THOMPSON HINE

Environmental Update

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Undoing the Climate Endangerment Finding: Implications for Industry, Regulation and Litigation

On February 12, the Trump administration finalized what it described as the largest deregulatory action in U.S. history: rescinding the Environmental Protection Agency's (EPA) 2009 Greenhouse Gas Endangerment Finding (Endangerment Finding) and the corresponding vehicle greenhouse gas (GHG) standards. The announcement marked the culmination of a process that began on day one of the president's second term when he issued Executive Order No. 14154 – Unleashing American Energy (Jan. 20, 2025), which directed EPA to submit a recommendation on the continuing applicability of the Endangerment Finding.

This action carries immediate consequences for regulated industries, public health, state regulators, litigators and corporate sustainability officers alike. Thompson Hine is actively monitoring ongoing legal challenges and advising clients across sectors on how to respond.

Background: The Endangerment Finding and Basis for Its Repeal

On December 7, 2009, the EPA Administrator signed two findings under Section 202(a) of the Clean Air Act (CAA). The first concluded that six key well-mixed GHGs – carbon dioxide ($C0_2$), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF_6) – constituted air pollution threatening the public health and welfare. The second concluded that the combined GHG emissions from motor vehicles and motor vehicle engines contributed to GHG pollution threatening public health and welfare. For over 16 years, these findings served as the legal and scientific cornerstone for a broad array of federal GHG regulations spanning aircraft emissions standards, oil and gas facility rules, power plant emissions limits, and beyond.

In repealing the Endangerment Finding, EPA generally relies on a series of new statutory interpretations of Section 202(a) of the CAA to support three core positions:

- Congress only delegated authority to EPA to regulate pollution with local or regional impacts and vehicle GHG emissions do not contribute to pollution that impacts the public health and welfare.
- The Endangerment Finding was unreasonable because regulating air emissions would be costly and futile without a measurable impact on climate.
- The Endangerment Finding would violate the Major Questions Doctrine, since Congress had not given EPA authority to regulate air emissions on the scale required.

Much of the repeal's reasoning rests on previous arguments the U.S. Supreme Court rejected in *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007). In that case, the court rejected EPA's argument that Congress did not intend for it to regulate air pollutants that contribute to climate change under Section 202(a) of the CAA, finding that Congress's definition of "air pollutant" was "sweeping" and "unambiguous." *Id.* at 529. EPA's revival of that stance raises the open question of whether the agency will ultimately push for the case to be overturned – a move that would have significant ramifications for currently pending state climate litigation.

Notably absent from the final rule is any reliance on, or evaluation of, climate science to invalidate the Endangerment Finding. In its initial proposal, EPA asserted that the Endangerment Finding was premised upon "unduly pessimistic" views of climate change and failed to account for positive impacts, but this basis was removed from the final rule.

Active Legal Challenges

The repeal did not go unanswered. The legal response was swift, with environmental nonprofits and health organizations leading the charge in the D.C. Circuit. Plaintiffs include the Environmental Defense Fund, Sierra Club, Earthjustice, Clean Air Task Force, Natural Resources Defense Council, Public Citizen, Service Employees International Union, Conservation Law Foundation and American Lung Association. These challenges are likely to be consolidated into one proceeding.

Their core legal theories center on two arguments. First, that the reversal of a science-based finding without a credible scientific basis violates the Administrative Procedure Act (APA) and is arbitrary and capricious. Second, that the CAA's statutory mandate to regulate air emissions is nondiscretionary.

State-level coordination is building rapidly. So far, 25 Republican-controlled states have intervened in support of the repeal, while Democratic-led states are expected to file their own legal challenges. Conservative estimates anticipate a D.C. Circuit ruling in mid-2027, but Supreme Court review could extend into 2029. These timelines assume neither party seeks a stay of the repeal or approaches the Supreme Court for temporary relief. Ultimately, a merits decision by the Supreme Court could settle the matter conclusively, preventing reversal by subsequent administrations and potentially binding future administrations from regulating climate change under the CAA.

Cascading Regulatory Consequences Across Industries

Whether the repeal will withstand judicial review remains unclear. In the interim, affected industries face profound regulatory uncertainty that demands careful legal navigation. The Endangerment Finding did not operate in isolation; it anchored a matrix of GHG regulation across multiple sectors.

- Transportation: The repeal eliminates all GHG emissions standards for light-, medium- and heavy-duty vehicles. It also eliminates compliance incentives and mandates that drove electric vehicle adoption and fleet electrification strategies.
- Oil and gas: The repeal renders EPA's methane rules for wells and processing plants legally vulnerable. Operators should anticipate that there may be new rulemakings and the rollback of existing regulations.
- Power generation and steel: Similarly, standards for coal, gas-fired power plants and industrial facilities that referenced the Endangerment Finding will also be vulnerable to reversal.
- Aviation: The Endangerment Finding was cross-referenced in the aviation industry's own 2016 endangerment finding and was slated for reconsideration last spring. The industry's corresponding emissions standards are now on uncertain legal ground.

The federal repeal of the Endangerment Finding is not the end of the story. The battleground will shift to the states. Businesses should expect accelerated state-level rulemakings and challenges, creating a patchwork of inconsistent compliance obligations that will prove especially burdensome for companies operating across multiple jurisdictions.

Public Health, Environmental Justice and Potential Litigation

In the face of opposition, many in the scientific community have taken the stance that air pollution, specifically GHG emissions, contributes to premature death. The federal retreat from any mechanism to address these harms will likely fuel a surge in state common law tort litigation.

- Public nuisance claims: State attorneys general and municipalities have already leveraged public nuisance theories against major GHG emitters. Without a federal regulatory scheme to point to, this litigation strategy becomes even more attractive and viable.

- Failure to warn theories: Corporate defendants who fail to disclose known climate risk to consumers and investors face increased exposure under both tort and securities law.
- Environmental justice: Advocacy groups may increasingly rely on civil rights and state environmental statutes to create reputational considerations and challenge projects that they believe create disproportionate environmental burdens.

Insurance Sector

The insurance industry's climate risk framework is now destabilized because it was made upon a federal regulatory scheme that no longer exists. There are several practical consequences that may emerge:

- State-by-state liability divergence: Premiums may increase and coverage exclusions proliferate as states adopt divergent regulatory and tort regimes to address the fallout from a fractured liability and compliance landscape.
- Reduced monitoring obligations: The rollback of mandatory monitoring and reporting requirements will lead to environmental conditions deteriorating before detection, increasing severity and, ultimately, costs of eventual remediation.

Sustainability and Greenwashing Risk

With the federal mandate for emissions reductions withdrawn, most corporate sustainability targets will become voluntary commitments that will invite intense scrutiny from investors, regulators and plaintiffs' counsel.

Ironically, eliminating mandatory federal standards also eliminates the legal safe harbor that companies could previously rely on as a compliance shield. Companies that seek to walk back public net-zero or emission-reduction commitments made in sustainability reports now face increased greenwashing exposure. Defending voluntary targets in a landscape of scrutiny, litigation and greenwashing risk will create a formidable challenge for corporate boards to manage.

Implications for Businesses

The repeal of the 2009 Endangerment Finding will result in a fundamental restructuring of the legal and regulatory landscape surrounding industrial emissions, corporate liability and climate-related risk management. The next several months and years will be defined by:

- Protracted federal litigation over the repeal, including APA challenges and constitutional and statutory questions that may ultimately reach the Supreme Court.
- A responsive patchwork of state-level regulatory activity requiring customized solutions for multistate operations.
- Increased state and private tort litigation targeting GHG emitters.
- Heightened scrutiny of voluntary sustainability commitments and disclosures by investors, regulators and plaintiffs' counsel.
- Disruption in the insurance sector as liability models are recalibrated to reflect the absence of federal regulatory oversight.

Early, proactive legal counsel will be essential to navigating risk and preserving strategic flexibility in the face of unprecedented regulatory upheaval.

FOR MORE INFORMATION

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