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## **Client Alert**

### **EPA Announces Final Endangerment Findings**

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On December 7, 2009, the EPA announced two critical findings regarding greenhouse gas (GHG) emissions, which will ultimately allow the EPA to regulate GHG emissions under the Clean Air Act. The EPA found that (1) GHG emissions threaten the public health and welfare of current and future generations and (2) combined emissions of GHGs from new motor vehicles and new motor vehicle engines cause or contribute to GHG pollution. EPA could not regulate GHG emissions from motor vehicles until it made these findings.

The findings were both made in response to the U.S. Supreme Court's decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007). The Supreme Court held that GHGs fall within the Clean Air Act's definition of "air pollutant" and EPA must: (1) find that CO<sub>2</sub> causes or contributes to air pollution that endangers public health or welfare; (2) find that it does not cause or contribute to air pollution; or (3) offer a reasonable explanation as to why it cannot determine the answer to that question. The Court ruled that if EPA made a positive "endangerment finding" then it must regulate emissions from new motor vehicles.

On April 17, 2009, the EPA proposed positive "endangerment" and "cause or contribute" findings. EPA then held a 60-day public comment period and received over 380,000 public comments, including both written comments and testimony at two public hearings. EPA reviewed and considered the comments it received, but the key elements of the proposed findings – namely that concentrations of GHGs threaten both public health and welfare, and emissions of GHG air pollutants from cars contribute to that threat – remained unchanged in the final versions.

These findings do not actually impose any requirements on industry or other entities. However, this action is a prerequisite to finalizing the EPA's proposed GHG emission standards for light-duty vehicles, which were proposed on September 15, 2009. Once the vehicle emissions standards go into effect – possibly as early as spring of 2010 – the Clean Air Act's permitting requirements will be triggered for sources of GHG emissions. At that point, new or modified sources of GHG will be required to comply with Prevention of Significant Deterioration (PSD) permitting requirements, including the requirements to demonstrate the use of best available control technology (BACT). Large sources of GHG emissions will also need to begin accounting for those emissions in their Title V operating permits at that time.

The general consensus among stakeholders, including the EPA, is that a new regulatory regime, such as a cap-and-trade system, would be preferable to regulation of GHG emissions under the existing framework of the Clean Air Act. However, these final findings mark another in a series of steps taken by the EPA in the last year to push ahead and regulate GHG emissions under the existing structure of the Clean Air Act. Many view this action by EPA as simply an attempt to spur congressional action. Nonetheless, this finding sets the stage for EPA regulation of GHG emissions to begin as early as spring 2010.

More information about the “endangerment” and “cause or contribute” findings, including the full text of each, can be found [here](#). Conservative think tank Competitive Enterprise Institute has announced plans to challenge the EPA’s findings in federal court. Plews Shadley Racher and Braun LLP’s attorneys will continue tracking these developments.