

## DC Appeals Court Upholds EPA's Greenhouse Gas Rules

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The U.S. Court of Appeals, D.C. Circuit, [upheld the EPA's greenhouse gas \(GHG\) regulations](#) against a challenge brought by business interests and the attorney generals of a number of states seeking relief from EPA's new GHG regulations. As a result, **EPA's GHG regulations remain effective, and PSD and Title V permits must continue to include BACT limits on GHG emissions.** Barring a reversal by the Supreme Court (which seems unlikely at this point) or action by Congress, the inexorable processes of the CAA will likely lead to further and more restrictive regulation of GHGs by EPA going forward.

The regulations grow out of an earlier case decided at the Supreme Court, in 2007, **Massachusetts v. EPA**, which determined that GHGs are an "air pollutant" for purposes of the Clean Air Act, and so are subject to regulation. Since that 2007 decision, the EPA has taken a number of steps related to GHG regulation, including issuing an Endangerment Finding (that GHGs may "reasonably be anticipated to endanger public health or welfare"), setting emission standards for cars and light trucks (the "Tailpipe Rule"), and establishing construction and operating permits for major stationary sources of GHGs. These permits would require implementation of the best available control technology ("BACT") to limit GHG emissions.

The various Petitioners raised numerous substantive and procedural challenges to EPA's findings, including claims that the bases for EPA's Endangerment Finding and Tailpipe Rule were improper, that the scientific record was inadequate or improperly addressed, and that the requirements of the Administrative Procedures Act ("APA") had not been met during the development of these regulations, among other claims. The court upheld EPA's review of and reliance on the scientific record it had compiled, as well as its compliance with the APA. The court also rejected challenges to major source permitting requirements, largely based on the statutory language of the Clean Air Act. Given the court's heavy reliance on the Clean Air Act and the Supreme Court's 2007 decision, a reversal seems unlikely without some change in direction by the high court.

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National Law Review, Volume II, Number 186

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