Welcome to CleanLaw from the Harvard Environmental and Energy Law Program. In this episode, EELP's Executive Director Carrie Jenks, Associate Director Sara Dewey, and Senior Staff Attorney Erika Kranz discuss recent developments in greenhouse gas regulation and litigation. They compare these actions, highlight what they're watching for next, and consider the implications for future climate policy. We hope you enjoy this episode.

Sara Dewey:

I'm Sara Dewey from the Harvard Environmental and Energy Law Program, and I'm joined today by EELP's Carrie Jenks and Erika Kranz to discuss recent developments in federal greenhouse gas regulations. So glad to be speaking with you both today.

Carrie Jenks:

Thank you. Looking forward to it.

Erika Kranz:

Me too, Sara.

Sara Dewey:

Rescinding Greenhouse Gas Regulations is at the center of the Trump administration's anti-climate and pro-fossil fuel deregulatory push. And there are many moving pieces here, which we're going to discuss.

The administration has repealed the Endangerment Finding and ended federal greenhouse gas regulations for motor vehicles and power plants, which are two of the country's highest emitting sectors. And it's also continued to regulate greenhouse gas emissions from oil and gas operations, and at the same time filed lawsuits to stymie state greenhouse gas regulations and other state action related to climate change.

So today we're going to talk through these moves by the Trump administration to take stock of where we are and where we're headed as litigation begins and we await a Supreme Court decision in *Suncor v. Boulder*.

Carrie Jenks:

And while we won't get into the details of each of these rules, we've got detailed analysis on our website and we'll continue to evaluate what's happening. We hope this conversation pulls out some of the cross-cutting themes. Where are we seeing consistencies? Where are we seeing tensions? And then we can talk about what this might mean for the authorities to regulate greenhouse gas more broadly.

Sara Dewey:

So let's start with the shifting policy landscape and where we are with the administration's greenhouse gas regulatory rollbacks. To start, Erika, can you talk about the Endangerment Finding rescission and the car standard deregulation which were finalized in February of 2026?

Erika Kranz:

Sure. So the Endangerment Finding was a science-based finding that EPA made back in 2009, that greenhouse gas emissions from US new motor vehicles cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare. That's the statutory hook in the Clean Air Act. Making that finding then triggered EPA's duty to regulate those vehicles under Section 202 of the Act. But in February 2026, EPA rescinded that finding, not for scientific reasons, but for a mix of reasons resting on a new statutory interpretation. EPA said greenhouse gases are just not the kind of emissions that Congress intended EPA to

regulate because they cause effects only through long causal chains and in accumulation with other greenhouse gas emissions, and that Congress could not have intended EPA to regulate these emissions from vehicles because it won't make a difference in global climate change. And EPA also said even if it had authority to regulate, it wouldn't exercise that authority for similar reasons.

So as a result of rescinding the Endangerment Finding, EPA also repealed its greenhouse gas standards for US vehicles, but this went well beyond just rescinding those emissions requirements for cars. It asserted that EPA can't make new standards in the future either because if courts accept it, this new legal interpretation would basically be binding in the future.

Now, several challenges have now been filed in the DC circuit. These are challenges by environmental groups, public health groups, and states, and those challenges are really just getting started. Briefing has not even yet begun in them, but that briefing probably will start soon and that'll start to give us a sense of how parties are making these arguments, how the government is responding.

Sara Dewey:

Thanks, Erika. Carrie, let's also talk about power plant greenhouse gas standards and the rescission that was released this fall.

Carrie Jenks:

So this past September, most of the greenhouse gas standards that were finalized by the Biden administration have been rescinded. They've proposed this earlier in the administration and they finalized it this fall. Most of the standards that they rescinded were based on carbon capture and sequestration for some plants as well as co-firing with natural gas for other plants. The rescission was largely based on EPA's conclusion that carbon caption sequestration or CCS was not adequately demonstrated as required by the statute. They argued that carbon capture sequestration was difficult and too expensive to deploy. It was infeasible to get the infrastructure in place for a series of reasons, which you can talk about more about the fact that those installations required actions by third parties. For co-firing, they said that that wasn't allowed because that was essentially generation shifting and they argued that that's what the Supreme Court had rejected in *West Virginia versus EPA*.

At the same time, they also released a supplemental proposal that took comment on the question of whether EPA's conclusion was accurate, that it does not have the authority to regulate greenhouse gases for power plants under the section 111, which is the statute here at issue for power plants in a way that aligned with the Endangerment Finding that Erika just talked about. So the challenges to the rescission of the standards were just filed and comments are due on the supplemental proposal in early November.

Sara Dewey:

Let's also mention methane regulations for the oil and gas sector, which the administration has proposed to significantly weaken but retain. This rule just came out, so we're still wading through it, but it's interesting in how it differs from the power sector rule. Carrie, do you want to say a little bit about that?

Carrie Jenks:

Exactly. I think it's really interesting to see how they've approached it for vehicles and power and how that is different for the methane rule. So I'll back up.

So the Biden EPA strengthened methane regulations for the oil and gas sector under the same section that we talked about for power plants, section 111 of the Clean Air Act. And the methane regulations are often referred to as Quad O, so OOOOB and OOOOC. In April 2026, the Trump administration took the first step to weaken

some of those rules by loosening requirements, but the second proposal was just released this week and it's a proposal that's much more comprehensive in terms of a rollback to many of the other OOOO standards. As you mentioned, Sara, we're still digesting, we're still reading it, but some of the parts that I think are important to flag, it reduces the stringency, it adds flexibility. Many of those aspects were asked for by industry, but I think it's much more of a rule that you would expect an administration that wanted to do deregulatory action in terms of adding flexibilities and adding less stringent requirements, but there's still requirements that are part of that rule. So if you can compare that to power plants where they said, "No, there's nothing possible, we're not going to do any regulation." Methane, they are still regulating many components.

The other parts though, and I want to flag three, it's more consistent with how they've approached it for power and vehicle, and we can talk through some of the legal theories that they're asserting. One is the Super Emitter Program, which allowed EPA to certify third parties to report large emission events and leaks. And if those emission leaks were because a company, an operator, was violating an actual standard, then the EPA required them to go out and fix that leak. So they've eliminated that program.

They've also proposed to exempt low producing wells, are often called marginal wells, and then they are also proposing to no longer require newer wells to not flare gas that's associated with oil. So a lot of times in an oil production field, you get associated gas and the Biden rule said you've got to make sure you move that gas to a pipeline and sell it. And this rule is saying if you can't do that, then we're going to allow you to flare or not necessarily have to sell that gas to a pipeline.

So it's important to note that EPA is planning to significantly loosen the methane regulations, but for now it's proposing to continue to regulate. And so I know we'll talk more about that, but I think that's a stark difference when you compare how they're approaching oil and gas to how they've eliminated the regulations for power and vehicles.

Sara Dewey:

Carrie, did the EPA say anything about its legal authority in the methane rule?

Carrie Jenks:

So they did ask for comment or they do at least acknowledge that they are rescinding, they're proposing to not have authority to regulate power plants under section 111. And they give a nod to say, "We may think about its authority to regulate methane" depending on how it finalizes the power plant rule that they have out for proposal. And so they may come back to this, but we'll have to see. I think it's telling though that their entire rule is based on the fact that they are assuming they have authority to regulate methane under section 111.

Sara Dewey:

Great, thanks. We'll come back to some of those similarities and differences between these rules.

But first, Erika, you mentioned the federal vehicle standards, and I think we should also mention the California waivers for vehicle standards. So to remind listeners, under the Clean Air Act, California has long set its own more stringent vehicle standards, which other states can opt into. And in this administration, EPA sent the waiver decisions that allowed California to have stricter regulations to Congress for review and disapproval under the Congressional Review Act. Erika, this was an unprecedented move. So can you talk about why and the status of litigation challenging it?

Erika Kranz:

Sure. So the Congressional Review Act lets an incoming Congress review rules finalized by a prior administration within a certain timeframe. It's 60 Senate session days. It's a little tricky to calculate, but the long and short of it is it's a short look back window, but it will catch normally rules finalized in the last few days of an administration.

So there's two things going on. First of all, this was the first time that EPA had ever characterized its California waiver decisions under the Clean Air Act as rules at all for purposes of the CRA. Normally when an agency finalizes a rule, it sends it over to Congress for consideration under the CRA. EPA had not been doing that with the California waivers because it didn't deem them rules. And indeed last summer, two bodies that look at decisions and adjudicate whether they are rules for purposes of the CRA, that's the Government Accountability Office and the Senate Parliamentarian, they both looked at these waiver decisions and also concluded they weren't rules for purposes of the CRA. Nevertheless, EPA sent them over, Congress took them up and vetoed them using the CRA, which basically nullifies the rule. And also the CRA contains a provision that says an agency may not make a future rule that is substantially the same as a rule that has been vetoed.

The other way that EPA's practice with these waivers has differed from some past practice is it is now sent over older waiver decisions on the theory that because it didn't send them when initially made, now that it is treating these as rules for purposes of the CRA, it's sending them over for the first time and Congress is taking a fresh look at them with the intent, of course, that Congress will veto them.

So EPA sent over three California waivers last summer. This year it proposed to send over four more, and those have generated litigation. There have been several challenges filed, one about the set of waivers that were vetoed by Congress last year, and then several more challenges about EPA's decision to send even more waiver decisions to Congress for veto this year.

And one of the challenges about EPA's move this year, a court entered a preliminary injunction preventing EPA from sending those waiver decisions over. Now, EPA has appealed, arguing among other things, that the CRA blocks judicial review of whether those decisions were the type of thing that Congress can veto. So we'll have to see what the DC Circuit says in that case and what the other courts that are hearing these challenges think about reviewability and the other questions raised in those challenges.

Sara Dewey:

Before we turn to talk more about litigation, I wanted to also mention that along with these sector specific rollbacks, the administration has also taken steps to eliminate economy-wide greenhouse gas reporting under the Greenhouse Gas Reporting Program, which requires large emitters in many sectors to report emissions to the EPA. The administration has delayed reporting and proposed to end data collection for all sectors reporting under the program except for oil and gas, and it would pause reporting for that sector and then it would pick back up in several years. This is a really important data source for policymakers and for industry, and many stakeholders did not support eliminating it.

Turning now from this kind of overview of where things are with these different pieces of regulation, the administration is also filing litigation to prevent states from taking action on climate change using their own state laws and state regulations.

Erika, can you talk about what steps we've seen DOJ try to take to limit state climate action through the courts?

Erika Kranz:

Last year we saw the United States file several affirmative suits to prevent state action related to climate change. These were suits to prevent states from using their own tort laws to hold companies liable for some portion of climate change related damage that the state is experiencing. And there were also suits to block states from using their enacted climate superfund laws, which are basically cost recovery statutes that require companies to contribute to a fund that the state can then use for climate adaptation and resilience programs.

The United States has argued in these affirmative cases that states can't use those kinds of suits and laws either because the Constitution blocks those types of actions, something about the Constitution structure and the relationship between states or between states and the federal government or because those kinds of state actions are preempted by the Clean Air Act. So we have a constitutional argument and we have a statutory argument.

The government has also made its views known, tracking those same kinds of arguments in some other cases where states or local governments have actually brought suits against companies. And one of those cases just made its way to the Supreme Court where the United States, along with oil and gas producers, has argued that the Constitution or the Clean Air Act prevents that case from going forward. In that case, as you mentioned, Sara, is *Suncor versus Boulder*. It was argued in the Supreme Court on October 5th.

Sara Dewey:

This gives us a sense of the level of uncertainty we're operating in as we're seeing these rollbacks and litigation. And of course the legal challenges to the deregulatory actions are all in early stages, but we're already seeing some clear themes emerge in the rulemakings that I think it's important to discuss. So let's start with EPA's legal authority here, which the agency has attempted to narrow drastically in the Endangerment Finding rescission.

Carrie, can you talk about how the EPA is interpreting its Clean Air Act authority to regulate greenhouse gases differently in different sectors and the risks that could pose and talk about sections 202 and 111 of the Clean Air Act and how the administration is deploying them?

Carrie Jenks:

So section 202 is the section of the Clean Air Act that deals with vehicles, and section 111 is for stationary sources. And the language about endangerment is similar in both 202 and 111. The words are, "Cause or contribute to air pollution, which may reasonably be anticipated to endanger public health and welfare." And there's pretty much similar language in both of those sections. So it makes sense when you think about vehicles and power, that as EPA evaluated its analysis for vehicles, we're seeing many of those same arguments asserted for the power sector because they're saying that both sectors don't cause and contribute and that if you were to regulate them, it's de minimis and you wouldn't actually affect a global climate change if you're only addressing one segment of the problem. But as you mentioned at the beginning, those are our largest sectors of greenhouse gas emissions in the US, and there's a lot of good arguments for why EPA has authority.

It's clearly in tension, and we've all written about this tension with *Massachusetts versus EPA*, which directed EPA to evaluate whether these pollutants endangered public health and welfare. But EPA is trying to argue and assert legal authority to say EPA doesn't have this authority. Then you look at the methane rule, and as I was mentioning, they go into detail and try to make flexibilities in terms of how the industry needs to comply with these standards. And we can debate whether those flexibilities are needed or not, but they don't argue that they don't have authority to regulate methane and we're under the same section 111 statute. I think there are reasons for why they're doing that. I think some of the reasons that I suspect are sort of driving them to this decision is that there was a Congressional Review Act during the Biden administration on the first Trump administration's actions on methane.

We also had under both the Inflation Reduction Act and the One Big Beautiful Bill, both administrations kept the waste emission charge in place. The Trump administration delayed it, but it didn't repeal it. And so there's both examples of where Congress has presumed that EPA would regulate methane under section 111. I think those are all really strong arguments for why EPA has authority to regulate methane under the Clean Air Act. I think there's also strong actions by Congress for both power and vehicles on how they also expected EPA to regulate greenhouse gases from those two sectors. So I think when you start to pull that back, there are some tensions

and it's going to be important to understand how do different stakeholders respond to that, how do the courts respond to it, and what do the briefs say about this tension?

Erika Kranz:

Carrie, can you say a little more about how Congress's use of the Congressional Review Act to reject Trump era methane rules could be interpreted as a congressional assumption that EPA does have authority to regulate?

Carrie Jenks:

Yeah, so it is complicated, but I'll try to do it concisely.

When the Biden administration started, the Trump administration had just finalized a rule that would not have regulated methane emissions from existing oil and gas sources. And Congress, during the first few months of the Biden administration, used the Congressional Review Act to reject that. So the legal theory would be Congress has spoken very clearly that they expect EPA to be regulating methane emissions from existing sources. But once you go down that path and accept that Congress has spoken on that, plus the waste emission charge, I think there's other examples of where they've also spoken or assumed EPA had authority to regulate power plants and vehicles. So it'll be important to watch how those tensions are responded to in the courts and how courts respond. At the same time, and Erika, maybe you can talk about this, the Department of Justice is also defending or thinking through whether some of these regulations preempt states or whether states can regulate. So can you talk a little bit about those tensions as well?

Erika Kranz:

Right. So in *Suncor* and those other cases where the United States either has filed its own case to block state laws or is sort of weighing in in other people's cases, the United States is making preemption arguments that basically the federal government has all the authority to regulate and the states have none. That statutory preemption argument basically goes that the Clean Air Act makes EPA the primary decision maker about what levels of emissions are allowed and any state actions that might cause courts to reach different conclusions about reasonable amounts of emissions or to apportion liability in some way that is tied to emissions or production of fossil fuels. Any of that is preempted, basically overridden by the Clean Air Act.

And that is for sure in deep tension with EPA's conclusion in the Endangerment Finding rescission, in its no authority proposal about power plants, that it doesn't have authority to regulate greenhouse gas emissions, that Congress did not give EPA that authority, that greenhouse gas emissions just are not the type of thing that Congress was envisioning when it enacted the Act.

Now in the *Suncor* case, when the United States filed its brief, EPA had rescinded the Endangerment Finding, but not yet proposed that it had no authority to regulate greenhouse gas emissions for power plants. And you sort of see that moment in time reflected in the government's brief because the government was acknowledging, "Yes, we no longer believe we have authority to regulate vehicle emissions. We still think we have authority to regulate power plants." And of course that reality has changed, or at least the government has proposed to change that view.

But the other thing that's important to know in *Suncor* is that these statutory preemption arguments really were the government's second theory, that it's constitutional arguments were their lead theory for why cases like Boulder's should be blocked. And those theories don't depend on any interpretation of the Clean Air Act. It may be that the tension between the government's statutory preemption arguments and the reality of what EPA is doing in its deregulatory actions, maybe that tension is part of the reason that the United States is centering these constitutional arguments. We don't know, but the parties that have participated in that case for sure have recognized the tension in the United States arguments there.

In any event, the top line takeaway from *Suncor* is that what we're seeing is the government back away from federal regulation of greenhouse gases, first from vehicles, now power plants, now methane, at least somewhat, while also blocking states from taking their own actions using state tort law or climate superfund laws to help recoup costs that they're incurring from climate change related damage and also potentially to discourage future emissions. And we're also seeing that, we could tie that back to the California Waiver Congressional Review Act vetoes. This was another way of blocking state regulatory action. And if EPA's actions sending those decisions to Congress for veto, if that is validated by courts, the way the Congressional Review Act works would prevent a future EPA from making a decision that is "substantially the same." It's a little unclear at the moment what exactly that phrase means and how it works in practice, but there's some potential that that phrase could be read quite broadly and prevent EPA from granting similar waivers in the future.

Sara Dewey:

Despite the legal tensions between some of these rules, we are seeing trends in how EPA is approaching these rulemakings. So let's talk about some of the common themes we're seeing in the regulation and in the administration's approach to their analysis.

Carrie Jenks:

I think there are some really interesting themes now that we have three rules to be looking at. So the first one I would start with is that they don't need to consider alternatives. We see that in power plants and vehicles. And ordinarily when an administration takes an action, agencies need to consider alternatives to that action. It's a basic concept in administrative law. And EPA asserts in the context of the power plant standards that they don't need to consider alternatives because they're about to finalize a rule that repeals their authority to actually regulate. And that is sort of saying, "We don't have to do our job because trust us we're going to do something in the future" that I think will be interesting to see how courts respond to that. It's not an exception that has been tested before, been recognized by a court. Rather, the Supreme Court has recognized that even when an agency concludes that a policy or a program's illegal, there may be alternatives that they need to at least evaluate. They can reject them, but they at least need to evaluate.

And in this final rule that we just saw on the power plants, they've not even considered alternatives. So one alternative, for example, that could be considered would be a less stringent carbon capture requirement. The Biden administration said you had to meet a standard that was consistent with a 90% capture rate. There are other projects that are being demonstrated and being operationalized that capture less CO2, and they didn't consider whether that less stringent standard would be justifiable.

Erika Kranz:

And that would make sense, right? Because at this moment, EPA has said the reason that it's rolling back power plant emission standards is because of technical reasons, cost, effectiveness, difficult rollout. But in the rule, EPA doesn't consider things like you said, weaker standards or maybe a longer rollout period, right?

Carrie Jenks:

Exactly.

Erika Kranz:

The other thing that I would connect to this is that also in EPA's power plants rule, they also said that because they are simultaneously proposing to determine that they don't have authority to regulate at all, they're also relieved from the obligation to consider reliance interest, basically the idea that when you are changing a big regulation upon which industry or states or communities have relied, you need to consider the effect of your

rollback on that reliance. And EPA said, "Well, actually we don't need to do that because we have this new legal interpretation that we are proposing at the same time."

Now, EPA did give at least some treatment to reliance interest in its role. It was relatively thin, but again, it will be interesting to see if this is sort of continuing trend of asserting no requirement to comply with what has previously been seen as a requirement by the Supreme Court.

Sara Dewey:

I'll also mention in these rules, EPA has decided it doesn't need to quantify health harms of ozone, particulate matter, or greenhouse gas pollution. The power plant rule is a recent example where the administration talks a lot about reduced compliance costs for operators and the cost to taxpayers of certain tax credit programs, but it doesn't talk about the public health costs, which will be significant with the repeal of these standards. It just says that the costs are unquantifiable. And I think it's worth mentioning that just two years ago, EPA said that all those climate and health benefits from reduced emissions in the Biden era rule had a value of more than $300 billion for the American public.

Carrie Jenks:

I think that's a great point. The one other one I wanted to add is that we're seeing a new argument asserted in both the methane rule and the power plant rule that if compliance with the standard requires regulated entities to rely on third parties or significantly rely on actions by third parties, that's too much to require industry to do. So I think it's a really interesting argument to pull apart because any environmental regulation usually requires a company to install a technology or to operate their plant differently.

So if you think about a traditional power plant rule for acid rain, for example, a longstanding successful program that required companies to put scrubbers on their power plants to control emissions, that required manufacturers to build those scrubbers and power plant installers to then install them on the power plants. So that required a third party, but here they're saying no, for CCS, for example, you need pipelines to be built out and therefore we can't require that infrastructure to be built. It's too much reliance on third parties. You see that also in some of the components of the methane rule where it's saying you need people to build pipelines to take away that associated gas, and that can't be allowable. That's too costly and it's not in the control of the regulated entity. So I think it's a novel argument that they're asserting in these two rules and one to watch to see how courts respond to that.

The other piece I wanted to mention is for the methane rule, the Super Emitter Program, that was a Biden approach where they said if satellites or aerial surveys start to see a huge emission leak, they would tell EPA that we see this emission leak. EPA would let an operator know. And as I said, the operator would then have to go fix it if it was a violation. If it was an allowable emission, then that was fine. A company could go forward with it. But I think it's important to step back. A Super Emitter Program sounds like a really big new novel program, and there's no doubt that this administration wanted to get rid of this program. But if you had an industrial plant that had a huge emission plume that was orange, for example, there'd be no doubt that a third party could call EPA and say, "Guess what? We see something happening out of this plant. Go look and see what's happening." And that's really what is happening with the Super Emitter program. The problem is methane doesn't smell, you can't see it. And so you need this special equipment like satellites to detect methane. And so the Biden EPA was trying to find a way to get good information out to operators.

And no doubt it's important to figure out is it actionable? Can a company find the leak that was happening when it happened? All of that infrastructure would be needed to work well. But I think by just striking it out and not figuring out how an alternative or how to make it work better, I think that's a theme that we're seeing. This EPA is saying, "No, we're just getting rid of it," as opposed to really wrestling with how do you make it work and implementable and actionable and actually address emissions.

Sara Dewey:

So those are some of the trends in terms of the substance of rules that we've been observing. What are we seeing in terms of sequencing of these deregulatory steps?

Erika Kranz:

So we're seeing some interesting step-by-step regulatory action and some unusual mechanisms. So methane, as Carrie has talked about, I think provides the best example of this.

We have EPA sending one part of its methane regulations to Congress for veto under the Congressional Review Act last March. Then last July EPA used an interim final rule (IFR) to delay a lot of its other methane regulations, delay the compliance deadlines by 18 months, and it finalized that delay then in December. Using the IFR is a way to immediately change regulatory effect instead of notice and comment we think is the normal process for agencies changing their regulations where you have the notice and the comment period first and then the legal effect. It sort of does it all at the same time. It rolls out an immediately legally effective rule, then takes comment and then finalizes it later. And now in October of 2026, we have EPA proposing the actual rollback of methane regs and also having this request for comments on its legal authority.

The power plants rule provides another example where we have the final rule this September rolling back the regulations, but also at the same time, the supplemental rule asking for comments on whether EPA has authority at all.

So again, these are examples of these incremental steps that have allowed EPA to take immediately effective actions with little process sometimes and achieve the results that they're looking for in this stepwise way.

Sara Dewey:

Before we wrap up, let's talk about how stakeholders are responding to these rules, especially given that in some contexts, the administration is going further than industry has asked and in the case of the Endangerment Finding went further than most industry groups even wanted. Carrie, can you talk a bit about this?

Carrie Jenks:

Yeah, and I'll build on what Erika was saying, the regulatory process, remember, is hard. It takes time, it takes resources, it takes expertise to do it well. And I think this administration has a priority to go fast. And so the sequencing I think is important to think about, as industry looks at all these rules, in the end, industry wants to know what do they have to comply with and when? And the sequencing is making it hard to know, is EPA going to say they have authority? Do courts agree with that? Do they have to comply with rules? What are those rules? How do they make investment decisions when their investment decisions last longer than a four-year election cycle, it's 10, 15 years. And so it's really hard for them to start to make those decisions about what they're going to make investments in and what is that timeframe.

In the comments, we saw industry asking for a durable legal framework. I think it's why you might have seen this administration move faster with rescinding the Biden power plant rules and then taking the time to figure out whether they have the authority or not that might be responsive to what industry was asking for. I think why they're regulating methane, industry oil and gas companies have made investments. Remember, methane is the product. Methane is gas. And so to the extent a company is trying to demonstrate to buyers that they've got the infrastructure to reduce their emissions, but also sell more product, there's multiple reasons why a company might want to have rules on the books to allow them to demonstrate that they're complying with that.

I think generally speaking though, industry is always going to be in favor of giving them more time. People want more time to comply. They want to comply in their own way. But what I think industry is broadly saying is they want rules in place. And so I think the question of whether EPA has authority is starting to really raise up how do

you have certainty if you have no authority to regulate EPA? You end up maybe with a patchwork of states doing different things. And that raises some of the questions Erika was raising is what is the state's authorities? Who has what authority? And that creates a lot of confusion, which is not good for investment decisions.

Sara Dewey:

What do you expect to see next in terms of deregulatory developments and what should we be watching?

Carrie Jenks:

So Erika talked about the court cases that we're watching for. There's no schedule yet that we can point to. We're waiting for the briefing schedule for the Endangerment Finding. Power plant litigation is just starting. We're waiting for EPA to finalize the supplemental proposal on its authority. And then the methane rules that we're talking about, remember those are just proposals. So there's a lot of work still to be done. So we're watching how do the briefs get filed and how do courts start to do that? And then how are commenters responding to the methane rule as well as a supplemental proposal for power plants?

Sara Dewey:

And Erika, turning back to the *Suncor* case where we'll have a decision by next summer that could shape the role of states in future greenhouse gas regulation and litigation, what are some of the outcomes you're watching for?

Erika Kranz:

So like I said, the case was just argued on October 5th and lots of people like to listen to Supreme Court arguments and guess what's going to happen. And I'm certainly not going to do that. And from the analyses I've digested, it seems like a lot of people are really not sure which way this one is going. The Justices' questioning, which is just questioning, it's not necessarily a preview of their views. The questioning really didn't tend to suggest any particular approach or outcome. So there's a lot of possibilities that are live. And one of those possibilities is that they dismissed the cert petition. It's not dismissing the whole case, but just sort of saying, "Hey, we're not actually going to rule in this case. We're going to send it back to state court without a ruling." That's possible. The Court asked the parties to brief question basically whether the case was properly before the Supreme Court.

And the fact that they asked for that briefing means at least some Justices were interested at that question. There wasn't a lot of time spent on that argument, but if the court did decide to do that, the case would go back to Colorado State Court where it would proceed, where presumably the defendant companies would raise some other defenses. The case is not anywhere close to a final resolution.

If Boulder prevails in the case and the court affirms the Colorado Supreme Court's decision that Boulder's claims are not blocked by federal law, that would basically mean the same thing. The case would go back to Colorado State Court for further proceedings, but the Court's reasoning, because in this scenario, the Supreme Court is writing some kind of decision saying that the US Constitution and the Clean Air Act do not block or preempt these kinds of cases, and that reasoning would then apply to the many other cases that are also pending that raise these kinds of issues, unless of course those cases are distinguishable for some reason.

So that could mean that the preemption arguments that the federal government and companies are raising in those cases get resolved in favor of states and tribes and local governments. But again, that also depends on how broadly or narrowly the Supreme Court writes a decision. And that's true also if Suncor prevails, how far a Supreme Court decision sweeps necessarily is going to determine what kinds of cases would end up blocked. And even if the decision could block claims about other kinds of pollution or even other kinds of interstate harm. If the Court's decision rests on the meaning of the Clean Air Act, that's something that Congress could address. Congress could speak clearly about whether it thinks the Clean Air Act does or should or should not block

particular types of state action. But if the Court rules on a constitutional theory, that would presumably not be the kind of thing that Congress could come in and resolve.

So without knowing what the decision will be, who will prevail, how broadly it will sweep and in which direction, it's hard to say how states and other entities are going to respond. But safe to say everyone will be dissecting this decision when it comes out to figure out what it means and what opportunities are still available for states to take their own climate-related action, particularly in this era of federal backtracking on greenhouse gas regulation from all different kinds of sectors we've been talking about today.

Sara Dewey:

Right. So depending on how *Suncor* and the cases challenging the Trump administration rules shake out, there will be a range of opportunities to rebuild climate authorities in part or in whole in the next administration. So Carrie, can you talk a little bit about how you're thinking about restoring legal authorities to regulate greenhouse gases?

Carrie Jenks:

I think we're starting to see in multiple conversations, whether it be industry-led or advocacy-led or by states that we need something that's durable. And by durable, you want something that sticks, that courts uphold, that industry understands what they need to do by when, and that we have a certainty about what emissions outcomes will result. So all of that makes it uncertain, but I do think that there's a moment to say, what could we do and how do we do it differently? How do we start to design rules that allow companies to make investment decisions, give them the incentives to reduce and make sure that the economics work?

There's a lot of conversations about affordability and data centers and all of that makes it more complicated. But I also think it creates an opportunity to say, we need an energy policy and what does that look like? How does industry respond to different market mechanisms? How do they build out the grid? How do they invest in new technologies? And what technologies start to be developed depending on what market signals get sent? So I don't know that I have a good answer, but I think those are some of the things to be watching for.

Sara Dewey:

Well, thank you both so much for this conversation.

Carrie Jenks:

Oh, thank you. This was fun.

Erika Kranz:

Thanks so much.