

D.C. Circuit Dismisses Challenges to EPA's GHG Permitting Program

JULY 26, 2013

On July 26, 2013 the D.C. Circuit Court of Appeals dismissed challenges by the States of Texas and Wyoming, as well as utility and other industry groups, to EPA's rule requiring the States to update their State Implementation Plans ("SIPs") to address greenhouse gases ("GHGs") by certain deadlines (the "SIP Call Rule"). As [previously reported on this blog](#), petitioners also challenged EPA's use of a Federal Implementation Plan ("FIP") for GHG permitting in Texas, arguing that the Agency improperly disapproved the state's SIP and was usurping the State's enforcement authority by directly issuing GHG permits. Petitioners had challenged the Agency's SIP Call Rule as premature, stating that an existing EPA rule expressly gives the States three years to revise their SIPs when a new pollutant is regulated under the Clean Air Act.

The D.C. Circuit dismissed these actions, stating that petitioners lacked standing because they did not assert a concrete injury. The Court held that section 165(a) of the Clean Air Act, which prohibits construction or modification without a PSD permit, is immediately self-executing whenever a pollutant becomes subject to regulation, without regard to the provisions of any SIP. As a result, any injury to petitioners was caused by the Clean Air Act itself, and not the challenged EPA rules.

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