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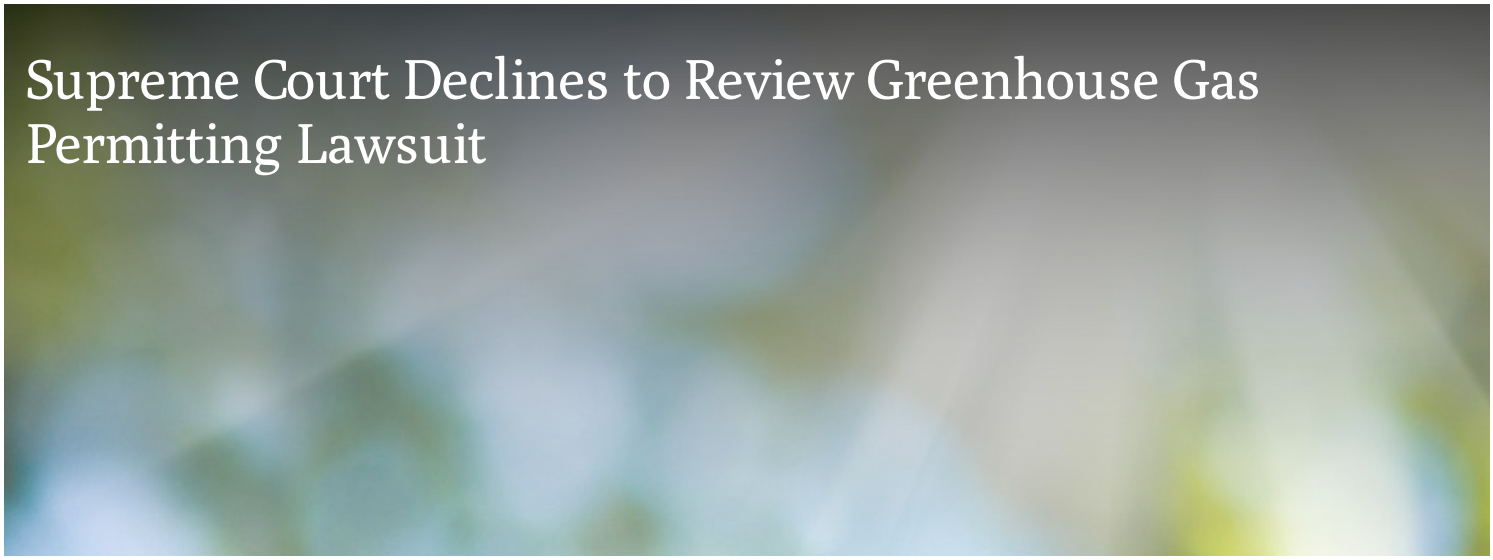
BLOG

Supreme Court Declines to Review Greenhouse Gas Permitting Lawsuit



JANUARY 25, 2016

On January 19, 2016, the Supreme Court of the United States rejected without comment a manufacturers group's petition for review of the D.C. Circuit's partial vacatur and remand of the Greenhouse Gas Tailoring Rule to EPA following the Supreme Court's 2014 decision in *Utility Air Regulatory Group v. EPA* (*UARG*). In *Energy-Intensive Manufacturers (EIM) Working Group on Greenhouse Gas Regulation v. EPA*, the petitioner argued that the D.C. Circuit should have vacated the Tailoring Rule entirely and that allowing the Tailoring Rule to remain in effect for sources that are already subject to Prevention of Significant Deterioration (PSD) and Title V permitting requirements based on their emissions of conventional pollutants (so-called "anyway" sources) contravened the holding in *UARG*. The petitioner sought vacatur of the portion of the Tailoring Rule that remains in effect following *UARG*, which would have the effect of preventing EPA from issuing PSD and Title V permits with GHG emission limits pending further rulemaking. EPA waived its right to respond to the *cert* petition, and the Supreme Court did not request a response from the Agency before denying the petition.

EPA has announced plans to revise its PSD and Title V GHG permitting regulations and to develop a GHG Significant Emission Rate (which would establish a threshold level below which Best Available Control Technology [BACT] is not required for a source's GHG emissions) in light of the decision in *UARG*. EPA plans to publish a proposed rulemaking in the *Federal Register* in October 2016. In the meantime, EPA is using a 75,000-ton-per-year threshold of GHG emissions on a carbon dioxide equivalent (CO_2e) basis to determine whether GHG BACT is required for new sources or major modifications of existing sources that are already subject to PSD and Title V permitting.

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