



Sequence of Events Leading to Regulation of Greenhouse Gases through EPA

Supreme Court Ruling in Massachusetts v. EPA: Recent activity at the Environmental Protection Agency (EPA) to regulate greenhouse gases began in earnest following the US Supreme Court ruling in [Massachusetts v. EPA](#) in 2007. This case found that carbon dioxide and other greenhouse gas (GHG) emissions meet the definition of “air pollutants” under the [Clean Air Act](#) (the Act). With the definition confirmed, EPA was then required to determine whether or not emissions of greenhouse gases from new motor vehicles (the specific sector cited in the law suit) cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare.

Endangerment Finding: On December 7, 2009, EPA made this scientific determination – the “[endangerment finding](#)” – a required step in the process leading to specific regulation of GHG emissions. EPA made a broad determination that GHG emissions did endanger public health and welfare. It also ruled that emissions from motor vehicles would cause or contribute to the atmospheric concentrations of these key greenhouse gases and hence to the threat of climate change. With the endangerment finding released, EPA was then required to regulate GHG emissions from motor vehicles, under Section 202(a) of the Clean Air Act.

Motor Vehicle Regulations: Under the Clean Air Act, California has the ability to implement stricter vehicle emissions standards than the national standards set by EPA, but must get a waiver from EPA to do so. A waiver request by California to implement GHG emissions standards for motor vehicles was granted in 2009, and other states also indicated they were interested in adopting the more stringent standards proposed by California. In order to avoid having three sets of vehicle standards, in May 2009, President Obama, with the support of EPA, DOT, California, environmental organizations, and the auto industry, announced [an agreement](#) that would create harmonized Corporate Average Fuel Efficiency (CAFE) standards and GHG emissions standards for motor vehicles at the Federal level, with California agreeing to adopt the Federal standards from 2012-2016. These regulations of GHG emissions from motor vehicles were proposed in September 2009 and are expected to be finalized in March 2010. EPA’s final endangerment rule was a necessary prerequisite for finalizing its GHG standard for motor vehicles.

Stationary Source Regulations: According to the Clean Air Act, once a pollutant is regulated under any part of the Act, (as will be the case with GHG emissions after the motor vehicle regulations are finalized in March 2010) major new sources or modifications are subject to the [Prevention of Significant Deterioration \(PSD\) program](#) and to [Title V operating permits](#). In the PSD program, major new or modified stationary sources (such as power plants and manufacturing facilities) are required to implement “best available control technologies” for pollution abatement. Under the Act, PSD and Title V operating permits are required for all sources that emit a regulated pollutant above 100 or 250 tons/year, depending on the source. Because this threshold, if applied to GHGs, would greatly increase the number of facilities requiring PSD review or Title V permitting, based on administrative necessity, EPA has proposed to substantially increase these thresholds through its [“Tailoring Rule.”](#)



Possible Timelines

Administrator Jackson Proposal: In a February 2010 [letter](#) to Senator Rockefeller, EPA Administrator Jackson stated her intention to administratively delay the application of the PSD program to GHG emissions. The motor vehicle rule would move forward as previously planned, but PSD and Title V requirements would be delayed until 2011 when a phased-in approach would begin. In the first half of 2011, only facilities that already must apply for non-GHG PSD permits under the Act will be required address GHG emissions in their permit applications. Then in the second half of 2011 through 2013, permitting requirements will be phased in for other large sources at limit substantially higher levels (e.g. 75,000 tons/year). Smaller sources would not face permitting requirements any sooner than 2016.

Senator Rockefeller Proposal: In March 2010, Senator Rockefeller introduced legislation, [S. 3072](#), which would codify a 2-year delay in EPA regulation of GHGs with the exception that it would not delay the motor vehicle rule.

Senator Murkowski Proposal: In January 2010, Senator Murkowski introduced [S. J. Res. 26](#) - a joint resolution to override the Endangerment Finding, under the Congressional Review Act of 1996. If passed and signed into law, the Joint Resolution would overturn EPA's endangerment finding and prevent the Agency from taking any action to regulate GHGs (including the motor vehicle rule) without additional legislation.



Possible Timelines

Note: Senator Murkowski's resolution would prevent all EPA regulatory actions until authorized by new legislation.

Initial Timeline (Tailoring Rule) Current Timeline (Jackson Letter) Rockefeller Bill Timeline

