Mitigating Litigation Risks in an Ever-Changing International Environmental Regulatory Climate

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On March 12, 2025, "The U.S. Environmental Protection Agency (EPA) Administrator Lee Zeldin announced the agency will undertake 31 historic actions in the greatest and most consequential day of deregulation in U.S. history, to advance President Trump's Day One executive orders and Power the Great American Comeback."[1]

The deregulation measures contemplated and eventually executed by the EPA since that announcement have dramatically reduced standards for compliance in regulations on power plants, mercury and air toxics standards, greenhouse gas reporting, wastewater regulations for oil and gas development, and standards related to oil and gas refineries and other chemical processing plants.

[1] EPA Press Release, EPA Launches Biggest Deregulatory Action in U.S. History, March 12, 2025.

The EPA's deregulation efforts raise serious concerns for private interests operating in the United States. Such risks are evident in the EPA's recently announced rule rescinding the 2009 "Endangerment Finding" issued by the EPA during the Obama Administration. The Endangerment Finding was produced in response to the U.S. Supreme Court's Opinion in *Massachusetts v. EPA*, 549 U.S. 497 (2007), wherein, the Court held that greenhouse gases, including carbon dioxide, qualify as "air pollutants" under the Clean Air Act's (CAA) broad definition in (42 USCS § 7602g), which encompasses "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter which is emitted into or otherwise enters the ambient air." The Court further determined that the EPA has the statutory authority to regulate greenhouse gas emissions from new motor vehicles if it finds that such emissions "may reasonably be anticipated to endanger public health or welfare" under § 202(a)(1) of the CAA 42 USCS § 7521. Prior to the Court's ruling the EPA had refused to regulate greenhouse gases based on its conclusion that the EPA lacked such authority and on policy considerations, including economic implications and the potential impact on international negotiations. The Court rejected these justifications, holding that the EPA's decision must be grounded in the statutory text and scientific evidence, not policy preferences.

As a result of the Court's ruling the EPA issued its Endangerment Finding in 2009 which set forth a broad spectrum of regulations effecting the emissions of carbon dioxide and other greenhouse emissions. Repeal of the Endangerment Finding has created havoc within the environmental regulatory world. The EPA's rescission of the Endangerment Finding was immediately challenged by several Non-Governmental Organizations ("NGO") in the matter styled *Public Health Association et al. v. U.S. Environmental Protection Agency et al*., case number 26-1037, in the U.S. Court of Appeals for the District of Columbia Circuit. As litigation proceeds companies are left without clear guiding standards to follow.

The risks of these deregulation measures are not solely the risks faced by the EPA from lawsuits brought against the EPA. Companies involved in producing emissions have an independent duty to comply with the minimum requirements of the CAA. Where the EPA refuses to enforce those requirements, or misinterprets those requirements, then municipalities, states, NGOs, and individual private citizens may sue the companies polluting the environment through direct actions by powers granted in the CAA and other environmental acts.

Under the CAA, qualified persons may commence direct civil actions against violators of emission standards or limitations, or against the EPA Administrator for failing to perform non-discretionary duties. 42 USCS §7604, 5 USCS §702. Similarly, under the Clean Water Act ("CWA), citizens may bring actions against violators of effluent standards or limitations, provided they comply with the notice requirements and other procedural prerequisites. 33 USCS §1365.

Additionally, the EPA's deregulation efforts have significantly reduced standards for required environmental reporting. As publicly traded corporations report their environmental impacts as part of their statutorily required statements under securities and exchange rules, and make other statements that investors may rely upon in their investment decisions, corporations may find themselves caught in a situation where compliance with the minimum EPA requirements exposes them to derivative actions for misrepresenting the company's environmental measures. Suits related to environmental reporting may be brought through private actions under the various environmental statutes or through derivative shareholder actions which claim fraud or misrepresentation.

This panel will explore these and other scenarios to raise the awareness of deregulation measures and the risks that environmental deregulation presents to corporations producing emissions.

The Panel will also address significant deregulation that is taking place in European countries as is discussed in the attached report from the European panelists.

THE IADC 2026 ANNUAL MEETING

Written Materials for the Panel Discussion
The EU Perspective

Deregulation or Strategic Adjustment? ESG Developments in the EU and Their Legal Implications for Environmental Litigation and Greenwashing

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I. Introduction - Political and Regulatory Context

1. Over the past several years, the European Union has been operating under exceptional geopolitical and economic pressure. Russia's aggression against Ukraine, persistent inflationary trends, energy price volatility, intensifying global competition (particularly from Asian economies) and renewed instability in the Middle East, have collectively exposed some weaknesses in the EU's industrial and regulatory model.

2. The European Union has begun to change its regulatory approach in an effort to sustain economic resilience without abandoning its long-term climate objectives. One of the catalysts for this shift was the report on European competitiveness prepared by Mario Draghi (former European Central Bank President), published in September 2024, which offered a candid diagnosis of the European economy. The report identified three priority areas for action: closing the innovation gap with the United States and China, developing a coherent strategy that reconciles decarbonisation with competitiveness, and strengthening security while reducing strategic dependencies. At the same time, it highlighted several obstacles, one of the most significant being the excessive regulatory burden imposed on European businesses.

> "If Europe cannot become more productive, we will be forced to choose. We will not be able to become, at once, a leader in new technologies, a beacon of climate responsibility and an independent player on the world stage. We will not be able to finance our social model. We will have to scale back some, if not all, of our ambitions. This is an existential challenge."
>
> *Report by Mario Draghi, "The future of European competitiveness. Part A. A competitiveness strategy for Europe", page 5.*

3. In February 2025 the European Commission announced a coordinated legislative response consisting primarily of two parallel initiatives:

- the Omnibus Simplification Package (Omnibus) and
- the Clean Industrial Deal (CID).

4. Although frequently labelled “deregulation” in public discourse, the Commission has consistently referred to these measures as a simplification agenda rather than a retreat from climate objectives. The underlying premise is not abandonment of environmental ambition, but its recalibration.
5. A similar logic underpins the announced review of the EU Emissions Trading System (EU ETS), long regarded as the cornerstone of EU climate policy, but increasingly criticised for its cumulative cost impact on energy-intensive industries and electricity prices, particularly in the member states undergoing energy transitions.
6. Beyond their immediate regulatory objectives, the Omnibus, the CID and the announced review of the EU ETS also shape the future enforcement landscape of environmental law. By narrowing mandatory ESG reporting[1] and refocusing climate policy on material emissions and industrial decarbonisation, the EU is subtly altering how environmental obligations are tested and enforced. These changes foreshadow a gradual shift from predominantly administrative oversight towards increased reliance on civil litigation and private enforcement– a development that provides the broader context for the analysis set out below.

II. Deregulatory Measures or Strategic Adjustments?

2.1. Clean Industrial Deal

7. The Clean Industrial Deal (CID) is a European Commission strategy launched in February 2025. It marks a deliberate shift in the centre of gravity of EU climate policy. Rather than further expanding reporting and disclosure obligations, the CID prioritises the actual deployment of decarbonisation technologies at scale, particularly in sectors where emissions reductions have systemic relevance, and boosting demand for clean products.
8. The initiative focuses on energy-intensive industries such as steel, cement and chemicals, as well as clean-tech and net-zero technologies. Another element of the CID strategy is circularity which aims to reduce waste and extend the life of materials by promoting recycling, reuse, and sustainable production. The CID is underpinned by a substantial financing framework. Through the mobilisation of over EUR 100 billion, a simplified state aid regime and new financial instruments, including the proposed Industrial Decarbonisation Bank and the expanded InvestEU programme, the EU aims to turn decarbonisation into a driver of growth for European industries[2].
9. Importantly, the Clean Industrial Deal does not dilute environmental targets. Instead, it reallocates regulatory attention from procedural compliance towards tangible emissions reductions, recognising that reporting obligations alone do not decarbonise heavy industry.

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[1] ESG is an acronym for Environment, Social and Governance. These are criteria for assessing a company's non-financial performance, as well as factors that affect the value and rating of an organization.

[2] Read more: https://commission.europa.eu/topics/competitiveness/clean-industrial-deal_en.

2.2. The Omnibus Simplification Package

10. On 26 February 2025, the European Commission adopted the Omnibus Simplification Package, covering multiple legislative areas including the Corporate Sustainability Due Diligence Directive (CSDDD), Corporate Sustainability Reporting Directive (CSRD), Carbon Border Adjustment Mechanism (CBAM), the EU taxonomy and InvestEU.
11. The declared objective is to simplify EU rules (reduce administrative burdens by 25% for all businesses and at least by 35% for small and medium-sized enterprises – SMEs), boost competitiveness, and unlock additional investment capacity.
12. At its core, the package reflects a decision to concentrate mandatory ESG obligations on entities with the greatest environmental footprint, while shielding smaller actors from indirect compliance pressure within value chains.
13. Under the proposed changes:

- approximately 80% of companies originally expected to fall within the scope of CSRD will be excluded, focusing the sustainability reporting obligations on the largest companies which are more likely to have the biggest impacts on people and the environment;
- EU Taxonomy-related environmental reporting will be narrowed and limited to the largest companies, while remaining voluntary for other undertakings;
- the environmental content of Taxonomy reporting will be substantially simplified, including the introduction of a financial materiality threshold, a reduction of reporting templates by approximately 70%, and the simplification of the most complex “do no significant harm” (DNSH) criteria, particularly in relation to pollution prevention and the use of chemicals;
- companies will be permitted to report activities as partially aligned with the EU Taxonomy, explicitly recognising transition pathways and facilitating gradual environmental transformation rather than requiring immediate full alignment[3].

14. A separate “stop the clock” directive, adopted in April 2025 postponed certain reporting obligations by two years, allowing time for legislative negotiations.
15. From an environmental (E) perspective, the Omnibus reforms confirm that liberalisation does not amount to deregulation. Instead, they recalibrate environmental reporting by narrowing its mandatory scope and refocusing it on material environmental and climate impacts. In practice, reporting is expected to concentrate primarily on:

- greenhouse gas emissions and their reduction,
- energy consumption, decarbonisation and transition pathways,

[3] Read more: https://finance.ec.europa.eu/news/omnibus-package-2025-04-01_en.

- material environmental risks.

16. As a result, companies are no longer required to provide exhaustive environmental disclosures covering the full spectrum of potential impacts where these do not meet the threshold of materiality under the revised CSRD and EU Taxonomy framework.

2.3. The European Union Emissions Trading System Under Review

17. The EU ETS operates on a cap and trade principle, with a declining emissions cap intended to ensure progressive emissions reductions. By 2023, emissions from covered installations had reportedly fallen by approximately 47% compared to 2005 levels.

18. However, growing criticism has centered on price volatility and the cumulative cost burden of the system for European industry. In response, the European Commission announced a comprehensive review of the ETS, with concrete reform proposals expected by July 2026.

19. An initial step was announced on 1 April 2026, involving an amendment to the Market Stability Reserve (MSR). Under the current system, all allowances in the reserve above 400 million are invalidated. The proposed amendment will stop the invalidation mechanism, allowing allowances to be kept as a buffer that can support market stability[4].

20. Simultaneously, in recent months, political pressure has led to the postponement of the entry into force of EU ETS2. EU ETS2 is a separate emissions trading system, which covers and addresses the CO_2 emissions from fuel combustion in buildings, road transport and additional sectors, mainly smaller industrial installations not covered by the existing EU ETS[5].

21. The call for a far-reaching revision of the EU ETS is not unanimously supported across the EU. While a growing group of member states, including Poland, has advocated postponing ETS2 and recalibrating the system in light of economic and social pressures, other member states continue to regard the existing ETS framework as a cornerstone of EU climate policy and oppose fundamental changes that could weaken its integrity.

III. Environmental Litigation and Green Claims – example of Poland within the EU

3.1. Emerging Landscape for Environmental Litigation

22. These recent EU initiatives affect not only regulatory compliance frameworks but also enforcement dynamics. By narrowing mandatory environmental reporting obligations while increasing the substantive relevance of environmental performance, decarbonisation pathways and transition strategies, they contribute to a gradual shift in how environmental obligations are assessed – from predominantly administrative

[4] Read more: https://ec.europa.eu/commission/presscorner/detail/en/ip_26_666.

[5] Read more: https://climate.ec.europa.eu/eu-action/carbon-markets/ets2-buildings-road-transport-and-additional-sectors_en.

oversight towards judicial scrutiny. This shift coincides with a broader transformation of the Polish legal landscape.

23. Traditionally, environmental disputes in Poland were resolved almost exclusively through administrative proceedings, today, environmental harm is increasingly framed as a matter of civil liability and brought before civil courts, including claims with collective or quasi-collective features. This evolution is further reinforced by a growing public and legal awareness of environmental harm, particularly air pollution, as well as by the expanding role and standing of environmental NGOs and consumer organisations, which increasingly act as drivers of private enforcement.

24. In practice, this has enabled:

- smog related lawsuits against public authorities and infrastructure operators,
- claims linked to industrial pollution (including large scale environmental incidents),
- actions initiated or supported by environmental NGOs acting in the public interest.

25. More recently, NGOs such as Greenpeace Poland have initiated civil actions against the operator of major mining facilities (Bełchatów and Turów), seeking to halt new coal investments and adopt a binding decarbonisation strategy. Although final judgments are still pending, these cases signal judicial openness to climate-oriented claims.

26. Air pollution litigation represents a particularly dynamic area. While the Polish Supreme Court has held that a general "right to clean air" is not a protected personal right in the meaning of the Polish Covil Code, it confirmed that excessive pollution may infringe protected rights such as health, personal freedom and privacy. On this basis, courts have already awarded compensation to individuals exposed to unlawful air quality levels.

27. Poland has a dedicated statutory regime for group proceedings (class actions). Although environmental cases have so far appeared only sporadically within this framework, a notable example is a group action filed in 2019 before the Regional Court in Warsaw against the State Treasury. The proceedings were initiated by 242 claimants alleging damage resulting from long-term exceedances of PM 10 and PM 2.5 air pollution limits between 2011 and 2019. The claim is based on the alleged failure of public authorities to adopt effective and timely measures to ensure adequate air quality, resulting in persistent environmental harm and adverse health effects.

28. While these cases are still fragmented and procedurally complex, they mirror early stages of environmental litigation seen in other EU jurisdictions. Importantly, Polish courts are becoming more open to injunctive relief and declaratory claims, reducing traditional evidentiary barriers. Although environmental class actions in Poland are still at a nascent stage, they can no longer be regarded as merely theoretical.

3.2. Greenwashing as Litigation Risk

29. The planned implementation of Directive (EU) 2024/825 on greenwashing marks a qualitative change in litigation risk (work is currently underway on a draft act implementing this directive). The forthcoming legislation will:

- explicitly prohibit vague and unsubstantiated environmental claims such as “eco”, “green” or “climate neutral”;
- ban climate neutrality claims based solely on offsets;
- treat environmental representations as verifiable statements of fact, not marketing slogans.

30. The fact that only the forthcoming national legislation implementing the relevant EU directive introduces detailed rules explicitly targeting greenwashing does not mean that greenwashing has so far been permissible under Polish law. Even under the existing legal framework, businesses are already subject to specific obligations when presenting products as environmentally friendly or as delivering environmental benefits, deriving from other applicable legal acts, in particular consumer protection and unfair competition laws. This approach is confirmed by the enforcement practice of the Polish Competition and Consumer Protection Authority (UOKiK), which has pursued a number of proceedings addressing misleading environmental claims.

31. Moreover, allegations of greenwashing increasingly entail exposure to civil litigation risk, as illustrated by the lawsuit brought by ClientEarth against Nestlé Polska concerning the labelling of plastic water bottles. In that case, the claimant seeks an injunction prohibiting the use of marketing slogans and designations suggesting that single-use plastic bottles form part of a circular economy. The claim challenges statements such as “made from 100% recycled PET plastic (excluding cap and label)”, “made from another bottle”, or “recyclable”, arguing that they may give consumers the misleading impression that single-use plastic bottles are environmentally friendly, despite plastic being widely recognised as one of the major threats to both human health and the natural environment.

IV. Conclusions

32. The recent EU regulatory initiatives illustrate a fundamental shift in the architecture of environmental and climate governance. The Omnibus, the CID and the prospective reform of the EU ETS do not signal a retreat from environmental ambition. Rather, they reflect a strategic reprioritisation: fewer formal obligations, but a sharper focus on material emissions, industrial transformation and market-based incentives.

33. At the same time, this shift carries important consequences for legal risk. As regulatory compliance moves away from exhaustive reporting and towards selective, impact-oriented obligations, ESG narratives increasingly migrate from reports into contracts, investment decisions, marketing materials and, ultimately, courtrooms.

34. Poland offers a particularly instructive example of this dynamic. Long perceived as a jurisdiction dominated by administrative environmental law, it is now emerging as a forum where climate- and ESG-related disputes are progressively reframed through private law instruments, including consumer claims, NGO-driven strategic litigation and group proceedings. Understanding this framework will be essential for navigating environmental risk in the years ahead.

Legal Updates

UNDOING THE CLIMATE ENDANGERMENT FINDING: IMPLICATIONS FOR INDUSTRY, REGULATION AND LITIGATION

Environmental Update

04.01.26

On February 12, the Trump administration finalized what it described as the largest deregulatory action in U.S. history: rescinding the Environmental Protection Agency's (EPA) 2009 Greenhouse Gas Endangerment Finding (Endangerment Finding) and the corresponding vehicle greenhouse gas (GHG) standards. The announcement marked the culmination of a process that began on day one of the president's second term when he issued Executive Order No. 14154 – Unleashing American Energy (Jan. 20, 2025), which directed EPA to submit a recommendation on the continuing applicability of the Endangerment Finding.

This action carries immediate consequences for regulated industries, public health, state regulators, litigators and corporate sustainability officers alike. Thompson Hine is actively monitoring ongoing legal challenges and advising clients across sectors on how to respond.

BACKGROUND: THE ENDANGERMENT FINDING AND BASIS FOR ITS REPEAL

On December 7, 2009, the EPA Administrator signed two findings under Section 202(a) of the Clean Air Act (CAA). The first concluded that six key well-mixed GHGs – carbon dioxide ($C0_2$), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF_6) – constituted air pollution threatening the public health and welfare. The second concluded that the combined GHG emissions from motor vehicles and motor vehicle engines contributed to GHG pollution threatening public health and welfare. For over 16 years, these findings served as the legal and scientific cornerstone for a broad array of federal GHG regulations spanning aircraft emissions standards, oil and gas facility rules, power plant emissions limits, and beyond.

In repealing the Endangerment Finding, EPA generally relies on a series of new statutory interpretations of Section 202(a) of the CAA to support three core positions:

- Congress only delegated authority to EPA to regulate pollution with local or regional impacts and vehicle GHG emissions do not contribute to pollution that impacts the public health and welfare.
- The Endangerment Finding was unreasonable because regulating air emissions would be costly and futile without a measurable impact on climate.
- The Endangerment Finding would violate the Major Questions Doctrine, since Congress had not given EPA authority to regulate air emissions on the scale required.

Much of the repeal's reasoning rests on previous arguments the U.S. Supreme Court rejected in *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007). In that case, the court rejected EPA's argument that Congress did not intend for it to regulate air pollutants that contribute to climate change under Section 202(a) of the CAA, finding that Congress's definition of "air pollutant" was "sweeping" and "unambiguous." *Id.* at 529. EPA's revival of that stance raises the open question of whether the agency will ultimately push for the case to be overturned – a move that would have significant ramifications for currently pending state climate litigation.

Notably absent from the final rule is any reliance on, or evaluation of, climate science to invalidate the Endangerment Finding. In its initial proposal, EPA asserted that the Endangerment Finding was premised upon “unduly pessimistic” views of climate change and failed to account for positive impacts, but this basis was removed from the final rule.

ACTIVE LEGAL CHALLENGES

The repeal did not go unanswered. The legal response was swift, with environmental nonprofits and health organizations leading the charge in the D.C. Circuit. Plaintiffs include the Environmental Defense Fund, Sierra Club, Earthjustice, Clean Air Task Force, Natural Resources Defense Council, Public Citizen, Service Employees International Union, Conservation Law Foundation and American Lung Association. These challenges are likely to be consolidated into one proceeding.

Their core legal theories center on two arguments. First, that the reversal of a science-based finding without a credible scientific basis violates the Administrative Procedure Act (APA) and is arbitrary and capricious. Second, that the CAA’s statutory mandate to regulate air emissions is nondiscretionary.

State-level coordination is building rapidly. So far, 25 Republican-controlled states have intervened in support of the repeal, while Democratic-led states are expected to file their own legal challenges. Conservative estimates anticipate a D.C. Circuit ruling in mid-2027, but Supreme Court review could extend into 2029. These timelines assume neither party seeks a stay of the repeal or approaches the Supreme Court for temporary relief. Ultimately, a merits decision by the Supreme Court could settle the matter conclusively, preventing reversal by subsequent administrations and potentially binding future administrations from regulating climate change under the CAA.

CASCADING REGULATORY CONSEQUENCES ACROSS INDUSTRIES

Whether the repeal will withstand judicial review remains unclear. In the interim, affected industries face profound regulatory uncertainty that demands careful legal navigation. The Endangerment Finding did not operate in isolation; it anchored a matrix of GHG regulation across multiple sectors.

- Transportation: The repeal eliminates all GHG emissions standards for light-, medium- and heavy-duty vehicles. It also eliminates compliance incentives and mandates that drove electric vehicle adoption and fleet electrification strategies.
- Oil and gas: The repeal renders EPA’s methane rules for wells and processing plants legally vulnerable. Operators should anticipate that there may be new rulemakings and the rollback of existing regulations.
- Power generation and steel: Similarly, standards for coal, gas-fired power plants and industrial facilities that referenced the Endangerment Finding will also be vulnerable to reversal.
- Aviation: The Endangerment Finding was cross-referenced in the aviation industry’s own 2016 endangerment finding and was slated for reconsideration last spring. The industry’s corresponding emissions standards are now on uncertain legal ground.

The federal repeal of the Endangerment Finding is not the end of the story. The battleground will shift to the states. Businesses should expect accelerated state-level rulemakings and challenges, creating a patchwork of inconsistent compliance obligations that will prove especially burdensome for companies operating across multiple jurisdictions.

PUBLIC HEALTH, ENVIRONMENTAL JUSTICE AND POTENTIAL LITIGATION

In the face of opposition, many in the scientific community have taken the stance that air pollution, specifically GHG emissions, contributes to premature death. The federal retreat from any mechanism to address these harms will likely fuel a surge in state common law tort litigation.

- Public nuisance claims: State attorneys general and municipalities have already leveraged public nuisance theories against major GHG emitters. Without a federal regulatory scheme to point to, this litigation strategy becomes even more attractive and viable.
- Failure to warn theories: Corporate defendants who fail to disclose known climate risk to consumers and investors face increased exposure under both tort and securities law.
- Environmental justice: Advocacy groups may increasingly rely on civil rights and state environmental statutes to create reputational considerations and challenge projects that they believe create disproportionate environmental burdens.

INSURANCE SECTOR

The insurance industry’s climate risk framework is now destabilized because it was made upon a federal regulatory scheme that no longer exists. There are several practical consequences that may emerge:

- State-by-state liability divergence: Premiums may increase and coverage exclusions proliferate as states adopt divergent regulatory and tort regimes to address the fallout from a fractured liability and compliance landscape.
- Reduced monitoring obligations: The rollback of mandatory monitoring and reporting requirements will lead to environmental conditions deteriorating before detection, increasing severity and, ultimately, costs of eventual remediation.

SUSTAINABILITY AND GREENWASHING RISK

With the federal mandate for emissions reductions withdrawn, most corporate sustainability targets will become voluntary commitments that will invite intense scrutiny from investors, regulators and plaintiffs' counsel.

Ironically, eliminating mandatory federal standards also eliminates the legal safe harbor that companies could previously rely on as a compliance shield. Companies that seek to walk back public net-zero or emission-reduction commitments made in sustainability reports now face increased greenwashing exposure. Defending voluntary targets in a landscape of scrutiny, litigation and greenwashing risk will create a formidable challenge for corporate boards to manage.

IMPLICATIONS FOR BUSINESSES

The repeal of the 2009 Endangerment Finding will result in a fundamental restructuring of the legal and regulatory landscape surrounding industrial emissions, corporate liability and climate-related risk management. The next several months and years will be defined by:

- Protracted federal litigation over the repeal, including APA challenges and constitutional and statutory questions that may ultimately reach the Supreme Court.
- A responsive patchwork of state-level regulatory activity requiring customized solutions for multistate operations.
- Increased state and private tort litigation targeting GHG emitters.
- Heightened scrutiny of voluntary sustainability commitments and disclosures by investors, regulators and plaintiffs' counsel.
- Disruption in the insurance sector as liability models are recalibrated to reflect the absence of federal regulatory oversight.

Early, proactive legal counsel will be essential to navigating risk and preserving strategic flexibility in the face of unprecedented regulatory upheaval.

Environmental Update - Undoing the Climate Endangerment Finding (Download)

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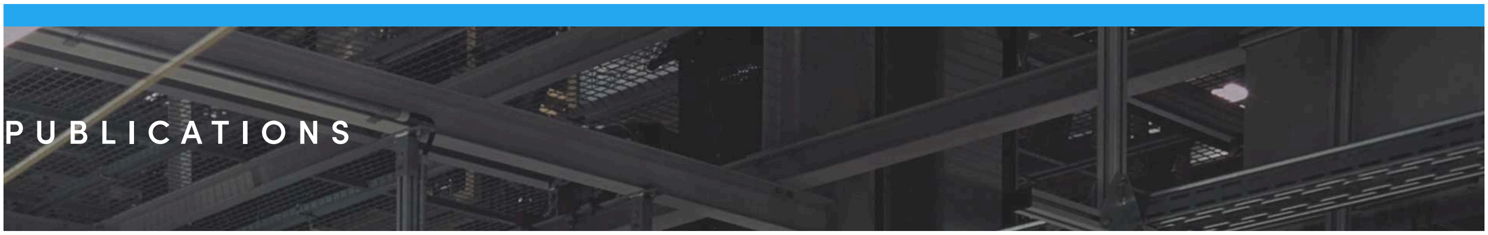

MARCH 14, 2025 NEWS ALERT

EPA's Historic Deregulation Initiative: Implications and Opportunities to Engage

Beveridge & Diamond / Eric Christensen, David Friedland, Dan Schulson, Timothy J. Sullivan, Nikki Waxman

On March 12, U.S. Environmental Protection Agency (EPA) Administrator Lee Zeldin announced that EPA would soon undertake efforts to roll back 31 environmental regulations that cut across industry sectors. EPA's deregulatory actions, as we previously predicted, align with and are intended to implement President Trump's executive orders to unleash American energy, lower costs for businesses and consumers, and restore cooperative federalism.

These changes present both opportunities and challenges for the regulated community. Most of the rules mentioned are already the subject of ongoing D.C. Circuit litigation or may only be modified through traditional notice-and-comment rulemaking. A few address

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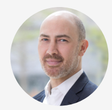
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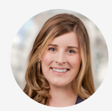
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enforcement and related agency priorities, which may largely be addressed as a matter of agency discretion.

If you have not already done so, now is the time to evaluate your regulatory priorities and make plans to communicate those priorities to EPA through a combination of direct advocacy, industry group commenting or litigation (both challenging or supporting EPA efforts), and legislative engagement. Beveridge & Diamond has advised and represented clients – including in litigation – in virtually all of the rules mentioned in Administrator Zeldin’s March 12 announcement. Please contact the authors of this Alert or your usual Beveridge & Diamond contact to learn more about how we can assist you in achieving your regulatory goals.

Key Areas of Regulatory Reform

EPA’s announcements include a broad suite of deregulatory measures affecting industries across the energy, manufacturing, automotive, and infrastructure sectors. Notable areas of focus include:

- **Climate Change**: Reconsideration of the 2009 Endangerment Finding, which concluded that greenhouse gas emissions (GHG) threaten public health, in collaboration with the Office of Management and Budget and other relevant federal agencies. The Endangerment Finding was the threshold step allowing GHGs to be regulated under the Clean Air Act. EPA also intends to reconsider all of its prior regulations and actions that rely on the Endangerment Finding.
- **Energy & Power Generation:** Reconsideration of regulations of GHG emissions from fossil-fired power plants (Clean Power Plan 2.0), methane emissions from the oil and gas industry (NSPS OOOO b/c), wastewater rules for coal plants, and regulations governing cleanup of coal combustion residuals.
- **Multi-Sector Air & Emissions Rules:** Repeal or revision of key air quality rules, including the Mercury and Air Toxics Standards (MATS), the Good Neighbor Rule, and multiple National Emission Standards for Hazardous Air Pollutants (NESHAPs). EPA has suggested that it may, for the first time in history, use the national security exemption contained in Clean Air Act Section 112(i)(4) to extend compliance deadlines for certain NESHAPS by an additional two years while those rules are being considered.
- **Transportation Sector:** Reconsideration of vehicle greenhouse gas regulations, which could significantly impact fleet requirements and compliance strategies for automakers and suppliers.
- **Regional/State Air Quality:** Overhaul of the Regional Haze Program, reconsideration of particulate matter (PM2.5) standards, and

- Water

RELATED RESOURCES

- Trump Administration Resources

working with states and tribes to address the backlog of State Implementation Plans and Tribal Implementation Plans (SIPs/TIPs) requiring action.

- **Enforcement**: EPA's press release stated that it would "redirect enforcement resources to EPA's core mission to relieve the economy of unnecessary bureaucratic burdens that drive up costs for American consumers (enforcement discretion)." In a memo from Acting Assistant Administrator for Enforcement and Compliance Jeffrey Hall also issued on March 12, EPA revised its National Enforcement and Compliance Initiatives to ensure that enforcement does not discriminate based on race and socioeconomic status or shut down energy production, and that it focuses on the most pressing health and safety issues. See prior B&D Alerts on the Trump administration's enforcement priorities/outlook:
  - President Trump Mandates Unprecedented Agency Review of Rules and Enforcement Actions
  - Environmental Enforcement Update: Supplemental Environmental Projects and Mitigation in the Second Trump Administration
  - Environmental Enforcement Update: What to Expect In the Second Trump Administration

Reconsideration: What is Required?

Most of the rules addressed in EPA's announcement were adopted through notice-and-comment rulemaking procedures and will require a similar rulemaking procedure to rescind or rewrite the rule. Hence, EPA will need to justify its actions by developing technical, economic, and scientific support for its proposals, and it will need to identify legal arguments to justify rescission or rollback, or both. For many of these rules, the task will be complicated by prior EPA factual/technical findings and legal interpretations, and EPA will need to develop a persuasive justification for changing course. If EPA does not thoroughly develop an administrative record supporting its decisions, it risks reversal in court. Potential reductions in staff and financial resources at EPA present opportunities for industry to provide key technical and legal support for the reconsideration proposals. See prior B&D Alert on rule revocation.

Next Steps for Regulated Entities

Beveridge & Diamond has a long-standing track record of advising clients through environmental rulemakings, federal permitting challenges, and litigation (including before numerous federal appellate courts and the U.S. Supreme Court). Our team includes former EPA and

Department of Justice officials and other regulatory and litigation strategists who can assist with the following recommended actions.

- **Regulatory Impact Assessments.** Evaluating how these rollbacks affect your permitting, compliance, and operational strategies.
- **Public Comment & Stakeholder Engagement.** Assisting you in submitting comments during EPA's rulemaking process (which may differ for each of the rules mentioned) to ensure (i) industry perspectives are heard, (ii) a robust administrative record is created and (iii) you preserve your right to judicial review.
- **Litigation & Defense Strategy.** Preparing for potential legal challenges to the new regulations and supporting industry-led interventions.
- **Providing Technical & Economic Analyses.** Supplying data-driven arguments on how regulatory changes impact operations, costs, and competitiveness.
- **Collaborating with Trade Associations.** Leveraging collective industry influence to shape rulemaking and legislative advocacy.
- **Engaging with Congress & State Agencies.** Working with policymakers to reinforce industry priorities and ensure favorable regulatory interpretations at the state level.
- **Monitor State Actions.** Many states are likely to either challenge EPA actions or to enact state-level policies to fill the perceived void in federal actions. For example, New York recently enacted a "Climate Superfund" law requiring large GHG emitters to pay for a climate mitigation measures, and other states, notably including California, are now using the New York law as a model for similar legislation in their states.

Given the broad scope of EPA's deregulation effort, we encourage industry leaders to act now to help shape these regulatory outcomes. We welcome the opportunity to discuss how these changes impact your business and how we can support your strategic response.

As we have for 50 years through Democratic and Republican administrations, Beveridge & Diamond stands ready to help our clients respond to these shifts in law and policy, to counsel them in state and federal government enforcement matters and internal investigations (including criminal matters), and to defend them in all types of litigation – including toxic torts, class actions, and the anticipated new wave of citizen/NGO, plaintiffs' bar and "blue state" attorney general lawsuits.

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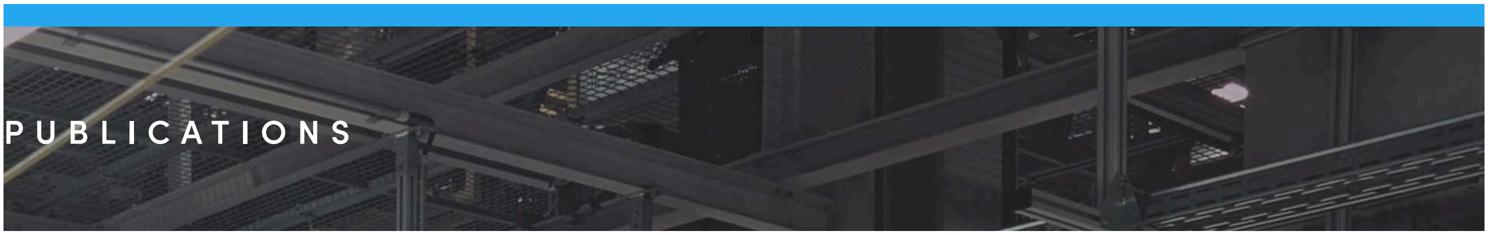

DECEMBER 12, 2025 NEWS ALERT

“Compliance First”: What EPA’s Updated Priorities Mean for Industry

Beveridge & Diamond / Maddie Boyer, John Cruden, Allyn Stern, Amber Ahmed, Lynne Davies, Stephen Smith, Alison Walsh

What Happened

On December 5, the U.S. Environmental Protection Agency’s (EPA) Office of Enforcement and Compliance Assurance (OECA) issued a Memorandum emphasizing a “compliance first” policy in all existing and future compliance and enforcement matters. A summary of the Memorandum follows our analysis.

What Does the Memorandum Do?

The Memorandum directs EPA civil enforcement staff to prioritize compliance over prolonged negotiations, with early compliance emphasized while leaving the Superfund early action approach

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unchanged. The Memorandum outlines six guiding factors: (1) use of a compliance assistance toolkit (outreach, training, "find and fix" self-audits) to encourage voluntary compliance; (2) coordination with state partners to ensure consistency and allow states to join civil judicial actions; (3) open communication to avoid duplication and build trust with regulated entities; (4) clear, nationally consistent findings of violation based on the "best reading" of law and regulation; (5) efficient, economical compliance requirements and injunctive relief tied directly to governing statutes, with OECA approval required for SEPs and other remedies; and (6) reasoned decision-making under the "LEAPS" model (law, evidence, analysis, programmatic impact, stakeholder impact) to ensure sound enforcement outcomes.

Who Is Impacted

The Memorandum impacts any regulated entity engaging with EPA or DOJ in its representation of EPA in compliance or enforcement activities, especially for those defending some of EPA's most novel or aggressive interpretations to form the basis for their alleged violations.

What Industry Should Do

The objectives of the Memorandum are to compel more streamlined enforcement, findings of violation based on the best reading of a regulation, less burdensome injunctive provisions, and fewer unexpected compliance assurance activities. Below are several steps companies should take to align with this Administration's "compliance-first" orientation:

- **Compliance Programs**: Because this Administration encourages proactive compliance, continue to ensure environmental compliance programs and related protocols are up to date, diligently implemented, and have the appropriate resources. In that regard, see recent U.S. Department of Justice Corporate Compliance Guidelines.
- **Find and Fix:** The concept of "compliance first" refers not only to prioritization, but also to the timeline of when a company should come into compliance. Therefore, employ a "find and fix" approach by conducting confidential risk assessment audits and reviewing them to evaluate potential avenues for self-reporting and other voluntary compliance options, while protecting attorney-client privilege.
- **Be Communicative:** Because this framework emphasizes open communication, consider staying in touch more regularly with relevant agencies at both the federal and state levels to maintain

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- Waste, Recycling
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strong, trusting relationships with regulators. The Administration will expect to see the "no surprises" policy going both ways.

- **Finding of Violation:** If your company receives a finding of violation that is uncertain or ambiguous, consult with counsel about raising and possibly elevating concerns with EPA. Under this framework, EPA must elevate such concerns to regional counsel or the Office of General Counsel.
- **Settlements**: If enforcement settlements involve third-party audits, monitoring, or any other mitigation or stipulated remedy, ensure EPA personnel have obtained appropriate approval from the OECA Assistant Administrator, as is required under this framework. Also, do not expect settlements to involve SEPs until additional guidance is issued.

Analysis

Craig Pritzlaff, Acting Assistant Administrator of EPA's OECA, issued the Memorandum, entitled "Reinforcing a 'Compliance First' Orientation for Compliance Assurance and Civil Enforcement Activities," to OECA personnel. Pritzlaff advanced a similar "compliance first" policy during his tenure as Director of the Office of Compliance and Enforcement at the Texas Commission on Environmental Quality (TCEQ). Beveridge & Diamond's Texas office has direct experience with the policy's implementation in Texas and anticipated the roll out of a "compliance first" orientation nationwide.

While "compliance first" has long been EPA's stated approach, the Memorandum calls for more frequent national elevation of regional violations and emphasizes open communication with regulated entities and coordination with state partners. The Memorandum could have significant impacts, potentially limiting the scope of EPA enforcement actions and reducing the agency's utilization of novel theories or overbroad interpretations of the law in lieu of creating new rules.

The Memorandum should not be interpreted as a directive to reduce inspections or reduce enforcement generally. If implemented as it was at TCEQ, "compliance first" is not simply an Agency enforcement policy, but a view that the Agency intends for industry to embrace as well, and well ahead of an inspection and enforcement. Companies should continue to prepare for inspections and regularly evaluate compliance status.

The Memorandum does not guarantee widespread change in environmental enforcement as a whole, and holding the Agency accountable to similar fair-play and best-reading-of-law concepts espoused in multiple Executive Orders has proved to be slow and often unsuccessful. However, the Memorandum will undoubtedly impact some cases and overall, and may shift emphasis to compliance actions and resolutions over more formal enforcement actions – that could mean more emphasis on administrative resolutions, more no-penalty Administrative Orders on Consent, and fewer judicial referrals. This may be especially true for regulated entities defending alleged violations based on novel or overreaching EPA legal interpretations that deviate substantially from years of past interpretive positions.

The Memorandum also elevates legal interpretations to Agency leadership, emphasizing that inspectors and enforcement staff, including attorneys, are not responsible for resolving ambiguity in federal environmental laws, but only for identifying and elevating such ambiguity when raised by a regulated entity. While this may expedite some resolution in some cases, in other instances, it may result in longer delays while leadership considers arguments and positions.

How much impact the Memorandum can have remains to be seen. The "find-it-fix-it" approach at TCEQ had strong legal support in the Texas Audit Act, which incentivizes industry self-audits and disclosures in ways that EPA's own Audit Policy has failed to achieve. TCEQ also has an administrative Penalty Policy that, under Pritzlaff's leadership, was updated regularly to make penalty calculations more transparent and more consistently applied. This is in contrast to EPA's current discrete and inconsistent programmatic penalty policies, many of which are decades old and can result in enormous swings in penalty ranges.

And while the focus on administrative enforcement has benefits, industry should keep in mind that administrative orders often do not satisfy the diligent prosecution bars in defending citizen suits that civil judicial enforcement does. And, how *Jarkesy* (see B&D's July 2024 alert here) will play out for EPA administrative actions is an issue to watch. All this means, of course, is that embracing "compliance first" cultures is the best first course of action.

Summary of the Memorandum

The Memorandum states that, effective immediately, all EPA personnel responsible for civil enforcement and compliance assurance activities must prioritize ensuring compliance when addressing ongoing and future potential non-compliance with federal environmental laws. This framework intends to streamline early compliance, rather than divert unnecessary resources into prolonged negotiations. The Memorandum also notes that it will not impact the established early action approach to Superfund enforcement. Below is a summary of the six factors relied upon in the Memorandum.

1. Compliance Assistance Toolkit

The first factor—the compliance assistance toolkit—is driven by OECA's assertion that enforcement should not be the only means for achieving compliance. Instead, the Memorandum urges EPA personnel to use compliance assistance tools such as outreach, technical assistance, and training, including employing a "find and fix" approach to voluntary compliance through self-reporting and self-audits, to proactively encourage regulated entities to comply, rather than retroactively addressing compliance issues in enforcement. This approach is consistent with the first Trump administration's efforts to prioritize compliance assistance rather than a standard "nail and hammer" enforcement approach that can occur once EPA identifies potential violations.

2. State Partner Coordination

Because most federal environmental laws delegate state authority for environmental compliance and enforcement, the Memorandum re-emphasizes the Trump administration's priority of having OECA and EPA enforcement personnel work with states to ensure consistency and state input in compliance assurance and enforcement activities.

It should be noted that if a state is a co-plaintiff in a civil judicial action, then those actions may continue even during this push for "compliance first." There is an incentive for states to join these actions to share in the penalty and coordinate on the implementation of injunctive relief. Additionally, at least in the RCRA context, states cannot join as a party in administrative actions.

3. Open Communication

Building on further coordination with state partners, the Memorandum also emphasizes open communication between all interested parties to ensure further clarity regarding required compliance. By strengthening communication, OECA seeks to avoid unnecessary or duplicative compliance assurance activities, which waste time and money. EPA emphasizes that more open communication will also help ensure there are "no surprises" for regulated entities and build trust between the parties, including encouraging voluntary compliance through self-reporting.

4. Finding of Violation

To avoid uncertainty, findings of violation must be "clear and unambiguous, well-tailored, and based on the 'best reading' of the relevant statute and regulation." The "best reading" of a statute or regulation must consider statutory construction canons, past practice, and current litigation. The Memorandum contemplates regulated entities raising concerns about how EPA has applied a statute or regulation to their case, such as asserting potentially controversial or novel enforcement theories. When a regulated entity raises a concern, inspectors and enforcement staff, including attorneys, are expected to elevate it, including to OECA as needed. Any decision is to be made at the national level to ensure national consistency. Lastly, OECA plans to create consolidated criteria to more clearly define specific categories of violations, which will allow for more consistent findings of violations across all EPA programs and regions.

5. Compliance Requirements and Injunctive Relief

Recognizing that rapid compliance may not always be possible and that formal enforcement will be necessary, the Memorandum emphasizes, in such cases, that EPA must take the most efficient, economical, and swift strategy possible in its negotiations and litigation (if needed). An important addition is their requirement that any injunctive relief provisions shall be based on "the best, most defensible interpretation of the law" to quickly achieve compliance. Furthermore, settlements and orders must reflect a "clear nexus to the governing statute and implementing regulations."

Additionally, the Memorandum rescinds EPA's April 2021 memorandum, which set forth expansive injunctive relief tools for civil enforcement settlements, such as third-party audits or monitoring. The OECA Assistant Administrator must now approve the use of these tools prior to negotiation. This includes supplemental environmental projects (SEPs), a historically controversial remedy, which are not to be included in any settlement until EPA issues additional guidance (see B&D's 2024 alert on SEPs here). Lastly, the OECA Assistant Administrator must approve the use of any other mitigation or stipulated remedy before negotiation. The Memorandum defines stipulated remedies as a settlement term that requires the implementation of a specified project in the event of any future violation of the settlement agreement but does not include stipulated penalties in this definition.

6. Reasoned Decision Making

The last factor requires OECA to use reasoned decision-making when determining non-compliance and enforcement remedies. This may be self-evident, but the Memorandum clarifies that decision-making must now follow the "LEAPS" model, using law, evidence, analysis, programmatic impact, and stakeholder impact to reach a sound, logical conclusion in compliance and enforcement actions.

As we have for 50 years through Democratic and Republican administrations, Beveridge & Diamond stands ready to help our clients respond to shifts in law and policy, to counsel them in state and federal government enforcement matters and internal investigations (including criminal matters), and to defend them in all types of litigation – including toxic torts, class actions, and the new wave of citizen/NGO, plaintiffs' bar and "blue state" attorney general lawsuits. Nearly two-thirds of B&D lawyers have prior U.S. state or federal government experience, including several former senior EPA and DOJ attorneys who served under both the initial Trump and Biden administrations.

William A. Ruskin's Toxic Tort Litigation Blog

News, Analysis, and Trends

Federal Judicial Center Removes Reference Guide on Climate Science

Posted on April 13, 2026 by William A. Ruskin

The newly revised Reference Manual on Scientific Evidence (Fourth Edition) ("RMSE"), a vital resource used by federal judges to understand complex technical issues, was released at the end of 2025. The RMSE is an indispensable tool that can strengthen defense lawyers' Rule 702 arguments and play an important role in keeping "junk science" out of the courtroom.

Added to the Fourth Edition was a new, 80-page "Reference Guide on Climate Science" intended to help judges navigate the growing number of climate-related lawsuits by explaining how specific weather events or impacts can be linked to human-caused emissions. The article was well researched and highly instructive. It came as a shock to federal court litigators that the Federal Judicial Center (FJC) unceremoniously deleted the entire climate science chapter on February 6, 2026, a few days after a coalition of 27 Republican state attorneys general sent a letter to the FJC demanding the chapter's immediate removal. The Republican state attorneys argued that the climate science discussion was biased and threatened to undermine judicial impartiality. They argued that the chapter was "indoctrinating" judges with "left-wing prose." Further, they (and Republican members of Congress) criticized the authors for relying on consensus-based bodies like the UN's Intergovernmental Panel on Climate Change (IPCC) while ignoring a highly controversial 2025 Department of Energy report that was skeptical of climate science.

The removal sparked a massive outcry from the scientific and legal communities. Over two dozen of the manual's co-authors and various scientific organizations (including the American Meteorological Society and the American Statistical Association) condemned the move as a "political attack" on the independence of the judiciary. The scientists argued that the chapter had undergone rigorous peer review and that

Some legal experts pointed out the inconsistency in the FJC's logic. The manual contains chapters on other "litigation-heavy" topics like Asbestos, DNA Evidence, and Epidemiology. Judges noted that those chapters were not removed despite being central to massive, high-stakes lawsuits, leading to the conclusion that the climate chapter was singled out solely for political reasons.

The administrative quiet of the FJC's decision was quickly shattered by a chorus of high-profile dissenters. Leading the charge was Nancy Gertner, a retired judge of the U.S. District Court for the District of Massachusetts and current Harvard Law senior lecturer. Gertner called the removal "outrageous." In her view, the FJC's move signaled a dangerous vulnerability to the "politics of the time." She likened the attorneys general demands for "balance" to a false equivalence, stating:

"It's like we're at a time that somehow we think we have to give equal time to the people who believe that the Earth is flat. I mean, you don't. There are certain issues that are simply beyond the pale."

For Gertner and other jurists, the manual isn't supposed to be a debate stage; it's supposed to be an independent anchor. Judges use the manual to understand the broader scientific landscape so they can better evaluate—and sometimes "supplant"—the arguments being fed to them by lawyers. Scholars have pointed out that while the attorneys general attacked the authors' affiliations, the chapter underwent the same rigorous, multi-layered peer review as the sections on DNA or Epidemiology.

For their part, the attorneys general coalition relied on a controversial 2015 report from DOE in support of their claim that climate science is "hotly disputed." This report, the coalition argued, was the "missing link" that the FJC manual ignored. However, as it turns out, the report itself was the product of a "Secret Panel" of scientists whose identities and funding were shielded from public view until a series of FOIA requests blew the lid off the operation. The "Secret Panel" responsible for the DOE's report's authorship was composed of researchers with ties to fringe think tanks, who operated outside the standard National Academies peer-review process. When the DOE report was finally scrutinized by the broader scientific community in early 2026, the consensus was that the DOE panel ignored fifty years of satellite data in favor of a narrow window of atmospheric readings from the mid-90s to support their findings. Moreover, leaked emails suggested that the report's executive summary was edited not by climatologists, but by political appointees seeking to create "probative doubt" for use in active ongoing litigation.

Comments

Federal Judicial Center Removes Reference Guide on Climate Science **— No Comments**