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Sustainability & Climate Change Reporter

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EPA Messes with Texas, Congress Likely to Mess with EPA

Two days before Christmas the U.S. Environmental Protection Agency handed the state of Texas the regulatory equivalent of a lump of coal for its stocking. The agency [announced](#) that, effective January 2, 2011, it will follow through on the threat to take over issuance of air permits to industries in Texas. This is a first for EPA and was prompted by the refusal of Texas to include greenhouse gas emissions in its air permit decisions. The EPA's action, however, is sure to raise the heat to long-simmering efforts by Congressional Republicans to halt the agency's climate change regulations in its tracks.

State Permits

For many years states such as Texas have been implementing aspects of the federal Clean Air Act, including issuing permits under the Prevention of Significant Deterioration (PSD) program, which regulates air pollution from new major industrial sources or major modifications to industrial facilities. Up to now greenhouse gases have not been part of the PSD permit considerations. But because the U.S. Supreme Court in *Massachusetts v. EPA* told the agency to make a decision whether greenhouse gases are "pollutants" under the Clean Air Act, and EPA did so with its December 2009 endangerment finding, the next step was to include greenhouse gases in permit programs.

Texas Response

EPA notified state and local air permitting agencies that they would need to be in a position to issue PSD permits for greenhouse gases or a federal plan would step in to avoid delay in issuing permits to new or expanding facilities. Texas responded last August with a strongly-worded [letter](#) (PDF):

In order to deter challenges to your plan for centralized control of industrial development through the issuance of permits for greenhouse gases, you have called upon each state to declare its allegiance to the Environmental Protection Agency's recently enacted greenhouse gas regulations – regulations that are plainly contrary to United States law. To encourage acquiescence with your unsupported findings you threaten to usurp state enforcement

authority and to federalize the permitting program of any state that fails to pledge their fealty to the Environmental Protection Agency.

Although seven other states (Arizona, Arkansas, Florida, Idaho, Kansas, Oregon and Wyoming) also are not in compliance with including greenhouse gases in PSD permits, those states have indicated that they are in the process of revising their programs. Only Texas has been adamant in its refusal and is part of lawsuits against EPA to block implementation of the agency's rules.

In early December, the U.S. Court of Appeals for the District of Columbia rejected a motion by a coalition of parties, including Texas, to stay implementation of the EPA rules. The court said: "petitioners have not shown that the harms they allege are 'certain,' rather than speculative, or that the 'alleged harm[s] will directly result from the action[s] which the movant[s] seeks to enjoin,"

EPA Implementation

In addition to the PSD program, EPA also has announced plans to release proposed updated pollution rules for existing power plants in July 2011 and for oil refineries by next December, with the two sets of rules to be finalized six to nine months after each release.

The big question, however, remains whether Congress will put a stop to all this. Newly-installed Republican committee chairs in the House, such as Rep. Fred Upton (R-MI), head of the House Energy and Commerce Committee, threaten to do just that. In a Wall Street Journal [article](#) on December 28th, Rep. Upton characterized the EPA regulations as "an unconstitutional power grab that will kill millions of jobs -- unless Congress steps in." Rep. Upton said the best solution would be for Congress to overturn EPA's regulations outright, but other tactics could include a two-year moratorium on EPA regulations, defunding EPA entirely or blocking funds for EPA's climate change programs.

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