

May 18, 2016

High Court Declares MassDEP Deficient in Regulating Greenhouse Gases

Yesterday, in [*Kain v. Department of Environmental Protection*](#) the Supreme Judicial Court declared that MassDEP had failed to properly implement the requirements of the Global Warming Solutions Act. Specifically, the Court found that the department is required “to promulgate regulations that address multiple sources or categories of sources of greenhouse gas emissions, impose a limit on emissions that may be released, limit the aggregate emissions released from each group of regulated sources or category of sources, set emissions limits for each year, and set limits that decline on an annual basis.”

The Court found that although MassDEP’s Regional Greenhouse Gas (“RGGI”), low emission vehicle (“LEV”) and sulfur hexafluoride leak regulations were “important to the overall scheme of reducing greenhouse gas emissions over time, they do not fulfill the specific requirements of” the Global Warming Solutions Act.

It remains to be seen how MassDEP and the legislature will react to the decision. Will the MassDEP begin a whole new round of regulatory initiatives mandating greenhouse gas emissions reductions over a wide array of sources or will the legislature reconsider the economic and environmental impact of the mandate of the Global Warming Solutions Act? Which ever way the Administration and legislature eventually choose to go, this case opens up a whole new spectrum of issues for project proponents, opponents and regulators. At a time when MassDEP’s budget is continuing to shrink, it has lost many senior staffers to early retirement and it is proposing to take on the NPDES permitting program, one wonders how it will take on the herculean task of regulating greenhouse gas emissions across a broad array of sources.

One saving grace in the decision, on which MassDEP may hang its hat, is the Court’s observation that “there is nothing in the statutory language to indicate that the department must regulate every source of emissions in the Commonwealth” and that “the department has discretion to select what sources of emissions it will regulate.”

If you would like to discuss any of these observations, please do not hesitate to contact us.

For questions, call or email [Tom Mackie](#)