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U.S. Supreme Court Agrees to Hear Greenhouse Gas Appeals

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On October 15, 2013, the U.S. Supreme Court agreed to hear various appeals related to EPA's efforts to regulate greenhouse gas (GHG) emissions under the Clean Air Act. *Coalition for Responsible Regulation, Inc. v. EPA*. Several petitions were consolidated and the Court's review is limited to a single question: "Whether EPA permissibly determined that its regulation of GHG emissions from new motor vehicles triggered permitting requirements under the CAA for stationary sources that emit GHGs." The Court also denied other petitions and declined to hear the validity of EPA's "Endangerment Finding" and EPA's adoption of permitting provisions for GHG emissions through the "Tailoring Rule."

This will be the Court's first foray into greenhouse gas regulation since its 2007 decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), which precipitated EPA's regulation of greenhouse gas emissions. In *Massachusetts v. EPA*, the Court held that greenhouse gases could be regulated under the Clean Air Act if EPA determined that such emissions "endangered" public health or the environment. Once EPA issued its "Endangerment Finding" in 2009, regulation of greenhouse gas emissions was automatically triggered, according to EPA. The first regulations were directed at new motor vehicles, the so-called "Tailpipe Rule", which in turn triggered greenhouse gas emission limitations in permits for stationary sources, such as prevention of significant deterioration (PSD) and Title V permits. EPA sought to temper the scope of these new limitations through a "Tailoring Rule", which reduced the number of sources subject to greenhouse gas permits by increasing the greenhouse gas thresholds that trigger permitting.

While neither EPA's "Endangerment Finding" nor its "Tailoring Rule" will be reviewed by the Court, the Court's decision could profoundly impact EPA's permitting of greenhouse gases. Moreover, while EPA and the regulated industry wait for a ruling from the high Court on this issue, certain permitting decisions may be held hostage. Companies may delay planned expansions waiting for a decision, and EPA may alter the pace of its permitting decisions pending resolution from the Court. At the very least, uncertainty will reign supreme.