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("APA") generally does not allow for retroactive rulemaking. The court then turned to the Sierra Club's motion to enforce the judgment of the District Court through an injunction preventing the EPA from taking any further action on its proposed rules postponing St Louis' attainment date and preventing the EPA from withdrawing the March 19, 2001, reclassification and nonattainment determination. The court held that the District Court's order did not restrict the EPA from engaging in such subsequent rulemakings. The Sierra Club argued that once the EPA complied, the EPA contravened what the order required. However, the court reasoned that this would be too broad a reading of the court's order and thus, by the time the Sierra Club moved to enforce the judgment, the EPA had complied with the court's order.

The court finally noted that, regarding its denial of the Sierra Club's petition for a writ of prohibition, the Sierra Club has an adequate forum to challenge the extension of St. Louis' attainment date and withdrawal of its nonattainment classification. The court reasoned that a writ of prohibition will only issue if the applicant has no other forum in which to seek relief. The court pointed out that the Sierra Club could seek review of the rulemaking in the Seventh and Eighth Circuits, and that in fact the Sierra Club had sought relief in those fora. Therefore, denial of the writ of prohibition was proper.

PATRICK R. DOUGLAS

ENVIRONMENTAL NEWS

EPA Responds to September 11th Attacks

At the request of the Federal Emergency Management Agency ("FEMA"), the EPA has been involved in the cleanup and monitoring efforts, working with the U.S. Coast Guard, the Centers for Disease Control, the Occupational Safety and Health Administration, and state and local authorities. The EPA's role following the attack has been to provide expertise on cleanup methods for hazardous materials, as well as monitoring areas around the World Trade Center and the Pentagon to detect contaminants in ambient air quality, drinking water sources, and runoff near the disaster sites. FEMA has provided the EPA with a Total Project Ceiling of slightly more than \$83 million for the Agency's cleanup and monitoring efforts at the sites.

Initially, the EPA's involvement was funded using emergency funding of \$23.7 million. If costs exceed this level, FEMA will authorize the EPA to use additional funding in \$15 million increments. As part of the additional funding, the EPA was placed in charge of hazardous waste disposal, general site safety and providing sanitation facilities for rescuers and cleanup personnel. Immediately following the attack, the EPA coordinated with the U.S. Air Force Center for Environmental Excellence and the U.S. Coast Guard to quickly implement these additional responsibilities in order to provide maximum support and protection from hazardous materials that rescuers and workers may come in contact with.

While careful not to impede on the search, rescue and cleanup efforts, the EPA's primary concern was to ensure that rescue workers and the public were not being exposed to elevated levels of potentially hazardous contaminants in the dust and debris, especially where practical solutions were available to reduce exposure. The EPA provided dust masks to workers to minimize inhalation of dust, and recommended that the blast site debris continue to be kept wet, reducing the amount of airborne dust which could aggravate respiratory ailments. This also involved spraying water over buildings, streets and sidewalks in lower Manhattan. In addition, on-site facilities were provided which allowed workers to clean themselves, change their clothing and have dust-laden clothes cleaned separately from their household wash.

Results, a week following the attack, indicated that the air and drinking near the disaster sites was safe, according to EPA Administrator Christie Whitman. Initially, the EPA established 10 continuous (stationary) air monitoring stations near the World Trade Center site, which were used to detect asbestos, lead and volatile organic compounds. These samples are evaluated against a variety of benchmarks, standards and guidelines established to protect public health under various conditions. The majority of the results were either non-detectable or below established levels for concern. The highest level of asbestos were detected within one-half block of ground zero, with the EPA responding by providing rescuers and workers with appropriate protective equipment.

The EPA also performed dust samples in an attempt to locate areas with dangerous levels of asbestos and other substances. Most fell below the EPA's definition of "asbestos containing material," which is material that is composed of at least one percent asbestos. Where samples exceeded this level, the EPA has used High Efficiency Particle Arresting

vacuum trucks to clean the area, which was then resampled. These trucks were also used to clean streets, sidewalks and the lobbies of five federal buildings near the World Trade Center site in preparation for a return to business. Drinking water in Manhattan was tested at 13 sampling points, in addition to a test at the Newton Sewage Treatment plant and pump station. Initial results showed that levels of asbestos were below the EPA's level for concern. Similar monitoring was conducted over an area surrounding the Pentagon, with all results showing either no detection of asbestos and other contaminants, or levels that were well below the EPA's level for concern.

Since the attack, the EPA has established more than twenty fixed air monitors in and around ground zero, as well as additional monitors in the Bronx, Brooklyn, Queens, and Staten Island. The agency is also using portable sampling equipment to collect data from a range of locations. Results of samples taken six months after the attack show that both ambient air and drinking water resources remain safe. Up to March 14th, 6,868 air samples had been collected and analyzed in Lower Manhattan, with only 18 samples above the standard. Of those 18, 11 were collected prior to September 30th. This number of samples above the standard is lower than reported on daily summaries, as earlier sampling results included an additional unnecessary adjustment for the volume of air sampled which has since been removed. These daily environmental monitoring summaries can be viewed on the EPA website (www.epa.gov).

DAVID BROSE

LEGISLATIVE UPDATE

HB1134 - Revised Definitions for Forestry and Application Process to Designate Land as Forest Croplands, and the Creation of a Forest Landowner Cost-Share Incentive Program

Sponsored by Representatives Randall H. Relford and James Seigfreid

On January 9, 2002, HB1134 was introduced and read for the first time in the Missouri House of Representatives. If passed, the bill will repeal sections Missouri Revised Statutes Sections 254.020 and 254.040 and enact three new sections relating to forestry. HB1134 allows the Missouri Conservation Commission to administer a cost-share incentive program to promote sustainable forestry on eligible private lands.

The program may reimburse landowners for up to 50% of the costs of forest management activities that protect water quality, ensure efficient use and continued availability of forest resources, and do not generate an immediate profit. Landowners apply for the program on prescribed forms to the state forester. Applications will not be accepted for tracts of land less than 40 acres or for land that has been designated as forest cropland. The total amount of incentives provided to any person cannot exceed \$5,000 per calendar year.

Supporters say that the bill creates incentives for landowners to develop productive forests. The estimated impact to the Conservation Commission Fund is \$182,500 to 912,500 in 2003; \$219,000 to \$1,095,000 in 2004 and \$219,000 to \$1,095,000 in 2005.

On February 5, 2002 the House Committee on Conservation, State Parks and Mining unanimously voted "do pass." HB1134 also unanimously passed the House on February 13, 2002. As of April 11, 2002, the bill is referred to the Senate Committee on Agriculture, Conservation, Parks, and Tourism.

MEGAN L. GARTON