

client operations and business risk, requiring significant investment in compliance efforts and increasing exposure to enforcement and litigation. Politics continue to cloud this area of practice, creating a climate of uncertainty exacerbated by the storm of litigation in another upcoming election year. U.S. businesses must endure, gearing up for more permitting and reporting while closely tracking legislative, regulatory and judicial developments.

1. See Intergovernmental Panel on Climate Change Fourth Assessment Report or "AR4," available at [www.ipcc.ch/publications\\_and\\_data/publications\\_and\\_data\\_reports.shtml](http://www.ipcc.ch/publications_and_data/publications_and_data_reports.shtml). Note, for CAA permitting purposes, the EPA requires use of the GWPs in IPCC's AR2 (at the same link), for consistency with the EPA's Mandatory GHG Reporting Rule. See *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule*, 65 Fed. Reg. 31514, at 31522 (June 3, 2010).

2. *Massachusetts v. EPA*, 549 U.S. 497 (2007), Dissent, Justice Scalia, footnote 2 (stating, "Not only is EPA's interpretation reasonable, it is far more plausible than the Court's alternative. As the Court correctly points out, 'all airborne compounds of whatever stripe,' ante, at [1460], would qualify as 'physical, chemical, ... substance[s] or matter which [are] emitted into or otherwise ente[r] the ambient air,' 42 U.S.C. §7602(g). It follows that everything airborne, from Frisbees to flatulence, qualifies as an 'air pollutant.' This reading of the statute defies common sense.").

3. See generally, <http://epa.gov/climatechange/index.html>.

4. To review the Copenhagen Accord, see <http://unfccc.int/resource/docs/2009/cop15/eng/107.pdf>.

5. To see the UNFCCC events, see <http://unfccc.int/2860.php>.

6. The methods used for these inventories are available at [http://www.ipcc.ch/publications\\_and\\_data/publications\\_and\\_data\\_reports.shtml](http://www.ipcc.ch/publications_and_data/publications_and_data_reports.shtml).

7. See *Climate Stewardship and Innovation Act of 2007*, S. 280 (110th Congress), available at [www.govtrack.us/congress/bills/110/280](http://www.govtrack.us/congress/bills/110/280).

8. See *Climate Security Act of 2008*, S. 2191 (110th Congress), available at [www.govtrack.us/congress/bills/110/2191](http://www.govtrack.us/congress/bills/110/2191).

9. See *American Clean Energy and Security Act of 2009*, H.R. 2454 (111th Congress), available at [www.govtrack.us/congress/bills/111/2454](http://www.govtrack.us/congress/bills/111/2454).

10. See *Global Warming Solutions Act of 2006*, Cal. Health & Safety Code §38550, available at [http://www.leginfo.ca.gov/pub/05-06/bill\\_asm\\_ab\\_0001-0050/ab\\_32\\_bill\\_20060927\\_chaptered.html](http://www.leginfo.ca.gov/pub/05-06/bill_asm_ab_0001-0050/ab_32_bill_20060927_chaptered.html).

11. The Regional Greenhouse Gas Initiative (RGGI) is a cooperative effort among the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont. Together these 10 states have capped and committed to reducing power sector CO2 emissions 10 percent by 2018. See [www.rggi.org](http://www.rggi.org).

12. See e.g., [www.epa.gov/climatechange/emissions/co2\\_geosequest.html](http://www.epa.gov/climatechange/emissions/co2_geosequest.html).

13. See e.g., <http://news.discovery.com/tech/geoengineering-schemes-top-5.html>.

14. See e.g., the Pew Center on Global Climate Change, *State Adaptation Plans*, available at [www.pewclimate.org/what\\_s\\_being\\_done/in\\_the\\_states/adaptation\\_map.cfm](http://www.pewclimate.org/what_s_being_done/in_the_states/adaptation_map.cfm).

15. For more information, see SEC Release No. 33-9106, *Commission Guidance Regarding Disclosure Related to Climate Change*, Feb. 2, 2010, available at [www.sec.gov/rules/interp/2010/33-9106.pdf](http://www.sec.gov/rules/interp/2010/33-9106.pdf).

16. 40 C.F.R. Part 52, *Approval and Promulgation of Implementation Plans*, Subpart LL – Oklahoma.

17. *Massachusetts v. EPA*, 549 U.S. 497 (2007).

18. *Control of Emissions From New Highway Vehicles and Engines*, notice of denial of petition for Rulemaking, 68 Fed. Reg. 52,922 (Sept. 8, 2003) (responding to Oct. 20, 1999, petition for rulemaking to regulate emissions of greenhouse gases (GHG) from new motor vehicles pursuant to 42 U.S.C. §7521(a)(1)).

19. *Massachusetts v. EPA*, 549 U.S. at 528-29.

20. *Id.* at 497-498, quoting CAA §202(a)(1), 42 U.S.C. §7521(a)(1).

21. See CAA §202(a)(1), 42 U.S.C. §7521 (a)(1) (stating the EPA "shall by regulation prescribe ...standards applicable to the emission of any air pollutant from any class of new motor vehicles.").

22. For more information on the EPA's denial of the endangerment petitions, see [www.epa.gov/climatechange/endangerment/petitions.html](http://www.epa.gov/climatechange/endangerment/petitions.html).

23. 75 Fed. Reg. 31514 (June 3, 2010).

24. CAA §169(3).

25. See [www.epa.gov/nsr/ghgdocs/ghgpermittingguidance.pdf](http://www.epa.gov/nsr/ghgdocs/ghgpermittingguidance.pdf).

26. H.R. 2764; Public Law 110-161.

27. See *Mandatory Reporting of Greenhouse Gases*, 74 Fed. Reg. 56260 (Oct. 30, 2009), available at [www.epa.gov/climatechange/emissions/ghgrulemaking.html](http://www.epa.gov/climatechange/emissions/ghgrulemaking.html).

28. EPA made available all GHG reporting data on Jan. 11, 2012, at this link: [www.epa.gov/climatechange/emissions/ghgdata/index.html](http://www.epa.gov/climatechange/emissions/ghgdata/index.html).

29. See Michael Gerrard's *Climate Change Litigation in the U.S. Chart* — Columbia Law School Center for Climate Change Law, available at [www.climatecasechart.com](http://www.climatecasechart.com).

30. *Connecticut v. American Elec. Power Co.*, 406 F. Supp. 2d 265, 274 (S.D.N.Y. 2005), *vacated*, 582 F.3d 309 (2d Cir. 2009).

31. *Connecticut v. American Elec. Power Co.*, 582 F.3d 309 (2d Cir. 2009).

32. *American Elec. Power Co., v. Connecticut*, 131 S.Ct. 2527 (2011).

33. *Id.* at 2530.

34. *Id.* at 2531. Opinion available at [www.supremecourt.gov/opinions/10pdf/10-174.pdf](http://www.supremecourt.gov/opinions/10pdf/10-174.pdf).

35. *Native Village of Kivalina v. ExxonMobil Corp.*, 663 F.Supp.2d 863 (N.D. Cal. 2009) (order granting defendants' motion to dismiss for lack of subject matter jurisdiction).

36. *Comer v. Murphy Oil*, 585 F.3d 855 (5th Cir. 2009), *reh'g en Banc granted*, 598 F.3d 208 (5th Cir. 2010), *on reh'g en Banc, appeal dismissed*, 607 F.3d 1049 (5th Cir. 2010). See [www.climatecasechart.com](http://www.climatecasechart.com) for tracking this tortured case.

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