Clearing the Air: Legal Showdown in Louisiana Over Emissions Standards

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As one of the nation's largest hubs of industrial production, Louisiana is no stranger to federal emissions regulations. Recently, the Louisiana Department of Environmental Quality (LDEQ) faced off against the Sierra Club before the US 5th Circuit Court of Appeals, opposing allegations that it acted arbitrarily in its decision to issue preconstruction permits for a planned liquefied natural gas export facility in Cameron Parish, Louisiana.

Among a slew of allegations as to the insufficiency of LDEQ's permitting review system, the Sierra Club's concerns primarily stemmed from its belief that the export facility's emissions will exceed National Ambient Air Quality Standards (NAQS) set by the US Environmental Protection Agency (EPA) pursuant to the Clean Air Act. These standards, applicable to only six (6) “criteria” pollutants (carbon monoxide, lead, ground-level ozone, particulate matter, nitrogen dioxide and sulfur dioxide) are designed “to provide protection for the nation's public health and the environment.” However, the Sierra Club claims LDEQ utilized a technical shortcut by employing “significant impact levels” (SILs) and using an “emissions factors” technique to forego more rigorous forecast modeling of expected emission concentrations. The Sierra Club argued LDEQ's utilization of “emissions factors” necessarily undermined any SIL analysis and was in direct contradiction of EPA guidance that cautions against their use except as one of last resort.

The US 5th Circuit unanimously upheld LDEQ's decision to grant both pre-construction and operating permits for the project. Finding the agency “did not abuse its discretion in relying on reasonable EPA guidance to use SILs to calculate which pollutants will have an insignificant effect on the [NAQS],” the three-judge panel agreed with LDEQ and noted “because there are not yet direct emissions to monitor,” emissions factors are almost always required for the planning of these types of facilities.

In a public statement, attorneys for the Sierra Club project future violations of NAQS and caution that if built, the export facility will significantly contribute to pollution in Cameron Parish and surrounding regions, including Lake Charles, Louisiana. Given the complexities and nuances surrounding environmental and public health regulations and guidelines, it is imperative for companies to continually monitor and ensure compliance with federal, state and local agencies.

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