

## New year of GHG regulation

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## By Mary Ellen Ternes

EPA's Clean Air Act rules pulling six major greenhouse gases into CAA regulation of mobile sources, as well as major stationary sources undergoing New Source Review for Prevention of Significant Deterioration and Title V permitting, began January 2, 2011. On December 10, 2010, the D.C. Circuit Court of Appeals rejected pleas to stay the EPA's suite of GHG rulemaking pending judicial review, finding that the petitioners simply had not satisfied the stringent standards required for a stay pending court review. Specifically, with regard to each of the challenged rules, the D.C. Circuit held that petitioners had not shown that the harms they alleged were "certain,"



rather than speculative, or that the alleged harms would result directly from the EPA's actions which they sought to enjoin. The suite of GHG rules under judicial review that will not be stayed pending this review include EPA's December 7, 2009, Endangerment and Cause or Contribute Findings; the April 1, 2010, mobile source emission standards; the May 13, 2010, Tailoring Rule; and the March 29, 2010, "timing memo" also referred to as the "Johnson Memorandum." Moreover, the legislative attempts to block the rules appeared to end on December 17, 2010, when Sen. Jay Rockefeller reportedly decided to stop pushing for a legislative two-year delay in EPA's rule implementation due to lack of support.

With the judicial and legislative barriers out of the way for the time being, EPA has paved the way for state GHG permitting authority. All but 13 states have assured EPA that they have adequate state implementation plans (SIP) to permit major sources of GHG pursuant to EPA's GHG rules. For the remaining 13 states, including Arizona, Arkansas, California, Connecticut, Florida, Idaho, Kansas, Kentucky, Nebraska, Nevada, Oregon, Texas, and Wyoming, EPA promulgated a final rule

determining that these 13 state programs were inadequate, including a SIP call requiring these states revise their SIPs within a twelve month deadline and a Federal Implementation Plan (FIP) for use in the interim.

Notably, Texas did not reply to this SIP call. As a result, EPA notified Texas on December 21, 2010, via letter that it is taking over the Texas GHG air permitting program until Texas adopts a compliant SIP. EPA promulgated these rules in the December 13, 29 and 30, 2010, issues of the Federal Register. But not so fast! Also on December 30, 2010, the D.C. Circuit granted the State of Texas's petition for review and request for an emergency stay regarding EPA's interim final rule providing EPA with the mechanism to take over the Texas GHG program in response to Texas's argument that the State had no time to comment. Will facilities needing PSD GHG permits be able to get them in Texas in 2011? Watch these developments as the GHG CAA permitting landscape continues to evolve very quickly.



- EPA's GHG rulemaking initiatives
- EPA's recently promulgated rules, including the SIP revisions, the FIP, Title V authority and EPA's response to Texas
- D.C. Circuit's Order

## **LINKS**

Mary Ellen Ternes' bio

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