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BLOG

Grain Processors Petition Supreme Court to Hear Clean Air Act Preemption Case

OCTOBER 3, 2014

On September 11, 2014, Grain Processing Corporation (GPC) filed a petition for a writ of *certiorari* with the Supreme Court of the United States. GPC is asking the Supreme Court to overturn the Iowa Supreme Court's decision in *Freeman v. Grain Processing Corporation* that the Clean Air Act does not preempt state law nuisance suits against polluters.

Critics of nuisance suits such as those brought by Laurie Freeman and seven of her neighbors (all individuals living within 1.5 miles of the GPC facility in Muscatine, Iowa) argue that allowing nuisance claims to proceed against facilities complying with Clean Air Act permitting requirements would establish two sets of pollution controls: those required under the Clean Air Act and those additional controls that may be required by state courts awarding damages in successful citizen suits. GPC's petition argues, in particular, that the plaintiffs' nuisance claims are barred by the Supreme Court's 2011 ruling in *American Electric Power v. Connecticut*, where the Court held that Connecticut could not bring a federal nuisance claim against the utility AEP to bar excess greenhouse gas emissions, which the State contended were contributing to climate change.

The Iowa Supreme Court, on the other hand, in upholding Freeman's suit, pointed to savings clauses in the Clean Air Act and the Clean Water Act, which preserve state law and citizens' rights to bring nuisance claims, so long as state law is no less stringent than the federal pollution statutes. GPC's petition argues that a savings clause gives states permission to supersede EPA's air standard only by setting their own regulatory standards.

Freeman's brief in opposition to the petition is due October 15.

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