

EPA Clean Air Act greenhouse gas rulemaking

McAfee & Taft RegLINC - September 2010

By Mary Ellen Ternes

EPA confirms endangerment

On July 29, 2010, EPA denied 10 petitions to reconsider its 2009 Greenhouse Gas Endangerment and Cause and Contribute Findings, including petitions from Coalition for Responsible Regulation, Competitive Enterprise Institute, Ohio Coal Association, Peabody Energy Company, State of Texas and the U.S. Chamber of Commerce, among others. With its denial, EPA issued a Response to Petitions in three volumes: Volume 1, "Climate Science and Data Issues Raised by Petitioners"; Volume 2, "Issues Raised by Petitioners on EPA's Use of IPCC"; Volume 3, "Process Issues Raised by Petitioners."



In Volume 1, EPA addresses petitioners' questions regarding:

- The reliability of global temperature data
- E-mail discussions regarding temperature data
- Assertions that warming has slowed or stopped
- Questions regarding data sets maintained by NOAA, NASA and the Climatic Research Unit (CRU)
- Assertions that new studies not previously considered contradict key conclusions in the Endangerment Finding

In Volume 2, EPA addresses claims regarding:

- Asserted errors in the IPCC's Fourth Assessment Report
- Assertions of bias within the IPCC
- Characterizations by petitioners of undue reliance by the U.S. Global Change Research Program and the National Academy of Sciences on the IPCC
- Suggestions that EPA's process was not rigorous

In Volume 3, EPA addresses process issues raised by the petitioners including those regarding:

- Consideration of the CRU e-mails
- The separate and independent nature of the USGCRP and NRC assessments
- Issues regarding integrity of peer-reviewed literature
- Freedom of Information Act requests

[More information on EPA's denial of the Endangerment petitions](#)

Legal Challenges to EPA Greenhouse Gas Rulemakings

Over 50 lawsuits have been filed in the D.C. Circuit Court of Appeals challenging EPA's issuance of greenhouse gas rulemaking, including challenges to the EPA's Endangerment Finding, mobile source rules ("Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards"), Tailoring Rule and Mandatory GHG Reporting Rule. Many of these challenges are driven by concerns arising from EPA's permitting of stationary source GHG emissions, which is triggered by EPA's Endangerment Finding and the mobile source rules.

In addition to these CAA GHG based rule challenges, additional lawsuits have been filed challenging EPA's decades old Prevention of Significant Deterioration rules, asserting that EPA's new GHG rules reopen the PSD rules for such challenges. See for example, Petition for Review, *American Chemistry Council v. U.S.EPA*, Case No. 10-1167 (D.C. Circuit) (July 6, 2010) (petitioning the court to review Prevention of Significant Deterioration Rules, 43 Fed. Reg. 26,388 (June 19, 1978)).

[Summary of GHG legislation](#)

[Litigation developments \(Challenges to EPA Rulemakings\)](#)

LINKS

- [Mary Ellen Ternes](#)

Oklahoma City Tenth Floor • Two Leadership Square 211 North Robinson • Oklahoma City, OK 73102-7103 (405) 235-9621 office • (405) 235-0439 fax
Tulsa 1717 S. Boulder Suite 900 • Tulsa, OK 74119 (918) 587-0000 office • (918) 599-9317 fax