

EPA Repeals Power Plant Carbon Standards

Supplemental proposal argues EPA lacks authority to regulate greenhouse gas emissions

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On September 17, 2026, EPA published its final rule repealing most of the [2024 Carbon Pollution Standards](#), a set of greenhouse gas emissions standards and guidelines for existing, modified, and new fossil fuel-fired power plants.¹ EPA determined that the standards and guidelines were not a “best system of emissions reduction” under the relevant statute for a variety of reasons, including cost, effectiveness, and availability of emissions reduction technology. EPA also asserted that the 2024 rules violated the Supreme Court’s bar on “generation shifting,” announced in [West Virginia v. EPA](#).

On the same day, EPA issued a supplemental proposal, explaining that it now reads Clean Air Act section 111 as not authorizing any EPA regulation of greenhouse gas emissions from power plants.² EPA thus proposes extending its conclusions that it lacks authority to regulate greenhouse gas emissions from US vehicles — the basis of its rescission of the [Endangerment Finding](#) in February 2026 — to the second-largest sector of emissions in the US.

EPA’s final repeal of most of the 2024 Carbon Pollution Standards

Clean Air Act section 111, which applies to stationary sources of air emissions, requires EPA to establish standards of performance, defined as “a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.”³

EPA’s final action is based on a combination of legal arguments and a conclusion that standards based on carbon capture and sequestration/storage (CCS) and natural gas co-firing are not the best system of emissions reduction (BSER) because they are not adequately demonstrated and are otherwise not reasonable.

¹ Partial Repeal of the Carbon Pollution, Standards for Fossil Fuel-Fired Electric, Generating Units, 91 Fed. Reg. 58,954 (Sept. 17, 2026), <https://www.federalregister.gov/documents/2026/09/17/2026-19071/partial-repeal-of-the-carbon-pollution-standards-for-fossil-fuel-fired-electric-generating-units>.

² Rescission of the Greenhouse Gas Findings for Fossil Fuel-Fired Power Plants and Repeal of Regulations for Power Plant Greenhouse Gas Emissions Under Clean Air Act Section 111, 91 Fed. Reg. 59,002 (Sept. 17, 2026), <https://www.federalregister.gov/documents/2026/09/17/2026-19072/rescission-of-the-greenhouse-gas-findings-for-fossil-fuel-fired-power-plants-and-repeal-of>.

³ 42 U.S.C. § 7411(a)(1). For more on the statute’s requirements and EPA’s regulatory history, see Carrie Jenks & Sara Dewey, *EPA’s Final CO₂ Standards for the Power Sector: Robust Regulatory Record Sets the Stage for Legal Challenges*, Harvard Env’t & Energy Law Program (May 7, 2024), <https://eelp.law.harvard.edu/epas-final-co2-standards-for-the-power-sector-robust-regulatory-record-sets-the-stage-for-legal-challenges/>.

EPA’s action repeals the 2024 Carbon Pollution Standards (CPS)⁴ for existing fossil fuel-fired plants with planned medium- or long-term retirement dates, existing natural gas- and oil-fired steam generating units, and coal-fired units undertaking a large modification. It also repeals some standards for new gas-fired power plants but leaves others intact.⁵

Table 1. The effects of the 2026 final rule on the 2024 rule by category

2024 CPS category ⁶	2024 CPS BSER and compliance deadline	Effect of 2026 rule
Existing coal-fired plants retiring in 2039 or later (long-term)	90% CCS by 2032	Repealed
Existing coal-fired plants retiring between 2032 and 2039 (medium-term)	40% natural gas co-firing by 2030	Repealed
Existing coal-fired plants retiring before 2032	Exempted from the 2024 rule	N/A
Existing natural gas- and oil-fired generating units	Routine methods of operation and maintenance/uniform fuels by 2030	Repealed
Existing coal-fired plants undertaking a large modification	90% CCS	Repealed
New baseload stationary combustion turbines	Phase 1 efficiency-based standards	Not Repealed
	Phase 2 standard based on 90% CCS by 2032	Repealed
New intermediate and low load combustion turbines	Emission rates based on efficient simple cycle generation and lower-emitting fuels	Not Repealed

EPA did not finalize its primary proposal: that emissions from fossil fuel-fired plants “do not contribute significantly to dangerous air pollution as required for the promulgation of new and existing source standards” under Clean Air Act section 111.⁷ Rather, EPA issued a supplemental proposal on the same day proposing to conclude “that CAA section 111 does not authorize the EPA

⁴ New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39,789 (May 9, 2024).

⁵ The Clean Air Act sets up different mechanisms for regulating existing and new sources. New sources are regulated through “standards” set directly by EPA; existing sources are regulated through state plans in accordance with “guidelines” EPA sets. For simplicity, we use the term “standards” to reflect both mechanisms.

⁶ See Timelines of EPA’s Final Rules to Reduce Climate Changing Pollution from Power Plants, Harvard Env’t & Energy Law Program (Apr. 25, 2024), <https://eelp.law.harvard.edu/timelines-of-epas-final-rules-to-reduce-climate-changing-pollution-from-power-plants/> (summarizing the different, plant categories, standards, and compliance deadlines); Jenks & Dewey, *supra* note 3 (analyzing the 2024 CPS in depth).

⁷ Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units, 90 Fed. Reg. 25,752, 25,755 (June 17, 2025).

to regulate emissions from power plants in response to global climate change concerns.”⁸ We discuss this separate action in more detail below.

EPA’s explanations for rejecting 90 percent CCS

The 2024 CPS included 90 percent CCS as the basis for BSER for existing coal plants that plan to operate long-term (i.e., beyond 2039), as well as for coal plants undertaking a large modification and for certain new fossil fuel-fired combustion turbines.⁹ EPA’s explanation for repealing that standard includes several components.¹⁰

Not adequately demonstrated

In 2024, when EPA defined BSER as CCS with a 90 percent capture of CO₂ for existing long-term coal plants, it explained that CCS is an “available and cost effective” technology and that “[t]his determination is based, in part, on the demonstration of the technology” at existing plants and the identification of “minor technological improvements” that can be applied to improve performance.¹¹ The agency considered example CCS applications, and explained current technology and improvements in development as well as other technical and economic considerations.¹² All told, EPA in 2024 concluded that 90 percent was “adequately demonstrated technology that achieves significant emissions reduction and is cost-reasonable, taking into account the declining costs of the technology and a substantial tax credit available to sources.”¹³

However, in its new rule repealing that standard, EPA renounces its 2024 conclusions. EPA states that CCS is not adequately demonstrated for application in commercial-scale coal-fired steam generating units.¹⁴ EPA also states that the primary example it cited as support for the CPS — use of CCS at the Boundary Dam unit — shows that CCS is not currently capable of capturing 90 percent of carbon emissions because “between 2014 and 2022” that capture system “achieved a total capture efficiency of not more than 63 percent over the course of a calendar year,” “substantially below the 90 percent capture level specified by the BSER” even after fixes to improve performance.¹⁵ EPA asserts that its reliance on availability of new solvents that would improve performance was unreasonable,¹⁶ and its 2024 determination did not account for downtime of the capture system,

⁸ 91 Fed. Reg. at 59,002.

⁹ In 2024, EPA adopted different BSERs for baseload, intermediate load, and low load (also called “peaking”) new combustion turbines. The highest capacity plants (above 40%) were subject to 90% CCS; intermediate and low-capacity plants were required to use high efficiency simple-cycle generation or use lower-emitting fuels, respectively. 90 Fed. Reg. at 39,903.

¹⁰ The citations that follow are generally to EPA’s explanation regarding long-term coal-fired plants. Its explanation for rejecting the standard for plants undertaking a large modification is materially the same. See 91 Fed. Reg. at 58,988.

¹¹ 89 Fed. Reg. at 39,847, 40,022.

¹² *Id.* at 39,847–62.

¹³ *Id.* at 39,801.

¹⁴ 91 Fed. Reg. at 58,970.

¹⁵ *Id.* at 58,971.

¹⁶ *Id.* at 58,971, 58,974.

among other factors.¹⁷ EPA faults its past reliance on planned, but not yet operational, projects, stating that these projects do not provide “measured data” or demonstrate that the designed percentage capture is achievable in practice.¹⁸ It states, “Considering these factors, the EPA is finalizing the determination that CCS with 90 percent capture and, consequently, 90 percent CCS are not adequately demonstrated for existing coal-fired steam generating units.”¹⁹ It likewise says that there is insufficient deployment of the technology at scale to demonstrate that it is available and effective for new baseload combustion turbines.²⁰

Too costly

EPA also now determines that cost considerations make 90 percent CCS unreasonable. EPA states that its 2024 assumptions were too optimistic, assuming that sources were running with a high capacity factor (meaning plants are producing electricity at a high level with respect to maximum designed output) and with “effective [CO₂] capture efficiency.”²¹ While EPA’s 2024 analysis factored in tax credits available to help pay for CCS, “EPA believes that coal-fired steam generating units are now more likely to operate longer than they will be able to claim the tax credit.”²²

EPA also concludes that it was improper for it to have factored the tax credits into its consideration of cost at all, as “the tax credit does not eliminate costs, it simply transfers costs to the U.S. taxpayer.”²³ It asserts that the best interpretation of the statute’s direction to “tak[e] into account the cost of achieving such reduction . . .” “does not, by its terms, limit the costs incurred directly by the source.”²⁴

EPA also faults its prior analysis of costs for new combustion turbines, saying that it failed to look at high compliance costs for the smallest plants and at whether the technology is cost-effective in the context of declining capacity factor over the life of a plant, in addition to the other cost-related issues it identified in its discussion of long-term coal plants.²⁵

In sum, EPA now estimates higher compliance costs (in cost per energy produced and cost per ton of CO₂) than previously estimated and concludes those costs are unreasonable.²⁶

¹⁷ *Id.* at 58,973–74.

¹⁸ *Id.* at 58,974, 58,898.

¹⁹ *Id.* at 58,972.

²⁰ *Id.* at 58,989–90.

²¹ *Id.* at 58,975.

²² *Id.*

²³ *Id.* at 58,977.

²⁴ *Id.* at 58,976 (citing *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024)); see also *id.* at 58,977 (agreeing with commenters that the failure to consider costs to the taxpayer was a failure of reasoned decisionmaking under *Michigan v. EPA*, 576 U.S. 743, 750 (2015)).

²⁵ *Id.* at 58,990–92

²⁶ *Id.* at 58,977, 58,990.

Infrastructure rollout is unrealistic

Next, EPA says that its assumption that the rollout of capture, pipeline, and sequestration infrastructure by the 2032 compliance deadline in the 2024 CPS was unrealistic: “It is highly unlikely, if not impossible, that the infrastructure necessary for CCS can be deployed by the January 1, 2032, compliance date.”²⁷ EPA points to siting, permitting, engineering, and construction required for the infrastructure and the time required for each.²⁸

EPA also states that the degree of reliance on third parties (i.e., not the owners or operators of the plants) to accomplish CCS “makes it unreasonable to base federally enforceable requirements on the presumption of a best-case scenario for implementation when tardy- or non-performance by a single party has the potential to cause or exacerbate delays that ripple through the deployment of the CCS system.”²⁹ Although EPA acknowledges that “sources commonly rely on third parties in their normal business,” it says the degree of reliance required for CCS for existing coal plants is unreasonable.³⁰ It similarly concludes that CCS infrastructure “cannot likely be deployed” by the 2032 compliance date for combustion turbines.³¹

West Virginia v. EPA gloss

Having concluded that CCS is “unreasonable and impracticable,”³² because of its ineffectiveness, cost, and difficulty of its rollout, EPA also suggests that it violates the Supreme Court’s bar on “generation shifting.” EPA now says that its 2024 rule adopted a standard that is too hard for many plants to meet, meaning they will close rather than attempt to comply. The result, it explains, is an effective shift in the energy mix from coal to other sources not subject to CCS, “cross[ing] the threshold” of generation shifting that the Supreme Court rejected in *West Virginia*.³³ Its prior reading of the statute, it says, was “overly restrained,” and there is no basis for distinguishing the application of standards applied to categories of plants (as in the 2024 CPS) from the Clean Power Plan, which allowed electricity producers to shift generation to cleaner sources to meet emissions limitations.³⁴

EPA’s explanation for rejecting co-firing

When EPA promulgated the 2024 CPS, it defined the BSER for power plants that were slated to retire sooner than 2039 based BSER on “co-firing with natural gas, at a level of 40 percent of the unit’s annual heat input”³⁵ In setting that standard, EPA recognized that the capital costs of CCS deployment and the shorter amortization period for units retiring in the medium term, required EPA to identify less expensive options that could deliver some emissions reductions. EPA concluded that

²⁷ *Id.* at 58,977.

²⁸ *Id.* at 58,978.

²⁹ *Id.*

³⁰ *Id.* at 58,979.

³¹ *Id.* at 58,992.

³² *Id.* at 58,981.

³³ *Id.* at 58,967, 58,980–81 (citing *West Virginia v. EPA*, 597 U.S. 697 (2022)).

³⁴ *Id.* at 58,967.

³⁵ 89 Fed. Reg. at 39,841. Co-firing involves burning two different fuels in the same combustion system.

co-firing was consistent with the Supreme Court's decision in *West Virginia v. EPA* because it requires a source-specific use of supplemental fuel rather than mandating a sector-wide shift to lower emission fuels.

Now, EPA asserts that its conclusion about the scope of *West Virginia* was incorrect, and that the decision bars "requiring a utility to use a completely different fuel type."³⁶ "Requiring a significant portion of the coal-fired fleet to become a different type of electricity generating resource — a hybrid coal and gas-fired fleet that relies on a different set of fuels — has the same effect of dictating the market shares of the different fuel types that comprise the nation's energy supply."³⁷ EPA also says that requiring coal plants to install the equipment necessary to allow co-firing is "requiring a coal plant to turn itself into a different type of plant" and is not comparable to a traditional pollution-control measure or simply "fuel switching akin to burning lower sulfur coal in a coal-fired EGU," as it had analogized in 2024.³⁸

Significant effect on the energy system

Beyond this legal argument, EPA asserts that its consideration of "energy requirements," a factor section 111 directs EPA to "tak[e] into account,"³⁹ allows it to look at energy needs at a regional or national scale.⁴⁰ It concludes that "diverting natural gas for use . . . in steam generating boilers could result in an unreasonable impact on the energy system because it reduces the availability of gas for other, more efficient uses, including for electricity generation in combustion turbines."⁴¹ EPA states that coal plants are now expected to operate longer rather than retiring (meaning more gas co-firing would be required), in contrast to its past "consideration of energy requirements associated with 40 percent natural gas co-firing in the 2024 CPS on an assumption of a continued and significant decline in the number of coal-fired EGUs."⁴² EPA also reports natural gas demand has exceeded its 2024 projections and that it now expects more new natural gas-fired generation in the next 10 to 20 years than it did in 2024.⁴³ The agency asserts that requiring co-firing could reduce natural gas supply available and raise its price, increasing costs for new, more efficient gas-fired power plants. Thus, EPA states, this requirement is unreasonable because of the potential "significant adverse impact on the energy system."⁴⁴ EPA concludes that "it should attempt to optimize the use of natural gas amongst the affected sources" and rejects co-firing as less efficient than new combined-cycle power plants.⁴⁵

³⁶ 91 Fed. Reg. at 58,981.

³⁷ *Id.*

³⁸ *Id.* at 58,981–82.

³⁹ 42 U.S.C. § 7411(a)(1). For more on the statute's requirements and EPA's regulatory history, see Jenks & Dewey, *supra* note 3.

⁴⁰ 91 Fed. Reg. at 58,982.

⁴¹ *Id.* at 58,983.

⁴² *Id.*

⁴³ *Id.* at 58,983–85.

⁴⁴ *Id.* at 58,984–85.

⁴⁵ *Id.* at 58,985.

Infrastructure rollout is unrealistic

Finally, EPA rejects natural gas co-firing as “not achievable because it is unlikely the necessary pipeline infrastructure can be deployed by the compliance date of January 1, 2030.”⁴⁶ It says that the infrastructure needed is greater than it anticipated in 2024 because more coal plants are expected to stay online and comply rather than retire before the deadline. As with CCS, the agency cites reliance on third parties and lengthy approval and construction timelines to support its conclusion that co-firing is not adequately demonstrated. While it recognizes that a “longer approval and construction timeline for pipelines would be more appropriate,”⁴⁷ it does not consider as an alternative extending the compliance deadline for co-firing, and instead simply repeals the standard.

EPA’s explanation for rejecting standards for existing natural gas- and oil-fired power plants

The 2024 rule identified BSER for intermediate load and baseload natural gas- and oil-fired steam generating units — those with annual capacity factors of between eight and forty-five percent and those with forty-five percent or greater, respectively — as “routine methods of operation and maintenance.”⁴⁸ For low load sources with annual capacity factors of less than 8 percent, EPA identified a BSER of uniform fuels (i.e. “fuels with a consistent chemical composition”).⁴⁹

In its 2026 repeal, EPA does not determine that these standards were illegal, not adequately demonstrated, or otherwise unreasonable for sources. Instead, it states that it was “unreasonable” to require states to develop implementation plans for these plants, given that the standards effect few emissions reductions but require administrative resources for states to implement.⁵⁰

EPA’s explanation for not rejecting efficiency-based standards for new combustion turbines

EPA’s final rule does not remove the efficiency-based standards for new baseload or intermediate-load turbines or the requirement that low-load turbines use lower-emitting fuels.⁵¹ EPA did not provide an explanation for this decision, beyond noting its proposal that it “lacks statutory authority to regulate GHG emissions from fossil fuel-fired power plants under CAA section 111.”⁵² If it adopts that proposal, as explained beginning on page 15, it would repeal all remaining greenhouse gas emission standards for power plants.⁵³

Tensions in EPA’s process and explanations for its action

Failure to consider alternatives to repeal

Ordinarily, courts reviewing an agency rulemaking look to whether an agency has considered reasonable alternatives to its chosen path. But here, EPA states it has determined “that it is not

⁴⁶ *Id.* at 58,986.

⁴⁷ *Id.*

⁴⁸ 89 Fed. Reg. at 39,801.

⁴⁹ *Id.* at 39,960, 40,029.

⁵⁰ 91 Fed. Reg. at 58,987.

⁵¹ *Id.* at 58,993.

⁵² *Id.*

⁵³ *Id.*

necessary to analyze and promulgate alternatives to the repeal of the emission guidelines and standards of performance in this action.”⁵⁴ Its explanation for this departure is that its action is solely deregulatory, “to provide near-term relief from the 2024 CPS requirements that the EPA now considers unlawful, infeasible, or otherwise unreasonable.”⁵⁵

This approach, EPA asserts, is “consistent with the incremental way agencies often proceed, and courts have recognized that agencies may act in steps rather than all at once.”⁵⁶ EPA also says this is consistent with the Clean Air Act, which does not set a deadline for the agency to promulgate replacement standards.⁵⁷ As its central argument, EPA asserts that its decision to forgo any discussion of alternatives is excused by its proposal that it lacks authority to regulate greenhouse gas emissions from power plants. EPA insists that its failure to consider alternatives at this stage is consistent with Supreme Court decisions in *Regents of the University of California* and *State Farm* because those decisions require it only to consider alternatives “within the ambit of the existing [policy]” and EPA is proposing that the “existing policy” does not allow *any* regulation.⁵⁸ If it later concludes it lacks authority, the issue will be “mooted.”⁵⁹ “If the EPA does not finalize that separate proposal, the Agency could revisit whether alternatives to the standards repealed in this action should be developed and promulgated. For now, however, the EPA believes it is reasonable to proceed without doing so.”⁶⁰

EPA cites no authority for its proposed exception to the requirement that it “consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives.”⁶¹ The Supreme Court has not recognized what EPA now proposes: that a possible future legal interpretation that may foreclose regulatory options relieves it from the obligation to consider alternatives as “an important aspect of the problem.”⁶²

EPA adopts this view that it is exempted from considering alternatives even though its partial repeal indicates alternatives may be available. For example, in rejecting a CCS-based standard of 90-percent removal, EPA explains that the Boundary Dam plant failed to meet that standard over several years of operation. But EPA’s recent final rule does not discuss or consider whether standards more aligned with Boundary Dam’s removal rate are feasible alternatives.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* (citing *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 522 (2009) and *Pub. Safety Spectrum All. v. F.C.C.*, No. 24-1363, slip op. at 20 (D.C. Cir. July 21, 2026)).

⁵⁷ *Id.*

⁵⁸ *Id.* at 58,969 (citing *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 30 (2020); *Motor Vehicle Manufacturers Ass’n of the U.S. v. State Farm Mutual Automobile Ins.*, 463 U.S. 29 (1983)).

⁵⁹ *Id.*

⁶⁰ *Id.* at 58,993.

⁶¹ *Spirit Airlines, Inc. v. U.S. Dep’t of Transportation*, 997 F.3d 1247, 1255 (D.C. Cir. 2021) (quoting *Am. Radio Relay League v. F.C.C.*, 524 F.3d 227, 242 (D.C. Cir. 2008)).

⁶² *State Farm*, 463 U.S. at 43.

As a backup explanation, EPA notes that it considered and rejected alternatives to 90 percent CCS and co-firing in its 2024 rulemaking.⁶³ EPA does not acknowledge the tension in its near-wholesale rejection of its prior reasoning with regard to BSER in the 2024 CPS and its embrace of its discussion of alternatives in that rulemaking. Nor does it explain how its 2024 rejection of alternatives for their inability to produce satisfactory emissions reductions fits with its current rejection of alternatives for other reasons.

Failure to consider reliance interests

EPA asserts that it is excused from the normal requirement that it “be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.”⁶⁴ It states first that it need not consider such interests because “[t]o the extent the EPA is repealing aspects of the 2024 CPS based on applicable statutory requirements, the unlawful nature of those aspects necessitates repeal; the change-in-position doctrine does not expand an agency’s statutory authority for the purpose of addressing reliance interests.”⁶⁵ But the Supreme Court has made clear that agencies are obligated to consider serious reliance interests that may have developed under a regulation, even where that regulation was unlawful.⁶⁶

EPA also asserts that there are no reliance interests to consider in any event. It reports that it received “no comments on reliance interests arising from the 2024 CPS from regulated entities” and to its knowledge “no expenditures on projects involving fossil fuel-fired power plants have been made exclusively in response to the 2024 CPS requirements that the EPA is repealing.”⁶⁷ EPA insists that states could not have seriously relied on the 2024 CPS because of the short timeline between its May 2024 promulgation and EPA’s announcement in March 2025 that it intended to reconsider the rule.⁶⁸ It is difficult to reconcile these assertions with EPA’s insistence that if it did not take immediate steps to repeal the 2024 CPS standards, they “would imminently begin forcing the expenditure of significant resources.”⁶⁹

Moreover, EPA appears to have given no consideration to reliance interests other than a selection of the regulated community and failed to consider states citing benefits of the standards.⁷⁰ EPA’s

⁶³ 91 Fed. Reg. at 58,993–94.

⁶⁴ *Food & Drug Admin. v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 570 (2025) (quoting *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016)).

⁶⁵ 91 Fed. Reg. at 58,960.

⁶⁶ *Regents*, 591 U.S. at 32 (holding that the government was required to consider reliance interests even where the government had concluded a prior regulation was unlawful); *Fox Television*, 556 U.S. at 517 (applying the change-in-position doctrine where, among other things, an agency “disavow[s]” prior “inconsistent” agency action as “no longer good law”).

⁶⁷ 91 Fed. Reg. at 58,960.

⁶⁸ *Id.* at 58,961.

⁶⁹ *Id.* at 58,969.

⁷⁰ *Id.* at 58,960–61.

apparent focus on reliance interests in the form of costs of complying with the 2024 CPS rather than costs from its repeal is not supported by Supreme Court precedent.⁷¹

Failure to consider foregone health or climate benefits.

EPA asserts that it need not consider the climate benefits of the standards it is repealing because it is rejecting those standards based on “technical determinations,” rather than because of a balance of costs and benefits.⁷²

Regardless, EPA says, the CO₂ emissions reductions achieved by the standards it is repealing are outweighed by costs to industry and adverse energy impacts.⁷³ But EPA does not elaborate in the preamble about those emissions reductions, nor how it valued them for comparison with costs to industry and energy. As for co-pollutants that would have also been reduced via implementation of the CPS, EPA states that it did not factor these into the BSER determination; “And even if the EPA were to consider these incidental reductions of co-pollutants, the Agency would determine that the costs and energy impacts of the controls should be weighted more heavily than those foregone reductions.”⁷⁴

It is not clear how EPA has evaluated this balance. EPA states that it “has not monetized several impact categories, including the potential health and welfare impacts of changes in emissions.”⁷⁵ EPA points to “data limitations” as “prevent[ing] us from characterizing the value” of PM_{2.5} and ozone reductions and cites President Trump’s direction to not consider climate benefits as well as “uncertainties and limitations associated with monetizing CO₂-related domestic climate benefits.”⁷⁶ Although the agency acknowledges causal relationships between emissions and a range of health effects,⁷⁷ it says its past approach “may not have presented the full range of uncertainties and associated confidence level regarding the potential benefit estimates.”⁷⁸ Rather than present estimates or ranges along with levels of uncertainty, EPA declines to provide any estimates.⁷⁹

⁷¹ *Regents*, 591 U.S. at 32 (finding reliance interests in the benefits afforded by a regulatory program and the costs of its repeal).

⁷² *Id.* at 58,970.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 58,994; see also Regulatory Impact Analysis for the Final Partial Repeal of the Carbon Pollution Standards for Fossil Fuel-Fired Electric Generating Units, EPA-452/R-26-003, at 4-1 (Sept. 2026) https://www.epa.gov/system/files/documents/2026-09/utilities_ria_final_partial_repeal_of_cps_2026-09.pdf.

⁷⁶ Regulatory Impact Analysis at 4-1.

⁷⁷ *Id.* at 4-3.

⁷⁸ 91 Fed. Reg. at 58,994.

⁷⁹ In 2024, EPA estimated the climate and public health benefits at between \$320 and \$370 billion (depending on discount rate). 89 Fed. Reg. at 39,799. EPA now reports its deregulatory action’s cost savings at \$102 billion. 91 Fed. Reg. at 58,995. It reports its “social cost savings” is even higher, but it does not include health costs related to increased pollution in that projection. 91 Fed. Reg. at 58,994.

Accordingly, it is difficult to assess the reasonableness of EPA's purported balancing of costs and benefits, as it does not explain how it compared quantified and unquantified costs and benefits nor how much value it placed on unquantified health and welfare benefits of the rule it has repealed.

Adding to the internal inconsistency in EPA's analysis is that it has declined to consider health and climate benefits even while noting that tax credits companies may use to defray the cost of updates "are a cost from a societal perspective" and changes in resources used by the power sector may affect "other sectors and households."⁸⁰ Its asymmetric consideration of these indirect effects on people in the United States and refusal to consider the health-related costs of its rule may be raised by litigants challenging the rule, arguing that EPA must consider all important aspects of the regulatory problem before the agency.⁸¹

Restrictive view of "adequately demonstrated"

While the current EPA critiques its 2024 analysis of CCS as effective and practicable, it does little updated analysis about changes in testing and adoption of CCS in the two years since the CPS. EPA does not consider whether allowing additional time for compliance would allay its concerns about feasibility.⁸² And while EPA presents a picture of CCS as experimental and unreliable, commenters on EPA's 2025 proposal characterized use of the technology as currently operational and effective in plants around the world.⁸³

The final rule does not acknowledge the recent projects being announced and permitted for CCS or at least explain why such projects are not relevant to its assessment of whether CCS is adequately demonstrated.⁸⁴ For example, EPA cites a North Dakota coal plant as an example of planned CCS projects that were "abandoned or have faced other challenges,"⁸⁵ but a recent announcement indicates the project is moving forward.⁸⁶ Other recent examples of CCS projects planned or

⁸⁰ 91 Fed. Reg. at 58,994.

⁸¹ *State Farm*, 463 U.S. at 43.

⁸² Indeed, EPA asserts, without cited support, that it should not adopt a standard that would take more than its 8-year review interval to roll out. 91 Fed. Reg. at 58,978.

⁸³ See, e.g., Comments of Sabin Center for Climate Change Law at 9–15, EPA's Proposed Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Power Plants (Docket ID No. EPA-HQ-OAR-2025-0124) (Aug. 7, 2025), <https://climate.law.columbia.edu/sites/climate.law.columbia.edu/files/content/Sabin%20Center%20Comment%20Letter%20on%20Repeal%20of%20CCS%20BSE%20for%20Power%20Plants.pdf>.

⁸⁴ See, e.g., Jamie Smyth, *ExxonMobil wins Texas approval for \$5bn carbon capture project*, FINANCIAL TIMES (Sept. 15, 2026), <https://www.ft.com/content/4b9952d5-3cc8-48ef-8619-daa15a0a6af1?syn-25a6b1a6=1>. (reporting that Exxon is moving forward with a plan to build the world's largest carbon capture pipeline network on the US Gulf Coast, allowing it store more than 50 million tons of CO₂ underground); Press Release: Calpine, ExxonMobil sign CO₂ transportation and storage agreement for power generation project (Apr. 23, 2025), https://corporate.exxonmobil.com/news/news-releases/2025/0423_calpine-exxonmobil-sign-co2-transportation-and-storage-agreement-for-power-generation-project; Broadwing Energy Center, <https://www.broadwingenergy.com/> (last visited Oct. 6, 2026) (describing a project to capture and sequester more than 90% of the CO₂ produced by a new gas-fired plant supplying energy to Google and ADM, totaling up to 2 million tons annually).

⁸⁵ 91 Fed. Reg. at 58,975.

⁸⁶ Press release: Project Tundra announces updated development structure and expanded economic opportunities, Reliant (Aug. 13, 2026), <https://www.reliantccs.com/news/milton-young-station>.

underway are unmentioned in EPA's rule, raising questions about whether its consideration of whether CCS is adequately demonstrated is based on a complete picture of the technology's deployment. Additionally, EPA's new modeling on nationwide generation by fuel type in the next two decades projects that coal- and natural gas-fired plants with CCS will be part of the energy mix in 2035, 2040, and 2045, even absent the standards EPA has now repealed.⁸⁷ EPA does not explain how this projection fits with its assertion that CCS is not adequately demonstrated.

More fundamentally, it is not clear from EPA's analysis whether the cost and implementation challenges for CCS differ meaningfully from "technology forcing" allowed under the Clean Air Act. The D.C. Circuit has held that technology "need not necessarily be routinely [deployed] within the industry prior to its adoption."⁸⁸ EPA may set standards "at a level that is higher than has actually been demonstrated over the long term by currently operating" facilities, pushing "improved design and operational advances."⁸⁹ And EPA may extrapolate from a technology's use in other industries and applications.⁹⁰ EPA's explanation for rejecting CCS appears to be based on a higher standard for a technology to be "adequately demonstrated" than the D.C. Circuit has required.

Unbounded concerns about reliance on third parties

EPA makes much of sources' required reliance on third parties for the implementation of CCS and cites this as a reason the technology is not adequately demonstrated. But as EPA acknowledges, "sources commonly rely on third parties in the normal operation of their business."⁹¹ While EPA suggests that the level of dependence on third parties required by CCS and the novelty of the technology make it different from this "common[]" reliance, it is not clear where EPA would now set the bounds between what it considers permissible and impermissible levels of reliance. EPA's lack of clarity could lead to a position that any standard requiring sources to rely on third parties to develop, plan, or deploy technology might be deemed impermissible.

Incomplete analysis of demand and compliance costs

EPA's critique of its 2024 projection of CCS compliance costs largely relies on different assumptions regarding electricity load growth and the resource mix needed to meet demand. EPA now projects that lower-capacity coal plants (which cost more to run) will retire later than it projected in 2024, operating beyond the period during which EPA had assumed CCS tax credits would be available (which would help offset costs for the first 12 years of compliance). These different assumptions, combined with EPA's new, lower expectations about the performance of CCS, result in higher cost projections.⁹²

⁸⁷ Technical Memo: Trends Relating to Fossil Fuel-fired Electric Generating Units, at 27–28, Partial Repeal of the Carbon Pollution Standards for Fossil Fuel-Fired Electric Generating Units, No. EPA-HQ-OAR-2025-0124 (Aug. 2026), <https://www.regulations.gov/document/EPA-HQ-OAR-2025-0124-2988> ("Technical Memo: EGU Trends").

⁸⁸ *Essex Chem. Corp. v. Ruckelshaus*, 486 F.2d 427, 433–34 (D.C. Cir. 1973).

⁸⁹ *Sierra Club v. Costle*, 657 F.2d 298, 364 (D.C. Cir. 1981).

⁹⁰ *Lignite Energy Council v. EPA*, 198 F.3d 930, 934 (D.C. Cir. 1999).

⁹¹ 91 Fed. Reg. at 58,979.

⁹² EPA's technical memo assessing compliance costs shows how sensitive its cost analysis is to different assumptions in capacity, effectiveness, and lifespan. Technical Memo: Updated Evaluation of Best System of

EPA's generation-specific demand projections are also not clearly explained. EPA acknowledges that its 2024 analysis reflected ongoing trends of increasing reliance on renewables and natural gas and decreasing reliance on coal. It now says that "updated information and analysis of power sector trends indicates a significantly different landscape moving forward."⁹³ Much of what EPA cites are projections of increased demand, which it translates into a conclusion that most existing coal-fired power plants will need to remain in operation in 2040 (i.e., EPA now projects 100 GW of coal capacity in 2040 compared to its 2024 projections of 40 GW).⁹⁴ But EPA's modeling does not support the idea that coal capacity is needed to meet future projected demands. EPA's updated modeling, with-CPS and without-CPS, projects that total generation under either scenario is equivalent in 2045, as the modeling assumes generation from other sources can increase to meet the decline in coal-fired generation.⁹⁵

Although EPA notes several areas of uncertainty that would affect its projections, it does not explore the administration's influence on those factors.⁹⁶ For example, EPA does not consider the administration's other energy-related policies, including its support of geothermal and nuclear development.⁹⁷ Additionally, EPA barely acknowledges that at least in some instances, the Department of Energy has prevented coal plants from retiring via emergency orders under Federal Power Act section 202(c)⁹⁸ — indicating that these postponed retirements are a function of government intervention rather than a market response to changing demand. EPA also does not explore the implications of projections about continued operation of coal plants in light of the D.C. Circuit's recent decision rejecting the Department of Energy's understanding of its authority as a "vast, top-down emergency power to pick its favorite generators to run at all costs."⁹⁹ Given the court's conclusion that the Federal Power Act allows only "last resort" federal intervention and does not extend to overriding states' and regional transmission organizations' resource planning aimed at "serv[ing] the public interest in affordable, environmentally sound, reliable resources going forward," it is not clear that the continued federal intervention will lawfully continue.¹⁰⁰

Emission Reduction Costs of Carbon Capture and Sequestration/Storage at Existing Coal-Fired Electric Generating Units, Partial Repeal of the Carbon Pollution Standards for Fossil Fuel-Fired Electric Generating Units, No. EPA-HQ-OAR-2025-0124 (August 2026), <https://www.regulations.gov/document/EPA-HQ-OAR-2025-0124-2995>.

⁹³ 91 Fed. Reg. at 58,965.

⁹⁴ Technical Memo: EGU Trends, *supra* note 87, at 7.

⁹⁵ *Id.* at 26–28.

⁹⁶ *See id.*

⁹⁷ *See id.*

⁹⁸ 91 Fed. Reg. at 58,980.

⁹⁹ Opinion, *Michigan v. U.S. Department of Energy*, No. 25-1159, slip op. at 32, 33, 35–36. (D.C. Cir. Sept. 11, 2026), <https://media.cadc.uscourts.gov/opinions/docs/2026/09/25-1159-2192454.pdf>.

¹⁰⁰ *Id.* at 32–33.

New, broad reading of limits in West Virginia v. EPA

EPA's reading of *West Virginia v. EPA* as barring both its adoption of 90 percent CCS and natural gas co-firing does not appear to be supported by the text of that decision and is a departure from its past interpretation of that case.

In *West Virginia*, the Supreme Court considered the 2015 Clean Power Plan, which relied on “generation shifting” across the grid from high-carbon emitting sources to lower-emitting sources. The Court concluded that the standard was based on compliance with a cap-and-trade system that reduced emissions by allowing high-emission sources to purchase credits from low-emission sources. In rejecting that plan as not a lawful BSER under Clean Air Act section 111, the Court emphasized that EPA's attempt at grid-level change was distinguishable from “traditional pollution control measures,” included “fuel switching,” “add-on controls,” and “efficiency improvements.”¹⁰¹ The Court said that the grid-wide shift was different from EPA's past approach of “improving the performance of individual sources” and was outside the bounds of the word “system” in the statute.¹⁰²

In 2024, EPA viewed its CPS as compliant with the Supreme Court's direction: CCS is a “traditional, add-on control intended to reduce the emissions performance of individual sources,” and co-firing is fuel-switching.¹⁰³ EPA anticipated the argument that expected retirements in lieu of CCS installation are “the effect of generation shifting,” explaining, “[t]hat sources will incur costs to control their emissions of dangerous pollution is an unremarkable consequence of regulation, which, as the Supreme Court recognized, ‘may end up causing an incidental loss of coal's market share.’”¹⁰⁴ It also explained that “the modeling projections showing that many sources retire instead of installing controls are in line with the trends for these units in the absence of the rule — as the coal-fired fleet ages and lower-cost alternatives become increasingly available, more operators will retire coal-fired units with or without this rule.”¹⁰⁵

Regarding co-firing, EPA explained that “increasing co-firing at existing coal-fired units to 40 percent would require only minor changes to the units' boilers. In fact, many coal-fired units are already capable of co-firing some amount of gas without any changes at all, and several have fired at 40 percent and above in recent years.” In this way, it is unlike the Supreme Court's aside that EPA could not likely “simply require coal plants to become natural gas plants.”¹⁰⁶

Requirements that companies reduce their emissions by choosing whether to install technologies such as CCS or natural gas co-firing are closer to these types of regulatory strategies EPA has previously used and that the Supreme Court distinguished in *West Virginia* compared to a cap-and-trade system that the Court rejected as beyond EPA's statutory authority. The final rule's conclusion that a standard that could nudge plants into retirement is “generation shifting” risks potentially

¹⁰¹ *West Virginia*, 597 U.S. at 727.

¹⁰² *Id.*

¹⁰³ 89 Fed. Reg. at 39,901.

¹⁰⁴ *Id.* at 39,899.

¹⁰⁵ *Id.* at 39,900.

¹⁰⁶ *Id.* at 39,901–02 (quoting *West Virginia*, 597 U.S. at 728 n.3).

foreclosing any future standard that causes “incidental” closures, even though the Supreme Court acknowledged this effect as part of a typical regulatory strategy.

At a minimum, EPA’s change in legal interpretation is not well explained and sets up a question for courts about how to apply *West Virginia*.

Burden on states untied to statutory factors

Although EPA is correct that its standards must be overall reasonable, EPA does not tie its analysis about whether it should repeal standards for existing intermediate load and baseload natural gas- and oil-fired steam generating units to factors listed in the statute that EPA is to consider. Additionally, EPA does not explain how a state government’s time and resources to implement a standard fit within the factors EPA is required to consider (“the cost of achieving such reduction and any nonair health and environmental impact and energy requirements”).

EPA’s supplemental proposal to determine it lacks authority to regulate greenhouse gas emissions from the power sector

On the same day it repealed most of the 2024 CPS, EPA also released its proposal “that CAA section 111 does not authorize the EPA to regulate emissions from power plants in response to global climate change concerns” and thus it must rescind its “contrary findings and determinations in 2015 and repeal[] all associated 2015 and 2024 GHG standards for the fossil fuel-fired EGU source category.”¹⁰⁷ This “supplemental proposal” adds to its prior proposed determination that power plants do not “contribute significantly” enough to global climate change allow regulation under section 111.¹⁰⁸ EPA states that it now “proposes additional approaches to that question” of statutory authority in light of its February 2026 rescission of the Endangerment Finding for motor vehicles.¹⁰⁹ EPA plans to consider both its initial and new no-authority proposals before taking action.¹¹⁰

The supplemental proposal tracks EPA’s Endangerment Finding rescission, and the vulnerabilities and tensions that [EELP identified in our analysis of the rescission](#) apply here as well. Because of the similarities, we summarize EPA’s assertions only briefly.

EPA proposes that Clean Air Act section 111 allows it to regulate only emissions that endanger health or welfare through local or regional exposure.¹¹¹ EPA states that this reading reflects the best understanding of statutory terms and congressional intent and aligns with its longtime regulatory practice. It also states that it erred in 2015 by not making a specific finding whether power plant emissions contribute significantly to global climate change concerns. It urges that interpreting

¹⁰⁷ 91 Fed. Reg. 59,002.

¹⁰⁸ Erika Kranz, Carrie Jenks, & Sara Dewey, *Eliminating the Foundation: Vulnerabilities in and Implications of EPA’s Endangerment Finding Rescission*, Harvard Env’t & Energy Law Program (March 2, 2026), <https://eelp.law.harvard.edu/eliminating-the-foundation-vulnerabilities-in-and-implications-of-epas-endangerment-finding-rescission/>.

¹⁰⁹ 91 Fed. Reg. at 59,004 (citing Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act, 91 Fed. Reg. 7686 (Feb. 18, 2026)).

¹¹⁰ *Id.*

¹¹¹ *Id.* at 59,021.

section 111 as allowing the regulation of greenhouse gas emissions from power plants would allow it to regulate even where “standards would do nothing to meaningfully address” a “global concern,” an “unbounded construction” of the statute.¹¹² Put another way, EPA states that the result of regulating a source category must be more than *de minimis* for it to have regulatory authority.¹¹³ EPA also asserts that its new, limited reading of its authority is consistent with Supreme Court decisions about the scope of EPA’s authority. As EELP pointed out regarding the Endangerment Finding rescission, the Supreme Court in *Massachusetts v. EPA* held that “the statutory text forecloses EPA’s” similarly narrow reading of the scope of its authority under the Act’s analogous section 202, and more recent decisions have not undermined that holding.¹¹⁴

As it did regarding the Endangerment Finding, EPA also asserts it lacks “clear congressional authorization” to regulate power plants’ greenhouse gas emissions, as the agency says is now required by the major questions doctrine after *West Virginia v. EPA*.¹¹⁵ However, as EELP explained in our Endangerment Finding rescission analysis, *West Virginia* rejected a *method* EPA had used to regulate greenhouse gas emissions from the power sector, but did not question EPA’s ultimate *authority* to do so, and did not alter *Massachusetts v. EPA*’s holding addressing that question.¹¹⁶

EPA asserts that it “cannot or should not exercise its regulatory authority under CAA section 111 when that exercise would have no meaningful impact on the identified dangers to public health and welfare.”¹¹⁷ EELP’s Endangerment Finding rescission analysis explains how this proposed reasoning is at odds with the Supreme Court’s recognition in *Massachusetts v. EPA* that even if a sector’s emissions that are just a fraction of the world’s, they are still “meaningful,” and that incremental reductions are a valid regulatory step.¹¹⁸ That analysis applies with equal force to the United States power sector as it does to vehicles, which were directly at issue in the Endangerment Finding rescission.

An additional reason EPA proposes to determine that it lacks authority to regulate greenhouse gas emissions from power plants is essentially procedural: it states that it erred in 2015 by merging two previous source categories (steam generators and combustion turbines) into a single category. It explains that creating a new source category triggered a new duty to “determine that GHGs emitted from the source category cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.”¹¹⁹ Even if EPA is now correct that its prior finding was procedurally flawed, it does not necessarily follow, as EPA now proposes, that a no-authority conclusion is inevitable. EPA does not, for example, propose any correction to this supposed flaw.

¹¹² *Id.* at 59,027.

¹¹³ *Id.* at 59,029.

¹¹⁴ Kranz, Jenks & Dewey, *supra* note 108, at 6–11.

¹¹⁵ 91 Fed. Reg. at 59,032.

¹¹⁶ Kranz, Jenks & Dewey, *supra* note 107, at 11–13.

¹¹⁷ 91 Fed. Reg. at 50,035.

¹¹⁸ Kranz, Jenks & Dewey, *supra* note 107, at 13–16.

¹¹⁹ 91 Fed. Reg. at 59,030.

Moreover, although EPA acknowledges that it “purported to make such a determination” previously as to its new source category, it says its entire basis for doing so was the 2009 Endangerment Finding made in the context of vehicle emissions under section 202. The errors it has asserted required it to rescind the Endangerment Finding in February 2026, it says, were carried into its determination that it also had authority to regulate power plants.¹²⁰ And because it has rescinded the Endangerment Finding, it now lacks a required independent determination for power plants. But EPA in 2024 cited its 2015 determination that “[greenhouse gas] air pollution may reasonably be anticipated to endanger public health or welfare,” and that power plants are “by far the largest emitters” of greenhouse gases among stationary sources in the country.¹²¹ Commenters on this supplemental proposal are likely to point to EPA’s prior rulemakings that make clear EPA did not solely rely on the 2009 Endangerment Finding to conclude that power sector emissions contribute significantly to pollution that endangers public health or welfare.

Looking Ahead

EPA’s final rule repealing most of the 2024 Carbon Pollution Standards and its proposed determination that it lacks authority to regulate greenhouse gas emissions from the power sector add complexity to a regulatory environment with several moving pieces. EPA ended its regulation of greenhouse gas emissions from new motor vehicles after its February 2026 rescission of the Endangerment Finding. Legal challenges to that move are pending in the D.C. Circuit.¹²²

EPA’s final partial repeal of the 2024 CPS has also already been challenged, and more challenges are expected.¹²³ Challengers may raise issues identified here, such as arguments about EPA’s obligation to consider alternatives and reliance interests, its interpretation of *West Virginia*, its assumptions underlying its conclusions about demand and cost, and whether it has otherwise reasonably explained its conclusion that CCS and co-firing are not the best systems of emission reduction for certain source categories.

At the same time, the United States is seeking to prevent states and local governments from taking steps under state law to recoup costs of climate-related harm. It has done this by filing its own suits to block state law tort claims or state climate superfund statutes and by weighing in through filing in suits in which it is not a party, as it did in an amicus brief in *Suncor v. Boulder* supporting oil and natural gas companies’ arguments that state tort law claims related to climate change are preempted or blocked by federal law. Its arguments in that case are, in part, in tension with EPA’s supplemental proposal that it lacks authority to regulate greenhouse gas emissions from the power

¹²⁰ *Id.* at 59,031.

¹²¹ 89 Fed. Reg. at 39825 (quoting 80 Fed. Reg. 64,510, 64,530, 64,522 (Oct. 23, 2015)).

¹²² *Am. Public Health Ass’n v. EPA*, No. 26-1037 (D.C. Cir.) (lead case of several consolidated challenges). As of this writing, merits briefing in the challenges has not yet begun.

¹²³ *Am. Lung Ass’n v. EPA*, No. 26-1238 (D.C. Cir. Sept. 17, 2026); *New York v. EPA*, No. 26-1259 (D.C. Cir. Oct. 1, 2026).

sector, as its brief in *Suncor* argues that state law claims would interfere with EPA's exclusive authority in this area.¹²⁴

We also expect EPA to propose changes to the methane regulations under section 111 of the Clean Air Act for the oil and natural gas sector. It will be important to consider how EPA approaches the legal arguments raised in the final rule and supplemental proposal for power plants' greenhouse gas emissions as it takes this expected action regarding methane emissions from the oil and natural gas sector.

[Comments on EPA's supplemental proposal are due on November 2, 2026.](#)

¹²⁴ Brief for the United States as Amicus Curiae Supporting Petitioners, *Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County*, No. 25-170 (S.Ct. filed May 21, 2026), https://www.supremecourt.gov/DocketPDF/25/25-170/409590/20260521184428959_25-170_Suncor_v_Boulder_Merits_FINAL.pdf. The United States appeared to recognize the tension between its Endangerment Finding rescission and its claims of exclusive authority in a footnote in its brief, stating, "Regardless of what authority the Act delegates to EPA, Boulder's claims are constitutionally barred." *Id.* at 34 n. 4. Indeed, the United States' primary argument is not based on the scope of the Clean Air Act, but instead that the constitution's structure and primacy of the federal government in foreign affairs matters prevents state law claims like Boulder's.