



# JW Environmental e-Alert

An important Environmental law update from the law firm of Jackson Walker.

**June 27, 2012**

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## D.C. Circuit Upholds EPA's Greenhouse Gas Regulations

*Green-lights the centralized control of industrial development through the issuance of permits for greenhouse gases*

By **Bill Cobb**

In a unanimous per curiam panel opinion, the United States Court of Appeals for the District of Columbia Circuit let stand each of the four rules underlying the EPA's greenhouse gas regulatory regime, paving the way for the imposition of sweeping carbon emission controls on virtually all forms of productive activity.

The D.C. Circuit first affirmed EPA's "Endangerment Finding," which concluded that greenhouse gases "very likely" caused global warming, and therefore, endanger human health and welfare, notwithstanding EPA's inability to articulate the level of greenhouse gases in the atmosphere that actually cause harm. According to the Court of Appeals, certainty and reliability are not prerequisites to regulation, stating "[EPA's] failure to distill this ocean of evidence into a specific number at which greenhouse gases cause 'dangerous' climate change is a function of the precautionary thrust of the CAA and the multivariate and sometimes uncertain nature of climate science, not a sign of arbitrary and capricious decision-making."

Next, the Court of Appeals upheld EPA's "Tailpipe Rule," which limits greenhouse gas emissions from mobile sources such as cars and trucks. Having failed to identify an amount of greenhouse gases that endanger human health or welfare, EPA necessarily could not demonstrate how its new greenhouse gas emission control requirements for mobile sources would help to reduce such 'danger.' The D.C. Circuit was untroubled, and simply rejected the argument that "regulations had to be premised upon factual proof of actual harm."

Finally, the D.C. Circuit dismissed challenges to EPA's "Timing Rule" and "Tailoring Rule" for lack of standing. The Court concluded neither rule caused any party injury, and that both rules mitigated the permitting burden. The Court further noted that while vacating the Tailoring Rule would "result in astronomical costs and unleash chaos on permitting authorities," the potential relief from resulting "corrective legislation" was speculative, and not "likely" as required by the Court's precedent because, citing *Schoolhouse Rock*, "as a generation of schoolchildren knows...[i]t's not easy to become a law."

The EPA's greenhouse gas regulations are certain to be appealed to the United States Supreme Court, but bolstered by its success in the intermediate appellate court, EPA will continue to promulgate further greenhouse gas regulations, like its recently proposed New Source Performance Standards which, if adopted, will require new fossil fuel-fired electric generating units to achieve a CO<sub>2</sub> emission

rate equivalent to that of a modern natural gas combined cycle facility, and set emissions limits of 1000 lb CO<sub>2</sub>/MWh.

If you have any questions regarding this e-Alert, please contact **Bill Cobb** at 512.236.2326 or [bcobb@jw.com](mailto:bcobb@jw.com). As Special Assistant and Senior Counsel to Texas Attorney General Greg Abbott, Mr. Cobb spearheaded Texas' opposition to the EPA's greenhouse gas regulatory regime and orchestrated Texas' defense of its air permitting program.

The Court's decision, styled *Coalition for Responsible Regulation v. Environmental Protection Agency*, [can be found here](#).

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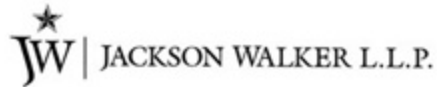
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