

### Volume 239 June 21, 2011

#### Impact of Supreme Court emissions ruling likely to be felt in other cases

The Supreme Court's ruling yesterday finding that states cannot invoke federal common law in an attempt to limit greenhouse gas emissions has left several key legal questions unanswered.

Lawyers say the remaining issues are likely to be litigated in short order. In its *American Electric Power v. Connecticut* decision, the court ruled 8-0 -- with Justice Sonia Sotomayor recused -- that the Clean Air Act and the Obama administration's efforts to regulate emissions had displaced the states' federal common law argument. But the court did not address whether states and others can sue under state law to limit emissions.

The first case likely to be affected by the Supreme Court's decision is one currently before the San Francisco-based 9th U.S. Circuit Court of Appeals, *Kivalina v. Exxon Mobil Corp.* It was put on hold while the high court considered *AEP*. Plaintiffs' attorneys, who have made both federal and state law claims, believe their federal claims could still survive.

On state law claims in general, the Supreme Court specifically avoided addressing whether they could be made or whether they are preempted by the Clean Air Act.

Attorneys representing the various plaintiffs in *AEP* -- six states, New York City and several land trusts -- have not yet decided how to proceed, but it's possible that the case is not over if they decide to pursue the state law claims that were included in the original lawsuit.

Lawyers sympathetic to the plaintiffs note that the Supreme Court has previously held that the Clean Water Act does not pre-empt state law and surmise that the Clean Air Act could be treated the same.

#### Extended Temp Forecast: Chicago Area

Tue	Wed	Thu	Fri	Sat
69 - 87	63 - 75	60 - 70	61 - 72	62 - 76

#### Electricity Pricing Areas – On Peak July 2011

	June 21, 2011	Per kWh
Cinergy	Hub Peak Swap Monthly	\$.04695
PJM Hub	Com Ed	\$.05103
PJM	Hub Peak Monthly	\$.06671

#### ComEd Average Day Ahead LMP Electric Price

Time Period	Average per Kwh
Jul 1 - Jul 31, 2010	\$.04741
Aug 1 - Aug 31	\$.04628
Sep 1 - Sep 30	\$.02934
Oct 1 - Oct 31	\$.02702
Nov 1 - Nov 30	\$.02778
Dec 1 - Dec 31	\$.03545
Jan 1 - Jan 31, 2011	\$.03871
Feb 1 - Feb 28	\$.03581
March 1- Mar 31	\$.03668
April 1 - April 30	\$.03448
May 1- May 31	\$.03954
June 1 thru June 20	\$.04106

**Weather - Tue:** High 87F. Winds SSW at 15 to 25 mph. Chance of rain 40%. **Wed:** A few storms may be severe. High near 75F. Winds SSW at 15 to 25 mph. Chance of rain 60%. **Thu:** Cloudy with showers and thunderstorms. Highs in the low 70s and lows in the low 60s. **Fri:** Clouds giving way to sun. Highs in the low 70s and lows in the low 60s. **Sat** Mix of sun and clouds. Highs in the mid 70s and lows in the low 60s

