

## Texas and Utility Group Challenge EPA's GHG FIP in D.C. Circuit

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The D.C. Circuit Court of Appeals heard oral arguments on May 7 in cases challenging EPA's decision to directly write GHG permits in Texas after the state refused to adopt the Agency's GHG permitting program. In a September 2010 EPA rule stated that state PSD programs that did not address GHG-emitting sources were inadequate. At this time, 13 states did not include GHG permitting in their state implementation plans ("SIPs"). 12 of these states revised their SIPs consistent with EPA's GHG permitting program. Texas, however, refused. As a result, EPA imposed a federal implementation plan ("FIP") that put EPA directly in charge of issuing GHG permits in Texas.

Texas filed suit against EPA stating that the Agency is trying to usurp state enforcement authority. Further, Texas argues that EPA's disapproval of the SIP it had previously approved in 1992 was improper. A utility group filed a parallel suit arguing that EPA's SIP call was premature. The utility group argues that when a new pollutant begins to be regulated under the Clean Air Act, but is not regulated as a criteria pollutant under NAAQS, states should have three years to correct deficiencies in their SIPs. EPA states that Texas and the utility group lack standing to sue, as the rules do not impose a harm that can be challenged. EPA asserts that the FIP helps petitioners, rather than harms them, since Texas cannot currently issue valid PSD permits covering GHG-emitting sources.

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