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**ENVIRONMENTAL UPDATE****EPA Announces Greenhouse Gas Endangerment Finding**

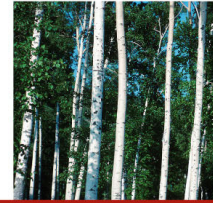
On December 7, the Environmental Protection Agency (“EPA”) announced its “Endangerment Finding” that greenhouse gases (“GHGs”) threaten the public health and welfare of the American people, and that GHG emissions from on-road vehicles contribute to the threat. The EPA published its “Proposed Endangerment and Cause or Contribute Finding for GHGs” (“Proposed Finding”) on April 24, 2009 in the *Federal Register*. Following this publication, the EPA received more than 380,000 public comments, although the final Endangerment Finding remained largely unchanged from the Proposed Finding.

In its announcement, the EPA explained that GHGs threaten the public health and welfare of the American people by contributing to climate change that will cause harm to human health and welfare of future generations. Further, the EPA based its finding that GHG emissions from on-road vehicles contribute to this threat based on the fact that GHGs emissions from on-road vehicles constitute approximately 4 percent of total global GHG emissions and over 23 percent of total U.S. GHG emissions. The six GHGs addressed in the Endangerment Finding are carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

The Endangerment Finding is significant because it will permit the regulation of GHGs under the Clean Air Act (“CAA”), which has been hotly debated in Congress since climate change was first recognized as a global issue. Specifically, the Endangerment Finding paves the way for the EPA to regulate automobile emissions. While the Endangerment Finding itself does not impose any requirements on industry or entities, its significance to future regulation under the CAA will have far-reaching impacts beyond the automotive industry.

The Endangerment Finding was issued in response to the Supreme Court’s decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), in which the Court found that GHGs are air pollutants under the CAA. However, in this decision the Court held that the EPA must determine whether or not emissions of GHGs from new motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision. In announcing the Endangerment Finding, the EPA has answered this question in the positive by determining that emissions of GHGs can reasonably be anticipated to endanger public health and welfare.

The immediate impact of the Endangerment Finding is that it will permit the EPA to finalize the GHG emission standards for light-duty vehicles that were proposed jointly by The U.S. Department of Transportation’s National Highway Traffic Safety Administration and the EPA on September 15, 2009. The implementation of these standards would establish a national program aimed at improving vehicle fuel economy and reduction of GHGs. The proposed program would cover



model years 2012 through 2016 and include miles per gallon requirements and maximum carbon emission levels per mile. The joint proposal must be finalized by March 31, 2010, so the issuance of the Endangerment Finding is timely for the finalization of this joint proposal.

The long-term impacts of the Endangerment Finding are already being debated among manufacturers, businesses and trade organizations that fear the action will lead to the EPA's regulation of all large GHG emissions sources. This could include sources that are not currently regulated under the CAA, such as certain manufacturing plants, hospitals, universities and other facilities with large carbon footprints, yet relatively low emissions of traditional CAA pollutants. Further, although the Endangerment Finding does not trigger major new source or Title V permitting, the EPA recognizes that the finalization of the GHG emission standards for motor vehicles discussed above would trigger these CAA programs. As such, the EPA proposed a "Prevention of Significant Deterioration" ("PSD") or Title V GHG "Tailoring Rule" on September 30, 2009 to address the potential impact that the Endangerment Finding would have on existing CAA permitted facilities. The Tailoring Rule would limit the applicability of PSD/Title V to emitters of 25,000 tons of GHGs per year.

Critics of the Endangerment Finding argue that the regulation of GHGs under the CAA is improper because the CAA is not flexible enough to regulate GHG emissions, and cap-and-trade alternatives are less costly and currently being discussed in Congress. Thus, even within groups that desire to regulate GHGs, there are disputes as to the proper mechanism to regulate GHG sources. The Endangerment Finding is not likely to resolve these disputes and likely will lead to additional challenges as new laws and regulations are promulgated in the future

#### **FOR MORE INFORMATION**

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