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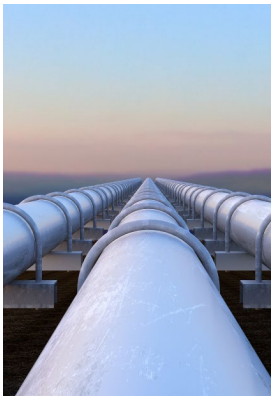

Implications of the Endangerment Finding Rescission for the Oil and Gas Methane Standards

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INTRODUCTION

Oil and gas companies are asking a consequential question: Will EPA's rescission of the 2009 Endangerment Finding for the GHG emission standards for new motor vehicles under section 202(a) of the Clean Air Act (CAA)[1] unravel the methane standards for the oil and gas facilities under section 111 of the CAA. [2] After all, both regulatory programs rely on the same Endangerment Finding.

The answer is far from straightforward. EPA's legal rationales for rescinding the Endangerment Finding in the context of section 202(a)—summarized in section II below—do not easily translate cleanly to the section 111 methane standards. First, as explained in section III, unlike the section 202(a) standards, Congress has repeatedly and expressly affirmed regulation of oil and gas methane under section 111. Through its actions under the Congressional Review Act and its enactment of the Inflation Reduction Act's Waste Emissions Charge, Congress did more than acquiesce in methane regulation under the Clean Air Act—it embedded the section 111 standards in the statutory design. That history makes it difficult to characterize methane regulation as an "unheralded" assertion of power lacking clear Congressional authorization.

Second, as explained in section IV, the methane standards do not resemble the kind of novel and transformative expansion of regulatory powers that triggered the application of the Major Questions Doctrine in *West Virginia v. EPA*.[3] The methane standards operate within the traditional, source-specific framework of section 111, and they do not restructure the oil and gas sector in the way the Clean Power Plan sought to restructure the power sector.

For these same reasons, the methane standards may complicate the Rescission Rule itself. Repeated Congressional ratifications of the section 111 methane standards muddy key premises of the Rescission Rule, creating risks for EPA's

[1] U.S. EPA, Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards under the Clean Air Act, 91 Fed. Reg. 7686 (Feb. 18, 2026) [hereinafter the "Rescission Rule"].

[2] 40 C.F.R. Part 60, Subparts OOOOb and OOOOc.

[3] 597 U.S. 697 (2022).

defense of the rule in the courts. The Rescission Rule may have a methane problem.

Given these uncertainties, oil and gas companies should prepare for the possibility that the oil and gas methane standards will remain on the books.

EPA'S LEGAL RATIONALES FOR RESCINDING THE ENDANGERMENT FINDING

EPA's rationales for rescission of the Endangerment Finding are summarized in a previous VNF alert and go as follows: (1) Congress did not expressly authorize EPA to prescribe greenhouse gas (GHG) emissions standards under section 202(a) of the Clean Air Act; and (2) absent such express authority, Congressional authorization to prescribe GHG standards under section 202(a) cannot be inferred. The agency reasons that such authority cannot be inferred because GHG emissions from new motor vehicles and engines in the U.S. are de minimis, rendering any regulation futile.[4]

EPA further asserts that its conclusions are corroborated by Supreme Court cases applying the Major Questions Doctrine—and, in particular, the *West Virginia v. EPA* decision, which invalidated the carbon dioxide emission standards that EPA promulgated under section 111 for power plants in 2015 (the "Clean Power Plan").[5] In *West Virginia*, the Court found that EPA had "claim[ed] to discover in a long-extant statute an unheralded power" representing a "transformative expansion in [its] regulatory authority."[6] The Court declined to bless that expansion in the absence of "clear Congressional authorization."[7]

Citing *West Virginia*, the Rescission Rule asserts that the Endangerment Finding and resulting vehicle emission standards reflect a comparable transformative expansion of powers for which there is not a clear Congressional authorization. In particular, the agency points to the way that the standards force a shift from vehicles with internal combustion engines to electric vehicles. EPA compares this to the invalidated Clean Power Plan, which was designed to shift generation within the power sector from higher-emitting to lower-emitting facilities.[8]

CONGRESSIONAL STATEMENTS ABOUT THE METHANE STANDARDS

A fundamental premise of the Rescission Rule is the absence of any express Congressional authorization to prescribe vehicle GHG standards under section 202(a). However, that premise does not hold for methane standards under section 111. Congress has ratified EPA's promulgation of methane standards under section 111 on at least three occasions.

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[4] Rescission Rule at 7691.

[5] Rescission Rule at 7688 (citing *West Virginia v. EPA*, 597 U.S. 697 (2022)).

[6] *West Virginia v. EPA,* 597 U.S. 697, 724 (2022) (citations and internal quotations marks omitted).

[7] *Id.* at 732.

[8] Rescission Rule at 7725.

First, during the first Trump term, the EPA finalized a rule repealing the 2016 version of the methane standards (using different legal rationales).[9] Congress rejected this action. Acting under the Congressional Review Act (CRA), Congress issued a joint resolution disapproving the repeal.[10] Under the CRA, a joint resolution of disapproval not only nullifies the agency action at issue but also prohibits the agency from issuing any future rule in 'substantially the same form' without new Congressional authorization.[11] By disapproving EPA's repeal, Congress thus did more than restore the 2016 standards — it affirmatively constrained EPA's ability to eliminate them again without Congressional blessing. EPA may argue that Congressional disapproval of the repeal reflects only opposition to that particular action rather than affirmative ratification of section 111 methane regulation. But the CRA's 'substantially same form' prohibition forecloses this reading. Congress didn't merely restore the standards; it locked them in against future administrative elimination.

Second, when Congress enacted the Inflation Reduction Act in 2022, it added a new methane provision to the Clean Air Act: the Waste Emissions Charge (WEC). [12] In the WEC provisions, Congress: (1) set methane emission levels for certain categories of oil and gas facilities that grow increasingly stringent over time; (2) established increasing monetary charges for facilities exceeding those levels; (3) and directed EPA to promulgate rules to implement these requirements. In effect, Congress ratified that the Clean Air Act should set limits on oil and gas sector methane emissions—even though the volume of such emissions is smaller than those from the vehicle sector on a carbon dioxide equivalent basis[13]—and affirmed that EPA should implement those limits.

In the Rescission Rule, EPA insists that the Congress-created WEC is distinguishable from section 111 methane standards because the WEC is an "incentive" rather than a regulatory mandate.[14] It is not clear why this distinction is meaningful for the legal analysis. Both a monetary charge and a regulatory standard penalize excess emissions.

However, even if this incentive/regulation distinction were somehow relevant, it is also important to note that Congress designed the WEC in a manner that expressly links it to the section 111 methane standards promulgated by EPA. Specifically, Congress authorized an exemption from the WEC for facilities in compliance with the methane standards.[15] In other words, even if one dismisses

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[9] U.S. EPA, Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, 85 Fed. Reg. 57018 (Sep. 14, 2020) (repealing 40 C.F.R. Part 60, Subpart OOOOa).

[10] S.J. Res.14, 117th Congress (2021).

[11] 5 U.S.C. § 801(b)(2).

[12] Clean Air Act § 136, 42 U.S.C. § 136.

[13] *See* U.S. EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2022 (2024), https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2022.

[14] Rescission Rule at 7725.

[15] Clean Air Act § 136(f), 42 U.S.C. § 136(f).

the WEC penalty itself as evidence that Congress ratified EPA regulation of methane, Congress designed the WEC exemption in a way that once again ratified such regulation.

Accordingly, the CRA action established that Congress wanted the section 111 methane standards to exist. The WEC action affirmed that Congress wanted the section 111 methane standards to operate as the benchmark for continued methane reductions from the oil and gas sector.

In the Rescission Rule, EPA asserts that Congress's recent CRA disapproval of EPA's WEC implementation rules and its recent 10-year pause of the WEC signal a retreat from its prior ratifications of methane regulation.[16] But a pause is not a repeal. Even though the 119th Congress was, in EPA's words, "explicitly hostile toward programs to reduce GHGs"[17] that Congress left the WEC on the books, along with its exemption structure expressly tied to the section 111 methane standards. As things stand, the WEC will apply after the 10-year pause, and EPA will be required to develop new rules for WEC implementation, even if those rules cannot be "substantially similar" to the rules it previously promulgated. The 119th Congress had the authority to eliminate the WEC or sever its section 111 link alongside its elimination of other fiscal measures affecting GHGs, but it did not.

THE METHANE STANDARDS AND THE MAJOR QUESTIONS DOCTRINE

Because Congress has repeatedly ratified EPA's authority to regulate methane emissions under the Clean Air Act, there is no absence of "clear Congressional authorization" for the section 111 methane standards. By contrast, Congress's ratifications provide "overwhelming evidence of Congressional acquiescence" in EPA's authority to regulate oil and gas methane under section 111.[18] Taken together, the CRA's "substantially the same" prohibition, the WEC's express linkage to the section 111 methane standards, and Congress's deliberate choice to preserve that linkage even while pausing the WEC constitute the kind of combination of action and inaction the Supreme Court found dispositive in the *Bob Jones Univ. v. United States* decision cited by EPA in its Response to Comments. Accordingly, the Major Questions Doctrine does not apply.

However, even assuming for the sake of argument that this history of Congressional ratification is not sufficiently "overwhelming," the Major Questions Doctrine still does not apply because the section 111 methane

[16] Rescission Rule at 7725.

[17] EPA, Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards: Response to Comments at 156, EPA-420-R-26-003 (Feb. 2026), https://www.epa.gov/system/files/documents/2026-02/420r26003.pdf (last visited Feb. 23, 2026) [hereinafter "Response to Comments"].

[18] Response to Comments at 63 (quoting *Rapanos v. United States*, 547 U.S. 715, 750 (2006) and *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983) (finding congressional acquiescence where Congress repeatedly reenacted relevant statutes without disturbing agency interpretation).

standards do not represent a novel and transformative expansion of agency powers, nor do the standards restructure the oil and gas sector.

Consider the reasons that the Supreme Court cited for invalidating the Clean Power Plan under the Major Questions Doctrine. The Court found that: (1) the "generation shifting" regulatory framework adopted by the EPA was a significant departure from its prior section 111 regulations, which focused on improving the emissions performance of individual sources; (2) the framework was essentially a cap-and-trade program, even though Congress has repeatedly considered and rejected enacting such a program for GHGs; and (3) the framework empowered EPA to "substantially restructure the American energy market."[19] In the Rescission Rule, EPA asserts that the section 202(a) standards for new motor vehicles are comparably novel and far-reaching, observing that they would force an industry shift from internal combustion engines to electric vehicles.[20]

However, the section 111 methane standards do not have these qualities. To be sure, the current standards reach significantly more oil and gas facilities than prior versions. They also incorporate a new third-party monitoring program (the "Super Emitter" program). While the Super Emitter program is novel in that it allows third parties to trigger regulatory obligations on facilities, it does not rise to the level of transformation that concerned the Supreme Court in *West Virginia* — it is a monitoring and enforcement mechanism that operates within the existing source-by-source regulatory framework.

In all other respects, the section 111 methane standards are conventional in form and reach (even if they could be made more reasonable and workable). The standards apply to individual sources, rather than on a system-wide basis. The standards do not impose a shift away from production of natural gas or other restructuring of the sector. Instead, they largely require mitigation using off-the-shelf technologies and industry best practices.

THE RESCISSION RULE MAY HAVE A METHANE PROBLEM

The Congressional history of the section 111 methane standards not only complicates future repeal of those standards—the history also muddies the legal picture for EPA's rescission of the Endangerment Finding in the first instance.

The Rescission Rule relies heavily on the premise that Congress never clearly authorized EPA to prescribe emission standards for GHGs. However, as explained above, Congress repeatedly affirmed EPA's promulgation of methane standards.

In its Response to Comments document, EPA dismisses the WEC ratification argument on the ground that it addresses a different question — section 111

[19] *West Virginia v. EPA,* 597 U.S. 697, 724-728.

[20] Rescission Rule at 7724.

authority rather than section 202(a) authority.[21] But this ignores that both provisions rest on an endangerment finding, and that EPA used the same finding to justify standards under each. Congressional ratification of regulation pursuant to the 2009 Endangerment Finding in one statutory context necessarily bears on the validity of the Finding itself, not merely on the authority under one provision.

Moreover, it is relevant that the requirements for an endangerment finding under section 111 are more stringent than the requirements under section 202(a). Under section 202(a), EPA may make an affirmative finding if the pollution at issue "causes or contributes" to endangerment. Under section 111, EPA can only make the finding if the pollution "causes, or contributes significantly" to endangerment.

This distinction is important for at least two reasons. First, if Congress ratified EPA's section 111 methane standards — where the statutory threshold for endangerment is higher — it implicitly affirmed that GHG emissions clear even this more demanding bar. It is difficult to see how GHG emissions can satisfy the "significantly contribute" standard of section 111 but somehow fail to meet the lower "cause or contribute" standard of section 202(a).

This also calls into question EPA's "futility" argument in the vehicle context. The agency asserts that U.S. vehicle GHG emissions are too small to warrant regulation under section 202(a). Yet, Congress ratified regulation of oil and gas methane emissions — a smaller emissions source — under the more demanding section 111 threshold. If methane emissions from the oil and gas sector are significant enough to clear the higher section 111 bar, it is unclear how vehicle emissions fail to clear the lower section 202(a) bar on *de minimis* grounds.

CONCLUSIONS

EPA faces a difficult legal path in getting from its rescission of the Endangerment Finding in the context of vehicles to repeal of the methane standards for oil and gas facilities. EPA's own reasoning in the rescission action has made that path harder. Indeed, the Congressional history of ratifying the methane standards presents problems for EPA's defense of the rescission action.

Accordingly, oil and gas companies with facilities subject to regulation should be prepared for the possibility that the methane standards are going to stay on the books. This means that companies should continue to invest in methane mitigation. Such investments could include replacement of aged and leaky equipment, electrification of certain processes, and deployment of advanced technologies for monitoring and measurement. The legal picture could evolve, but these kinds of investments make sense to minimize compliance risks and prepare companies for any future actions by EPA or Congress.

[21] Response to Comments at 64.

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