

Question 2:

After graduating from the Law Center, you've established a top-flight Houston boutique environmental law firm with your classmates. Your firm is off to a fast start, and a major new client and matter has walked into your office.

GeoGreen Power Corporation recently announced its plan to construct a new power plant to supply electricity to the South Texas region. The new plant will rely on coal as its primary power source, and the plant will be located southwest of Houston and Galveston in an area that meets all current national ambient air standards for criteria air pollutants (although the plant lies only a half-mile outside the Houston-Galveston non-attainment area for ozone). GeoGreen will construct the plant in a greenfield site which has had no prior industrial operations or emissions.

Once it is fully operational, the GeoGreen plant will emit close to 200,000 tons per year of carbon dioxide. Because GeoGreen Power will install state-of-the-art emission controls at the facility, the plant will emit less than 100 tons per year of any criteria air pollutant, including nitrous oxides, volatile organic compounds, and particulate matter. GeoGreen Power has no current plans to capture or sequester any greenhouse gases from the plant, but the plant design will allow GeoGreen to add that capacity in the future at relatively moderate expense if it chooses in the future. If it does ultimately sequester greenhouse gases from the plant, GeoGreen has not explored how it would (or even could) manage those captured gases.

Gulf Guardians, a national environmental advocacy group, has announced that it will strenuously oppose approval and construction of the plant. They have specifically threatened to use all administrative objections to the permit and civil litigation to delay or halt the project.

GeoGreen Power's general counsel has hired you to provide an objective assessment of the environmental legal risks facing the plant. She specifically needs you to forecast the most likely environmental challenges to the plant's greenhouse gas emissions that Gulf Guardians (or other future plaintiffs) might raise under federal and/or Texas environmental laws and regulations. After providing this forecast, she has asked you to outline GeoGreen Power's best defenses and legal strategies to answer these challenges. Your assessment should include any proactive steps that GeoGreen Power can take to make the plant less vulnerable to environmental legal attack.