

The Impact and Regulation of Air Toxics in Kentucky



by Ronald R. Van Stockum, Jr.

Coal

Coal is a marvelous product of Kentucky's floral and geologic history. Coal represents the remains of the early lush forest in Kentucky, one composed of tree ferns and towering Lycopoid and Sphenopsid trees.¹ Approximately 318 million years ago, during the Pennsylvanian Series of the Carboniferous Geologic Period, dead trees and plant tissue in these great wetland forests began to accumulate as swampy, muddy detritus. Much of the sun's energy which had gone into the production of that great mass of organic material was trapped within the soggy, slowly decaying plant remains. Further mud and ocean deposits buried these "peats" and the heat and pressure of time compressed and compacted them into coal, the "black gold" we mine today.² Ralph Waldo Emerson described coal thusly: "Every basket is power and civilization. For coal is a portable climate. It carries the heat of the tropics to Labrador and the polar circle, and it is the means of transporting itself whithersoever it is wanted...with its comfort brings its industrial power."³

Coal is important to Kentucky. More than 92 percent of Kentucky's electricity is produced by coal.⁴ Although not all recoverable, as much as 82 percent of Kentucky's original coal deposits remain, a staggering 86 billion tons.⁵ Coal-fired electric generating facilities have long been regulated for the emission of "criteria pollutants," and have been a central focus in the recent debate over carbon dioxide emissions and their role in "global warming."⁶ Coal combustion also figures prominently in the regulation of "hazardous air pollutants" or "air toxics," which is the subject of this paper.

History

Toxic air pollution and its regulation have a long history. By 1100 AD, coal mined in northeastern England was being shipped by sea to London. That medieval city was expanding rapidly and had exhausted its relatively accessible source of wood for cooking, heat, and commercial furnaces. By 1306, pollution from the burning of coal resulted in one of the first attempts to control toxic air pollution. In that year, King Edward I banned the burning of this "sea" coal in craftsmen's furnaces in London because of the uncontrolled and unhealthy effects of the smoke produced by its combustion. Regardless, by 1600 coal had become the predominant source of fuel in a deforested England. Three hundred and fifty years later in 1952, London smog, resulting primarily from the burning of coal, would be blamed for the deaths of 4,000 people over a four-day period.

In 1930, 63 people died and thousands were sickened from sulfur dioxide pollution in the atmosphere of the Meuse Valley River in Belgium. Here in the United States, in 1948, 20 people died and over 6,000 were made sick due to toxic air pollution in Donora, Penn. Thus it was learned that the ability of the atmosphere to disperse and dilute toxic air pollutants released from fuel combustion and industrial processes could be exceeded.

In the late 1940s, the Louisville Smoke Commission placed buckets on light posts for the purpose of measuring the accumulation of soot deposited from the city's polluted air. In 1956, the city undertook a "Special Air Pollution Study of Louisville and Jefferson County." The large-scale impact of air pollution in the city was obvious, yet the "chronic" effect of air pollutants present below levels high enough to cause "acute" health effects was not understood. The adverse toxic effects of

low concentrations of pollutants were brought to the public's attention by Rachael Carson in her 1962 book, "Silent Spring." Air pollution in the nation's largest and most industrialized cities was causing dark, smoggy skies and unacceptable health risks.

Federal

These conditions and the increasing environmental awareness of the public led to the landmark 1970 Amendments to the Clean Air Act (CAA).⁷ Congress instituted a strong "command and control" regulatory system to address air pollution in the United States. In 1970, through Reorganization Plan Number 3, Republican President Richard Nixon created the Environmental Protection Agency which began to enforce this new air pollution law in 1971.

The 1970 amendments to the CAA contained a significant new section directed at "Hazardous Air Pollutants" (HAPs). These air toxics were defined as those, "...which may reasonably be anticipated to result in serious irreversible or incapacitating illness."⁸ The 1970 Clean Air Act required EPA to promulgate a list of HAPs and regulate them through National Emission Standards for Hazardous Air Pollutants (NESHAPs) based on, "... the level which ... provides an ample margin of safety."⁹ This program proved ineffective in the 20 years between 1970 and 1990 and stimulated much litigation concerning the issue of "risk."¹⁰ During this period of time, EPA listed only eight substances or categories of HAPs and only seven were regulated.¹¹

In the 1980s, with the implementation of new federal statutes dealing with hazardous waste, toxic chemicals and waste disposal sites, public interest and concern about the environment exploded.¹² Deficiencies in the effective control of air pollution through the 1970 Act led to political interest in amending

the CAA again. Accordingly, in 1990, Republican President George H.W. Bush signed into law the Clean Air Act Amendments of 1990.¹³

This law implemented strict new mandates regarding HAPs. Congress listed 187 HAPs to be specifically addressed by EPA. The chemicals specified by Congress included volatile organic compounds (VOCs), metals, inorganic chemicals, semi-volatile organic chemicals, polycyclic organic matter (POM) and polynuclear aromatic hydrocarbons (PAH).¹⁴ The list contains such diverse chemicals as asbestos, 1,3 butadiene (of special interest in Louisville's regulatory program), chlor-dane, ethyl benzene, formaldehyde, heptachlor, naphthalene, PCBs, perchloroethylene (dry cleaning fluid) and vinyl chloride (plastics).¹⁵ These chemicals have been linked to cancer, neurological effects, reproductive effects, respiratory, and immune effects.¹⁶ Diesel fuel emissions, often cited as health risks, are not collectively listed as a HAP. Many of the compo-

nents of diesel emissions are, however, specifically listed as HAPs. Some are considered "known, probable or possible" carcinogens as described in the Federal Integrated Risk Information System (IRIS).

EPA believes that there are "millions of sources of air toxics."¹⁷ In 2011, EPA released the National Scale Air Toxics Assessment (NATA) which reviewed the nation's exposure to 177 air toxics and diesel emissions in 2005. EPA concluded that the average increased cancer risk was 50 in one million. They describe that risk as, "...on average, approximately 1 in every 20,000 people have an increased risk of contracting cancer as a result of breathing air toxics from outdoor sources if they were exposed to 2005 emission levels over the course of their lifetime."¹⁸ The study described formaldehyde as the greatest national HAP cancer factor with benzene, PAH, and naphthalene being of regional concern.

The 1990 amendments required EPA to prepare a list of categories of HAP

sources defined as either a "Major Source" or an "Area Source." Major Sources are stationary sources in contiguous areas under common control and with the potential to emit (PTE) 10 tons per year of any individual HAP, or 25 tons per year or more of any combinations of HAPs. Area Sources are stationary HAP sources which are not "major" but which present a threat of adverse effects to human health or the environment. Sources are categorized by EPA using product or process considerations.

EPA was instructed to issue National Emission Standards for Hazardous Air Pollutants (NESHAPs) for each source category. The agency was to consider cost, energy and "any non-air quality health and environmental impacts" in setting the standards.¹⁹ The emission standards are to be technology based and incorporate Maximum Achievable Control Technology (MACT). MACT is to be based on the best performing sources in each source category with 30 or more sources. If there are less than 30 sources in a category, then EPA is to use the average of the five best performing sources. For area sources, EPA may either require MACT or the more economic "Generally Available Control Technology" (GACT). To date, EPA has listed 174 categories of major sources, 70 area source categories, and has promulgated 121 NESHAPs with applicable MACTs.²⁰

The 1990 CAA amendments also required a second risk-based analysis in HAP regulation. EPA was to report back to Congress concerning the "residual risk" that remained after the application of MACT or GACT.²¹ Eight years after the promulgation of a MACT, Congress required this residual risk to be addressed through a "Risk and Technology Review" (RTR) performed by EPA. EPA was to, "...provide an ample margin of safety to protect public health...or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect."²² In examining this risk, Congress set a goal for cancer-causing HAPs of reducing lifetime risk to exposed individuals to below one in a million additional can-



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cers. Because Congress failed to take action on EPA's recommendations in its report, EPA issued the first Residual Risk Standards relating to Coke Oven Batteries in 2005.²³

EPA was also required to identify and regulate urban area sources accounting for 90 percent of the 30 HAPs posing the greatest public health risk in urban areas.²⁴ 75 percent of all HAPs are released in urban areas. EPA developed the "National Air Toxic Program: The Integrated Urban Strategy" in order to address area sources and risk in urban areas.²⁵

Pursuant to settlements in a Sierra Club lawsuit, EPA identified 70 area source categories that it agreed to address. Regulated area sources include gasoline distribution plants, wood preserving, metal fabrication and finishing, paint and allied products manufacturing and municipal landfills. EPA has stated that its goal "...is to reduce air toxic emissions by 75 percent from 1993 levels and to significantly reduce the risk to the public of cancer and other serious health effects caused by airborne toxins."²⁶

The current administration of Democrat President Barack Obama has ramped up regulatory efforts in response to court imposed deadlines and administration priorities. As a result, on March 21, 2011, EPA published two final rules relating to the emission of mercury, particulates, nitrogen oxides, and other contaminants released from industrial boilers and incinerators.²⁷ A companion rule defining the identification of non-hazardous secondary materials used in combustion units describes whether emissions from such sources are regulated by the CAA Section 112 HAP emission standards or the more stringent solid waste emission standards of CAA Section 129.²⁸ EPA has agreed to emission standards for cement kilns requiring the reduction of mercury emissions by 92 percent, total hydrocarbons by 83 percent, particulate matter (a surrogate for toxic metals such as arsenic, cadmium, beryllium and lead) by 92 percent, and 97 percent of hydrochloric acid emissions by 2013.²⁹

Louisville

Louisville has a robust industrial base that includes strong chemical and automotive industries. In West Louisville, along the Ohio River, lies "Rubbertown," an extensive industrial complex dating back as far as World War I. The current complex now produces products such as rubber, plastics, and specialty chemicals. Louisville supports a population of approximately one million people within its region with national motor vehicle traffic traversing the area along its national freeway corridors. Because it is located in the Ohio River Valley, atmospheric conditions can concentrate pollutants over the city.³⁰

When EPA failed to comply in a timely fashion with many of the deadlines set out in the 1990 amendments, states and local authorities moved to address the regulation of air toxics within their jurisdiction. The Louisville Metro Air Pollution Control District (APCD) is empowered by the Federal CAA and Kentucky Revised Statutes (KRS) Chapter 77 to administer an air pollution regulatory program in Louisville and Jefferson County. It is currently the only county in Kentucky that exercises such local air pollution authority. The Kentucky Division for Air Quality (DAQ) administers the air quality program for the remainder of the state.

In September 2002, U.S. EPA Region

4, (covering the Southeast Region and headquartered in Atlanta) released a study entitled "Air Toxics Relative Risk Screening Analysis."³¹ EPA performed this analysis as part of the residual risk review of air toxic emission standards for HAPs required by the 1990 CAA amendments. EPA examined data available through the National Air Toxics Assessment (NATA) and the Toxics Release Inventory (TRI) Risk Screening Environmental Indicator (RSEI) software. Jefferson County was determined first out of 737 counties ranked in Region 4 for relative health risks from exposure to hazardous and toxic air pollutants.

The "West Jefferson County Community Task Force" (WJCCTF) was established in Louisville involving numerous local stakeholders. This task force worked with EPA and the University of Louisville to conduct an air monitoring study in Jefferson County. They released the "West Louisville Air Toxics Risk Assessment" in 2003.³² Seventeen cancer-causing chemicals, including 1,3 butadiene, were identified at unsafe levels for cancer risks, defined as greater than one in one million additional cancers.

As a result of these studies, the APCD in 2004, under the leadership of Director Art Williams, began enactment of its "Strategic Toxic Air Reduction (STAR)

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Program” for Louisville. This program lists and regulates the emission of 18 “Toxic Air Contaminants” (TACs).³³ Section 3 of Regulation 5.01 is entitled “General Duty” and states, in part: “... a person shall not allow any process or process equipment to emit a toxic air contaminant in a quantity or duration as to be harmful to the health and welfare of humans, animals, and plants.” As a result, approximately 170 companies are required to model the health risks of their emissions. Lauren Anderson is the current director of the APCD, being appointed to that position following the retirement of Mr. Williams in 2008.³⁴

Kentucky

The Kentucky Division of Air Quality (DAQ) has historically regulated air toxics through its general duty regulation entitled, “Potentially Hazardous Matter or Toxic Substances” which states, in part: “... No owner or operator shall allow any affected facility to emit potentially hazardous matter or toxic substances in such quantities or duration as to be harmful to the health and welfare of humans, animals and plants.”³⁵ Pursuant to Section 3 of the general duty regulation, DAQ is to administer the regulation of air toxics in Kentucky on a case-by-base basis.³⁶ In addition, Kentucky’s HAP regulations closely parallel and incorporate by reference EPA’s HAP regulations. DAQ, therefore, enforces the federal NESHAPs and MACTs for facilities in the state through state regulations.³⁷

All applicants for an air pollution permit in Kentucky must identify their emissions of criteria pollutants and HAPs.³⁸ Using internal guidance and EPA resources such as the “Air Toxics Risk Assessment Library,” DAQ performs an initial screening of the risk posed by HAPs described in the application. The vast majority of applications to the state of Kentucky pass this screening test.

Because EPA failed to meet CAA deadlines to promulgate HAP regulations and, in light of the implementation of the STAR Program by the Louisville APCD, DAQ established a stakeholder workgroup to develop state air toxics regulations more specific than its gen-

eral duty regulation. In 2006, DAQ formally proposed additional regulations to address stationary source emissions of 129 Toxic Air Pollutants (TAPs). The regulations proposed use of a one in one million cancer risk threshold, implementation of Toxic Air Pollutant Best Available Control Technology (TAP-BACT), and a “Safety Net.” Citing a technicality in responding to comments, DAQ withdrew the draft regulations from legislative consideration. The package was not resubmitted. DAQ representatives have indicated, however, that many of the review procedures contained in the proposed regulation are considered guidelines and are utilized by the state in a case-by-case review of a facility’s air toxic emissions under its general duty regulation in 401 KAR 63:020.³⁹

Air toxics are ubiquitous in Kentucky due to electrical power generation, industrial operations and motor vehicle emissions. Air monitoring by the state for HAPs is not generally performed statewide. Instead, DAQ focuses on urban areas such as Northern Kentucky, Lexington, and the Ashland Tri-State area as part of EPA’s “National Air Toxic Program: The Integrated Urban Strategy.”⁴⁰ The state also studies industrial areas like the Calvert City Industrial Complex in Western Kentucky and will perform site-specific testing based on complaints.⁴¹ John Lyons is the current director of DAQ.⁴²

Electrical Generating Units

There are approximately 1,300 coal-burning electrical generating units at various facilities in the nation. Mercury contamination, of which power plants are a major contributor, have resulted in health advisories being issued for fish caught in the streams of many states, including Kentucky. The 1990 amendments established a “cap and trade” program for acid rain pollutants.⁴³ The success of that program led the administration of Republican President George W. Bush to implement a similar “cap and trade” program for mercury released from coal-fired power plants called the Clean Air Mercury Rule (CAMR).⁴⁴ This program was vacated, however, by the United States Court of Appeals for

the District of Columbia Circuit as being improperly promulgated.⁴⁵

On July 20, 2011, the national environmental advocacy group, the National Resources Defense Council (NRDC), released a study entitled “Toxic Power: How Power Plants Contaminate Our Air and States.”⁴⁶ Their study was based on data accumulated by EPA in its Toxics Release Inventory (TRI) for 2009. NRDC notes that almost one-half of the air toxics released from industrial sources in the United States comes from coal or oil-fired power plants. They estimate that 49 percent of toxic industrial air pollution originates from the electrical generation sector, 15 percent from the chemical sector, and 13 percent through the paper products sector. In addition, NRDC estimates that the electrical generating sector was responsible for the release of approximately 75 percent of mercury air pollution released in the United States in 2009.⁴⁷

NRDC compiled a list of the top 20 states emitting, by volume, what it defines as “Total Toxic Air Pollution” in 2009. Kentucky ranks fourth with emis-



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concentrating in environmental law, in Louisville since 1981. In addition to his law degree, Van Stockum has Master of Science and Doctorate of Philosophy degrees in biology. He is past chair of the Environmental Law Section of the Louisville Bar Association and immediate past chair of the Kentucky Bar Association Environment, Energy and Resources Law Section. He is former chair of the Kentucky Chapter of the Nature Conservancy and was vice president of the Filson Historical Society. Van Stockum currently serves on the executive committee of the University of Louisville Alumni Association and now practices from his office in Shelby County.

sions of 41,340,348 pounds. For Kentucky, NRDC lists the contributions by the electrical generating sector at 77 percent; chemical sector – 7 percent; paper products – 4 percent; printing and publishing – 3 percent; primary metals – 2 percent; and “other” – 6 percent.⁴⁸ For mercury emissions, NRDC ranks Kentucky 14th among states, with 1,760 pounds of mercury released in 2009. According to NRDC, 89 percent of the total mercury released to the air in Kentucky for that year is associated with coal-fired electrical generating facilities. NRDC lists the Tennessee Valley Authority (TVA) Paradise Plant as the largest source of toxic air pollutants released from an electrical generating plant in Kentucky.⁴⁹

The American Lung Association (ALA) has also highlighted the issue of air toxics in electrical generating facilities.⁵⁰ They note that some of these toxic pollutants can be associated with fine particulate matter released by power plants. In March of 2011, the ALA issued a press release claiming that, “Particle pollution from power plants is estimated to kill 13,000 people a year.”⁵¹ After coal-fired power plants, ALA lists industrial boilers, paper mills, chemical manufacturing, landfills, and others in rank priority for emissions of hazardous air pollutants. In a reference to Environmental Justice concerns, ALA cites an analysis of 2000 census data indicating that 68 percent of African Americans in America live within 30 miles of a coal-fired power plant.⁵²

EPA finds that 50 percent of mercury emissions originate from 1,350 coal and oil powered generating units located at 525 facilities in the United States. The Obama administration has proposed to replace the vacated Bush era CAMR rule with mercury HAP emission regulations issued under the authority of the air toxics provisions of the 1990 CAA amendments. On March 16, 2011, EPA proposed new stringent standards on the emission of mercury, arsenic, chromium, nickel, acid gases and other HAPs from these plants based on authority of Section 112(N) of the 1990 amendments (“Utility MACT”).⁵³

There has been a significant outcry from the regulated community indicat-

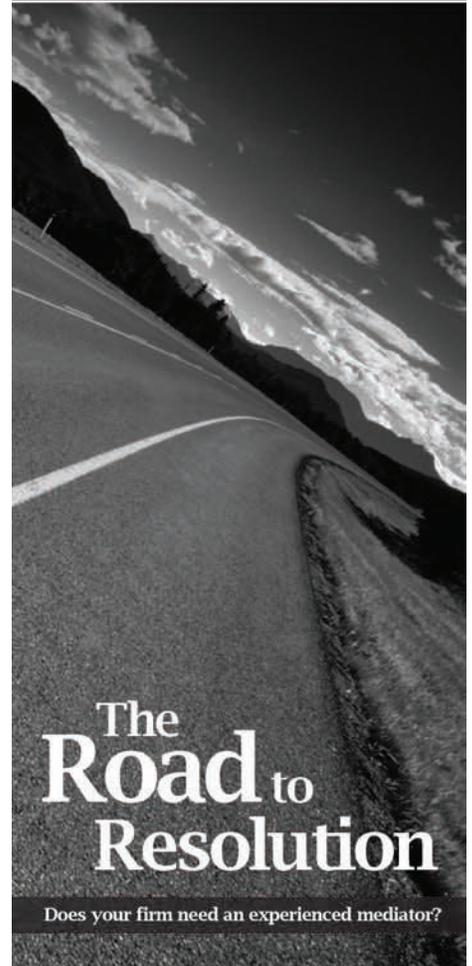
ing that these “Utility MACT” regulations are so stringent that they will have the effect of closing smaller, older coal-fired electrical generating units. In addition, the new source standards may eliminate the construction of new coal-fired plants because they are even more stringent.⁵⁴ Some states have complained that the rule will cause job losses and prevent the creation of new employment opportunities. EPA’s cost of compliance estimates may be unrealistically low. As a result, Kentucky Utilities (KU) customers may face a 19.2 percent rate increase by 2016.⁵⁵

In addition to the toxic metals such as mercury, the Utility MACT proposes to address the acid gases such as hydrochloric acid, sulfuric acid and hydrogen fluoride. These gases had not been completely regulated in the emissions from smaller, older coal-fired plants because they predated emission reduction requirements for new plants or benefited from the cap and trade program affecting acid gas emissions.⁵⁶ Much of the industry furor over the proposed Utility MACT is over the impact on these small, older plants. As a result, some utilities may decide to close the plants rather than apply costly new air pollution controls.⁵⁷

Conclusion

The implementation of the air toxics provisions of the Clean Air Act has resulted in some of the most complex and detailed regulations in the environmental arena. An initial focus on costs and technological feasibility is followed up by a sophisticated analysis of remaining risk to human health and the environment. The application of these regulations continues to demonstrate our nation’s leadership in environmental protection among industrialized nations.

The proposed regulation of hazardous air pollutants emitted from coal and coal-fired electrical generating units brings to bear the conflict between the public’s need for healthy air while enjoying the more inexpensive electrical rates currently available through the use of coal. This conflict is especially evident in Kentucky which has abundant coal resources, an electrical-generating system based upon that coal, and relatively inexpensive rates charged for electricity.



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Kentucky, Louisville and the nation will, therefore, continue to benefit from, and struggle with, the impact and consequences of the hazardous air pollution provisions of the Clean Air Act. ☉

ENDNOTES

1. Diminutive descendants of this ancient forest live on in Kentucky under the canopy of modern trees or along shaded moist rock outcrops. “Ground pines” and “club mosses” are remaining representatives of the lycopsid group. “Horsetails” or “scouring rushes” are examples of sphenopsids.
2. Coal macerals are the crushed and altered structure of these plants, the remains of which can be seen in coal under a microscope. On the macroscopic scale, segments of fossil trees can often be seen in coal or associated shale beds. The most common, *Lipidodendron* and *Sigillaria*, still bear leaf scars on their trunks and stems. Parallel lines in the casts of *Calamites* are also commonly evident along with impressions of their radial foliage. “Cannel coal,” which burns exceptionally hot and bright, is composed primarily of the wax coatings on wind blown plant spores and ancient pollen from these forests.
3. Ralph Waldo Emerson, “The Conduct of Life,” (Part 3, “Wealth”); 1860.
4. Bill Caylor, Presentation to Kentucky Chamber of Commerce, July 26, 2006.
5. “Kentucky Coal Facts,” Kentucky Office of Energy, Policy and the Kentucky Coal Association, 2007-2008 Pocket Guide (updated by 11th Edition).
6. The CAA “criteria pollutants” are carbon monoxide, lead, nitrogen oxide, ozone, fine particulates and sulfur dioxide, 42 U.S.C. § 7408; see also the National Ambient Air Quality Standards (NAAQS), 40 CFR Part 50.
7. Clean Air Act Extension of 1970, 84 Stat. 1676, Pub. L. 91-604.
8. 42 U.S.C. § 7412(a)(1), (1982).
9. 42 U.S.C. § 7412 (b)(1)(B), (1982).
10. See *Natural Resources Defense Council, Inc. v. EPA*, 824 F.2d 1146 (D.C. Cir. 1987).
11. These eight were asbestos, beryllium, mercury, vinyl chloride, benzene, radionuclides, inorganic arsenic, and coke oven emissions. The coke oven standards were not promulgated. 40 CFR Part 61.
12. Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq.; Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq.; and Comprehensive Environmental Response Compensation and Liability Act (CERCLA, also known as Superfund), 42 U.S.C. §§ 9601 et seq.
13. Clean Air Act Amendments of 1990, Pub. L. 101-549, 104 Stat. 2399. This legislation has remained the only major environmental legislation passed in the United States in the last 21 years.
14. 42 U.S.C. § 7412(b)(1).
15. Five chemicals have been removed from the list: hydrogen sulfide, caprolactum, surfactant alcohol ethoxylates and derivatives, ethylene glycol monobutyl ether (EGBE), and methyl ethyl ketone (MEK). A March 30, 2009 petition filed by the Sierra Club sought to have hydrogen sulfide relisted as a HAP.
16. Federal Register, July 19, 1999, 64 F.R. 38707.
17. See footnote 16, supra, at 38707.
18. “Summary of Results for the 2005 National-Scale Assessment.” http://www.epa.gov/ttn/atw/nata2005/05pdf/sum_results.pdf.
19. 42 U.S.C. § 7412 (d)(2). 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs).
20. 40 C.F.R. Part 63. Three of these NESHAPs (PVC, brick and structural clay, and clay ceramics) have been vacated by the courts.
21. EPA submitted this Residual Risk Report to Congress in March of 1999.
22. 42 U.S.C. § 7412(F)(2)(A).
23. 70 F.R. 19,992, April 15, 2005.
24. CAA § 112 (c)(3)(c)(6) and (k)(3)(B); On March 21, 2011, EPA certified compliance with the 90 percent requirement on March 21, 2011, 76 F.R. 15308.
25. 64 F.R. 38706, July 19, 1999.
26. See footnote 25, supra, at 38708.
27. “National Emission Standards For Hazardous Air Pollutants For Major Sources: Industrial, Commercial, and Industrial Boilers and Process Heaters,” Final Rule, March 21, 2011, 76 F.R. 15608; “Standards of Performance For New Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units,” Final Rule, March 21, 2011, 76 F.R. 15704. On May 18, 2011, EPA delayed the effectiveness of these rules, “...until the proceedings for judicial review of these rules are completed or the EPA completes its reconsideration of the rules...” May 18, 2011, 76 F.R. 28662.
28. March 21, 2011; 76 F.R. 15456.
29. *Portland Cement Assn. v. EPA*, D.C. Cir. No. 07-1046, 2009.
30. Mobile source HAP emissions are indirectly controlled by Title II of the CAA, entitled “Emission Standards for Moving Sources.” 42 U.S.C. 7521-75909.
31. www.louisvilleky.gov/NR/rdonlyres/3A0E72EA-BCBA-4E05-857C-F7A72E035E36/0/EPA_R4_relative_risk_analysis.pdf
32. www.louisvilleky.gov/NR/rdonlyres/B376DACC-764E-4999-8822-32E1DD541C1B/0/wlats_risk_assessmentreport.pdf
33. “Standards for Toxic Air Contaminants and Hazardous Air Pollutants,” APCD Regulation Part 5.
34. Both Mr. Williams and Ms. Anderson were previously staff attorneys for the Kentucky Natural Resources and Environmental Protection Cabinet (now part of the Energy and Environment Cabinet). Mr. Williams also served as Commissioner of the Kentucky Department of Environmental Protection, a position currently held by Bruce Scott.
35. 401 KAR 63:020. 401 KAR 63:022, entitled, “New or Modified Sources Emitting Toxic Air Pollutants,” was repealed in 1999. 401 KAR 63:021, “Existing Sources

- Emitting Toxic Air Pollutants” was amended to prevent the removal of installed air toxic controls already in place (anti-backsliding). The DAQ also cites KRS 224.20-120, “Considerations in Fixing Standards” and 224.20-100, “Finding of Necessity For Act” in support of its regulation of air toxics emissions.
36. In 2010 DAQ petitioned EPA to delete 401 KAR 63:020 from the State Implementation Plan (SIP), thus removing the regulation as a federally enforceable regulation.
 37. “40 CFR Part 61 National Emission Standards for Hazardous Air Pollutants,” 401 KAR 57:002.
 38. The permit application information is required by 40 CFR 52.020 and 52.030, which are incorporated into Kentucky regulations.
 39. See also, KRS 13A. 130 entitled, “Matters Prohibited as Subject of Internal Policy, Memorandum or Other Form of Action.”
 40. July 19, 1999, 64 F.R. 38706; 42 U.S.C. §§ 7412(k) and 7412(c)(3).
 41. Louisville APCD addresses testing for the Rubbertown Industrial Complex in West Louisville.
 42. Mr. Lyons has held this position for 10 years and is the longest serving Director of the Kentucky Division of Air Quality, eclipsing the tenure of the previous Director, John Hornback.
 43. 42 U.S.C. § 7411, 40 CFR Part 73.
 44. 70 F.R. 28606, May 18, 2005.
 45. New Jersey v. EPA, 517 F. 3rd 574.
 46. docs.nrdc.org/air/files/air_11072001a.pdf; issued jointly with Physicians for Social Responsibility.
 47. Chinese coal-fired power plants contribute significant amounts of mercury contamination to the upper atmosphere which spreads the contamination to American soil, especially in the west.
 48. NRDC lists Ohio as number one with Total Industrial Toxic Air Pollution release of 68,863,474 pounds, 65 percent from the Electrical Generating Sector.
 49. The TVA Paradise Plant is located in Muhlenberg County, Kentucky. It is also the subject of a popular

folk song waltz by John Prine entitled, “Paradise.”

50. Georgia Coalition for the Peoples’ Agenda, Black Leadership Forum, the Southern Organizing Committee for Economic and Social Justice and Clear the Air. “Air of Injustice,” 2002, http://www.catf.us/resources/publications/files/Air_of_Injustice.pdf.
51. American Lung Association, “Toxic Air: The Case for Cleaning Up Coal-Fired Power Plants,” <http://www.lungusa.org/healthy-air/outdoor/resources/toxic-air-report/>.
52. American Lung Association, <http://www.lungusa.org/press-room/press-releases/power-plants-epa.gov>.
53. “National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility, Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units” (“Utility MACT”); Proposed Rule 76 F.R. 24976, May 3, 2011; 42 U.S.C. 9612 (N)(1)(A).
54. “EPA proposes Franken-MACT for utilities,” by Kasi Dubbs, in Environmental Quality, August 9, 2011, Trinity Consultants.
55. Letter from Reidt Clemmer, P.E., PPL Services Group to EPA docket, August 4, 2011.
56. This Cap and Trade Program was implemented, in part, through the Clean Air Interstate Rule (CAIR). The United States Court of Appeals for the D.C. Circuit vacated and remanded the CAIR in 2008. North Carolina v. EPA, Case No. 05-124, D.C. Cir. (2008). On July 6, 2011, EPA finalized the Cross-State Air Pollution Rule (CSAPR) to replace the CAIR. August 8, 2011, 76 F.R. 48208.
57. KU’s electrical generation facilities at Tyrone, Cane Run, and the Green River may be so affected.

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Business Valuation

- Business Sale
- Marital Dissolution
- Estate and Gift Tax
- ESOPS
- Professional Practice Sale
- Insurance Claims
- Family Limited Partnerships
- Damage Suits

Expert Witness Testimony

- Business Sale
- Marital Dissolution
- Estate Planning
- Lost Profit and Earning Insurance Claims
- Merger or Acquisition
- Bankruptcy
- Commercial Damage Suits

Arbitration and Mediation

- Insurance Claims
- Estate and Gift Tax
- Damage Suits
- Marital Dissolution
- ESOPS
- Family Limited Partnerships

Forensic Accounting

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