



# THE ADMINISTRATIVE WATCH

ADMINISTRATIVE WATCH ADDRESSES ENVIRONMENTAL, HEALTH & SAFETY ISSUES

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## EPA Releases “Endangerment Finding” Opening Door to Regulation of Greenhouse Gases Under the Clean Air Act

On April 17, 2009, the United States Environmental Protection Agency (“EPA”) released a proposed finding that greenhouse gas (“GHG”) emissions cause or contribute to air pollution that endangers public health and welfare under section 202(a) of the Clean Air Act (“CAA”). The EPA’s proposed finding was issued in response to the U.S. Supreme Court’s landmark 2007 decision in Massachusetts v. EPA (127 S. Ct. 1438), which found GHGs are “air pollutants” as defined under the CAA. If finalized, the endangerment finding will subject GHG emissions to regulation under the CAA, a result that has been opposed by much of business and industry.

EPA’s proposal addresses two distinct findings regarding GHGs under section 202(a) of the CAA: (1) Endangerment Finding: a mix of six GHGs – CO<sub>2</sub>, methane, N<sub>2</sub>O, HFCs, PFCs, and sulfur hexafluoride – threaten public health and welfare, now and in the future; and (2) Cause or Contribute Finding: the combined emissions of CO<sub>2</sub>, methane, N<sub>2</sub>O, and HFCs from new mobile sources increase atmospheric concentrations of these GHGs and the threat of climate change. The EPA did not propose emission standards for new motor vehicles under section 202(a) as part of the recent proposal.

The proposal specifically governs GHG emissions from new mobile sources. The EPA states in a footnote that it does not impact stationary sources. Nonetheless, environmental groups and others will likely argue that the endangerment finding does impact stationary sources rendering them subject to best available control technology requirements under the Prevention of Significant Deterioration program. The immediate impact on stationary sources will likely be a contentious and controversial issue and subject to ongoing litigation in permit appeals being pursued by environmental groups.

While the Obama administration is taking this first step towards regulation of GHGs under the CAA, Congressional action still appears to be the preferred approach. Business and industry as well as some regulators have opposed regulation of GHGs under the CAA instead advocating for new federal legislation to regulate GHGs. While not clearly stated in the proposal, the fact that the EPA did not propose emissions standards along with the proposed endangerment finding suggests that the EPA may not want to specifically regulate GHGs under the CAA. Nonetheless, the Obama administration has carried through with a promise to pursue regulation of GHGs under the CAA if Congress fails to act.

The EPA is pursuing the endangerment finding under the procedures of 307(d) of the CAA which subjects the action to public notice and comment. A 60-day comment period will follow publication of EPA’s proposed finding in the *Federal Register*.

BCCZ’s Environmental Health & Safety and Climate Change Groups actively track Clean Air Act and climate change legislative, regulatory, and policy developments at all levels of government, and advise clients as to the potential impacts of these developments. For more information regarding this and other climate change or Clean Air Act developments, please contact Michael H. Winek at (412) 394-6538 or [mwinek@bccz.com](mailto:mwinek@bccz.com) or Seth A. Rice at (412) 394-5490 or [srice@bccz.com](mailto:srice@bccz.com).

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