Hazardous Air Pollutants under the Clean Air Act

Prof. Tracy Hester
University of Houston Law Center

Houston, Texas
Sept. 30, 2013
Hazardous Air Pollutants

• What is a hazardous air pollutant?

• HAPs recent special treatment under Clean Air Act
  
    – Sad history of NESHAPs (National Emission Standards for Hazardous Air Pollutants)
  
    – Section 112 required an “ample margin of safety to protect the public health”
  
    – Not zero – Vinyl Chloride v. EPA’s two step process

• EPA’s response – 1989 benzene HAP (MIR + 1 in 10,000 statutory baseline, with increased controls as population grows)
The New Title III

• Congress significantly revised the HAP program in 1990

• Now 189 HAPs specifically listed in the statute

• MACT approach
  – 12 percent baseline set by industrial category
  – Hammers for failure to implement
  – Role for subcategories? *NRDC v. EPA* (D.C. Cir. 2007)
The New Title III

• Major source –
  – 10 tpy of any HAP
  – 25 tpy combined HAP
  – “Once in, always in”
  – Area sources

• Source categories (166 major, 8 area)
The New Title III

• Residual risk review (section 112(f)(2))
  – How low does EPA have to go?
  – *NRDC v. EPA* (D.C. Cir. 2008)

• State law standards can be more stringent
  – Texas – Air Pollutant Watch Lists
    Effects Screening Levels
TCEQ Air Pollutant Watch Lists

TCEQ Regions
1 - Amarillo
2 - Lubbock
3 - Abilene
4 - DFW
5 - Tyler
6 - El Paso
7 - Midland
8 - San Angelo
9 - Waco
10 - Beaumont
11 - Austin
12 - Houston
13 - San Antonio
14 - Corpus Christi
15 - Harlingen
16 - Laredo
Questions?

Professor Tracy Hester
University of Houston Law Center

tdheste2@central.uh.edu
713-743-1152 (office)