

## **EPA Finds That Carbon Dioxide and Other Greenhouse Gases Constitute a Threat to Public Health and Welfare**

**December 17, 2009**

On December 7, the Environmental Protection Agency (EPA or Agency) announced that six greenhouse gases taken in combination endanger both public health and welfare. The Agency also found that the combined emissions of these greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas pollution that endangers public health and welfare. The Agency's endangerment finding does not by itself impose greenhouse gas regulations, but sets the stage for future regulation under the Clean Air Act (CAA), including finalizing the light-duty vehicle rule proposed earlier this year.

The EPA's endangerment finding is in response to the U.S. Supreme Court's decision in *Massachusetts v. EPA*, which found that EPA had the statutory authority to regulate emissions of greenhouse gases under the CAA and required the Agency to determine whether or not emissions of greenhouse gases from new motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. In the endangerment finding, the Agency states that the decision limited EPA "to consideration of science" when undertaking the endangerment analysis and that the Agency could not "delay issuing a finding due to policy concerns if the science is sufficiently certain." The Agency concluded that the body of scientific evidence compellingly supports a finding that the mix of the following six long-lived and directly emitted greenhouse gases are "air pollution" under section 202(a) of the CAA: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>) (collectively referred to as "well-mixed greenhouse gases").

The endangerment finding considered both public health and welfare effects associated with elevated concentrations of well-mixed greenhouse gases and associated climate change. With respect to public health, the Agency evaluated the risks associated with changes in air quality, increases in temperature, changes in extreme weather events, increases in food- and water-borne pathogens, and changes in aeroallergens. The Agency's Administrator placed weight on the fact that certain groups, such as children and the poor, are most vulnerable to climate-related health effects. With respect to public welfare, the Agency evaluated the risks to food production and agriculture, forestry, water resources, sea level rise and coastal areas, energy, infrastructure and settlements, ecosystems, and wildlife. The Agency found that evidence concerning adverse impacts in the areas of water resources and sea level rise and coastal areas provided the "clearest and strongest" support for an endangerment finding.

The Agency also found that emissions of well-mixed greenhouse gases from the transportation sources covered under CAA section 202(a)<sup>1</sup> contribute to the total greenhouse gas air pollution, and thus to its associated climate change, which is anticipated to endanger public health and welfare. In order to establish the contribution to greenhouse gas air pollution, the Administrator compared the emissions from the covered transportation sources to total global and total U.S. greenhouse gas emissions, and found that the transportation sources are responsible for about 4% of total global well-mixed greenhouse gas emissions and just over 23% of total U.S. well-mixed greenhouse gas emissions.

While the endangerment finding does not by itself impose any regulations on well-mixed greenhouse gas emissions, it will allow the Agency to finalize the greenhouse gas standards proposed earlier this year for new light-duty vehicles as part of a joint rulemaking with the Department of Transportation. It is important to note that EPA has taken the position that the regulation of greenhouse gas emissions from light-duty vehicles would subject stationary sources that emit those greenhouse gasses to the CAA's Title V and Prevention of Significant Deterioration (PSD) permitting programs. This is because the Title V and PSD programs apply to facilities that are major sources of emissions of any air pollutant otherwise regulated under the CAA. Earlier this fall, EPA proposed a rule to tailor or limit the applicability of the Title V and PSD requirements to larger emitters of greenhouse gases.<sup>2</sup>

The endangerment finding becomes effective January 14, 2010. Challenges seeking judicial review of the endangerment finding must be filed in the U.S. Court of Appeals for the District of Columbia Circuit by February 16, 2010.

Morgan Lewis lawyers are at the center of the development of climate change programs. We help our clients navigate developing climate change requirements, and develop strategies to address the challenges they present. If you have any questions or would like more information on the issues discussed in this client alert, please contact any of the following Morgan Lewis attorneys:

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1. Section 202(a) source categories include passenger cars, heavy-, medium- and light-duty trucks, motorcycles, and buses.  
2. More information on the proposed tailoring rule is available at [http://www.morganlewis.com/pubs/Environmental\\_EPAREgulateGreenhouseGases\\_LF\\_07oct09.pdf](http://www.morganlewis.com/pubs/Environmental_EPAREgulateGreenhouseGases_LF_07oct09.pdf).

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