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Industry Groups Challenge EPA's Reconsideration of 'Johnson Memo'

By **ROBIN BRAVENDER** of [Greenwire](#)

A coalition of industry groups has asked a federal appeals court to review U.S. EPA's policy for when it plans to begin regulating greenhouse gases from stationary sources.

Groups including coal, mining and agricultural interests Friday **petitioned (pdf)** the U.S. Circuit Court of Appeals for the District of Columbia to review EPA's policy detailing when the agency must regulate the heat-trapping emissions from industrial facilities like power plants, oil refineries and other sources.

EPA Administrator Lisa Jackson laid out that timeline last Monday when she announced the Obama EPA's final reconsideration of the George W. Bush administration's "Johnson memo" ([E&ENews PM](#), March 29). Jackson said EPA plans to begin regulating some large stationary facilities in January 2011, when automakers must begin to comply with EPA's greenhouse gas rules for tailpipe emissions, which were also finalized last week ([Greenwire](#), April 1).

The groups filing the lawsuit were the Coalition for Responsible Regulation Inc., the Industrial Minerals Association-North America, the National Cattlemen's Beef Association, Great Northern Project Development LP, Rosebud Mining Co. and Alpha Natural Resources Inc.

Eric Groten, an attorney representing the groups, said EPA's policy is illegal and will have dire consequences for stationary sources.

He said EPA is using a "strained reading of the Clean Air Act" to say that the adoption of the tailpipe standards forces EPA to begin regulating industrial facilities. "The law doesn't compel that," he said.

Opponents of EPA's policy have until June 1 to file legal challenges with the appeals court.

Jackson last week said that EPA's time frame would give businesses and regulators enough time to prepare for rules that will clamp down on greenhouse gases.

Justice Department spokesman Andrew Ames declined to comment on the lawsuit. He said attorneys for the Obama administration would review the petition and respond in court.

The groups that filed the petition are also parties to a lawsuit filed in December challenging EPA's "endangerment" finding, a determination that greenhouse gases threaten public health and welfare. That finding sets the stage for the agency to begin regulating those emissions from mobile and stationary sources. The coal giant Massey Energy Co. is also a party to that lawsuit, which has been consolidated with a host of other groups' challenges to the finding.

[Click here \(pdf\)](#) to read the petition.

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