

# Air Quality: Current Topics and Recent Cases

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# Oil and Gas Source Aggregation: *Summit Petroleum v. EPA* (6<sup>th</sup> Cir.)

- Sixth Circuit found EPA's interpretation of the term "adjacent" in its own regulations (that activities can be adjacent as long as they are functionally related) was contrary to the plain meaning of the term
  - Two non-adjacent emissions units cannot be considered "adjacent" simply based upon the nature of their relationship
  - Adjacency is a term that clearly connotes physical proximity
  - Any consideration other than the distance between separate emissions units when analyzing the third prong of the aggregation test is inappropriate
- December 12, 2012: EPA Headquarters Directive that Summit decision not be applied outside the Sixth Circuit

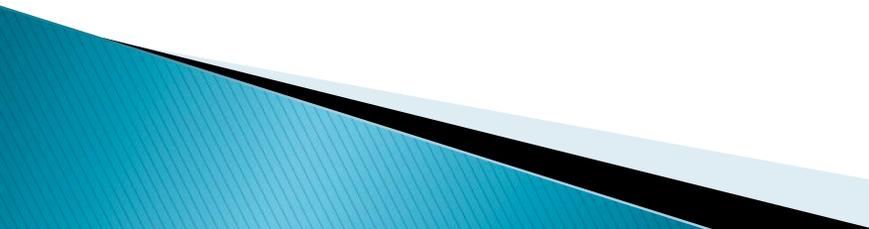
# ***National Environmental Devel. Ass'n v. EPA (D.C. Cir.)***

- The D.C. Circuit vacated EPA's *Summit Directive* – making the Summit Decision binding on EPA across the U.S.
  - Decision issued on May 30, 2014
  - The *Summit Directive* was not merely a policy statement but a final, reviewable agency action
  - The *Summit Directive* must be vacated because it is plainly contrary to EPA's Regional Consistency Rules, which require EPA to maintain national uniformity in implementing the Clean Air Act
  - EPA must apply the same standards throughout the United States
  - Implications For State Agencies

# *Utility Air Regulatory Group v. EPA* (U.S. 2014)

- The EPA's Tailoring Rule established an approach to permitting Greenhouse Gas emissions under PSD and Title V
  - The Court said that EPA may not treat greenhouse gases as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD or Title V permit
  - However, the Court said the EPA reasonably interpreted the Clean Air Act to require sources that would need permits based on their emission of conventional pollutants to comply with "Best Available Control Technology" for greenhouse gases

# *Sierra Club v. OG&E* (E.D. Okla.)

- Sierra Club asserted Clean Air Act citizen suit claims against OG&E related to a construction project at its Muskogee Plant
  - OG&E commenced the project in March 2008 without a PSD permit
  - Sierra Club filed suit in August 2013
  - Sierra Club sought both civil penalties and equitable relief under the Clean Air Act citizen suit provision
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# *Sierra Club v. OG&E* (E.D. Okla.)

- ▶ On March 4, 2014, the Court granted OG&E's Motion to Dismiss, agreeing that Sierra Club's claim was time-barred under the general 5-year federal statute of limitations
    - Construction without a PSD permit is a one-time violation that occurs at the time construction or modification commences
  - ▶ Sierra Club's claim for civil penalties was barred because more than 5 years had elapsed since construction commenced
  - ▶ Sierra Club's claim for equitable relief was barred by the concurrent remedy doctrine
  - ▶ Matter is currently on appeal to the Tenth Circuit U.S. Court of Appeals (Denver)
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# It is That Special Time in Washington, D.C.

- Not Thanksgiving or Christmas or even New Years
- It's a time when total chaos reigns . . .
- Any guesses?
- It's the Running of the Bulls – D.C. style