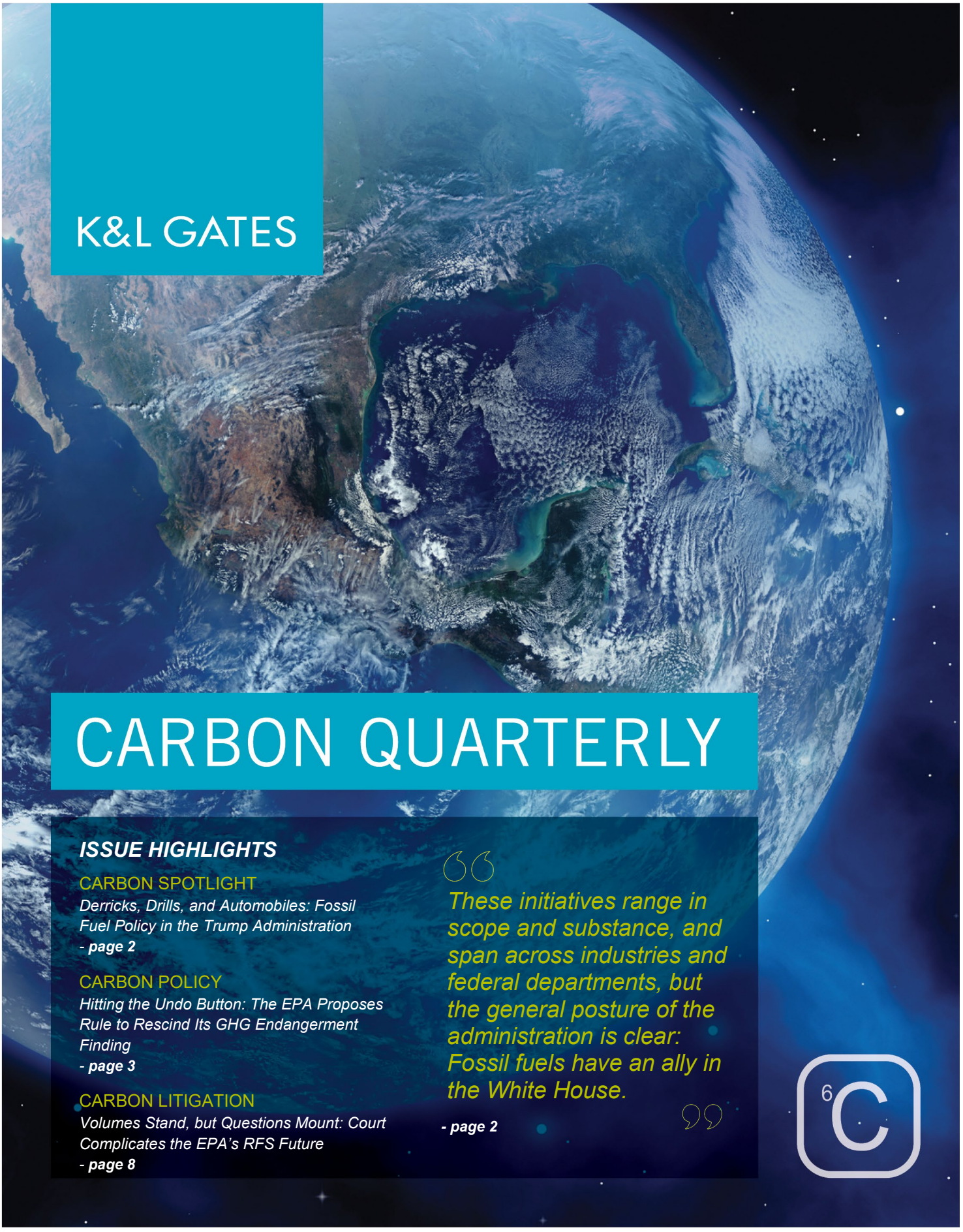

K&L GATES

CARBON QUARTERLY

ISSUE HIGHLIGHTS

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What's Inside

No matter your views on climate change policy, there is no avoiding an increasing focus on carbon regulation, resiliency planning, and energy efficiency at nearly every level of government and business. Changes in carbon—and, more broadly, greenhouse gas—policies have the potential to broadly impact our lives and livelihoods.

Covering developments in carbon policy, law, and innovation, Carbon Quarterly is produced by our Carbon Solutions group—a collaboration of our lawyers in the Asset Management and Investment Funds; Corporate; Energy, Infrastructure, and Resources; Real Estate; and Policy and Regulatory practices.

Carbon Spotlight

Derricks, Drills, and Automobiles: Fossil Fuel Policy in the Trump Administration

In the first nine months of President Donald Trump's second term, the administration has adopted a policy of aggressive support for the production and utilization of domestic fossil fuel and carbon mineral resources. President Trump campaigned on a platform of establishing US energy dominance and reducing consumer costs, and the administration's actions in the first year clearly signal its view that oil, gas, and coal are resources critical to accomplishing that goal.

Developing US Resources

The Trump administration has issued and implemented a series of executive orders, executive agency policies, and legislative efforts to "unleash" US resources and promote industrial development in the sector. These initiatives range in scope and substance, and span across industries and federal departments, but the general posture of the administration is clear: Fossil fuels have an ally in the White House.

For example, on Inauguration Day, President Trump issued two key executive orders, "Declaring a National Energy Emergency" and "Unleashing American Energy."[1] Among several other actions, the executive orders ended the Biden administration's pause on reviewing applications for approval of liquefied natural gas (LNG) projects and directed relevant agencies to develop expedited emergency permitting procedures for certain energy projects, including oil, coal, and natural gas.[2] The Department of Energy (DOE) has since approved over 11 billion cubic feet per day of LNG exports.

Additionally, in May, the DOE formally designated metallurgical coal—a key component in the production of steel—as a critical mineral.[3] The critical mineral designation, an effort that saw significant lobbying from the mining industry, opens up metallurgical coal projects.

Congressional Republicans further prioritized fossil fuel development in the One Big Beautiful Bill Act (OBBBA), the agenda-setting reconciliation bill spearheaded by President Trump. The OBBBA eases certain drilling requirements; orders the Secretary of the Interior to immediately resume oil, gas, and coal lease sales; and reduces royalty rates for oil, gas, and coal.[4]

Regulatory Rollback and Administrative Support

The administration's efforts to proactively support fossil fuel development have been paired with a coordinated push across the executive branch to identify, revise, and repeal regulatory and environmental barriers to resource production and power generation.

In February, at the direction of the White House and in response to judicial rulings limiting its authority, the Council on Environmental

Quality (CEQ) rescinded all federal regulations implementing the National Environmental Policy Act (NEPA).[5] Individual agencies must comply with the environmental review requirements of NEPA and internal NEPA policies but are no longer bound by CEQ NEPA rules.

In March, the Environmental Protection Agency (EPA) announced the "greatest and most consequential day of deregulation in U.S. history," reconsidering over 30 environmental regulations, including the Clean Power Plan 2.0, the Mandatory Greenhouse Gas Reporting Program, the 2009 Endangerment Finding, and several other foundational EPA rules and enforcement mechanisms.[6] These rollbacks were designed to end the "throttling [of] the oil and gas industry" and eliminate "trillions" in compliance costs for the industry and consumers.

In July, in support of the EPA's proposal to repeal the 2009 Endangerment Finding, the DOE initiated a review of the climate impacts of greenhouse gas (GHG) emissions to solicit public comment on the "critical assessment of the conventional narrative on climate change."[7] The report concludes that global warming as a result of carbon emissions appear "less damaging economically than commonly believed" and refocused US energy priorities toward "reliable and affordable" energy production.[8]

Conclusion

In his March address to a joint session of Congress, the president announced that the policy of the United States would be to "Drill, Baby, Drill." In nine months, the widespread efforts of the White House, key regulatory agencies, and Republican congressional leadership to loosen the regulatory burdens on fossil fuel development and pivot away from prioritizing renewable energy have been consistent with that declaration.

Carbon Policy

Hitting the Undo Button: The EPA Proposes Rule to Rescind Its GHG Endangerment Finding

On 1 August 2025, the EPA published a proposed rule that would revoke the agency's 2009 Endangerment Finding, the scientific determination concluding that planet-warming GHGs pose a threat to public health and underpinning the government's legal authority to combat climate change.[9] Lee Zeldin, the EPA's administrator, stated, "[t]he proposal would, if finalized, amount to the largest deregulatory action in the history of the United States" and would erase limits on GHG emissions from cars and trucks on the nation's roads.[10]

For background, the Clean Air Act (CAA) requires the administrator of the EPA to prescribe standards for emissions of air pollutants that are determined to "endanger public health or welfare."[11] In 2007, the US Supreme Court concluded in *Massachusetts v. EPA*, a 5-4 decision, that the CAA's broad definition of "air pollutant" includes GHGs.[12] The Supreme Court ruled that Section 202(a)(1) of the CAA grants the EPA the statutory authority to regulate GHG emissions from new motor vehicles and engines.[13] The high court left to the EPA's judgment whether GHG emissions from vehicles cause or contribute to conditions (e.g., climate change) that endanger public health or welfare.[14] Following the Supreme Court's decision, the EPA issued the Endangerment Finding, concluding six GHGs—carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)—contribute to air pollution at concentrations projected to threaten public health and welfare.[15] Since 2009, the Endangerment Finding has allowed the EPA to formally regulate and reduce global warming emissions pursuant to the CAA.

The Obama and Biden administrations utilized the Endangerment Finding to set stringent limits on GHG emissions from cars, power plants, and other industrial sources of pollution. If the Endangerment Finding is rescinded, the EPA's authority under the CAA to regulate GHG emissions accumulating in the atmosphere from the burning of fossil fuels would be crippled. The decision would run counter to decades of environmental rulemaking and court decisions and make it significantly more difficult for future administrations to rein in climate pollution from industrial sources, namely, the burning of coal, oil, and gas.[16] It may also nullify certain existing EPA rulemakings that rely on the Endangerment Finding, such as the New Source Performance Standards (NSPS) for industrial sources and CO_2 emission limits set under Section 111(b) of the CAA for new industrial sources.[17]

The EPA's proposed rule to reconsider the 2009 Endangerment Finding states that its repeal would nevertheless preserve federal preemption of state vehicle GHG standards under the CAA, as well as federal common law claims related to GHGs.[18] The preemption issue may prove critical for dozens of climate tort cases currently proceeding throughout state courts.

Many of the defendants in these cases argue that GHG-related claims against them are preempted by the CAA and the EPA's regulation of GHG emissions thereunder.[19]

The public comment period for the EPA's proposal closed on 15 September 2025.[20] EPA Administrator Zeldin stated that, following the public comment period, the agency would work to finalize the rule within the next year.[21] It is very likely that any final rule would be challenged in the courts.

States Raise the Bar on Cutting Power Plant Pollution

The Regional Greenhouse Gas Initiative (RGGI) is a cooperative effort among 10 Northeastern and mid-Atlantic states to limit carbon pollution from large power plants. It works by selling a limited number of permits (called "allowances") that power plants must buy to release carbon dioxide; over time, fewer allowances are issued, encouraging cleaner energy choices.

On 3 July 2025, the RGGI states agreed to strengthen the program.[22] Beginning in 2027, the total amount of carbon pollution allowed across the region will start at about 69.8 million tons of CO_2, down from about 75.7 million tons under the previous plan.[23] From 2027 through 2033, this cap will shrink quickly—by roughly 8.5 million tons per year on average.[24] After 2033, the reductions will continue, but more slowly, through 2037.[25]

Besides lowering the cap, the states updated the program's design to keep it fair and steady. They set a stronger minimum price so allowances cannot become too cheap, added measures to prevent sudden spikes in prices, and decided to phase out "offsets"—which previously allowed companies to count emissions reductions outside the power sector.[26] Moving forward, reductions must come directly from the power plants themselves.

The states cited several reasons for pushing harder:

- *Give the carbon market stability and certainty*. They want power producers and designers of new energy projects to have clearer guidelines so they can make long-term plans with more confidence.[27]
- *Ensure enough allowances are available and protect consumers*. The updated rules aim to match allowance availability with expected energy needs while keeping prices from spiking, ensuring electricity remains affordable.[28] The proceeds from selling allowances will continue funding programs that reduce energy bills, support renewable energy, and assist communities.[29]
- *Confirm enduring commitments to affordability, health, and a robust economy*. The changes underscore each state's dedication to maintaining energy that supports affordable electricity, clean air, and economic opportunity for businesses and workers.[30]

The new rules mean a sharper push toward clean energy across the region. Utilities will need to transition faster through renewable power, energy efficiency, and other low-carbon strategies. There might be modest increases in energy costs at first, but the revenue from selling carbon permits is expected to continue to help lower bills, support clean energy programs, and assist low-income communities.

These changes take effect in 2027 after each state updates its own laws. Another review is scheduled to take place by 2028 to assess progress and consider future goals beyond 2037.

EPA to Power Plants: No Carbon Standards Required?

The EPA is planning a reset of GHG and mercury rules for power plants in the United States under Section 111 of the CAA. This reset signals a regulatory whiplash over GHG emissions for the power plant sector, with this latest EPA proposal serving as a repeal of the Biden administration's GHG power plant rules (GHG Power Plant Rules) finalized only a year ago.[31] On 11 June 2025, the EPA proposed repealing the GHG Power Plant Rules with the stated aim of ensuring "affordable and reliable energy supplies" and meeting the goal of driving "down the costs of transportation, heating, utilities, farming, and manufacturing[.]" (Proposed Rule).[32] Aligned with the Trump administration's stated goal of "unleashing American energy," the Proposed Rule will represent a rollback of some of the most burdensome requirements currently facing power plants.[33] However, the extreme ends of the spectrum from the Biden administration's GHG Power Plant Rules to the Trump administration's Proposed Rule to repeal the same is a source of great uncertainty for plant operators who have begun to take actions toward compliance with the GHG Power Plant Rules as they currently exist. With pending litigation and no final repeal yet made, power plants—and stakeholders, including environmental groups and the general public—remain in regulatory limbo.[34]

The Proposed Rule is focused on repealing the GHG emissions standards established last year for fossil-fired power plants under the Carbon Pollution Standards (CPS) and the Greenhouse Gas New Source Performance Standards rule. The Proposed Rule provides two alternative approaches for repealing all GHG emissions standards for all fossil-fired power plants: (1) a repeal based on the "Significant Contribution Finding," or (2) a repeal based on the "Carbon Pollution Standards Repeal."[35]

Under the Significant Contribution Finding approach, the EPA could find that GHG emissions from fossil-fired power plants do not contribute significantly to dangerous air pollution.[36] If such emissions do not contribute significantly to dangerous air pollution, then they are not subject to regulation under the CAA.[37] As such, the EPA would repeal the GHG Power Plant Rules based on this finding. Such a reversal would be premised on the EPA applying a narrower reading to Section 111 of the CAA, wherein the statute is interpreted as requiring a pollutant-specific finding that the source category is a significant contributor to harmful air pollution.[38] This means that Section 111 would only be triggered on a pollutant-by-pollutant basis, which in turn would require the EPA to make a distinct finding that GHG emissions from fossil-fired power plants are a significant contributor to harmful air pollution. Under the EPA's proposed reading of the CAA, the EPA could find that GHG emissions from fossil-fired power plants do *not* contribute significantly to harmful air pollution because the plants constitute only 3% of total global GHG emissions.[39]

In conclusion, the EPA therefore proposes to repeal all GHG emissions standards for the power sector under CAA Section 111.[40]

Under the alternative Carbon Pollution Standards Repeal, the EPA suggests repealing a narrower set of requirements of the GHG Power Plant Rules because they fail to satisfy the requirements of CAA Section 111. This would be a narrower repeal than that based on the Significant Contribution Finding and would instead eliminate specific GHG emission standards based on revised best system of emissions reduction (BSER) determinations for the CPS in the GHG Power Plant Rules.[41] This approach would instead involve the EPA concluding that the determination underlying the CPS in the GHG Power Plant Rules failed to meet the requirements of a valid performance standard under Section 111 of the CAA because it did not reflect "the degree of emission limitation achievable through the application of the" BSER that "the Administrator determines has been adequately demonstrated."[42] If Administrator Zeldin and the EPA determine such has not been adequately demonstrated, the EPA can make a finding that the current requirements do not constitute a valid performance standard.

The Proposed Rule aligns with the Trump administration's deregulatory agenda and policy objectives and promises significant compliance cost savings. However, on 7 August 2025, the attorney generals of 21 states and the District of Columbia, along with the chief legal officers of the city and county of Denver; the cities of Boulder, Chicago, and New York; and the California Air Resources Board, submitted a comment letter opposing the EPA's proposal to repeal all GHG emission standards for fossil-fired power plants.[43] Litigation over the repeal is expected, as is continued executive, regulatory, and legislative action, in the upcoming months as the Trump administration's energy policy continues to take shape.

BLM Opens the Ground, DOE Closes the Purse: The State of Carbon Sequestration

In the first half of 2025, the Bureau of Land Management (BLM) provided three separate approvals for the use of federal land in Wyoming for underground carbon sequestration projects. Underground carbon sequestration (as opposed to other sequestration methods, e.g., biological sequestration) is a process by which CO_2 emissions are permanently stored in deposits deep underground. On 26 March 2025, the BLM provided authorization to the Southwest Wyoming Carbon Dioxide Sequestration Project, the largest of the three projects, to utilize approximately 605,100 acres of federal subsurface pore space for permanent carbon storage beneath Lincoln, Sweetwater, and Uinta counties.[44] A separate approval was issued to on 30 April 2025 for the use of 480 acres of federal pore space in Laramie County as part of the Southeast Wyoming Carbon Dioxide Sequestration Project.[45] The third authorization was issued for the use of 44,350 acres of federal pore space, also located in Lincoln, Sweetwater, and Uinta counties.[46]

To commence operations of such carbon sequestration activities, these projects must obtain Class VI underground injection well permits. Authority for issuance of Class VI permits rests with the

EPA, unless the EPA has granted "primacy" over permitting and enforcement of such Class VI wells to a state agency in the state in which the wells are located. Wyoming is one of four such states that have been granted primacy with respect to Class VI wells, in addition to Louisiana, North Dakota, and West Virginia.[47] Arizona and Texas are currently in the final rulemaking stage of being granted primacy, while Alabama, Alaska, Colorado, Mississippi, Nevada, New Mexico, Oklahoma, and Utah are in the pre-application stage.[48]

The BLM approvals and EPA Class VI permit state primacy authorizations are proceeding amid a period of uncertainty for federal funding support for clean energy projects. On 30 May 2025, the DOE terminated 24 grants previously awarded by the Office of Clean Energy Demonstrations totaling US$3.7 billion that were awarded under the Biden administration.[49] The majority of the canceled grants were set to provide funding for carbon capture and sequestration and decarbonization initiatives, including a number of projects involving underground carbon sequestration.[50] The DOE initiated a review of these awards in response to the Trump administration's urging for a review of federal government spending for clean energy projects, and the DOE indicated that upon such review of these awards, it was "determined that they did not meet the economic, national security or energy security standards necessary to sustain DOE's investment."[51]

IMO Moves Toward Enforceable Carbon Market for Maritime Emissions

The International Maritime Organization (IMO) has proposed a carbon pricing mechanism for international shipping, impacting the industry's carbon footprint, which currently accounts for around 3% of global emissions.[52] The proposed mechanism includes a levy on carbon emissions and a carbon credit market, aiming to reduce GHG emissions by at least 20% (striving for 30%) by 2030, at least 70% (striving for 80%) by 2040, and achieve net-zero emissions by or around 2050.[53] The agreement, which could be formally adopted in October 2025, is considered a landmark step towards sustainable shipping.

IMO Net-Zero Framework

Established in 1948 as a United Nations (UN) body, the IMO's purpose is to promote safe, secure, environmentally sound, efficient, and sustainable shipping through international cooperation. Over time, its focus has shifted to include environmental concerns. On 11 April 2025, the Marine Environment Protection Committee passed a new potential regulation, intended to become a new chapter to Annex 6 of the International Convention for the Prevention of Pollution from Ships (MARPOL).[54] MARPOL has 108 parties and covers 98% of the world's shipping, so if implemented as planned, the IMO's Net-Zero Framework (Framework) will affect a large portion of the world's commercial shipping.

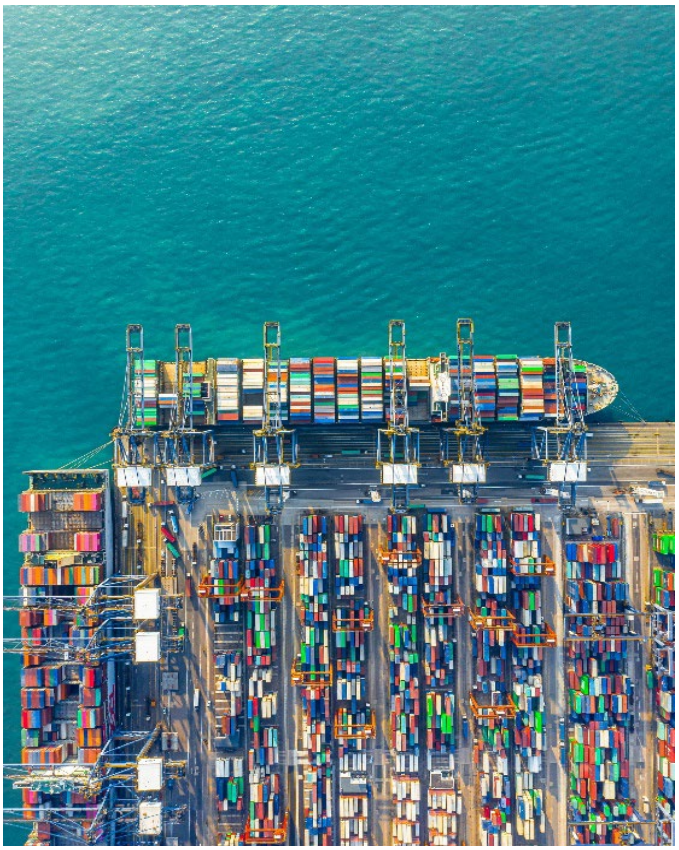
Crucially, and unlike other UN bodies, the IMO's proposed Framework would be both binding and enforceable. The IMO has powers to ensure obligations are met, including, for example, its ability to detain ships at ports for noncompliance.

The Framework is comprised of (1) a technical measure, and (2) an economic measure:

1. *Technical measure*. A global fuel standard, which reduces annual GHG fuel intensity.
2. *Economic measure*. Regulated entities are incentivized to comply with the standard through pricing emissions with a cap-and-trade system.

It is also noteworthy that the member states agreed that all GHG, not just carbon emissions, should be reduced.

In terms of participation, this Framework resulted in the highest-ever participation in the IMO by member states in its history so far. Participation by Small Island Developing States and Least Developed Countries (both as classified by the UN) was also boosted by the establishment of a donor fund.



The United States Secretaries of State, Commerce, Energy, and Transportation released a joint statement opposing the proposed regulations as a "Global Carbon Tax."[55] In particular, the secretaries argued the proposed regulations would rely on expensive fuels unavailable at global scale, disadvantage fuels where the United States has a competitive edge, such as liquified natural gas and certain biofuels, and cause increases in costs for American consumers.[56]

Implications for Shipping Contracts

The Framework has clear borders. While it requires a ship to reduce its GHG intensity, it does not set out how this needs to be achieved.

While other conventions in international shipping law specify which entities take on liability and costs, and which entities receive benefits, the Framework does not propose to demarcate these roles.

Instead, these questions are left for the parties to negotiate using private contract law throughout the contractual chain. This will inevitably be dealt with between the parties bilaterally, due to the number of contracting entities within the shipping ecosystem.

It is rare that a ship is owned, operated, managed, and chartered by the same entity, and many of these entities do not have a direct contractual relationship with one another. The entities with an interest in the ship include the following:

- The registered ship owner, who provides the asset.
- The bareboat charterer, who provides the master and crew. This entity generally contracts with the technical ship manager, who is subject to the Framework's compliance obligation.
- The time charterer, who deals with commercial employment, pays for hire and fuel, and contracts with the fuel supplier.
- The voyage charterer, who loads the cargo and hires the ship.

There will likely be a change in the contractual landscape in order to apportion the liabilities arising under the Framework.

A ship that exceeds emission-reduction requirements may be entitled to "surplus units." It will be a question of contractual construction as to which of the following entities receives the benefit of surplus units:

- The technical ship manager, who may claim it is entitled to the surplus units as it takes on the compliance risk.
- The bareboat charterer, who contracts with the technical manager and may claim it is therefore entitled to trade the surplus units.
- The time charterer, who may claim it is entitled to trade the surplus units connected to its payment for fuel.

Therefore, there is a wide scope for misalignment, as the various contracting entities could enter into conflicting arrangements.

Model for Other Industries?

The Framework was the first industry-led response to climate change. It provides an example and road map to show how other industries can take the lead, rather than relying solely on governments to create a path towards net-zero GHG emissions.

The shipping industry is perceived as a hard-to-abate sector. Ships are hard to design and clean fuels hard to develop, making emissions reductions difficult to achieve. However, this sector-specific approach to emissions reduction, if successful, would be a testament to the potential for industry-led regimes, which can cut across political deadlock and allow for specialized technical approaches.

Law 15,042/2024: How Brazil Is Building a National Carbon Trading System

Brazilian Law No. 15,042/2024 (the Law)[57] establishes the Brazilian Greenhouse Gas Emissions Trading System (SBCE) and amends existing legislation, including the Brazilian Forest Code and the Brazilian Securities and Exchange Commission (CVM) Law. It creates the legal foundation for a regulated carbon market in Brazil by defining tradable assets linked to the emission, reduction, and removal of GHGs, regulating their treatment when traded in financial markets, and setting initial rules for registration as well as measurement, reporting, and verification (MRV).

The full operationalization of the SBCE will depend on forthcoming regulations, ordinances, and rules issued by the CVM and relevant registries. These will provide further detail on MRV requirements, deadlines, applicable sectors, covered facilities, and compliance mechanisms.

The SBCE: Brazilian GHG Emissions Trading System

The SBCE will serve as Brazil's regulated carbon market, with the primary goal of controlling, reducing, and, where possible, neutralizing GHG emissions through a market-based mechanism. Under the system, the government will set an emissions ceiling (cap) for certain sectors or activities. Regulated entities, which will be identified by regulations during the first phase of implementation, will be allowed to trade emission permits, verified emission reduction or removal certificates, and eligible carbon credits.

Entities with surplus permits, meaning their emissions fall below their cap, may sell them, while those exceeding their cap will be required to purchase additional permits or credits. In practice, the SBCE introduces a carbon price in Brazil for the first time, incentivizing emission reductions where they are most cost-effective.

Integration With Carbon Credits

The Law permits the use of certain carbon credits, originating from verified reduction or removal projects, to partially meet SBCE compliance obligations through an offsetting mechanism. These credits must be generated under nationally recognized methodologies and standards to ensure environmental integrity and prevent double counting.

Monitoring and Compliance

Companies in regulated sectors will be required to measure and report their emissions according to official methodologies. Their data will undergo independent verification, and noncompliance may lead to penalties, such as fines and restrictions on operations.

Phased Implementation

Implementation will occur in five stages. The first phase, initially lasting one year from December 2024, but extendable up to an additional 12 months, is dedicated to issuing implementing regulations. The second phase, lasting one year, will allow regulated entities to operationalize emissions reporting systems. In the third phase, over a two-year period, regulated entities will

be obliged only to submit a monitoring plan and annual GHG emissions and removals reports to the SBCE's managing body. The fourth phase marks the effectiveness of the first National Allocation Plan, involving the free distribution of Brazilian Emissions Quotas (CBEs) and the start of SBCE asset trading. Finally, the fifth phase will see full implementation of the system at the end of the first National Allocation Plan. Based on this timeline, full implementation could be expected around 2030.

Tradable Assets Under the SBCE

The Law defines three categories of tradable assets. The CBE is a fungible, tradable right to emit one ton of CO_2 equivalent (tCO_2e), allocated by the SBCE's managing body either free of charge or for a fee to regulated sources. The Verified Emission Reduction or Removal Certificate (CRVE) represents the verified reduction or removal of one tCO_2e, following an accredited methodology and registration with the SBCE. Carbon credits, in turn, represent the reduction or removal of one tCO_2e through projects or programs conducted by public or private entities under recognized national or international MRV methodologies that operate outside the SBCE.

When traded in the financial and capital markets, CBEs, CRVEs, and eligible carbon credits will be treated as securities under Law No. 6,385/1976,[58] thus integrating the carbon market into Brazil's capital markets framework.

Market Outlook and Opportunities

By introducing a regulated carbon price, Brazil is aligning its climate policy with international markets such as the European Union and United Kingdom. This alignment is expected to stimulate innovation in low-carbon production processes and technologies, create new opportunities in the financial markets, and encourage the development of new products, including exchanges, brokerage services, market makers, carbon-focused investment funds, derivatives, and exchange-traded funds. Project development is also expected to expand, especially in areas such as afforestation, reforestation, conservation (including REDD+), land-use change, restoration, and carbon-capture technologies.

The demand for infrastructure and services related to registration, MRV, trading platforms, and compliance will likely increase. Technology providers in fields such as satellite monitoring, geoprocessing, and blockchain-based traceability systems are expected to find new market opportunities. Financial institutions may structure loans backed by carbon credit revenues, issue green bonds tied to removal projects, and create hybrid instruments combining debt and equity features. Professional services, including legal, tax, environmental due diligence, MRV consulting, and certification advisory, are also poised for growth, increasing the relevance of specialized law firms, auditors, and consultancies.

Conclusion

The Law establishes the necessary legal framework for a regulated carbon market in Brazil, transforming avoided or removed emissions into tradable assets—classified as securities when traded in the financial and capital markets. For investors, this development opens access to new asset classes, market infrastructure opportunities, and potential returns from projects and technologies that generate measurable environmental and social benefits. With regulatory developments on the horizon, rigorous due diligence, and strategic partnerships, the SBCE could position Brazil as a significant player in the global carbon market.

On The Horizon: Companies Must Prepare for Complying With California's Climate Disclosure Laws

While the US Securities and Exchange Commission's climate disclosure rule is on an indefinite pause, the 2026 reporting deadlines are quickly approaching for California's Climate Corporate Data Accountability Act (SB 253) and Climate-Related Financial Risk Act (SB 261). The California Air Resources Board (CARB) continues to work on final regulations and guidance for implementation of both laws.[59]

Under SB 253, companies with over US$1 billion in annual revenues doing business in California must begin publicly disclosing Scope 1 and Scope 2 GHG emissions for fiscal year 2025 by 2026, with Scope 3 disclosures phased in by 2027.[60] These disclosures must be independently assured, initially at a "limited assurance" level and shifting to "reasonable assurance" by 2030. SB 261 applies to companies with over US$500 million in annual revenues, requiring biennial public reporting of climate-related financial risks beginning 1 January 2026.[61] On 2 September 2025, CARB published a **draft checklist** for regulated companies preparing for the upcoming reporting obligations. The five-point checklist outlines the minimum standards for reporting on climate-related risks under SB 261.[62] The five-points are divided into: (1) reporting frameworks, (2) governance, (3) strategy, (4) risk management, and (5) metrics and targets.[63]

CARB is expected to finalize rulemaking by December 2025 after a public comment period, but the first reporting deadlines fall shortly thereafter.[64] With these rapidly approaching reporting periods, companies cannot wait for CARB to finalize rulemaking to start preparing to meet their reporting obligations. For more information on the proposed regulations and recommendations for regulated companies that could be subject to SB 253 and SB 261, check out K&L Gates' **alert** on this topic.

The implications of SB 253 and SB 261 extend beyond regulatory compliance. By mandating disclosure of emissions and climate-related risks, these laws push companies to assess and mitigate their contributions to climate change while strengthening accountability to investors, regulators, and the public. Scope 3 reporting, in particular, shines a light on value chain emissions, which are often the largest share of a company's footprint. At the same time, climate risk reporting under SB 261 forces businesses to consider how climate change will affect operations, supply chains, and long-term strategy. Collectively, these measures are designed not only to improve transparency but also to accelerate the transition toward a lower-carbon economy, positioning California as a regulatory leader in aligning corporate practices with climate goals.

Carbon Litigation

Volumes Stand, but Questions Mount: Court Complicates the EPA's RFS Future

In a split decision on 20 June 2025, the US Court of Appeals for the DC Circuit upheld the EPA renewable fuel volume requirements for 2023–2025 under the Renewable Fuel Standard (RFS) program but remanded the rules to the agency for further consideration without vacating them.[65] The court found that the EPA had failed to adequately support its conclusions on the climate benefits for certain categories of renewable fuels and the US Fish and Wildlife Service (FWS) had failed to adequately consider potential impacts on endangered species.[66] The ruling is likely to impact the EPA's renewable fuel volume requirements for 2026–2027, released as a proposed rule just days before the ruling.[67]

Background: The RFS

The RFS, created under the Energy Policy Act of 2005 and expanded by the Energy Independence and Security Act of 2007, requires transportation fuel sold in the United States to contain a minimum volume of renewable fuel. The program's goals include reducing GHG emissions, expanding the nation's renewable fuels sector, and decreasing reliance on imported oil.[68]

Under the statute, the EPA sets annual renewable volume obligations (RVOs) that specify how much renewable fuel must be blended into transportation fuel.[69] Obligated parties, such as refiners and importers, can meet these requirements by producing renewable fuels or purchasing compliance credits known as Renewable Identification Numbers (RINs).[70]

The RFS had a statutory schedule for volume requirements through 2022.[71] For years after 2022, the EPA is authorized to set the RVOs using a "Set Rule" process, which must consider a range of factors, including environmental impacts, energy security, and production capacity.[72] The 2023–2025 rule at issue here was the first Set Rule establishing post-2022 volumes.[73]

Holdings on Climate Analysis and Endangered Species Consultation

The court remanded the rule to the agency on two bases: (1) inadequately supported climate analysis by the EPA, and (2) inadequately explained endangered species consultation by the FWS.

A central focus of the court's decision was that the EPA's analysis of the effect of the Set Rule on climate change was arbitrary and capricious.[74] The statute requires the EPA to weigh six factors when setting volume requirements, including climate change.[75] To evaluate the impacts of the Set Rule on climate change, the EPA reviewed scientific literature for estimates on the emissions produced from renewable fuel production for nearly every type of renewable biofuel, except corn-based ethanol and soybean oil-based biodiesel, which happen to be the largest categories of renewable fuels.[76] For those categories of renewable fuels, the EPA relied solely on a 2010 study that projected lower high-end emission estimates because it argued that this was the only study to average out the impacts of land-use conversion over a period of years.[77] The court was unpersuaded by the EPA's reasoning and, noting the outsized role for the largest categories of renewable fuels, found the EPA's climate analysis arbitrary.[78]

Additionally, the court found that the FWS's determination that the Set Rule would have "no effect" on any endangered species or critical habitat despite the EPA's contrary determination was also arbitrary.[79] In its biological evaluation, the EPA had determined that the Set Rule "may effect," but is not likely to adversely affect, any listed species or critical habitat.[80] The EPA came to this conclusion based on modeling that compared predicted locations of land conversion for increased biofuel production and the habitat ranges of endangered species.[81] The FWS discounted the EPA's modeling because it argued the land conversions identified in the models were geographically uncertain.[82] The court held the FWS was arbitrary and capricious because the law did not require certainty and FWS had failed to engage with the results in the EPA's model or identify why the model did not constitute the best-available science and data.[83]

Because of these deficiencies, the court concluded that the EPA had violated the RFS's climate change analysis requirements and the FWS had violated the Endangered Species Act's (ESA) procedural requirements.[84] Importantly, however, the panel stopped short of vacating the rule, noting that vacatur could cause significant disruption to regulated parties and the renewable fuel market.[85] The dissenting judge would not only have remanded the rule but would have vacated the rule as well, finding the EPA failed to weigh the cost and benefits of the statutory factors it is required to consider when drafting the Set Rule.[86]

Impacts of the Decision

The EPA must now reopen its administrative process to compile updated data, meaning further interagency coordination with the FWS. This could involve new habitat assessments, expanded modeling of land-use changes, and a more robust evaluation of indirect effects from biofuel feedstock production. While the current volumes remain in place, a new analysis could yield findings that justify changes in the 2026-2027 Set Rule now underway—or even mid-course adjustments to 2025 obligations.

This opinion also reinforces that major federal energy and environmental policies—especially those involving agriculture, land use, and emissions—are vulnerable to ESA-based challenges. Future RFS rules, as well as other EPA programs such as the GHG emissions standards for vehicles, may require more comprehensive endangered species reviews.

In the short term, obligated parties can proceed under existing rules, but in the long term, this decision may reshape how the EPA approaches environmental review for major energy policies—potentially influencing the trajectory of the RFS for years to come.

Carbon Trading and Investment

Empire Wind Restart and Revolution Wind Halt Reflect Administration's Wind Policy Shift

After more than a month-long period of federally ordered work stoppage, offshore wind energy developer Equinor was authorized to restart work on the offshore Empire Wind 1 project on 19 May 2025.[87] The Empire Wind 1 project is to include 54 wind turbines that will generate 810 megawatts of electricity, enough to power roughly 500,000 homes in New York.[88] The Empire Wind 1 project had commenced construction in early April 2025 and was operating under a lease signed with the Department of the Interior (DOI) in 2017 during President Trump's first term and an approval to commence construction received by the Biden administration in 2024.[89] Despite these prior federal agreements and approvals, on 16 April 2025, the Bureau of Ocean Energy Management (BOEM) within the DOI issued a stop-work order for all construction activities related to the Empire Wind 1 project, citing a need for additional time to review feedback received from the National Oceanic and Atmospheric Administration (NOAA) regarding the environmental analyses of the project.[90] No specific information was made publicly available with respect to any purported concerns raised by NOAA, and reports indicated that key personnel within BOEM's Office of Renewable Energy Programs had been denied access to any such NOAA report.[91]

By 9 May 2025, Equinor president, Molly Morris, stated that it was spending up to US$50 million per week on the project and that any further delays to lift the work order would possibly result in a need to terminate the project, despite already investing more than US$2.5 billion into it.[92] She further highlighted that stopping an already permitted and approved project mid-execution would set a dangerous precedent.[93] Then, on 19 May 2025, BOEM issued a three-sentence notice officially lifting the order halting activities during BOEM's ongoing review.[94] No direct explanation was offered with respect to the lifting of the work stoppage; however, New York Governor Kathy Hochul stated that the stop-work order was lifted "after countless conversations with Equinor and White House officials."[95] The Interior Secretary, Doug Burgum, in turn thanked Gov. Hochul for her "willingness to move forward on critical pipeline capacity," which commentors have interpreted as an acknowledgement that a compromise was reached allowing Empire Wind 1 project work to commence in exchange for an agreement to build natural gas pipelines.[96] Gov. Hochul's office has denied that any deal on natural gas pipelines was made.[97]

In a similar letter as the one initially received by Equinor, on 22 August 2025, BOEM issued a stop-work order to Revolution Wind, LLC (Revolution Wind) in connection with its offshore wind farm being built off the coast of Rhode Island.[98] The letter provides that "BOEM is seeking to address concerns related to the protection of national security interests in the United States" and that construction activities may not resume until BOEM has completed its review of the project.[99] Nearly 70% of the 65 planned turbines had been installed at the time of the ordered work stoppage.[100] The project plans to provide electricity to more than 350,000 homes in Rhode Island and Connecticut.[101] Revolution Wind and Connecticut Attorney General William Tong have both separately indicated that they are evaluating all options to resolve the matter, including potential legal proceedings.[102]

The Empire Wind 1 project saga and Revolution Wind stop-work order are emblematic of the Trump administration's distaste for wind projects. While the Trump administration has taken action intended to streamline the review and approval of federal projects and permits generally (see our **K&L Gates alert** for further discussion), the administration has taken a more obstructive stance with respect to renewable projects requiring federal approvals or permits, particularly with respect to wind. On 15 July 2025, the DOI issued a memorandum announcing that all of its "decisions, actions, consultations and other undertakings" concerning the use of federal land for wind and solar energy facilities shall be subject to elevated review by the Office of the Secretary of the DOI.[103] The result is that all solar and wind projects that require any sort of federal approval or permit, no matter the scope or complexity, will be subject to review by the DOI Secretary's office. On 29 July 2025, the DOI issued a press release announcing further actions affecting wind energy development, including an order to identify and remove any policies that favor wind energy and authorizing the withdrawal of 3.5 million acres of offshore areas designated as "Wind Energy Areas," which were preapproved federal zones that could be auctioned for offshore wind leases.[104] These moves will significantly impact the review of offshore wind energy projects. They will also affect onshore wind energy projects that have any component that touches federal land, including, for example, any project that includes transmission line easements crossing federal land. For a more in-depth discussion of these DOI actions, please see our **K&L Gates alert**.

Back in Vogue: Nuclear Energy Becomes a Top Priority in the Public and Private Sector

Federal Nuclear Energy Developments

On 23 May 2025, President Trump signed four executive orders aimed at accelerating the development of nuclear power in the United States.[105] These orders direct the Nuclear Regulatory Commission (NRC) to expedite the approval of new reactors, relax radiation exposure limits, and explore federal lands and military bases as potential sites for reactors.[106] The goal is to increase the nation's nuclear energy capacity from approximately 100 gigawatts in 2024 to 400 gigawatts by 2050.[107] Additionally, the orders call for the construction of 10 new large reactors by 2030, with at least one operational reactor at a domestic military base by September 2028, supported by the DOE's Loan Programs Office.[108]

In a well-timed release, on 29 May 2025, the NRC announced that it had approved a 77-megawatt small modular reactor (SMR) design, marking the second SMR design approval following a smaller design in 2020.[109] Both designs are from the SMR company NuScale, though neither has been deployed, and a project to build the earlier design in Idaho was abandoned in

2023.[110] The NRC's approval came just weeks before President Trump dismissed Democratic NRC Commissioner Christopher T. Hanson.[111] Hanson was one of the five members of the independent commission overseeing the nation's nuclear reactors.[112]

Separately, Westinghouse executives met with President Trump in early June 2025 to discuss the construction of 10 new AP1000 nuclear reactors, aligning with President Trump's initiative to build new large reactors within the next five years.[113]

New York's Nuclear Power Initiative

On 23 June 2025, New York Governor Kathy Hochul directed the New York Power Authority (NYPA) to develop a zero-emission advanced nuclear power plant in upstate New York.[114] This initiative aims to support a reliable and affordable electric grid and provide zero-emission electricity to achieve a clean energy economy.[115] The NYPA, in coordination with the Department of Public Service, plans to develop at least one new nuclear energy facility with a capacity of no less than 1 gigawatt, either independently or in partnership with private entities.[116] The process will involve evaluating technologies, business models, and locations, as well as securing key partnerships.[117] The initiative builds on New York's ongoing financial support to Constellation Energy for an early site permitting process at the Nine Mile Point Clean Energy Center and aims to collaborate with other states and Ontario to strengthen nuclear supply chains and support advanced nuclear technologies.[118]

Holtec Brings Palisades Nuclear Plant Back Online in First-Ever Restart

On 25 August 2025, Holtec International announced that it had transitioned the Palisades power plant (Palisades) in Covert Township, Michigan, from decommissioning to operations status under the oversight of the NRC, making Palisades the first nuclear plant in US history to move from decommissioning back to operations.[119] The Palisades transition was first approved by the NRC on 24 July 2025 under the agency's existing regulatory framework and was supported by DOE-guaranteed loan funds.[120] Operations status means that Palisades has authorization to receive nuclear fuel and restart the plant upon meeting certain allowable conditions within the approved technical specifications.[121] Once up and running, Palisades will be able to produce more than 800 megawatts of electricity.[122]

Tech Companies Seek Nuclear Deals for Data Centers

On 30 June 2025, Google and Commonwealth Fusion Systems (CFS) announced a power purchase agreement under which Google will purchase 200 megawatts of electricity from CFS's inaugural "affordable, robust, and compact" (ARC) power plant, expected to supply power to the grid in the early 2030s in Chesterfield County, Virginia.[123] The ARC power plant is intended to be the first commercial fusion power plant and operates by superheating deuterium and tritium, two isotopes of hydrogen, into a cloud of particles (called plasma) that fuse and release energy.[124] Google also has the option to purchase power from additional ARC power plants and is increasing its investment in CFS, though financial terms were not disclosed. Google had previously announced other plans to fund new nuclear projects to meet its computing needs.[125] Meta Platforms signed a similar 20-year nuclear energy agreement with Constellation Energy for Meta's Illinois-based data center, drawing from Constellation Energy's Clinton Clean Energy Center.[126] Last year, Microsoft announced a plan to reopen Pennsylvania's Three Mile Island nuclear power plant—also owned by Constellation Energy—to meet its growing artificial intelligence needs, and Amazon has been looking at small modular nuclear reactors for its own data centers.[127]

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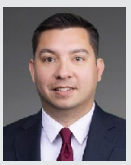

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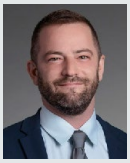

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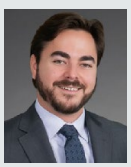

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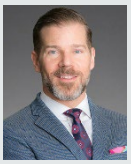

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