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EPA Lands a One-Two Punch on Federal GHG Regulation

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On September 14, 2026, Environmental Protection Agency (EPA) signed two concurrent actions that, together with the February 2026 rescission of the Green House Gas (GHG) Endangerment Finding under Clean Air Act (CAA Section 202(a)), signal EPA's complete withdrawal from regulation of greenhouse gas regulation. The February action repealed all GHG emission standards for motor vehicles. The September actions will do the same for power plants. Together, these actions dismantle GHG standards for the nation's two largest emission sources and raise fundamental questions about how future administrations can regulate GHGs under the CAA absent congressional action.

Primary Takeaways

- **GHG regulation of power plants is being dismantled in stages.** The final rule repeals coal- and most gas-plant standards now; the supplemental proposal, if finalized, would foreclose any GHG standards for the power sector under Section 111.
- **The deregulatory rationale extends beyond power plants.** EPA concedes that its proposed interpretation of Section 111 “could apply more broadly,” and it has already flagged the oil and gas sector for potential future action. Any GHG standard under Section 111 that rests on a global climate change rationale is now vulnerable.
- **State regulation and climate litigation are poised to fill the void.** The CAA's savings clause (Section 116) preserves state authority to regulate stationary-source GHG emissions, and the federal retreat weakens the preemption defenses the energy industry has relied on against state common-law climate claims. The Supreme Court will hear oral arguments in *Suncor Energy v. Boulder County* on October 5, 2026, and the implications of these actions will loom large.

Final Rule: Immediate Relief from GHG Standards

EPA repealed most of the 2024 Carbon Pollution Standards (CPS), including the carbon capture and storage (CCS)-based emission guidelines for existing coal-fired units, CCS-based standards for coal units undergoing large modifications, and phase 2 CCS-based standards for new base load combustion turbines. EPA concluded that 90% CCS has not been “adequately demonstrated,” that compliance costs are unreasonable, and that the necessary infrastructure cannot be deployed by the 2032 deadline. EPA further determined that 40% natural gas co-firing constitutes impermissible “generation shifting” under *West Virginia v.*

EPA, 597 U.S. 697 (2022). No replacement standards are being promulgated.

Notably, the 2024 phase 2 efficiency-based emission standards for new and reconstructed gas-fired combustion turbines under Subpart TTTTa remain in effect, including standards for base load, intermediate load, and low load turbines based on highly efficient generation, efficient simple-cycle generation, and lower-emitting fuels, respectively. EPA acknowledged industry commenters' “meritorious concerns” that these standards may not be achievable given variability in operating conditions and limited turbine model availability, but declined to address those concerns here, noting that the concurrent supplemental proposal would repeal all GHG standards if finalized.

Supplemental Proposal: The End of GHG Regulation Under Section 111?

Issued concurrently, the supplemental proposal advances three independent rationales for the position that CAA Section 111 does not authorize GHG regulation of power plants based on global climate change: (1) “air pollution” is best interpreted as implicating harms associated with local or regional exposure; (2) the major questions doctrine, under *West Virginia* and *Loper Bright Enterprises v. Raimondo* (2024), precludes EPA's previous assertion of authority where Congress has not spoken clearly; and (3) even complete elimination of U.S. power sector GHG emissions would have only de minimis global temperature and sea level effects.

While EPA acknowledges that GHGs remain “air pollutants” under the CAA's broad definition per *Massachusetts v. EPA*, it attempts to thread the needle by arguing that the CAA restricts

EPA's proposal is a logical extension of its reasoning in the February 18, 2026, rescission of the 2009 GHG Endangerment Finding under CAA Section 202(a)(1). EPA argues, for example, that the specific endangerment provisions in Sections 202 and 111 do not authorize regulation based on global climate change. EPA contends that if finalized, it will “abrogate[] the legal framework underlying the 2015 Findings” for power plants, which would require rescinding the 2015 new source performance standards (NSPS) findings and repealing all remaining GHG standards for fossil fuel-fired electric generating units (EGUs). The comment period is 45 days.

Preemption Landscape

Stationary sources. CAA Section 116 preserves state authority to adopt emission standards for stationary-source air pollutants—including GHGs—as long as they are at least as stringent as federal standards. The repeal removes the federal regulatory floor, including the CCS-based NSPS that anchored the best available control technology (BACT) floor in prevention of significant deterioration (PSD) permitting. Expect a growing patchwork of state GHG standards for power plants.

Common-law claims. EPA's retreat strengthens states' anti-preemption arguments in climate tort litigation. Multiple courts have held the CAA does not preempt state common-law climate claims (*Suncor Energy v. Boulder County* ; *City & County of Honolulu v. Sunoco LP* (2023); *Baltimore v. BP* (4th Cir. 2022)). The Supreme Court's grant of certiorari in *Suncor* will directly address this question in a landscape where the federal government has largely vacated the field.

Mobile sources. CAA Section 209(a) preempts state vehicle emission standards absent an EPA waiver, but EPA's disavowal of Section 202 authority opens arguments that states are no longer preempted. Separately, DOJ/DOT filed suit in March 2026 challenging California's GHG standards for light-duty vehicles under EPCA.

What This Means for Your Business

1. **Immediate compliance relief.** The final rule is effective 60 days after Federal Register publication. Sources subject to the repealed CPS provisions will no longer be subject to CCS-based requirements.
2. **Remaining federal standards.** Efficiency-based (phase 1) standards for new combustion turbines remain in effect pending the supplemental proposal. Continue compliance with these standards unless and until they are repealed. Industry stakeholders with achievability concerns should consider submitting comments on the supplemental proposal, which would resolve those concerns by repealing all remaining GHG standards if finalized.
3. **Comment opportunity.** The supplemental proposal's 45-day comment period is a critical window. Industry stakeholders should consider comments on the statutory interpretation, major questions, and futility rationales.
4. **Prepare for state regulation.** Increased state-level GHG regulation is likely, particularly in states with existing climate legislation or clean energy mandates. Monitor state legislative and regulatory developments closely.
5. **Assess litigation exposure.** The preemption defense against state common-law climate claims has been materially weakened. Energy-sector companies should assess exposure to state climate tort litigation, particularly in light of the pending *Suncor*
6. **Watch other source categories.** Companies in oil and gas, landfills, and other sectors subject to GHG standards under Section 111 should monitor whether EPA extends this deregulatory approach to their categories.
7. **Maintain planning flexibility.** Given parallel litigation tracks and the possibility of judicial or future-administration reversal, avoid irreversible capital commitments based solely on the current regulatory posture.

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