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The Clean Air Act Under the Trump Administration—What Has Changed?

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Special to the Legal

At the beginning of his term, President Donald Trump took aim at regulatory burdens that impact American energy, many of them established by prior administrations under the federal Clean Air Act (CAA). Through the combination of formal rulemaking, guidance, and public policy announcements, the Trump administration has indeed reshaped the CAA regulatory landscape. And while the CAA continues to have a broad reach over industrial sources, its scope has been recalibrated and more changes are almost certainly forthcoming. Hailed by some and decried by others, here is a brief look at some of the most impactful actions.

First, the EPA's finalized recission of its own 2009 endangerment finding has been perhaps its most controversial action. Originally promulgated in the wake of *Massachusetts v. EPA*, in which the U.S. Supreme Court concluded that greenhouse gas (GHG) emissions from motor vehicles qualify as "air pollutants" subject to regulation under Section 202(a) of the CAA, the EPA determined that "six GHGs taken in combination endanger both the public health and welfare of current and future generations" and that motor vehicles contributed to the buildup of GHGs in the atmosphere. See 74 Fed. Reg. 66496 (Dec. 15, 2009). The EPA then promulgated emission standards for vehicles, and later, power plants and oil and gas facilities based on the endangerment finding.

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In its recission of the Endangerment Finding, Trump's EPA stated that Congress did not intend for the CAA to address the global issue of climate change, and the major questions doctrine requires that the EPA may only regulate matters of vast economic and political significance with clear and explicit Congressional authorization. Several organizations have challenged the recission in the U.S. Court of Appeals for the D.C. Circuit; the outcome of which could take years. In the meantime, the EPA will almost certainly use the recission to repeal other regulatory programs that rely on the endangerment finding. Indeed, even prior to the recission, the EPA proposed to repeal all GHG emissions standards for fossil fuel-fired power plants. See 90 Fed. Reg. 25752 (June 17, 2025). Likewise, the EPA announced in early 2025 that it would reconsider certain rules governing oil and gas facilities (i.e., 40 CFR Part 60, Subparts OOOOb and OOOOc). See "Trump EPA Announces OOOOb/c Reconsideration of Biden-Harris Rules Strangling American Energy Producers" (Mar. 12, 2025). In September 2025, the EPA proposed to rescind its greenhouse gas reporting program, which has required 8,000 facilities across 47 industrial source categories to annually report GHG emissions to the EPA. See 90 Fed. Reg. 44591 (Sept. 16, 2025)

Second, the EPA's reinterpretation of the definition of "begin actual construction" under the new source review (NSR) program is intended to ease the NSR prohibition against beginning construction of a new source without a preconstruction permit in hand. The EPA defines "begin actual construction" as the "initiation of physical on-site construction activities on an emissions unit which are of a permanent nature." See 40 C.F.R. Sections 51.165(a)(1)(xvii); 52.21(b)(11). Historically, the EPA interpreted this language very broadly, which in turn placed severe limitations on the types of site preparation and construction activities that could be undertaken prior to permit issuance.For example, the strictest reading of the prohibition prevented construction of foundations, support structures, and building shells. In 2025, the EPA advised a semiconductor manufacturing facility that certain "core and shell" construction activities could proceed before permit issuance so long as the work did not involve physical construction "on an emissions unit" itself. See Memo

from Aaron Szabo, assistant administrator, EPA to Philip McNeely, director, Maricopa County Air Quality Department (Sept. 2, 2025). The EPA has now proposed to codify this changed interpretation by defining "begin actual construction" to encompass only the construction of "pollutant-emitting activities" at a stationary source in order to allow "stakeholders to quickly and confidently recognize" which construction activities may proceed prior to obtaining a permit. See 91 Fed. Reg. 26958 (May 13, 2026). Relatedly, amid media reports that the EPA and some state air permitting agencies may consider the use of nonroad engines and turbines (typically treated as mobile sources under the CAA) to power data centers in order to avoid burdensome NSR permitting, the EPA has not taken definitive action. However, the EPA did propose a new "temporary" subcategory for portable combustion turbines that would exempt them from complying with the NSPS. See 91 Fed. Reg. 1910 (Jan. 15, 2026). The outcome and impact of this proposed action remains to be seen.

Third, in the wake of the D.C. Circuit's decision in *SMM Litigation Group v. EPA*, 50 F.4th 953 (D.C. Cir. 2025), the EPA has signaled a more flexible response to emission exceedances during startup, shutdown and malfunction (SSM) periods, in line with earlier CAA interpretations. Although SSM exemptions and affirmative defenses date back to the 1990s, the EPA embarked on a campaign to reverse these exemptions and defenses under the Obama Administration following a D.C. Circuit decision vacating general SSM exemptions in the 2008 *Sierra Club v. EPA* 551 F.3d 1019 (D.C. Cir. 2008). The more recent decision in *SSM Litigation Group* vacated one such reversal, stating that complete affirmative defenses are not unlawful and would not undermine the relevant emission limit. The EPA agreed with the court, stating in its briefing opposing rehearing en banc that the EPA: may restore the Title V affirmative defense provision; should not disapprove any complete affirmative defense contained in SIP submissions; and is not prohibited from including complete affirmative defenses in its national emission standards. The EPA has indicated its intention to do just that, soliciting comment in recent proposals on potential affirmative defense provisions.

Fourth, the EPA has signaled an important shift in its interpretation of the residual risk review provision for hazardous air pollutants under CAA Section 112(f)(2), which requires the EPA to re-evaluate maximum achievable control technology (MACT) standards to address any remaining health risks eight years after initial MACT implementation. Separately, Section 112(d)(6) requires the EPA to review and revise MACT standards "as necessary" every eight years to account for developments in practices, processes, and control technologies. While the EPA has combined these obligations into recurring "risk and technology reviews" (RTRs), its recent proposal to rescind ethylene oxide emission standards for commercial sterilization facilities advanced the position that Section 112(f)(2) authorizes only a single residual risk review following promulgation of the original MACT standard. Under this interpretation, once the EPA completes the initial residual risk determination for a source category, the agency lacks authority—or at minimum lacks an obligation—to conduct additional residual risk reviews in future RTR cycles. This "one and done" interpretation would substantially limit the EPA's imposition of additional hazardous air pollutant controls based on evolving risk assessments.

Finally, the EPA has further promoted its goal of restoring of American energy dominance by repealing Biden-era amendments to the mercury and air toxics rule applicable to coal- and oil-fired electric utility steam generating units (EGUs). Specifically, the EPA repealed the filterable particulate matter emission standard for coal-fired EGUs, the tighter mercury standard for lignite-fired EGUs, and the requirement to use PM continuous emissions monitoring systems (CEMS). See 91 Fed. Reg. 9088 (Feb. 24, 2026).

In addition to these regulatory initiatives, the EPA has signaled its intent to adjust permit reviews and enforcement priorities. With respect to air permits, the EPA issued guidance urging regional offices to accelerate review of Title V and other major air permits, stating that the faster review process will reduce delays affecting energy infrastructure and industrial development. With respect to enforcement, the EPA has directed enforcement staff to prioritize a "compliance first" approach focused on returning regulated entities to compliance quickly. See Memo from Craig Pritzlaff, acting assistant administrator to OECA and EPA regions (Dec. 5, 2025). The EPA is encouraged to resolve violations through cooperation, technical assistance, and negotiated settlements, to avoid expansive regulatory interpretations and to reserve more severe enforcement measures for cases involving significant environmental harm, repeated noncompliance or bad-faith conduct. The EPA indicates that penalties should be proportional and tied to achieving compliance rather than serving primarily punitive or deterrent purposes.

The EPA's approach to CAA implementation continues to evolve under the Trump administration. While many of the EPA's actions remain legally unsettled and are likely to generate substantial litigation over the next several years, the EPA's more restrained interpretation of its regulatory authority has already taken clear shape in an effort to facilitate industrial and energy development.

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