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State Implementation Plan/Clean Air Act: Federal District Court Addresses Citizen Suit Challenge to Deviation from Mining Facility Material Transfer Restriction

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A United States District Court (Utah) ("Court") addressed in a June 8th decision a PM10 State Implementation Provision ("SIP") applicable to a Kennecott Utah Copper, LLC ("Kennecott") mining facility in Salt Lake County, Utah. See *Utah Physicians for a Healthy Environment, et al. v. Kennecott Utah Copper, LLC*. 2016 WL 3199478.

Utah Physicians for a Healthy Environment and other groups (Collectively "UPHE") filed a Clean Air Act ("CAA") citizen suit action alleging that Kennecott failed to comply with a SIP provision restricting ore and waste transfers/movement.

The CAA regulates air quality through a federal-state partnership. The Environmental Protection Agency ("EPA") develops National Ambient Air Quality Standards ("NAAQS"). These are ambient air pollutant concentrations set at levels deemed necessary to protect the public health and safety. Once the EPA sets these standards, it is then the responsibility of the individual state to enforce and implement these standards through State Implementation Plans ("SIPs"). Each state is therefore required to formulate, subject to EPA approval, an implementation plan ("SIP") designed to achieve each NAAQS.

The SIPs contain the measures and actions the state proposes to undertake to attain each NAAQS. These measures or actions must be enforceable through state regulations and typically include emission limits or other restrictions applicable to certain types of stationary sources.

UPHE alleged that Kennecott was in violation of a portion of the SIP restricting the movement of material during the mining process. The focus of the dispute was the interpretation of the meaning of the SIP provision which states:

"Total material moved (ore and waste) shall not exceed 150,500,000 tons per 12-month period *without prior approval* in accordance with Section 3.1, UACR." (emphasis added)

The Court determined that the plain meaning of the provision indicates that Kennecott could comply with the SIP provision in one of two ways. First, Kennecott could adhere to the 150,500,000 tons per 12-month

period default limit. Alternatively, the company could obtain approval from the state before exceeding the default limit.

Kennecott had exceeded the 150,500,000 ton per year default limit every year since 2007. However, it did so only after receiving prior approval in accordance with Section 3.1 of the UACR.

UPHE argued that the provision should be interpreted as requiring EPA approval before an increase in the movement of ore and waste material is allowed. The groups contended that the CAA statutory scheme does not permit states to unilaterally increase the amount of material that can be moved.

The Court found the arguments against plain meaning construction unpersuasive. It further determined that UPHE failed to demonstrate contrary administrative intent to allow states to make unilateral decisions in the movement of material.

[A copy of the decision can be downloaded here.](#)