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Regulatory Action and Court Cases to Watch in 2024

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Regulatory Actions to Watch in 2024

EPA Greenhouse Gas (GHG) Rule for Power Plants

- Final rule expected Spring 2024
- Reduces carbon dioxide emissions from existing coal plants and new and existing gas plants
- Compliance options include carbon capture and storage; low-GHG hydrogen co-firing; and natural gas co-firing
- Rule will be challenged. Potential issues:
 - Whether carbon capture and low-GHG hydrogen co-firing have been adequately demonstrated
 - Major question doctrine
 - Rule will likely force a shift away from coal as a source of energy
 - Rule allows states to implement a cap-and-trade program, which the Supreme Court has suggested EPA cannot directly do under Section 111



Regulatory Actions to Watch in 2024

Methane Emissions

- In December 2023, EPA finalized sweeping methane emissions standards for oil and gas infrastructure
 - State plans due 24 months
 - Litigation likely over, among other issues, the so-called “super-emitter” program
- Inflation Reduction Act methane fee
 - In January 2024, EPA issued its rule establishing a fee for certain oil and gas companies that exceed methane emission standards
 - Excess methane produced this year would result in a fee of \$900 per ton, with fees rising to \$1,500 per ton by 2026.



Key Court Cases in 2024

Loper Bright v. Raimondo and *Relentless v. U.S. Department of Commerce*

- Fishing groups challenging National Marine Fisheries Service rule requiring fishers to pay part of the cost of having federal compliance monitors onboard
- Opportunity for the Supreme Court to revisit the ruling in *Chevron v. Natural Resources Defense Council* (1984) that judges must defer to agencies' "reasonable" legal interpretations in rulemakings
- Oral arguments scheduled for tomorrow (January 17)
- Could impact future EPA rulemakings if *Chevron* is overturned, but . . .
 - Still likely to see deference on technical and scientific matters
 - The effect could cut both ways – both when EPA tries to expand and to contract its authority



Key Court Cases in 2024

- *Ohio v. EPA, Kinder Morgan Inc. v. EPA, American Forest & Paper Associations v. EPA and U.S. Steel Corp. v. EPA*
 - Challenges to EPA's Good Neighbor Plan, which targets emissions from 23 upwind states
 - Arguments focus on whether the plan usurps states' authority to develop their own plans for controlling emissions, the vagueness of the standards and impossibility of complying
 - Arguments scheduled for February 2024



Key Court Cases in 2024

Vehicle Emissions Cases in the District Court

- *Texas v. EPA and Natural Resource Defense Council v. NHTSA*
 - Decision expected in cases challenging EPA's emission standards and NHTSA's fuel economy standards for cars and light trucks for model years 2023-2026
 - Major questions doctrine argument that the rules effectively mandate a switch to electric vehicles
- *Ohio v. EPA*
 - Challenge to EPA's reinstatement of a waiver under the Clean Air Act that allows California to set its own vehicle greenhouse gas emission standards and require a certain percentage of vehicles sold to be electric



Key Court Cases in 2024

- *Corner Post v. Board of Governors of the Federal Reserve System*
 - Challenge to a 2011 Federal Reserve rule on debit card swipe fees
 - Issue is whether the six-year statute of limitation in the Administrative Procedure Act begins to run upon promulgation of a rule or when a party is injured by it
 - If promulgation does not start the statute of limitation clock, more agency rules could be subject to legal challenges



Key Court Cases in 2024

- Kids' Climate Change Cases
 - Montana Supreme Court to hear appeal of lower court finding that lawmakers violated young people's right to a clean and healthful environment by prohibiting agencies from considering climate change in permitting decisions
 - Trial is scheduled for June in a climate change case against the state of Hawaii after the judge denied attempts to dismiss the case
 - The dismissal of kids' climate change cases in Utah and Virginia are being appealed
 - Other jurisdictions with similar pending cases:
 - Oregon federal court
 - California federal court

