

### **U.S. Supreme Court to Rule in Landmark Greenhouse Gas Lawsuit**

The Supreme Court announced that it would take up the common law case, American Electric Power v. Connecticut, regarding the federal Greenhouse Gas reporting and permitting rules. The case will be argued in the spring, after the U.S. Circuit Court of Appeals for the District of Columbia decides whether to stay four related EPA regulations, parts of which are due to go into effect on January 2, 2011. A ruling on the stay request is due at any time.

The regulations are relevant to the Supreme Court's consideration of the case because it may reach its conclusion by ruling on whether efforts by EPA to regulate carbon emissions in recent years have effectively supplanted any federal common law that would give the states the right to claim that emissions are a "public nuisance." The four rules under attack from industry groups are: the "timing" rule that requires new controls of greenhouse gas emissions from stationary sources would be triggered on Jan. 2, 2011, the day that new motor vehicle standards go into effect; the "tailoring" rule that interprets the Clean Air Act in such a way that only major polluters are required to obtain permits for greenhouse gas emissions; the "endangerment" rule focusing on EPA's initial decision in which it held that greenhouse gases are harmful; and the "tailpipe" rule, which adopts new standards for car and light-truck emissions.

The case before the Supreme Court was prompted by the combined efforts of eight states, New York City, and several land trusts to require utilities that operate fossil fuel-fired electric power plants to reduce emissions. American Electric Power Co. Inc. and several other power companies responded that the Clean Air Act supplants the federal common law when it comes to greenhouse gas emissions. In 2009, the 2nd U.S. Circuit Court of Appeals ruled in favor of the states. The implications of the Court's decision will not only affect the utilities industry, but will likely have wide-reaching impacts on other economic sectors, including automakers, agricultural and manufacturing interests, extractive industries, and chemical companies.