Considering the "generous approach" the district court should take in deciding a Rule 56(f) motion, *Berkeley,* 68 F.3d at 1414, the district court's mistaken view that Convertino could continue to seek discovery in the Eastern District notwithstanding the termination of Convertino's Privacy Act litigation and the "monumental" efforts Convertino has taken to discover the needed information, *Convertino,* 769 F.Supp.2d at 144, we believe the district court committed an abuse of discretion in denying Convertino's Rule 56(f) motion. Accordingly, we reverse the district court's judgment and remand the case for further proceedings consistent with this opinion.

So ordered.

COALITION FOR RESPONSIBLE REGULATION, INC., et al., Petitioners

v.

ENVIRONMENTAL PROTECTION AGENCY, Respondent

State of Michigan, et al., Intervenors.

Coalition for Responsible Regulation, Inc., et al., Petitioners

v.

Environmental Protection Agency, Respondent

American Frozen Food Institute, et al., Intervenors.

Coalition for Responsible Regulation, Inc., et al., Petitioners

v.

Environmental Protection Agency, Respondent

Langboard, Inc.—MDF, et al., Intervenors.

American Chemistry Council, Petitioner

v.

Environmental Protection Agency and Lisa Perez Jackson, Administrator, U.S. Environmental Protection Agency, Respondents

Chamber of Commerce of the United States of America, et al., Intervenors.

13. We also note that the discovery delays in Convertino's pursuit of his Privacy Act claim have not occurred because of his action/inaction. *See Resolution Trust,* 22 F.3d at 1208–09 (district court abused discretion in denying Rule 56(f) motion when most of delay attributable to opposing party).

ing, Craig Holt Segall, David Doniger and Meleah Geertsma. Judith A. Stahl Moore, Assistant Attorney General, Office of the Attorney General for the State of New Mexico, and John D. Walke entered appearances.

Richard E. Ayres, Jessica L. Olson, and Kristin L. Hines were on the brief for amicus curiae Honeywell International, Inc. in support of respondents.

Richard L. Revesz, Michael A. Livermore, and Jennifer S. Rosenberg were on the brief for amicus curiae Institute for Policy Integrity at New York University School of Law in support of respondents.

Timothy K. Webster, Roger R. Martella, Jr., James W. Coleman, William H. Lewis, Jr., Ronald J. Tenpas, Charles H. Knauss, Shannon S. Broome, Bryan M. Killian, and Matthew G. Paulson were on the briefs for petitioners. Peter D. Keisler, Leslie A. Hulse, and Quentin Riegel entered appearances.

Amanda Shafer Berman and Perry M. Rosen, Attorneys, U.S. Department of Justice, and Elliott Zenick and Howard J. Hoffman, Counsel, U.S. Environmental Protection Agency, were on the brief for respondents. Jon M. Lipshultz, Senior Counsel, U.S. Department of Justice, entered and appearance.

Ann Brewster Weeks, Sean H. Donahue, Vickie Patton, Peter Zalzal, Joanne Spalding, Craig Segall, David Doniger, and Meleah Geertsma were on the brief of intervenors in support of respondents. David S. Baron, Pamela A. Campos, Colin C. O'Brien, and John D. Walke entered appearances.

Vera P. Pardee, Brendan R. Cummings, and Kevin P. Bundy were on the brief for amicus curiae Center for Biological Diversity in support of respondents.

Before: SENTELLE, Chief Judge; ROGERS and TATEL, Circuit Judges.

Opinion for the Court filed PER CURIAM.

PER CURIAM:

Following the Supreme Court's decision in *Massachusetts v. EPA,* 549 U.S. 497, 127 S.Ct. 1438, 167 L.Ed.2d 248 (2007)—which clarified that greenhouse gases are an "air pollutant" subject to regulation under the Clean Air Act (CAA)—the Environmental Protection Agency promulgated a series of greenhouse gas-related rules. First, EPA issued an Endangerment Finding, in which it determined that greenhouse gases may "reasonably be anticipated to endanger public health or welfare." *See* 42 U.S.C. § 7521(a)(1). Next, it issued the Tailpipe Rule, which set emission standards for cars and light trucks. Finally, EPA determined that the CAA requires major stationary sources of greenhouse gases to obtain construction and operating permits. But because immediate regulation of all such sources would result in overwhelming permitting burdens on permitting authorities and sources, EPA issued the Timing and Tailoring Rules, in which it determined that only the largest stationary sources would initially be subject to permitting requirements.

Petitioners, various states and industry groups, challenge all these rules, arguing that they are based on improper constructions of the CAA and are otherwise arbitrary and capricious. But for the reasons set forth below, we conclude: 1) the Endangerment Finding and Tailpipe Rule are neither arbitrary nor capricious; 2) EPA's interpretation of the governing CAA provisions is unambiguously correct; and 3) no petitioner has standing to challenge the Timing and Tailoring Rules. We thus dismiss for lack of jurisdiction all petitions for

review of the Timing and Tailoring Rules, and deny the remainder of the petitions.

I.

We begin with a brief primer on greenhouse gases. As their name suggests, when released into the atmosphere, these gases act "like the ceiling of a greenhouse, trapping solar energy and retarding the escape of reflected heat." *Massachusetts v. EPA*, 549 U.S. at 505, 127 S.Ct. 1438. A wide variety of modern human activities result in greenhouse gas emissions; cars, power plants, and industrial sites all release significant amounts of these heat-trapping gases. In recent decades "[a] well-documented rise in global temperatures has coincided with a significant increase in the concentration of [greenhouse gases] in the atmosphere." *Id.* at 504–05, 127 S.Ct. 1438. Many scientists believe that mankind's greenhouse gas emissions are driving this climate change. These scientists predict that global climate change will cause a host of deleterious consequences, including drought, increasingly severe weather events, and rising sea levels.

The genesis of this litigation came in 2007, when the Supreme Court held in *Massachusetts v. EPA* that greenhouse gases "unambiguous[ly]" may be regulated as an "air pollutant" under the Clean Air Act ("CAA"). *Id.* at 529, 127 S.Ct. 1438. Squarely rejecting the contention—then advanced by EPA—that "greenhouse gases cannot be 'air pollutants' within the meaning of the Act," *id.* at 513, 127 S.Ct. 1438, the Court held that the CAA's definition of "air pollutant" "embraces *all* airborne compounds of whatever stripe." *Id.* at 529, 127 S.Ct. 1438 (emphasis added). Moreover, because the CAA requires EPA to establish motor-vehicle emission standards for "*any* air pollutant . . . which may reasonably be anticipated to endanger public health or welfare," 42 U.S.C. § 7521(a)(1) (emphasis added), the Court held that EPA had a "statutory obligation" to regulate harmful greenhouse gases. *Id.* at 534, 127 S.Ct. 1438. "Under the clear terms of the Clean Air Act," the Court concluded, "EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do." *Id.* at 533, 127 S.Ct. 1438. The Court thus directed EPA to determine "whether sufficient information exists to make an endangerment finding" for greenhouse gases. *Id.* at 534, 127 S.Ct. 1438.

Massachusetts v. EPA spurred a cascading series of greenhouse gas-related rules and regulations. First, in direct response to the Supreme Court's directive, EPA issued an Endangerment Finding for greenhouse gases. *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act* ("Endangerment Finding"), 74 Fed. Reg. 66,496 (Dec. 15, 2009). The Endangerment Finding defined as a single "air pollutant" an "aggregate group of six long-lived and directly-emitted greenhouse gases" that are "well mixed" together in the atmosphere and cause global climate change: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. *Id.* at 66,536–37. Following "common practice," EPA measured the impact of these gases on a "carbon dioxide equivalent basis," (CO_2e) which is based on the gases' "warming effect relative to carbon dioxide . . . over a specified timeframe." *Id.* at 66,519. (Using the carbon dioxide equivalent equation, for example, a mixture of X amount of nitrous oxide and Y amount of sulfur hexafluoride is expressed as Z amount of CO_2e). After compiling and

considering a considerable body of scientific evidence, EPA concluded that motor-vehicle emissions of these six well-mixed gases "contribute to the total greenhouse gas air pollution, and thus to the climate change problem, which is reasonably anticipated to endanger public health and welfare." *Id.* at 66,499.

Next, and pursuant to the CAA's requirement that EPA establish motor-vehicle emission standards for "any air pollutant ... which may reasonably be anticipated to endanger public health or welfare," 42 U.S.C. § 7521(a)(1), the agency promulgated its Tailpipe Rule for greenhouse gases. *Light–Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule* ("Tailpipe Rule"), 75 Fed. Reg. 25,324 (May 7, 2010). Effective January 2, 2011, the Tailpipe Rule set greenhouse gas emission standards for cars and light trucks as part of a joint rulemaking with fuel economy standards issued by the National Highway Traffic Safety Administration (NHTSA). *Id.* at 25,326.

Under EPA's longstanding interpretation of the CAA, the Tailpipe Rule automatically triggered regulation of stationary greenhouse gas emitters under two separate sections of the Act. The first, the Prevention of Significant Deterioration of Air Quality (PSD) program, requires state-issued construction permits for certain types of stationary sources—for example, iron and steel mill plants—if they have the potential to emit over 100 tons per year (tpy) of "any air pollutant." *See* 42 U.S.C. §§ 7475; 7479(1). All other stationary sources are subject to PSD permitting if they have the potential to emit over 250 tpy of "any air pollutant." *Id.* § 7479(1). The second provision, Title V, requires state-issued operating permits for stationary sources that have the potential to emit at least 100 tpy of "any air pollutant." *Id.* § 7602(j). EPA has long interpreted the phrase "any air pollutant" in both these provisions to mean any air pollutant that is regulated under the CAA. *See Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans* ("1980 Implementation Plan Requirements"), 45 Fed. Reg. 52,676, 52,-711 (Aug. 7, 1980) (PSD program); *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule* ("Tailoring Rule"), 75 Fed. Reg. 31,514, 31,553–54 (June 3, 2010) (discussing history of Title V regulation and applicability). And once the Tailpipe Rule set motor-vehicle emission standards for greenhouse gases, they became a regulated pollutant under the Act, requiring PSD and Title V greenhouse permitting.

Acting pursuant to this longstanding interpretation of the PSD and Title V programs, EPA issued two rules phasing in stationary source greenhouse gas regulation. First, in the Timing Rule, EPA concluded that an air pollutant becomes "subject to regulation" under the Clean Air Act—and thus subject to PSD and Title V permitting—only once a regulation requiring control of that pollutant takes effect. *Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs* ("Timing Rule"), 75 Fed. Reg. 17,004 (Apr. 2, 2010). Therefore, EPA concluded, major stationary emitters of greenhouse gases would be subject to PSD and Title V permitting regulations on January 2, 2011—the date on which the Tailpipe Rule became effective, and thus, the date when greenhouse gases first became regulated under the CAA. *Id.* at 17,019.

Next, EPA promulgated the Tailoring Rule. In the Tailoring Rule, EPA noted

that greenhouse gases are emitted in far greater volumes than other pollutants. Indeed, millions of industrial, residential, and commercial sources exceed the 100/250 tpy statutory emissions threshold for CO_2e. Tailoring Rule, 75 Fed. Reg. at 31,534–36. Immediately adding these sources to the PSD and Title V programs would, EPA predicted, result in tremendous costs to industry and state permitting authorities. *See id.* As a result, EPA announced that it was "relieving overwhelming permitting burdens that would, in the absence of this rule, fall on permitting authorities and sources." *Id.* at 31,516. Departing from the CAA's 100/250 tpy emissions threshold, the Tailoring Rule provided that only the largest sources—those exceeding 75,000 or 100,000 tpy CO_2e, depending on the program and project—would initially be subject to greenhouse gas permitting. *Id.* at 31,523. (The Tailoring Rule further provided that regulated sources must also emit greenhouse gases at levels that exceed the 100/250 tpy emissions threshold on a *mass* basis. That is, they must emit over 100/250 tpy of actual pollutants, in addition to exceeding the 75,000/100,000 tpy carbon dioxide equivalent. *Id.* at 31,523.)

A number of groups—including states and regulated industries—filed petitions for review of EPA's greenhouse gas regulations, contending that the agency misconstrued the CAA and otherwise acted arbitrarily and capriciously. This appeal consolidates the petitions for review of the four aforementioned rules: the Endangerment Finding, the Tailpipe Rule, the Timing Rule, and the Tailoring Rule.

[1] "The Clean Air Act empowers us to reverse the Administrator's action in rulemaking if it is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'" *Med. Waste Inst. & Energy Recovery Council v. EPA,* 645 F.3d 420, 424 (D.C.Cir.2011) (quoting 42 U.S.C. § 7607(d)(9)(A)). Questions of statutory interpretation are governed by the familiar *Chevron* two-step: "First . . . if the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). But "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843, 104 S.Ct. 2778.

This opinion proceeds in several steps. Part II explains why the Endangerment Finding was neither arbitrary nor capricious, while Part III does the same for the Tailpipe Rule. Turning to stationary source regulation, Part IV examines whether any petitioners may timely challenge EPA's longstanding interpretation of the PSD statute. Because we conclude that they may, Part V addresses the merits of their statutory arguments, and explains why EPA's interpretation of the CAA was compelled by the statute. Next, Part VI explains why petitioners lack standing to challenge the Timing and Tailoring Rules themselves. Finally, Part VII disposes of several arguments that have nothing to do with the rules under review, and thus are not properly before us.

II.

We turn first to State and Industry Petitioners' challenges to the Endangerment Finding, the first of the series of rules EPA issued after the Supreme Court remanded *Massachusetts v. EPA.* In the decision ordering the remand, the Supreme Court held that EPA had failed in its

Alabama Power, holding that there is "no implied or apparent conflict between sections 165 and 166; nor . . . must the requirements of section 165 be 'subsumed' with those of section 166." *Alabama Power*, 636 F.2d at 406. Stating what should have been obvious from the text of the statute, we concluded: "[S]ection 166 has a different focus from section 165." *Id.*

Thus, because EPA has never classified greenhouse gases as a NAAQS criteria pollutant, the § 166 requirements are entirely inapplicable here. This section of the CAA has absolutely no bearing on our conclusion that EPA's interpretation of the PSD permitting trigger is compelled by the statute itself.

VI.

Having concluded that the CAA requires PSD and Title V permits for major emitters of greenhouse gases, we turn to Petitioners' challenges to the Tailoring and Timing Rules themselves.

As an initial matter, we note that Petitioners fail to make any real arguments against the Timing Rule. To be sure, at one point State Petitioners contend that the Timing Rule constitutes an attempt "to extend the PSD and Title V permitting requirements to greenhouse-gas emissions," State Pet'rs' Timing & Tailoring Br. 67. This is plainly incorrect. As discussed in the previous section, greenhouse gases are regulated under PSD and Title V pursuant to automatic operation of the CAA. All the Timing Rule did was delay the applicability of these programs, providing that major emitters of greenhouse gases would be subject to PSD and Title V permitting requirements only once the Tailpipe Rule actually took effect on January 2, 2011. *See* Timing Rule, 75 Fed. Reg. at 17,017–19. Despite this, Petitioners confusingly urge us to vacate "[t]he Tailoring *and* Timing Rules," *e.g.* State Pet'rs' Timing & Tailoring Br. 24 (emphasis added), although it is unclear what practical effect vacature of the Timing Rule would have. Nonetheless, given this phrasing of their argument, and given our conclusion that Petitioners lack Article III standing to challenge *both* rules, we shall, where appropriate, discuss the Timing Rule in conjunction with the Tailoring Rule.

In the Tailoring Rule, EPA announced that it was "relieving overwhelming permitting burdens that would, in the absence of this rule, fall on permitting authorities and sources." Tailoring Rule, 75 Fed. Reg. at 31,516. Although the PSD statute requires permits for sources with the potential to emit 100/250 tpy of "any air pollutant," 42 U.S.C. § 7479(1), EPA noted that immediate application of that threshold to greenhouse gas-emitting sources would cause permit applications to jump from 280 per year to over 81,000 per year. Tailoring Rule, 75 Fed. Reg. at 31,554. Many of these applications would come from commercial and residential sources, which would "each incur, on average, almost $60,000 in PSD permitting expenses." *Id.* at 31,556. Similarly, if the Title V 100 tpy threshold applied immediately to greenhouse gases, sources needing operating permits would jump from 14,700 per year to 6.1 million per year. *Id.* at 31,562. "The great majority of these sources would be small commercial and residential sources" which "would incur, on average, expenses of $23,175." *Id.* And were permitting authorities required to hire the 230,000 full-time employees necessary to address these permit applications, "authorities would face over $21 billion in additional permitting costs each year due to [greenhouse gases], compared to the current program cost of $62 million each year." *Id.* at 31,563.

Thus, instead of immediately requiring permits for all sources exceeding the 100/250 tpy emissions threshold, EPA decided to "phas[e] in the applicability of these programs to [greenhouse gas] sources, starting with the largest [greenhouse gas] emitters." *Id.* at 31,514. The Tailoring Rule established the first two steps in this phased-in process. During Step One, only sources that were "subject to PSD requirements for their conventional pollutants anyway" (i.e., those sources that exceeded the statutory emissions threshold for non-greenhouse gas pollutants) were required to install BACT for their greenhouse gas emissions. *Id.* at 31,567. Step Two, which took effect on July 1, 2011, also requires PSD permits for sources with the potential to emit over 100,000 tpy CO_2e after a proposed construction project, or 75,000 tpy CO_2e after a proposed modification project. *Id.* at 31,523. Step Two further requires Title V permits for sources which have the potential to emit over 100,000 tpy CO_2e. *Id.* at 31,516. EPA has since proposed—but has yet to finalize—a "Step Three," which would maintain the current thresholds while the agency evaluates the possibility of regulating smaller sources. *See* EPA's 28(j) Letter 1–2, February 27, 2012.

In the Tailoring Rule, EPA justified its phased-in approach on three interrelated grounds, each of which rests on a distinct doctrine of administrative law. First, EPA concluded "the costs to sources and administrative burdens ... that would result from [immediate] application of the PSD and title V programs ... at the statutory levels ... should be considered 'absurd results,' " which Congress never intended. *Id.* at 31,517; *see Am. Water Works Ass'n v. EPA,* 40 F.3d 1266, 1271 (D.C.Cir.1994) ("[W]here a literal reading of a statutory term would lead to absurd results, the term simply has no meaning ... and is the proper subject of construction by EPA and the courts."). Thus, under the "absurd results" doctrine, EPA concluded that the PSD and Title V programs "should not [immediately] be read to apply to all [greenhouse gas] sources at or above the 100/250 tpy threshold." Tailoring Rule, 75 Fed. Reg. at 31,554. Second, emphasizing that immediate regulation at the 100/250 tpy threshold would cause tremendous administrative burden, EPA justified its deviation from this threshold on the basis of the "administrative necessity" doctrine. *Id.* at 31,576; *see Envtl. Def. Fund, Inc. v. EPA,* 636 F.2d 1267, 1283 (D.C.Cir.1980) ("[A]n agency may depart from the requirements of a regulatory statute ... to cope with the administrative impossibility of applying the commands of the substantive statute."). Finally, asserting that there exists a judicial doctrine that allows agencies to implement regulatory programs in a piecemeal fashion, EPA stated that the Tailoring Rule was justified pursuant to this "one-step-at-a-time" doctrine. Tailoring Rule, 75 Fed. Reg. at 31,578; *see Massachusetts v. EPA,* 549 U.S. at 524, 127 S.Ct. 1438 ("Agencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop.").

Petitioners—particularly State Petitioners—argue that none of these doctrines permit EPA to "depart unilaterally from the [CAA's] permitting thresholds and replace them with numbers of its own choosing." State Pet'rs' Timing & Tailoring Br. 29. Admitting the "lamentable policy consequences of adhering to the unambiguous numerical thresholds in the Clean Air Act," State Petitioners rather colorfully argue that EPA's attempts to alleviate those burdens "establish only that EPA is acting as a benevolent dictator rather than a tyrant." *Id.* at 26. And because EPA exceeded the boundaries of its lawful au-

thority, Petitioners urge us to vacate the Tailoring Rule.

Before we may address the merits of these claims, however, we must determine whether we have jurisdiction. "No principle," the Supreme Court has repeatedly explained, "is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Raines v. Byrd*, 521 U.S. 811, 818, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997) (internal quotation marks omitted). The doctrine of standing "is an essential and unchanging part of the case-or-controversy requirement." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). To establish standing, a petitioner must have suffered an "injury in fact" that is 1) "concrete and particularized ... [and] actual or imminent, not conjectural or hypothetical," 2) was caused by the conduct complained of, and 3) is "likely, as opposed to merely speculative [to] be redressed by a favorable decision." *Id.* at 560–61, 112 S.Ct. 2130 (internal quotation marks and citations omitted).

[29] Petitioners fall far short of these "irreducible constitutional ... elements" of standing, *id.* at 560, 112 S.Ct. 2130. Simply put, Petitioners have failed to establish that the Timing and Tailoring Rules caused them "injury in fact," much less injury that could be redressed by the Rules' vacatur. Industry Petitioners contend that they are injured because they are subject to regulation of greenhouse gases, Coalition for Responsible Reg. Timing & Tailoring Br. 14. State Petitioners claim injury because they own some regulated sources and because they now carry a heavier administrative burden. State Pet'rs' Timing & Tailoring Br. 22–23. But as discussed above, *see supra* Part V, the CAA mandates PSD and Title V coverage for major emitters of greenhouse gases. Thus, Industry Petitioners were regulated and State Petitioners required to issue permits not because of anything EPA did in the Timing and Tailoring Rules, but by automatic operation of the statute. Given this, neither the Timing nor Tailoring Rules caused the injury Petitioners allege: having to comply with PSD and Title V for greenhouse gases.

Indeed, the Timing and Tailoring Rules actually mitigate Petitioners' purported injuries. Without the Timing Rule, Petitioners may well have been subject to PSD and Title V for greenhouse gases before January 2, 2011. Without the Tailoring Rule, an even greater number of industry and state-owned sources would be subject to PSD and Title V, and state authorities would be overwhelmed with millions of additional permit applications. Thus, Petitioners have failed to "show that, absent the government's allegedly unlawful actions, there is a substantial probability that they would not be injured and that, if the court affords the relief requested, the injury will be removed." *Chamber of Commerce v. EPA*, 642 F.3d 192, 201 (D.C.Cir. 2011) (quotations and alterations omitted). Far from it. If anything, vacature of the Tailoring Rule would significantly exacerbate Petitioners' injuries.

Attempting to remedy this obvious jurisdictional defect, State Petitioners present two alternative theories, neither of which comes close to meeting the "irreducible constitutional ... elements" of standing. *Lujan*, 504 U.S. at 560, 112 S.Ct. 2130. First, State Petitioners counterintuitively suggest that they actually want EPA to immediately "appl[y] the 100/250 tpy permitting thresholds to greenhouse-gas emissions." State Pet'rs' Timing & Tailoring Reply Br. 15. Admitting that vacature of the Tailoring Rule would result in astronomical costs and unleash chaos on per-

mitting authorities, State Petitioners predict that Congress will be forced to enact "corrective legislation" to relieve the overwhelming permitting burdens on permitting authorities and sources, thus mitigating their purported injuries. *Id.*

This theory fails. To establish standing, plaintiffs must demonstrate that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision," *Lujan,* 504 U.S. at 561, 112 S.Ct. 2130 (internal quotation marks omitted), but here, State Petitioners simply hypothesize that Congress will enact "corrective legislation." State Pet'rs' Timing & Tailoring Reply Br. 15. We have serious doubts as to whether, for standing purposes, it is ever "likely" that Congress will enact legislation at all. After all, a proposed bill must make it through committees in both the House of Representatives and the Senate and garner a majority of votes in both chambers—overcoming, perhaps, a filibuster in the Senate. If passed, the bill must then be signed into law by the President, or go back to Congress so that it may attempt to override his veto. As a generation of schoolchildren knows, "by that time, it's very unlikely that [a bill will] become a law. It's not easy to become a law." Schoolhouse Rock, *I'm Just a Bill,* at 2:41, *available at* http://video.google.com/videoplay?docid=7266360872513258185# (last visited June 1, 2012).

And even if the astronomical costs associated with a 100/250 tpy permitting threshold make *some* Congressional action likely, State Petitioners are still unable to show that it is "likely, as opposed to merely speculative," *Lujan,* 504 U.S. at 561, 112 S.Ct. 2130, that Congress will redress their injury. State Petitioners apparently assume that if the 100/250 tpy permitting threshold was immediately applied to greenhouse gases, Congress would exempt those pollutants from the PSD and Title V programs entirely. But this is just one of many forms "corrective legislation" could take. For example, were we to vacate the Tailoring Rule, Congress could decide to readopt its key provisions in the PSD and Title V statutes. Or it could set PSD and Title V permitting thresholds at 25,000 tpy for greenhouse gases—higher than the 100/250 tpy threshold, but lower (and thus more costly to Petitioners) than the thresholds promulgated in the Tailoring Rule. Or it could do something else entirely. All of this is guesswork, which is precisely the point: State Petitioners' faith that Congress will alleviate their injury is inherently speculative.

State Petitioners' second alternative theory of standing fares no better. In their reply brief, they contend that even if vacating the Timing or Tailoring Rules would indeed exacerbate their costs and administrative burdens (the purported injuries they claimed in their opening brief), "then State Petitioners can establish Article III standing under *Massachusetts* by asserting injuries caused by EPA's failure to regulate sooner." State Pet'rs' Timing & Tailoring Reply Br. 5. Essentially, State Petitioners' reply brief contends that, contrary to the position taken in the opening brief, they want more regulation, not less, and that they wanted regulation sooner rather than later. And because the Commonwealth of Massachusetts had standing to seek regulation of greenhouse gases in *Massachusetts v. EPA,* State Petitioners argue that they now have standing to seek more regulation of greenhouse gases as well.

This argument is completely without merit. As an initial matter, we are aware of no authority which permits a party to assert an entirely new injury (and thus, an entirely new theory of standing) in its reply brief. Quite to the contrary, we have held that, where standing is not self-

evident, "[i]n its *opening* brief, the petitioner should ... include ... a concise recitation of the basis upon which it claims standing." *Sierra Club v. EPA,* 292 F.3d 895, 901 (D.C.Cir.2002) (emphasis added); *see also* D.C.Cir. R. 28(a)(7) ("[i]n cases involving direct review in this court of administrative actions, the brief of the appellant or petitioner must set forth the basis for the claim of standing."); *American Library Ass'n v. FCC,* 401 F.3d 489, 493–94 (D.C.Cir.2005) (discussing limitations on this principle). After all, "it is often the case ... that some of the relevant facts are known only to the petitioner, to the exclusion of both the respondent and the court." *Sierra Club,* 292 F.3d at 901. If "the petitioner does not submit evidence of those facts with its opening brief," the respondent is "left to flail at the unknown in an attempt to prove the negative." *Id.* This principle is particularly important here, for State Petitioners' asserted fear of global warming stands in stark contrast to the position they took throughout this litigation. In an earlier brief, for example, they characterized the Endangerment Finding as "a subjective conviction" State Pet'rs' Endangerment Br. 19, "supported by highly uncertain climate forecasts," *id.* at 18, and "offer[ing] no criteria for determining a harmful, as opposed to a safe, climate," *id.* at 17. Given this, EPA could not possibly have anticipated that State Petitioners, abruptly donning what they themselves call "an environmentalist hat," State Pet'rs' Timing & Tailoring Reply Br. 4, would assert that global warming causes them concrete and particularized harm.

In any event, State Petitioners fail to cite any record evidence to suggest that they are adversely affected by global climate change. This is in stark contrast to the evidence put forward in *Massachusetts v. EPA,* where the Commonwealth submitted unchallenged affidavits and declarations showing that 1) rising sea tides due to global warming had "already begun to swallow Massachusetts' coastal land," and 2) "[t]he severity of that injury will only increase over the course of the next century." *Massachusetts v. EPA,* 549 U.S. at 522–23, 127 S.Ct. 1438. These specific, factual submissions were key to the standing analysis in *Massachusetts v. EPA:* the Court held that "petitioners' *submissions as they pertain to Massachusetts* have satisfied the most demanding standards of the adversarial process." *Id.* at 521, 127 S.Ct. 1438 (emphasis added). It is true, as State Petitioners emphasize, that the Supreme Court held that states are "entitled to special solicitude in our standing analysis." *Id.* at 522, 127 S.Ct. 1438. But nothing in the Court's opinion remotely suggests that states are somehow exempt from the burden of establishing a concrete and particularized injury in fact. State Petitioners, like Industry Petitioners, failed to do so here. We shall thus dismiss all challenges to the Timing and Tailoring Rules for lack of jurisdiction.

VII.

[30] Following promulgation of the Timing and Tailoring Rules, EPA issued a series of rules ordering states to revise their PSD State Implementation Plans (SIPs) to accommodate greenhouse gas regulation. *See Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call,* 75 Fed. Reg. 53,892 (Sept. 2, 2010), 75 Fed. Reg. 77,698 (Dec. 13, 2010); *Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure to Submit State Implementation Plan Revisions Required for Greenhouse*

Gases, 75 Fed. Reg. 81,874 (Dec. 29, 2010). Industry Petitioners present several challenges to these SIP-related rules. But our review in this case is limited to four EPA decisions: the Endangerment Finding, the Tailpipe Rule, and the Timing and Tailoring Rules. We thus lack jurisdiction over the SIP-related rules. Moreover, challenges to these rules are currently pending in at least two separate cases before this court. *See Utility Air Regulatory Group v. EPA,* No. 11–1037 (consolidating various challenges); *Texas v. EPA,* No. 10–1425 (challenge brought by Texas). We decline Industry Petitioners' invitation to rule on the merits of cases which are properly before different panels.

VIII.

For the foregoing reasons, we dismiss all petitions for review of the Timing and Tailoring Rules, and deny the remainder of the petitions.

So ordered.

VERMONT DEPARTMENT OF PUBLIC SERVICE et al., Petitioner

v.

UNITED STATES of America and Nuclear Regulatory Commission, Respondents

Entergy Nuclear Operations, Inc. and Entergy Nuclear Vermont Yankee, LLC, Intervenors.

Nos. 11–1168, 11–1177.

United States Court of Appeals, District of Columbia Circuit.

Argued May 9, 2012.

Decided June 26, 2012.

Background: Vermont Department of Public Service (DPS), and non-profit organization, petitioned for review of decision of the Nuclear Regulatory Commission (NRC) issuing a renewed license to energy company to operate a nuclear power station. Power station intervened.

Holding: The Court of Appeals, Karen LeCraft Henderson, Circuit Judge, held that petitioners waived their claim that the license renewal was unlawful because power station failed to furnish a state water quality certification (WQC).

Petition denied.

1. Environmental Law ⚿671

Sixty-day period, under Hobbs Act, to file petition for review of decision of Nuclear Regulatory Commission (NRC) issuing renewed license to operate nuclear power station began to run when license renewal was issued, not when NRC issued order resolving all challenges brought and terminating the proceeding, where claimed aggrievement was absence of state water quality certification (WQC) that discharge from station into navigable waters would comply with Clean Water Act when license renewal itself was issued. 28 U.S.C.A. § 2344; Clean Water Act, § 401(a)(1), 33 U.S.C.A. § 1341(a)(1).

2. Environmental Law ⚿666

Parties challenging decision of Nuclear Regulatory Commission (NRC) to issue renewed license to operate nuclear power