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Environmental Practice: Experience Highlights

Due to the breadth of our environmental team's experience in nearly all regulatory programs (air, water, solid and hazardous waste, toxic substances, endangered species), clients from a broad range of industries turn to us for help navigating their compliance obligations and resolving complex issues as they arise. What follows is an overview of our team's services, along with examples of our work:

Compliance Counseling

- **Advising on new and complex environmental regulations**
 - Coal Combustion Residuals (CCR):
 - U.S. EPA's proposed and final CCR disposal regulations.
 - Groundwater monitoring requirements under the CCR rule.
 - Disposition and beneficial reuse of utility waste materials involving CCR and flue gas desulphurization material, among others.
 - ELGs
 - Applicability of ELGs to mixed waste streams.
 - Interplay between ELGs and CCR requirements.
 - Monitor ELG rule implementation and litigation.
 - Boiler MACT for Combustion Units:

- Boiler MACT rulemaking.
 - Appropriate amount of allowances under the NO_x Budget Trading Program to be allocated to a boiler combined with a process furnace.
 - Responding to Section 114 information requests for the Boiler MACT.
 - Sufficiency of QA/QC manuals for boiler operations.
 - Sufficiency of Best Available Retrofit Technology (BART) plans.
 - Applicability and compliance obligations under the multiple combustion unit NSPS and NESHAP standards.
- **Assessment of New Source Review and state construction permit requirements for physical and operational changes and employee training**
 - Determining whether NSR permitting is triggered for expansion of combustion unit operations to provide excess power to the grid, a boiler retubing project to repair tubes from a dry-fire incident, and a new flash handling system.
 - Providing NSR training for the entire division of a utility company, highlighting how to assess projects under NSR and identify and address permitting triggers.
- **Updating to address regulatory changes**
 - Tracking federal and state environmental regulatory developments affecting the electric utility industry and preparing recurring update reports on environmental regulatory developments.
 - Preparing and submitting comments in response to proposed federal regulations affecting the electric utility industry.

- **Applicability of Endangered Species Act requirements to new and existing operations**
- Advise on ESA compliance options for new and existing transmission and distribution facilities on both private and federal land
- Evaluate status of Indiana bat and Northern long-eared bat compliance options for non-federal projects in Kentucky (with no ESA Section 7 “hook”)

Permitting

- **Negotiating and appealing NSR and Title V air permit terms**
- Negotiated initial Title V operating permit terms for a 620-megawatt natural gas-fired, combined-cycle plant.
- Developed strategy and negotiated permit terms involving the removal of duct burner operating hour restrictions on 1,240-megawatt natural gas-fired, combined-cycle merchant power plant.
- Negotiated permit terms that avoided use of a Continuous Opacity Monitoring System (COMS) to demonstrate compliance with a state opacity standard, and instead provided for use of the COMS as an indicator to trigger Method 9 readings.
- Negotiated permit modifications to incorporate regulatory flexibility for steam load limits for a boiler that triggered new particulate stack tests.
- Successfully developed modeling protocols to overcome objections by Federal Land Managers to a PSD construction permit based on PSD increment consumption, sulfur and nitrogen deposition, and regional haze impacts.
- Negotiated permit terms to remove RCRA metals restrictions imposed on a boiler.
- Assessed when permitting is triggered for physical and operational changes.

- **Negotiating and appealing NPDES permit (Industrial Wastewater Permit) terms**
 - Negotiated NPDES permit terms and Section 401 Water Quality certification terms for discharges to the Ohio River from a coal-fired electric utility plant, and waste management landfills and surface impoundments.
 - Successful appeal of NPDES permit issued by IDEM for a dam hydroelectric project.
- **Obtaining and defending National Environmental Policy Act (NEPA) approvals**
 - Obtained federal and state permits and addressed NEPA compliance for numerous electric transmission and distribution projects.
 - Successfully defended federal court challenge to NEPA compliance for combined generation-transmission project proposed by a rural electric cooperative.
 - Advised during the development of NEPA documents for multiple generation-related projects, including an Environmental Impact Statement for a proposed coal-fired electric generating unit.
- **Obtaining and defending wetland permits**
 - Assisted numerous clients in obtaining and defending Section 404 permits from the U.S. Army Corps of Engineers for energy generation, transmission and coal combustion byproduct disposal projects.
 - Identified realistic and workable wetland mitigation options and strategies.
- **Counseling on ash landfill expansion**
 - Counseled on proposed expansion of several coal ash landfills located at power plants, including regulatory permitting (e.g., Section 401/404, ESA Section 7, NHPA Section 106), risk management and citizen group considerations.

- Counseled on permitting of surface impoundments used to contain coal combustion by-products, including dam construction permits, construction permits for waste and water treatment facilities, and water discharge permits.

Remediation/Closure

- **Remediating legacy Manufactured Gas Plant sites and obtaining cost recovery**

- Counseled on the structure and implementation of investigations of contamination sources and the nature and extent of MGP impact.
- Counseled on design and implementation of remedial action plans involving excavation and in-situ solidification and stabilization.
- Interacted with governmental agencies and other stakeholders on permitting and other air monitoring issues arising in connection with work.
- Advised on development and implementation of plans involving internal and external stakeholders, including employee meetings, government agency briefings, and neighborhood communication and open houses.
- Assisted in successful recovery of investigation and remediation costs through the Public Utilities Commission of Ohio rider process.

- **Responding to and cleaning up PCB transformer oil spill**

- Investigated the scope and extent of PCB transformer oil release at an elementary school, including the requirements for cleanup and reporting to regulatory agencies.
- Advised on response and remediation work in cooperation with state and federal agencies.

- **Cleaning up lead contamination discovered during construction**
 - Investigated the scope and extent of lead contamination discovered during a stormwater management construction project.
 - Advised on the scope and applicability of state requirements for solid waste disposal facilities.
 - Advised on the response and remediation work to be performed.
- **Closing existing CCR impoundments**
 - Advised on removal and closure of CCR impoundments at multiple electric generating facilities.
 - Assisted in siting and permitting of CCR landfill for disposal of CCR removed during impoundment closure.

Litigation & Enforcement

- **Defending civil and administrative enforcement by state and federal environmental agencies**
 - Counseled on strategy for failed stack test after installation of new add-on NO_x control system for natural gas-fired combustion turbine resulting in no enforcement.
 - Counseled on strategy for self-disclosures under state and federal audit and voluntary self-disclosure policies.
 - Favorably resolved a U.S. EPA civil and criminal enforcement action against a co-generation unit owner involving fabricated QA/QC data.
 - Resolved alleged noncompliance with an “opacity as a surrogate for particulate matter” permit term.
 - Defended allegations that a COMS should be used to assess compliance with state 6-minute opacity averages.
 - Resolved an administrative enforcement action against an electric utility alleging air emissions violations at two

of its power plants resulting in a 50% reduction in the proposed civil penalty.

- Defended a civil penalty demand involving excess opacity emissions resulting in a substantial reduction in the civil penalty.

• **Advising and defending criminal enforcement cases**

- Counseling and representation when enforcement matters have the potential for criminal enforcement.
- Conducted internal investigations to gather and establish facts.
- Counseled client on legal strategy and approach with state and federal criminal investigators and the U.S. Attorney's Office to minimize potential criminal exposure.

• **Permit defense litigation**

- Successfully represented electric utility in defense of Title V permit appeal filed by environmental interest groups.
- Successfully defended electric utility in challenge to NEPA compliance for proposed electric transmission line through a National Forest.

Crisis Response/Internal Investigations/Root Cause Analysis

• **Responding to a major release of diesel fuel**

- Provided legal support for immediate response to release of diesel fuel to a navigable water river and communications with federal, state, and local agencies.
- Advised on press releases and updates to the public during the response activity.
- Conducted an internal investigation to determine the root cause of the release, which included review of

operational documents and interview of employees.

- Counseled on strategy and approach for response to inquiries by U.S. EPA and Ohio EPA criminal investigators, including preparation of responses and participation in meetings and interviews with criminal investigators.

• **Responding to release of propane gas**

- Provided legal support for initial response and reporting of release of propane gas.
- Conducted root cause analysis of the cause of the leak of propane from a facility line and internal ethics investigation.
- Oversaw consultant's evaluation of the integrity of the client's propane facilities.

• **Responding to PCB oil release**

- Provided legal support and strategy for response to a release of PCB-containing oil from a transformer at an elementary school.
- Advised the client on the requirements for cleanup and reporting to regulatory agencies.
- Advised response and remediation work in cooperation with state and federal agencies.

• **Responding to major diesel spill at a peaking station**

- Helped manage consultant and developed remedial work plan.
- Negotiated with state EPA.
- Obtained final closure of the release.

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