

Environment Alert

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SCOTUS Review of GHG Regulations – Opportunity for the Oil and Gas Sector?



The Supreme Court announced this week that it would review the U.S. Environmental Protection Agency's (EPA) authority to regulate "greenhouse gases" (GHGs) under the Clean Air Act. While the Court accepted six petitions for review, the Court declined to address several broader questions presented by those petitions and instead will consider only a single question. That question, in the particular context of the Clean Air Act's statutory structure, nevertheless presents a unique opportunity for the oil and gas sector to roll back EPA's regulation of GHGs from existing stationary sources.

The Court granted review of the following question: "Whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases." The Court denied requests to reconsider *Massachusetts v. EPA* (2007), holding that the Act's definition of "air pollutant" includes GHGs and empowering EPA to regulate GHGs under certain conditions. The Court also denied review of the validity of EPA's "endangerment finding" for mobile sources – the finding relied upon by EPA to establish standards for mobile sources such as cars and light trucks (not at issue) and regulation of stationary sources under the New Source Review preconstruction permitting program (here at issue).

The regulations under review involve EPA's authority under the New Source Review (NSR) permitting program to require new and modified sources to obtain a preconstruction permit and install Best Available Control Technologies. These regulations apply to all stationary sources that have the potential to emit GHGs over a certain limit (above the statutory limit) prescribed by EPA.

There are a number of different grounds on which the Court could strike down, or limit the scope of, the NSR regulations. For example, the Court could rule that the "endangerment finding" for mobile sources could not automatically support regulation of stationary sources. In that event, EPA would have to start over by issuing a new "endangerment finding" for stationary sources and then promulgating NSR regulations. The intricacies of the Clean Air Act provide additional arguments for invalidating EPA's regulations. The oil and gas sector could benefit from such a ruling that requires EPA to revisit its imposition of GHG emissions limits on stationary sources.

The Obama Administration's recently promulgated effort to impose emissions standards on new power plants will almost certainly not be impacted by the Supreme Court's review. This summer, President Obama unveiled a plan to reduce GHG emissions from power plants. Toward that end, EPA recently issued a proposed rule that would require new power plants to meet emissions limits established under

the New Source Performance Standards. Once that rule has been issued, EPA intends to establish similar requirements for existing power plants that have been modified or reconstructed. The Clean Air Act provisions under which EPA is promulgating those regulations are not before the Court.

Contact Information

If you have any questions regarding this alert, please contact:

Paul Gutermann

pgutermann@akingump.com

202.887.4088

Washington, D.C.

Pratik Shah

pshah@akingump.com

202.887.4210

Washington, D.C.