

June 28, 2012

## D.C. Circuit Court Upholds EPA Regulation of Greenhouse Gases

*EPA's Endangerment Determination, Tailpipe Rule, Timing Rule, and Tailoring Rule survive multiple challenges, confirming EPA's ability to require permits under the Clean Air Act for emissions of carbon dioxide and other greenhouse gases.*

The U.S. Court of Appeals for the District of Columbia Circuit issued a decision on June 26 upholding the U.S. Environmental Protection Agency's (EPA's) regulation of emissions of greenhouse gases under the Clean Air Act. The U.S. Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), had held that greenhouse gases are an air pollutant subject to regulation under the Clean Air Act; however, the Court left it up to EPA to determine how to regulate. The June 26 decision in *Coalition for Responsible Regulation, Inc. v. EPA* affirmed EPA's initial steps to require facilities that emit carbon dioxide and other greenhouse gases to obtain permits for their emissions, including EPA's decision to adopt an implementation schedule intended to reduce the number of facilities covered within the regulated community and reduce burdens on the state agencies primarily responsible for processing permit applications.

### **EPA Regulation after *Massachusetts v. EPA***

Following the Supreme Court's decision in *Massachusetts v. EPA*, EPA issued a series of determinations and regulations that established a permitting program under the Clean Air Act for emissions of greenhouse gases: (1) the December 2009 Endangerment Determination, (2) the May 2010 Tailpipe Rule, (3) the April 2010 Timing Rule, and (4) the June 2010 Tailoring Rule. EPA found in the Endangerment Determination that emissions of greenhouse gases contribute to climate change and thereby may reasonably be anticipated to endanger public health or welfare. The Tailpipe Rule set greenhouse gas emission standards for cars and light duty trucks. The Timing Rule provided that any obligation for stationary sources, such as factories, power plants, and refineries, to obtain permits for their emissions of greenhouse gases under the Clean Air Act's Prevention of Significant Deterioration (PSD) or Title V programs would occur no earlier than when manufacturers of cars and light duty trucks would be required to produce vehicles subject to the greenhouse gas emission standards under the Tailpipe Rule. Finally, the Tailoring Rule established a schedule for when different stationary sources of greenhouse gases needed to obtain permits for their greenhouse gases.

Industry trade associations, state governments, and nongovernmental organizations filed numerous petitions challenging EPA's series of greenhouse gas rulemakings. The D.C. Circuit Court consolidated these petitions under *Coalition for Responsible Regulation, Inc. v. EPA*, and dismissed or denied all challenges. The court then engaged in an analysis of whether each of the four rulemakings was arbitrary and capricious.

### ***Coalition for Responsible Regulation, Inc. v. EPA***

In its decision, the D.C. Circuit Court found that EPA's actions were based on the clear intent of Congress under the Clean Air Act. The court upheld EPA's interpretation of the Clean Air Act's standard for issuing an endangerment finding, the sufficiency and use of the scientific record supporting the determination, and EPA's decision not to quantify the endangerment caused by climate change. Significantly, the court held that EPA was authorized to proceed with the Endangerment Determination, even if there still was "some residual uncertainty" in the scientific record with regard to climate change, and did not need to provide a "rigorous step-by-step proof of



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