



Recent Federal Actions to Address Climate Change

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+ **Overview**

- + • **Actions by the Obama Administration**
- + • **EPA rules and proposals**
- + • **Involvement by the Courts**

Administration Actions

- **American Recovery and Reinvestment Act**
 - \$80 billion in stimulus targeted for clean energy (Feb. 2009)
 - weatherization, renewables, smart grid, batteries, Energy Star rebates
- **Executive Order: Federal Leadership in Environmental, Energy and Economic Performance (Oct. 2009)**
 - Agency GHG reduction goals within 90 days
 - Focus on buildings (zero-net energy by 2030), transit, and use of renewables

+ **EPA's Path Forward**

- + • Supreme Court decision rules greenhouse gases are air pollutants (*Mass v. EPA*, 2007)
- + • Administration's views on using Clean Air Act
- + • Science and law demand action
- + • Far better if Congress acted
 - + – Less legal uncertainty
 - + – Broader political support
 - + – Comprehensive approach better
 - + – Include appropriate flexibility provisions
 - + – Limited reductions thru EPA regulations

+ **EPA's Path Forward**

- + • **Advance Notice of Proposed Rulemaking (July 2008)**
 - + – options for moving forward
 - + – numerous square hole, round peg problems
- + • **Proposed Endangerment Finding and Cause or Contribute Determination for Vehicles (April 2009)**
 - + – Whether GHG may reasonably be anticipated to endanger public health or welfare

+ **EPA's Path Forward**

- + • **Proposed Light-Duty Vehicle Rule and endangerment finding (Sept. 2009)**
 - + – Responds to request from States
 - + – Establishes first carbon dioxide standard for cars and light-duty trucks
 - + – Sets national standard equal to 35.5 mpg by 2016
 - + – Projected to reduce US CO₂ emissions by 950 mmt over life of cars sold from 2012-2016
 - + – Final Rule (March 2010)

+ EPA's Path Forward

- + • Proposed “Tailoring” Rule (Sept. 2009)
 - Example of square peg and round hole
- + • Once vehicle CO2 rule finalized, other provisions triggered under Clean Air Act
- + • Thresholds in Act: 100/250 tons per year
 - Case-by-case permitting for major new or modified stationary sources
 - 300 to 40,000 cases/year
 - Emission permits for existing sources
 - 15,000 to 6,000,000 sources

+ **Tailoring Rule – Legal Rationale**

- + • **Risks huge political backlash and delays**
- + • **EPA’s legal “gymnastics”**
 - + 1) **Absurd results (not what Congress had intended)**
 - + 2) **Administrative necessity (place unreasonable administrative burden and delays)**
- + • **Phased-in approach**
 - + – **Work toward streamlining process**

+ **EPA's Path Forward**

- + • **Mandatory GHG Reporting Rule (Sept. 2009)**
- + • **Key foundation to any regulatory program**
- + • **Reporting kicks in for emissions in 2010**
- + • **About 85% of GHG emissions covered**
- + • **Emissions threshold set at 25,000 metric tons of CO₂/yr**
 - + – **Covers about 10,000 facilities**

+ EPA's Path Forward

- + • More questions than answers.....
- + • How to regulate utilities
 - + – technology standards
 - + – cap and trade (CAIR rule overturned)
 - + – new v. existing sources
- + • What flexibility mechanisms are feasible
 - + – Auctions, grandfathering
 - + – offsets
- + • How to regulate other sources

+ Public Nuisance Cases

- + • Court suits claiming damages from GHG emissions
- + • Common law public nuisance claims
- + • Early decisions dismiss cases as raising a political questions (nonjusticiable)
 - + • Three recent cases: 2nd US Circuit Court of Appeals (*Conn v. AEP*)
 - + • 5th U.S. Circuit Court of Appeals (*Comer v. Murphy Oil*)
 - + • 9th Circuit N. District of California (*Village of Kivalina v. ExxonMobil*)
- + • Lengthy trials and appeals ahead

+ **Bottom Line**

- + • EPA rulemaking will proceed but.....
 - + – NOT anyone's preferred path
 - + – Limited reductions achievable (standards take time to develop and aren't technology forcing)
 - + – Less comprehensive (CAA authority limited)
 - + – Higher costs and less flexibility
 - + – Greater uncertainty (legal and regulatory) and political risk
 - + – Regulations subject to changes by new Administration