation of ambiguous statutory authority. A two-step inquiry:
  - ◆ **Step 1**: Determine whether the statute is ambiguous, *i.e.*, whether Congress has “directly spoken to the precise question at issue.” If the statute is not ambiguous, the inquiry ends; court must give effect to Congress’s intent.
  - ◆ **Step 2**: If the statute is ambiguous, determine “whether the agency’s interpretation is reasonable.” If so, court must defer to the agency interpretation.
- ❑ *But see West Virginia v. EPA* (S.Ct. June 30, 2022): Under the “major questions doctrine,” agencies must point to “clear congressional authorization” for regulatory decisions of tremendous economic and political significance.
- ❑ Courts apply a less-deferential standard of review for EPA interpretation of prior agency rules.



## Final Rule as a “Logical Outgrowth”

- ❑ To satisfy APA and CAA notice requirements, changes in a final rule must be a “**logical outgrowth**” of the proposal.
- ❑ A final rule is the “logical outgrowth” of a proposed rule if “interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period.”
- ❑ A final rule “fails the logical outgrowth test” if “interested parties would have had to divine the agency’s unspoken thoughts, because the final rule was surprisingly distant from the proposed rule.”

See *Clean Air Council v. Pruitt*, 862 F.2d 1 (D.C. Cir. 2017) and cases cited therein.

## Record for Judicial Review

The administrative record. CAA Section 307(d)(7)(A):

- ❑ **Proposed rule and final rule** (including statements of basis and purpose; final rule must explain major changes from the proposed rule).
- ❑ **Data, information and documents** on which the proposed rule relies, and/or of central importance to the final rule.
- ❑ **Public comments, data, and documentary information** received during the comment period.
- ❑ **Transcripts of public hearings.**
- ❑ **Responses to significant comments**, criticisms and new data received during the comment period.

All these materials must be placed in the rulemaking docket.

# **Walking Through a Clean Air Act Rule Challenge Case in the D.C. Circuit**

# The Participants

- ❑ **Petitioner:** Party who files a petition for review.
- ❑ **Respondent:** EPA (and often, the EPA Administrator).
- ❑ **Intervenor:** Third party with a stake in the outcome of the case that the court has granted approval to participate.
  - ◆ On behalf of Petitioners or Respondents
  - ◆ Bound as a party to the court's decision
- ❑ ***Amicus Curiae:*** “Friend of the court” who offers expertise or insight with a bearing on the issues in the case.
  - ◆ In support of Petitioners or Respondents (or neither party)
  - ◆ Not a “party” to the case
  - ◆ Usually does not participate in oral argument

# Intervention

- ❑ Intervenors must file a **motion for leave to intervene** within 30 days of the filing of the petition for review which includes:
  - ◆ Concise statement of the party's interest in the case
  - ◆ Grounds for intervention.
  
- ❑ Although not binding on Courts of Appeals, Fed. Rule of Civil Proc. 24 allows intervention by parties if certain factors are met; these factors are used to analyze intervention motions under Fed. Rule of Appellate Proc. (FRAP) 15:
  - ◆ They have an interest in the subject of the petition for review
  - ◆ Their interest would be impaired or impeded without intervention
  - ◆ No other party will adequately represent their interest.

## *Amicus Curiae*

- ❑ The United States, its officers, federal agencies, or **states** may file an *amicus* brief without obtaining the consent of the court or other parties.
- ❑ Others must obtain the consent of all parties, or file a **motion for leave to participate as an *amicus*** that states:
  - ◆ The movant's interest
  - ◆ The reasons why an *amicus* brief is desirable and the matters asserted are relevant to the disposition of the case.

# Procedural Steps in the D.C. Circuit

1. **Petition for review filed** with the clerk of the court.
  - ◆ Each case is assigned a number based on the order in which it is filed. (In the D.C. Circuit: YY-####)
  - ◆ If multiple petitions for review are filed against the same rule, the cases are “consolidated.”
  - ◆ The first case filed becomes the “lead case.”
  - ◆ If multiple parties join in the same petition, the case is referred to by the first party listed (same with respondents).
  - ◆ Example: Challenges to EPA’s 2022 California waiver decision are consolidated and referred to as “*Ohio v. EPA*, No. 22-1081, et al.”

# Contents of a Petition for Review

## **Federal Rule of Appellate Procedure 15(a):**

- ❑ Name each party seeking review.
- ❑ Name the agency as a respondent.
- ❑ Specify the final rule or action being challenged (*Federal Register* citation).



# Procedural Steps in the D.C. Circuit

After the petition for review is docketed, the clerk issues an initial scheduling order setting initial deadlines (before the briefing schedule).

## 2. **Initial Submissions by Petitioners** (due 30 days after petition for review is filed):

1. Certificate as to Parties, Rulings, and Related Cases
2. Docketing Statement Form
  - Includes a brief statement of the basis of the petitioner's standing
3. Statement of Intent to Utilize Deferred Joint Appendix
4. Statement of Issues to be Raised
5. Underlying Decision from Which Petition Arises (i.e., the rule being challenged)

## Procedural Steps in the D.C. Circuit

3. EPA files Certified Index to the Record (due 30 days after petition for review is filed).
4. Deadline for **Procedural Motions**, if any – for both Petitioners and EPA (due 30 days after petition for review is docketed).
5. Deadline for **Dispositive Motions**, if any – for both Petitioners and EPA (due 45 days after petition for review is docketed).

NOTE: When multiple petitions for review are filed and consolidated over the 60-day review period, the parties often move to extend and align deadlines for initial filings and procedural and dispositive motions.

# Procedural Motions

- ❑ **Procedural motions** are motions that may affect the progress of the case through the court.
- ❑ **Examples:**
  - ◆ Motions to intervene
  - ◆ Motions to consolidate
  - ◆ Motions to hold the case in abeyance
  - ◆ **Motions to stay**
  - ◆ Motions to expedite

# Stay Motions

- ❑ The filing of a petition for review does not delay the effective date of a CAA rule.
- ❑ Petitioners can file a **motion to stay** the rule pending completion of judicial review (these are often coupled with a motion to expedite the briefing schedule).
- ❑ Must address four elements:
  - ◆ Likelihood of movant’s **success on the merits**;
  - ◆ **Irreparable injury** to the movant if stay is withheld;
  - ◆ Possibility of substantial **harm to other parties** if stay is granted;
  - ◆ The **public interest**.
- ❑ A stay is considered an “extraordinary remedy.”

# Dispositive Motions

- ❑ **Dispositive Motions** are motions which, if granted, would dispose of the petition for review in its entirety, or would transfer the case to another court. See FRAP 27(g).
- ❑ **Examples:**
  - ◆ Motions to dismiss (including for lack of jurisdiction)
  - ◆ Motions to transfer due to improper venue
  - ◆ Motions for summary affirmance (“where the merits are so clear as to justify summary action”)

## Notes on Motions Practice

- ❑ **Responses** to motions due 10 days after motion.
- ❑ **Replies** to responses due 7 days after response.
- ❑ Federal rules set length limits on motions, responses and replies.
- ❑ Depending on the relief sought, procedural and dispositive motions may be decided by the clerk (routine procedural motions), by a three-judge motions panel (contentious procedural motions, dispositive motions), or by the three-judge merits panel (if one has been assigned yet).
- ❑ Normally, motions are resolved before a briefing schedule is set.
- ❑ Issues raised in motions may be referred to the merits panel.

## Procedural Steps in the D.C. Circuit

6. Court may order parties to submit **proposed briefing formats and schedules** (more common in consolidated and/or complex cases).
  - ◆ In consolidated cases, joint briefs are preferred.
  - ◆ For example, petitioners in a CAA rule challenge case may be divided into the following groups: State Petitioners, Environmental/Public Interest Group Petitioners; Industry Petitioners (same for intervenors).

## Procedural Steps in the D.C. Circuit

6. **Briefing schedule issued** (default due dates and lengths can be changed). Typical briefing schedule:
- ◆ Petitioner's Brief
  - ◆ Intervenor for Petitioner's Brief (7 days after Petitioner's brief)
  - ◆ *Amicus* for Petitioner's Brief (7 days after Petitioner's brief)
  - ◆ Respondent's (EPA's) Brief (30 days after Petitioner's brief)
  - ◆ Intervenor for Respondent's Brief (7 days after EPA's brief)
  - ◆ *Amicus* for Respondent's Brief (7 days after EPA's brief)
  - ◆ Petitioner's Reply Brief (21 days after Respondent's brief)
  - ◆ Deferred Appendix
  - ◆ Final Briefs



## Merits Briefing

- ❑ **Petitioner's Brief:** All arguments supported by citations to authorities and record; standard of review; relief sought.
- ❑ **Intervenor and *Amicus* Briefs:** Must avoid repetition of facts and arguments in principal briefs and focus on points not made or adequately elaborated on.
- ❑ **Respondent's Brief:** Responds to arguments made in Petitioner's brief.
- ❑ **Petitioner's Reply Brief:** Replies to arguments in EPA's brief and does not put forth any new arguments.
- ❑ Briefs are required to contain specific sections in a specific order (see FRAP 28).

## Procedural Steps in the D.C. Circuit

### 8. Briefing

9. Case is randomly assigned to a **three-judge merits panel**.

**10. Oral argument scheduled** (usually at least 45 days after final briefs are filed)

- ◆ Court may order parties to submit proposed oral argument formats.
- ◆ Default is 10 minutes per side.

## D.C. Circuit Judges

1. Sri Srinivasan, Chief Judge (Obama, 2013)
2. Karen LeCraft Henderson (G.H.W. Bush, 1990)
3. Patricia A. Millett (Obama, 2013)
4. Cornelia T.L. Pillard (Obama, 2013)
5. Robert L. Wilkins (Obama, 2014)
6. Gregory G. Katsas (Trump, 2017)
7. Neomi Rao (Trump, 2019)
8. Justin R. Walker (Trump, 2020)
9. J. Michelle Childs (Biden, 2022)
10. Florence Y. Pan (awaiting commission) (Biden, 2022)
11. VACANT (Brad Garcia nominated by Biden, 2022)

Senior Circuit Judges (handle “as full a caseload as they are willing and able to undertake”):

1. Harry T. Edwards (Carter, 1980-2005)
2. Laurence H. Silberman (Reagan, 1985-2000)
3. Douglas H. Ginsburg (Reagan, 1986-2011)
4. David B. Sentelle (Reagan, 1987-2013)
5. Raymond Randolph (G.H.W. Bush, 1990-2008)
6. Judith W. Rogers (Clinton, 1994-2022)
7. David S. Tatel (Clinton, 1994-2022)

# Procedural Steps

## 11. Oral argument

## 12. **Opinion** issued, granting or denying the petition, or other disposition (dismissal, transfer)

- ◆ Usually many months after oral argument.
- ◆ May be published or unpublished, signed or *per curiam*; may be unanimous or a 2-1 split.
- ◆ Published opinions are accompanied by clerk's order withholding issuance of the mandate until 7 days after disposition of any timely rehearing petition.
- ◆ If the petition for review is granted, the CAA rule is remanded to EPA, in whole or in part, with or without vacatur.

## What happens next?

- ❑ Losing party may file a **petition for panel rehearing** (by the same 3-judge panel) and/or **petition for rehearing *en banc*** (by the full court).
  - ◆ Due 45 days after opinion is filed.
  - ◆ Must state each point of fact or law petitioner believes the court has overlooked or misapprehended.
  - ◆ Court may order a response, or it may decide the petition without a response.
- ❑ The court's formal **mandate** is issued 7 days after the period for seeking rehearing has expired or a petition for rehearing has been decided.

# Supreme Court Review

- ❑ Losing party may file a **petition for a writ of *certiorari*** with the U.S. Supreme Court.
- ❑ Multiple cert petitions will be consolidated.
- ❑ Responses and replies to the cert petition are filed.
- ❑ If the Supreme Court grants cert (VERY RARE), this will be followed by merits briefing (opening briefs, *amicus* briefs, responses and replies) and oral argument.
- ❑ If the Supreme Court reverses the decision of the Court of Appeals, the case is remanded, the mandate is withdrawn, and the case is revived.

# NACAA Resources

- ❑ NACAA maintains a chart showing the activities and status of every Clean Air Act case on the D.C. Circuit's docket (available at <https://members.4cleanair.org>).
- ❑ There are currently 99 cases on the docket, dating as far back as 2000. Most are being held in abeyance while EPA considers petitions for reconsideration.
- ❑ NACAA can provide members with copies of filings on request.

# Questions?

My contact info:

**Karen Mongoven**

Senior Staff Associate

National Association of Clean Air Agencies

[kmongoven@4cleanair.org](mailto:kmongoven@4cleanair.org)