



EPA Proposes Endangerment Finding for Greenhouse Gases

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On April 24, 2009, the United States EPA released a proposed “Endangerment Finding” that concludes greenhouse gases (“GHG”) released into the atmosphere are a danger to public health and welfare. See 74 Fed. Reg. 18886. This proposed Endangerment Finding is in response to the Supreme Court’s decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), which held that EPA has the authority to regulate GHGs. In this case, the Supreme Court found that carbon dioxide is an “air pollutant” within the meaning of the Clean Air Act (“CAA”), and this finding had the effect of giving EPA the ability to pursue regulation of GHGs. The Endangerment Finding goes beyond just consideration of carbon dioxide, and includes all six GHGs: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. According to EPA, these GHGs are at unprecedented levels in the atmosphere and such levels “are the unambiguous result of human emission, and are very likely the cause of the observed increase in average temperatures and other climate changes.” 74 Fed. Reg. 18886.

EPA made this Endangerment Finding pursuant to section 202(a) of the CAA which applies only to motor vehicles, and sets the groundwork for the establishment of emissions standards for GHG from motor vehicles. Therefore, unless Congress acts quickly to regulate GHGs, EPA will soon propose GHG emissions standards under the CAA. This Endangerment Finding also sets the stage for regulation of GHGs from other industry sectors. In the absence of Congressional action, EPA will continue to take actions to pursue broad GHG regulation under the CAA. For example, EPA could list GHGs as criteria pollutants and establish NAAQS for GHGs, and set new source performance standards for GHG for emissions from specific industries or types of sources under section 111 of the CAA. A significant concern is the impact of GHG regulation in the context of the CAA section 165 Prevention of

Significant Deterioration (“PSD”) permitting program, as it has the potential to sweep previously unregulated sources into the PSD program.

The EPA will accept comments on this proposed “Endangerment Finding” until June 23, 2009.



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