



# ENERGY LAW ADVISOR

## FEATURE

Introducing Sharon O. Flanery,  
Chair of the Advisory Board

PAGE 2

## INDUSTRY UPDATES

Mideast War Tests LNG  
Contracts

PAGE 3

## THE PIPELINE

Is AI the Answer to Environmental  
Permitting Gridlock?

PAGE 5



## INDUSTRY UPDATES



**FEATURE**  
Sharon O. Flanery  
*Chair, Advisory Board*

## THE PIPELINE

### Student Voices in Energy Law

Is AI the Answer to the  
Environmental Permitting Gridlock?  
Blue Hydrogen & the 45V Tax Credit

## MEMBER NEWS

Applications for IEL's 2026-27 Leadership Class  
now open

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## FEATURE

### An Introduction to Sharon O. Flanery, Chair of IEL's Advisory Board

Interview by Diana S. Prulhiere, Steptoe & Johnson PLLC

Sharon O. Flanery, Chair Emeritus of Steptoe & Johnson PLLC's Energy and Natural Resources group, is the newly appointed Chair of IEL's Advisory Board for 2026-2028. In the following interview by her colleague Diana S. Prulhiere, Flanery reflects on the path that led her from the engineering field to energy law, discusses what has kept her engaged with IEL over the years, and shares her vision for the organization's future.

**DP:** *Tell us a little bit about your background and how you got into the energy industry.*

**SF:** In college I was interested in math and an advisor suggested I consider engineering. That advice opened the door to a work-study program and scholarships in petroleum engineering at the School of Mines at West Virginia University. After earning my degree, I had the privilege of working nearly 12 years in the energy industry, both in Appalachia and overseas in Saudi Arabia with Aramco.

**DP:** *You have such an interesting and unique background story. What made you decide to go to law school?*

**SF:** During one of the industry downturns, I started at Duquesne University's law school night program while continuing to work during the day. Energy law was a good fit with my technical background, and I was blessed that many of the individuals I worked with during my engineering career were supportive of me as I moved into the legal field.

**DP:** *How would you describe your experience and practice after graduating law school?*

**SF:** Diverse. I began as a litigation associate working primarily on midstream and upstream issues, including coalbed methane. I then moved in-house with a coal company, where I handled coal, coalbed methane, and river transportation matters. Later, I served as Assistant General Counsel for a major FERC-regulated pipeline company. After that, I joined an E&P company and moved to the business side as Vice President of its Exploration and Development group. When that company was sold, I returned to private practice with Steptoe & Johnson, where I remain today.

**DP:** *When did you first hear about IEL?*

**SF:** I knew of IEL generally, but I learned much more from Russ Schetroma in the early 2010s. IEL was dear to Russ's heart, and he encouraged our firm to become more involved. He believed IEL offered excellent programming on industry issues and invaluable access to energy thought leaders across the country and around the world.

**DP:** *You've been very involved and have now been appointed Chair of the Advisory Board. What has kept you engaged with IEL, and what does being appointed Chair mean to you?*

**SF:** I remain involved because lifelong learning and education are so important to what we do, and IEL supports that through its programming and focus on industry issues. This knowledge helps us better serve our clients. Being appointed Chair is an extreme honor and truly humbling.

**DP:** *Looking back over your professional and personal life, is there anything that has significantly influenced your approach to leadership?*

**SF:** I would say service and stewardship – recognizing that you are there to serve and to lead with stewardship in mind. As members of IEL, we want to serve the organization and contribute to its success, and we also have a responsibility to be good stewards of its resources as we focus on its mission.

**DP:** *Do you have any specific goals for your tenure as Chair? Is there an area you'd like to focus on or help grow?*

**SF:** We want to continue the outstanding work of Kristi McCarthy (our Immediate Past Chair) and IEL's leadership and staff, who are truly exceptional. We will continue to focus on IEL's mission of offering high-quality education and programming. We would like to explore new ideas from the Strategic Planning Committee, including outreach to additional geographic regions and professionals across the energy sector. And we want to continue our focus on membership which is at an all-time high and continue to be good stewards of our finances which are stronger than ever.

**DP:** *Is there any closing message you would like to share as you step into this role?*

**SF:** We want to thank everyone who gives their time—those in leadership roles, those on committees, and all who volunteer. IEL's success depends on its members who care and are willing to serve. We are also deeply grateful for the IEL leadership team. Finally, we ask members to stay involved and continue sharing ideas that help us better serve the organization. I am excited and honored to serve as IEL's Chair and look forward to working with everyone to continue IEL's success.

## INDUSTRY UPDATES

### Mideast War Tests LNG Contracts

James Barratt and Afolarin Awosika, Vinson & Elkins LLP

*The escalating conflict in the Middle East has already had a significant impact on global energy markets, and the LNG sector has been among the hardest hit. The de facto closure of the Strait of Hormuz, through which almost a fifth of global LNG typically transits, has disrupted the flow of LNG cargoes from Qatar and other Gulf producers, pushing spot prices to their highest levels since 2022. This crisis raises urgent questions around supply security, contractual performance and price flexibility. In this article we assess these issues and the general market impact that is likely to materialize in the coming weeks and months.*

Air strikes by US and Israeli forces across Iran, and retaliatory attacks on shipping and port facilities in the Mideast Gulf, have disrupted oil and gas operations across the region. Missile and drone attacks in and around the Gulf caused several of the leading mutual marine insurers to cancel war risk coverage for ships operating in the region, with effect from March 5. QatarEnergy—the world's largest LNG producer—announced that it was suspending production of LNG and associated products after its facilities at Ras Laffan and Mesaieed were struck by Iranian drone attacks.

The Strait of Hormuz is now effectively commercially unnavigable for many shipowners, abruptly cutting off a significant volume of LNG from the global market. The disruption has also affected other Gulf producers, including the United Arab Emirates (UAE).

President Trump announced on March 3 that the US Navy could, if necessary, begin escorting oil tankers through the Strait of Hormuz, and added that the United States Development Finance Corporation could provide political risk insurance and financial guarantees for maritime trade in the Gulf. Whether these measures will be enough to ease concerns in the shipping industry remains to be seen.

### Impact on Gas Prices

The consequences for pricing have been significant. In Asia, spot LNG (JKM) moved into the low-to-mid \$20s/MMBtu on March 3, while in Europe, TTF surged above €53 per megawatt hour (\$64/MWh), with intraday prices approaching €60–€63/MWh as European buyers competed for available supplies. JKM Apr-26 futures settlement rose significantly to \$15.77/MMBtu, reflecting the lag between future and physical prices given the early days of the shock, but market participants expect these to rise and trade at a premium to Atlantic given that most Qatari and UAE production is contracted to Asian buyers.

Beyond pure supply disruption, the crisis has also injected a pervasive risk premium into energy markets; even cargoes originating outside the Gulf area are trading at elevated levels as buyers seek to lock in volumes against the possibility of further escalation.

The dramatic increase in spot prices is likely to have consequences for price review negotiations under long-term LNG sale and purchase agreements (SPAs). Most long-term LNG SPAs contain periodic price review clauses that allow either party to request an adjustment to the contract price to reflect changes in market conditions. These clauses typically permit a review every three to five years and require the requesting party to demonstrate that market conditions have materially changed since the last review.

The current environment may encourage sellers to invoke price review mechanisms, arguing that the elevation in spot prices demonstrates that existing contract prices are out of step with market realities. Conversely, buyers who locked in favorable prices during a lower-price environment will want to resist any upward adjustment and may argue that the current spike is a temporary, geopolitically driven anomaly rather than a structural shift in the market. The outcome of these disputes will turn on the precise drafting of price review clauses and, if price review negotiations escalate into disputes, how arbitral tribunals determine, among other issues, whether there has been a material change in market conditions.

## **Alternative Supplies**

With the disruption to Qatari supplies and the commercial closure of the Strait of Hormuz, buyers will be looking to turn urgently to alternative sources of supply. The US exported its first cargo of LNG from Louisiana in February 2016, and in the ten years since, has grown to become the world's largest LNG exporter. The precipitous growth of the LNG export industry in the US has been fueled by a favorable investment climate, abundant natural gas supply and reserves, as well as increasing international demand.

US suppliers have become increasingly attractive by offering more competitive pricing, allowing greater destination flexibility and free-on-board (FOB) terms. In light of the increased demand from the European market as it shifts away from reliance on Russian supplies, more flexible contracts on offer from US suppliers have proven to be competitive alternatives to traditional long-term, destination-restricted contracts from traditional suppliers in the Gulf region.

If the geopolitical conflict continues, an increase in supply to Asia—where the largest consumers of LNG from the Gulf region are located—is likely to be prioritized where portfolio flexibility permits. It also appears that buyers are looking to African producers—one LNG tanker that loaded a cargo from Bonny LNG in Nigeria on February 27 and was initially bound for Europe has reversed course and is now heading towards Asia as spot prices surge.

## **The Duty to Mitigate and the Limits of Force Majeure**

Many other suppliers of LNG in the region may, as QatarEnergy has done, choose to invoke the force majeure provisions in their contracts to suspend their delivery obligations. This leaves buyers in the unenviable position of receiving no LNG and no compensation (other than any restoration quantities expressly provided for in the SPA, depending on the circumstances), and potentially being forced to source replacement cargoes at a much higher price on the spot market, at their own expense if needed, for instance, to meet contractual obligations downstream.

However, even where a seller has a legitimate basis for invoking force majeure, it will typically be subject to a duty to mitigate the effects of the force majeure event. In practice, this means that a seller cannot simply cease deliveries and wait for the crisis to pass. It must take all reasonable steps to resume or maintain supply, which may include sourcing replacement cargoes from facilities outside the affected region, rerouting vessels via longer alternative passages, or drawing on portfolio flexibility to allocate non-Gulf volumes to affected buyers.

The scope of the duty to mitigate is likely to be heavily disputed. Typically, sellers argue that mitigation obligations should not require them to incur costs that are disproportionate to the value of the contract or to take steps that would expose them to unacceptable commercial or operational risk, whereas buyers will argue that the duty to mitigate should be interpreted broadly.

## **Spot Market Premiums and Contractual Obligations**

Market dislocations in the past have given rise to allegations in several proceedings that some sellers prioritized spot opportunities over long-term deliveries, raising disputes about compliance with delivery obligations, reasonable and prudent operator standards, annual contract quantities and force majeure provisions. The economics are stark, and the potential price differentials may create an incentive for a party to re-allocate or defer contracted volumes higher-paying buyers.

This is not a hypothetical scenario. For example, Shell LNG alleged that Venture Global Calcasieu Pass had deliberately delayed declaring the Commercial Operation Date (COD) at its facility in order to continue selling pre-COD LNG production on the spot market, to take advantage of the spike in global LNG prices following Russia's invasion of Ukraine. The tribunal rejected Shell's claims in August 2025 and on March 2, the New York State Supreme Court declined to vacate that award. By contrast, BP won a partial award in October 2025 concerning COD timing, with damages pending. These disputes illustrate that when market conditions diverge sharply from the assumptions that underpin long-term pricing arrangements, the likelihood of disagreement over allocation and performance under SPAs increases.

## Conclusion

The current crisis in the Gulf region is likely to expose a number of buyers (particularly in the Asian market) to critical supply risk and have knock-on effects on the global price and supply of LNG. The many recent geopolitical shocks that have so significantly impacted the LNG industry underscore the importance of negotiating key protections into long-term LNG SPAs, including destination flexibility, price review clauses and carefully drafted force majeure clauses, which will insulate parties as much as possible from the worst financial effects of crises such as this.

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## Trump Administration's Invocation of Defense Production Act to Bolster Energy Production Draws Legal Challenges

Scott Kiplinger, GableGotwals

The Trump administration's recent use of the Defense Production Act ("DPA") to open a segment of a pipeline off the coast of Santa Barbara signals to our energy clients that the exigencies of the ongoing dispute in the Middle East may affect ongoing operations.

The federal government [recently directed](#) Sable Offshore Corporation to restore operations of the Santa Ynez Unit and Santa Ynez Pipeline System. This follows previous efforts from the administration to stabilize global oil markets disrupted by conflict in the Middle East, which has included releasing 172 million barrels of oil from the Strategic Petroleum Reserve and coordinating with members of the International Energy Agency to release up to an additional 400 million barrels.

As global events unfold, domestic energy companies should be aware that the current administration is willing to consider unorthodox approaches to increase production capacity, subject to challenges from state and local authorities.

The administration issued the order to resume operations pursuant to the DPA, a federal law enacted in 1950, which permits the federal government to enact regulations and orders to allocate materials in the interest of national defense. In addition to wartime efforts, previous administrations have invoked the DPA to respond to natural disasters, the COVID-19 pandemic, and foreign cyberattacks. U.S. Secretary of Energy Chris Wright stated the directive will permit Sable to produce 50,000 barrels of oil per day and decrease domestic reliance on foreign crude oil. Sable resumed operations along the pipeline on the day the administration issued its order.

This offshore oil platform and pipeline have been shuttered for 11 years, and Sable has attempted to resume operations since it purchased the assets from ExxonMobil in 2024. California has contested the administration's order, claiming that it violates the state's regulatory authority and poses an environmental hazard. Governor Gavin Newsom [issued a statement](#) pledging to challenge the order in court, alluding to a 2015 incident in which the pipeline released thousands of barrels of crude oil along the Santa Barbara coastline. [Sable reports](#) the company completed its onshore anomaly repair program and hydrotested all pipeline segments in May of 2025.

The administration's use of the DPA signals a willingness to intervene directly in energy infrastructure operations where supply, transportation capacity, or national security concerns are implicated. Oklahoma producers and midstream operators should be mindful that federal intervention is possible, with potential upside to unlock capacity and constraint issues and cut through permitting delays. But these opportunities also carry litigation, regulatory, and operational risk. Against this backdrop, energy companies should evaluate how federal authorities could affect existing assets, expansion plans, and idle or constrained infrastructure.

# Texas Supreme Court Issues Its First Opinion Finding Rebuttal of the *Van Dyke* Conveyance Presumption

Jana Grauberger, James T. Kittrell, Sam Allen, and Margaret S. Chavez, Liskow

On March 13, 2026, the Texas Supreme Court issued its opinion in [Clifton v. Johnson](#), marking the first instance in which the Court found sufficient indicia in the text of an instrument to rebut the *Van Dyke* oil and gas conveyance presumption. Nearly three years before the Court issued its opinion in *Clifton, Van Dyke v. Navigator Group*, 668 S.W.3d 353 (Tex. 2023), held that, in the context of antiquated oil and gas conveyances containing one-eighth within a double fraction, such language gives rise to a rebuttable presumption that “one-eighth” refers to the entire mineral estate. Following *Van Dyke*, numerous title disputes arose and made their way through courts across the state. When adjudicating these disputes, courts of appeal are generally reluctant to hold that royalty clauses containing a 1/8 within a double fraction rebutted the *Van Dyke* presumption, leaving industry stakeholders and practitioners wondering whether the *Van Dyke* presumption is, in fact, rebuttable and, if so, what circumstances are sufficient to rebut the presumption. The Texas Supreme Court confirmed in *Clifton* that the *Van Dyke* presumption is, in fact, rebuttable, and it shed light on what is sufficient to do so.

At issue in *Clifton* was a 1951 royalty deed that conveyed “an undivided one-one hundred and twenty-eighth (1/128) interest in and to all of the oil, gas and other minerals in and under” several tracts of land in Reeves County. The deed also specified that the “land is under oil and gas leases providing for a royalty of 1/8 of the oil...” The 1951 royalty deed further conveyed a “1/128 (1/16 of the usual 1/8 royalty) part of all of the oil, gas and other minerals taken and saved under” future leases. For nearly three quarters of a century, the grantees and their successors received a fixed 1/128 royalty without dispute. However, in 2020, Johnson, a successor-in-interest to the grantee, claimed that the 1951 royalty deed conveyed a floating 1/16 royalty interest. In its opinion, the Texas Supreme Court revisited the two issues explored in *Van Dyke*: the rebuttable presumption and the presumed-grant doctrine.

## The *Van Dyke* Rebuttable Presumption

The Texas Supreme Court reversed the decision of the El Paso Court of Appeals and reinstated the trial court’s summary judgment ruling, holding that the plain language of the 1951 royalty deed rebutted the *Van Dyke* presumption by showing that the parties to the deed did not use 1/8 as a term of art—rather, they used 1/8 for its ordinary numerical value. While the court of appeals began its analysis with the *Van Dyke* presumption, it did not follow the analysis to the end. Had it done so, it would have considered the “textual indicia” in the 1951 royalty deed that was sufficient to rebut the presumption.

Here, unlike *Van Dyke* (and *Hysaw v. Dawkins*), both the granting clause and the future-lease clause expressly used the product of two fractions: 1/128. While the 1/128 stood alone in the granting clause, it was followed by double-fraction parenthetical in the future-lease clause—(1/16 of the usual 1/8 royalty)—which, when multiplied, amounted to 1/128. The Court interpreted the double-fraction parenthetical as being used to show how the parties reached the 1/128 royalty interest. Without the double-fraction parenthetical, the future-lease clause would still have contained the stand-alone fraction 1/128. The Court stated that explanatory parentheticals should not hold greater weight than single fractions—particularly when the same figure is expressed as single fraction alone in the granting clause. To do otherwise would have resulted in the 1/128 figure not reading consistently throughout the instrument. As such, the Court interpreted the 1951 royalty deed as conveying a fixed 1/128 royalty interest on future leases, thereby resolving any apparent contradictions and reading the instrument as a cohesive whole.

## Presumed Grant Doctrine

Additionally, the Texas Supreme Court concluded that the Cliftons’ alternative argument that remand to the trial court was appropriate under the presumed-grant doctrine because, in *Van Dyke*, the Texas Supreme Court made clear that the rebuttable presumption “sits alongside the presumed-grant doctrine” and remains relevant to the analysis when interpreting double fractions. Unlike the rebuttable presumption, which concerns textual meaning, the presumed-grant doctrine concerns “real-world developments.” To prevail under the presumed-grant doctrine, a party must establish “(1) a long-asserted and open claim, adverse to that of the apparent owner; (2) a nonclaim by the apparent owner; and (3) acquiescence by the apparent owner in the adverse claims.”

As was the case in *Van Dyke*, application of the two distinct inquiries—the rebuttable presumption and the presumed-grant doctrine—here pointed in the same direction of the parties’ 70-year shared understanding: the 1951

royalty deed conveyed a fixed 1/128 royalty interest. While oftentimes the parties' view of their respective rights and their corresponding conduct is consistent with the text of the instrument, the Court noted that in "rare circumstances" the presumed-grant doctrine may obviate the plain meaning of the text. Ultimately, the Court concluded that it need not decide whether the Cliftons satisfied all three elements of the presumed-grant doctrine because it would lead to the same result as the textual analysis of the deed.

Notably, Chief Justice Blacklock questioned counsel in oral arguments on whether it would be better, when there has been a consistent course of conduct among parties to an instrument containing one-eighth within a double fraction, to "[cut] through the whole thing" and interpret conveyances consistently with the parties' course of conduct without regard to "presumptions and rebuttals." In response to this line of questioning, the Court received three amicus curiae letters urging the Court not to adopt such an approach as doing so would contradict established precedent that course of conduct may not inform the text of an unambiguous deed and would contribute to title uncertainty.

The Court, however, likened the presumed-grant doctrine to adverse possession in that adverse possession asserts ownership that is contrary to a recorded deed. It then noted that, while courts will not find the presumed-grant doctrine to be easily satisfied, when its requirements are met, "parsing a complicated text may end up being unnecessary." For example, "suppose that, under a textual analysis, the presumption is (or is not) rebutted. If the parties have nonetheless acted as if the opposite were true for such an extended time, then the court will still apply the presumed-grant doctrine when its requirements are satisfied." Thus, as the Court "explained in *Van Dyke*, when the presumed-grant doctrine clearly applies, 'a court could dispense with the deed-construction analysis' altogether."

From this language, it is clear the Court disagreed with the amicus curiae letters submitted in response to Chief Justice Blacklock's line of questioning and held that course of conduct can override the plain meaning of an instrument's text when the requirements of the presumed-grant doctrine are satisfied. At the same time, because application of the presumed-grant doctrine was consistent with the Court's interpretation of the instruments in *Van Dyke* and *Clifton*, it is yet to be seen what quantum of evidence is necessary before a court will disregard an instrument's text.

In short, following this opinion, parties who find themselves in a dispute concerning how a double fraction containing one-eighth should be interpreted will find themselves unable to rely solely on the language of the instrument to resolve the dispute. Instead, until the Court provides guidance otherwise, it may be inevitable that each dispute concerning a double fraction containing one-eighth necessitates a careful analysis of the history of payments from the inception of the instrument to the present to determine whether a fixed or floating royalty interest was reserved. After all, such a history "could dispense with the deed-construction analysis altogether."

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## **U.S. Environmental Protection Agency Issues Final Rule to Rescind Endangerment Finding Underpinning Federal Regulation of Greenhouse Gas Emissions**

Paul D. Tanaka, P.C., James Dolphin, Jonathan E. Kidwell, Emily Tabak, Gabe Almario, Julianna Pendleton, and Julie Molina, Kirkland & Ellis LLP

On February 18, 2026, the U.S. Environmental Protection Agency (EPA) published a final rule (Rescission of Endangerment Finding Rule), which rescinds EPA's 2009 foundational rule for the regulation of GHG emissions from new motor vehicles and new motor vehicle engines (Endangerment Finding). The Rescission of Endangerment Finding Rule concludes that EPA lacks authority under Clean Air Act (CAA) Section 202(a) to prescribe standards for greenhouse gas (GHG) emissions based on global climate change concerns and also formally repeals GHG regulations promulgated in reliance on the Endangerment Finding, including emission standards for light-, medium- and heavy-duty on-highway vehicles and engines, as well as certain related regulations concerning test procedures, averaging, banking and trading (ABT) requirements, and reporting requirements. Subject to the outcome of litigation filed challenging the Rescission of Endangerment Finding Rule, we anticipate broader impacts on other federal GHG regulations, such as emissions standards for the power sector, oil and gas, aviation, transportation, fuels and landfills, promulgated on the same basis as the Endangerment Finding.

This *Alert* will discuss the background and history of the Endangerment Finding, the major elements of the Rescission of Endangerment Finding Rule, the implications of the final rule and an overview of the timeline for next steps.

## Overview and History of the Endangerment Finding and Related Developments

In the 2007 landmark case *Massachusetts v. EPA*, the U.S. Supreme Court held that GHGs are “air pollutants” covered by the CAA, and that EPA must determine whether emissions of GHGs from new motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger the public health or welfare under Section 202(a)(1) of the CAA. EPA subsequently issued the Endangerment Finding, finding that six well-mixed GHGs (i.e., carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride) in the atmosphere met the endangerment of public health and welfare standard contemplated by *Massachusetts v. EPA*. The Endangerment Finding was thus the legal underpinning of EPA’s GHG emission standards for new motor vehicles and engines.

In addition, the reasoning behind the Endangerment Finding underlies GHG emission standards later promulgated by EPA for other sectors, including for power plants, aircraft, oil and gas, electric vehicle manufacturers, alternative fuel producers and landfills. For example, GHG emissions regulations issued under Section 111 of the CAA, which directs EPA to establish new source performance standards (NSPS) for new or modified stationary sources of pollution, reference the Endangerment Finding, discuss scientific evidence released after the Endangerment Finding regarding impacts of GHG emissions on climate change, and affect various sectors, including power plants and landfills (including as described in our prior [Alert](#) on carbon emission limits and guidelines for new, modified, reconstructed and existing “fossil fuel”-fired power plants). Similarly, CAA Section 231 applies to emissions from aircraft and also relies on the Endangerment Finding’s interpretation of the phrase “any air pollutant” that “cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.”

Despite the Endangerment Finding’s broad regulatory impact beginning in 2009, subsequent Supreme Court rulings have limited the scope of EPA’s authority relating to the Endangerment Finding, and EPA now relies on these rulings in the Rescission of Endangerment Finding Rule to argue that EPA’s authority to regulate GHG emissions is more limited in scope. First, in *Utility Air Regulatory Group v. EPA*, the Supreme Court held that EPA regulation of GHG emissions from new motor vehicles under the CAA did not extend to regulations for permit requirements for stationary sources of GHG emissions. The Supreme Court’s 2022 decision in *West Virginia v. EPA*, discussed in our prior [Alert](#), further limited EPA’s GHG regulatory authority when it held that EPA lacked authority under the CAA to regulate GHG emissions from existing power plants using a “generation shifting” approach. The court relied on the “major questions” doctrine, holding that, when undertaking regulations of broad economic and political significance, EPA must point to clear, explicit congressional authorization and cannot rely on vague, ambiguous or ancillary statutory language to promulgate such regulations. Finally, the Supreme Court’s 2024 ruling in *Loper Bright Enterprises v. Raimondo* overturned *Chevron* deference, further curtailing EPA’s discretion to interpret statutory authority by holding that courts must independently interpret ambiguous statutory language to find the best reading rather than defer to reasonable agency interpretations of ambiguous statutory language.

### Key Elements and Rationales of the Rescission of Endangerment Finding Rule

On February 18, 2026, EPA issued its final rule rescinding the Endangerment Finding. Based on its statutory analysis and recent Supreme Court decisions, EPA determined that CAA Section 202(a)(1) prohibits EPA’s jurisdiction over GHG emissions for vehicle standards based on global climate change concerns. EPA also finalized the repeal of all GHG emissions standards from its regulations of light-, medium- and heavy-duty highway vehicles and engines, as well as certain related regulations concerning test procedures, ABT requirements, reporting requirements and fleet-average emission requirements.

#### *EPA’s Stated Primary Rationale for the Endangerment Finding Rescission*

The Rescission of Endangerment Finding Rule finalizes much of the August 2025 proposed rule, discussed in our prior [Alert](#).

In its Rescission of Endangerment Finding Rule, EPA reiterates its primary rationale for rescinding the Endangerment Finding articulated in the proposed rule: EPA lacks the statutory authority under CAA Section 202(a) to regulate GHG emission standards based on global climate change concerns. Specifically, EPA states in the final rule that CAA Section 202(a) is best read as regulating emissions that cause or contribute to air pollution that endangers public health or welfare through local or regional air pollution. By contrast, the Endangerment Finding asserted that GHG emissions lead to increases in *global* temperature that produce potentially adverse public

health consequences. Citing the agency's curtailed discretion after the Supreme Court decisions in *West Virginia v. EPA* and *Loper Bright Enterprises v. Raimondo*, EPA concludes that the Endangerment Finding's reliance on the impacts of global GHG emissions is too attenuated to fit the definition of "air pollution" as envisioned by Congress under the CAA.

Further, EPA states in its Rescission of Endangerment Finding Rule that CAA Section 202(a) does not permit the procedural discretion asserted in the Endangerment Finding. Under the statutory language in Section 202(a) of the CAA, in order to regulate emissions, EPA must determine that emissions of a pollutant from a particular class of new vehicles (1) "cause, or contribute to" air pollution and (2) that this pollution may endanger public health. The Endangerment Finding treated these two statutory elements as severable, finding that the six designated GHGs endangered public health without simultaneously determining that emissions from a specific class of vehicles contributed to that danger. In the Rescission of Endangerment Finding Rule, EPA asserts that this approach was inconsistent with the text of the CAA, which according to EPA, requires concurrent "endangerment" and "cause and contribute" findings that link emissions from specific vehicle categories to harmful air pollution.

Lastly, EPA asserts that the Endangerment Finding conflicts with the major questions doctrine, limiting agencies from relying on vague statutory language to justify transformative regulatory actions. EPA concludes that the CAA does not provide sufficient statutory support to justify the far-reaching impacts of the Endangerment Finding, which EPA says imposes "billions of dollars in annual compliance costs on American businesses and consumers and reflect[s] an increasing trend toward forcing a transition to the use of electric vehicles (EVs) rather than gasoline- or diesel-fueled motor vehicles and engines."

#### *EPA's "Futility" Rationale for Rescinding the Endangerment Finding*

As an additional and independent rationale, EPA asserts that the GHG emission standards under CAA Section 202(a)(1) are futile in addressing global climate change and thus the standards are unreasonable to retain. Specifically, EPA contends that the emission standards have "no more than a trivial effect" on the public health and welfare impacts identified in the Endangerment Finding. EPA argues that even a complete elimination of all GHG emissions from motor vehicles in the U.S. would have a limited effect on global GHG concentrations, and thus, the GHG emissions regulations under CAA Section 202(a)(1) are futile in addressing the identified concern. According to EPA, allowing a regulation's *de minimis* impacts on the identified danger would be "unreasonable and impermissible" given the costs associated with implementing GHG vehicle emission standards, thereby serving as an independent basis for rescinding the Endangerment Finding.

#### *EPA Does Not Rely on Scientific and Alternative Rationales Stated in Proposed Rule*

Notably, the Rescission of Endangerment Finding Rule does not rely on the alternative rationale outlined in the August 2025 proposed rule, namely that the Endangerment Finding should be rescinded because of uncertainty in the scientific record since 2009. While the Rescission of Endangerment Finding Rule does note scientific uncertainty underlying the Endangerment Finding, EPA does not independently rely on any scientific conclusions and ultimately relies on the legal conclusions in the Rescission of Endangerment Finding Rule as sufficient to rescind the Endangerment Finding and repeal vehicle and engine emissions standards.

EPA also does not rely on the alternatives set forth in the proposed rule, which stated that (1) because the elimination of all emissions from vehicles would have a minimal effect on public health and welfare and global climate change, there is no requisite control technology for heavy-duty vehicles and engines that could meaningfully address public health and welfare and global climate change and (2) all vehicle emissions standards should be repealed because emissions standards increase the price of vehicles to consumers and therefore disincentivize consumers from purchasing newer vehicles that are safer and emit fewer air pollutants, including criteria and hazardous air pollutants. Similar to the unutilized scientific rationale, EPA states that the legal conclusions offered by EPA in the Rescission of Endangerment Finding Rule are sufficient to rescind the Endangerment Finding and repeal vehicle and engine emission standards.

#### **Implications and Next Steps**

EPA, in its press release announcing the Rescission of Endangerment Finding Rule, stated that the rule is the "single largest deregulatory action in U.S. history," which will have broad implications for industry, GHG

emission regulatory frameworks and efforts to address climate change. Upon formal publication of the Rescission of Endangerment Finding Rule, environmental and public health advocacy groups, including the Center for Biological Diversity, Sierra Club, American Lung Association and the Natural Resources Defense Council, Inc., immediately filed a lawsuit in the U.S. Court of Appeals for District of Columbia Circuit, challenging the Rescission of Endangerment Finding Rule as illegal and contrary to broad scientific consensus. Subsequent similar legal challenges have been filed and consolidated with the lead case of *American Public Health Association v. EPA*. The litigation concerning the Rescission of Endangerment Finding is ongoing and is likely to be further supplemented by lawsuits from proponents and opponents alike.

The Rescission of Endangerment Finding Rule may also have wide-ranging impacts beyond motor vehicle regulations. The EPA's 2009 reasoning behind the Endangerment Finding served as the basis for many other regulatory actions targeting GHG emissions, and the rationales underlying the Rescission of Endangerment Finding Rule may be applied broadly, including to regulations that were not directly based on the Endangerment Finding such as those concerning emissions from stationary sources. For example:

- EPA's regulations on GHG emissions from power plants and oil and gas facilities are promulgated under CAA Section 111(b)(1), which concerns stationary sources and requires EPA to make an endangerment finding specific to new stationary sources. Accordingly, EPA's regulations on GHG emissions from power plants and oil and gas facilities do not directly rely on the Endangerment Finding because EPA had already made separate endangerment findings for power plants and oil and gas sources. Nonetheless, these regulations discuss the Endangerment Finding and the latest scientific evidence regarding GHG emissions from such stationary sources, and the Rescission of Endangerment Finding Rule may ultimately impact rules issued for stationary sources because they rely on similar statutory terms (e.g., "air pollution") as rules promulgated for mobile sources and because EPA's rationale for the Rescission of Endangerment Finding Rule could be applied to rules issued for stationary sources (e.g., EPA may argue that certain GHG emission standards for stationary sources are futile in addressing global climate change and are therefore unreasonable to retain).
- In addition, as discussed in our prior [Alert](#), EPA announced in June 2025, a proposed rule to repeal GHG emission standards for power plants, under Section 111(b)(1) of the CAA. In its proposed rule, EPA laid out a reinterpretation of Section 111(b)(1): in order to regulate a pollutant, EPA must first affirmatively establish an endangerment finding for that pollutant with respect to the relevant stationary source. Applying the rationale asserted in the Rescission of Endangerment Finding Rule, EPA may find that, like GHG emissions from motor vehicles, GHG emissions from power plants do not contribute *significantly* to global GHG emissions, and thus, cannot be regulated. According to the regulatory agenda, the final rule for GHG emissions standards for Electric Generating Units was expected to be published in or around December 2025 and should be forthcoming shortly.

The Rescission of Endangerment Finding is set to become effective on April 20, 2026, and all legal challenges must be filed with the D.C. Circuit by that date.

## THE PIPELINE

Introducing *The Pipeline*, the Energy Law Advisor's dedicated space for emerging student voices in energy law.

### Is AI the Answer to the Environmental Permitting Gridlock? Texas is About to Find Out

Kayla Shelkey, University of Texas School of Law, J.D. 2026 (expected)

America's energy future is stuck in a regulatory traffic jam. It takes an average [of 4.5 years](#) for federal agencies to complete environmental reviews of major projects. That's almost as long as it took to build the Hoover Dam.

In Texas, the story is similar. Routine permits to dispose of [industrial waste](#) or radioactive materials take over 500 days to be processed. Even simple applications to drill [oil and gas wells](#) leave operators waiting for more than a month. These delays stall development of critical infrastructure and threaten America's position as a leader in clean energy.

How do we catch up? The answer may be artificial intelligence.

Both the Biden and Trump administrations have embraced AI as a solution to this bureaucratic bottleneck, launching partnership initiatives like [PermitAI](#)—a collaboration between the Department of Energy and Pacific Northwest National Laboratory—to use machine learning to analyze thousands of environmental review documents and expedite drafting of environmental impact statements. Texas state agencies are also experimenting with this technology. The [Texas Railroad Commission](#) uses AI to evaluate earthquake risks before approving select drilling permits. The [Texas Department of Transportation](#) has leveraged similar platforms to cut invoice processing time from two weeks to 24 seconds.

But speed without standards is dangerous. That's what makes a new Texas law significant.

The [Responsible Artificial Intelligence Governance Act](#)—which took effect in January—creates the Texas Artificial Intelligence Council to help agencies navigate the technical, ethical and legal implications of using AI. Most importantly, it requires training for state agencies and local governments before they implement these systems. This proactive approach acknowledges a fundamental tension: AI can make government regulation more efficient, but only with clear rules for how it operates within existing legal frameworks.

The federal Administrative Procedure Act (and equivalent state laws) requires agencies to explain their conclusions based on the evidence before them. This transparency enables accountability, because when an agency denies a permit, the regulated party can understand why and challenge that decision. And although environmental studies are time-intensive, there is value in having a slow process with multiple eyes that carefully comb through the evidence.

But many machine learning models are black boxes. Even their designers struggle to explain precisely how they reach conclusions. There's also the risk of [gaming the system](#). If regulated parties figure out which keywords or data points trigger favorable AI recommendations, they could manipulate their permit applications accordingly.

Texas's framework is practical. By mandating training and oversight before systems go live, the law ensures agencies understand their AI tools. The Council can learn from early implementations, update guidance as technology evolves and provide best practices. It may guide agencies toward adopting AI systems for data-intensive tasks like air quality monitoring, while steering them away from wholesale delegation of judgment calls.

The Texas approach could also make agency decisions more objective. Human reviewers bring their own biases and inconsistencies. AI systems, when properly designed and trained under clear standards, can apply criteria uniformly.

The Texas Railroad Commission offers an instructive model. Its AI system [evaluates seismicity data](#) for injection well permits, but a human analyst reviews the results and makes the final judgment. This hybrid approach harnesses AI's analytical power while preserving human oversight and accountability.

Done right, AI could deliver faster permitting without sacrificing environmental protection or reasoned deliberations. As a guideline, agencies must disclose when and how AI influences their decisions, and regulated parties must have meaningful opportunities to understand and challenge those determinations.

If we want to modernize infrastructure and remain a competitive player in the race for clean energy, we need to embrace artificial intelligence as a sophisticated tool in permitting and compliance. As Texas and federal agencies expand their use of AI, they should proceed with both enthusiasm and caution. The goal is faster decisions and better ones.

*Kayla Shelkey is a third-year student at the University of Texas School of Law, where she serves as a Kay Bailey Hutchison Energy Fellow and has published scholarship exploring the intersection of environmental law and energy production.*

# Blue Hydrogen and the 45V Tax Credit: How to Maintain American Energy Excellence

Max Lies, McCombs School of Business, University of Texas at Austin, MBA 2026 (expected)

American energy leadership has long rested on the ability to combine scale, innovation, and reliability: producing abundant energy at home while shaping global markets abroad. As global energy demand continues to rise, the next phase of this leadership will be defined not only by volumes produced, but by which countries set the terms for emerging energy commodities. Hydrogen is poised to become one such commodity, with applications across refining, chemicals, manufacturing, and international trade. Among hydrogen pathways, *blue hydrogen*, produced from natural gas with carbon capture and sequestration (CCS), aligns closely with U.S. strengths: an existing natural gas base, world-class industrial operators, and deep experience in large-scale project execution. Recognizing this opportunity, Congress included the 45V Clean Hydrogen Production Tax Credit in the [2022 Inflation Reduction Act](#) (IRA) to catalyze early investment and overcome market failures. Recent legislative changes under the One Big Beautiful Bill (OBBB), however, substantially weaken this incentive by imposing an early sunset. As a result, U.S. firms risk forfeiting a narrow but critical window to establish international leadership in blue hydrogen, ceding economic and strategic ground in a market primed to expand over the coming decades.

The International Energy Agency's (IEA) [2025 Global Hydrogen Review](#) shows that global hydrogen demand reached more than 100 million metric tons (Mt) in 2024, a roughly 10% year-over-year increase. This demand remains concentrated in established industrial sectors such as refining, ammonia production, and chemicals rather than new clean-energy applications. China alone consumes nearly 30 Mt of hydrogen annually, compared with approximately 16 Mt across all of North America. Absent strong policy support, the IEA notes that hydrogen demand growth will remain limited to these incumbent uses, as high costs and coordination challenges inhibit broader adoption.

The IRA's 45V Clean Hydrogen Production Tax Credit was designed to address this reality. By offering up to \$3.00 per kilogram of qualifying clean hydrogen for ten years, the credit aimed to move projects across critical investment thresholds rather than permanently subsidize production. For capital-intensive blue hydrogen projects, the availability and durability of 45V materially altered project economics, enabling firms to justify final investment decisions (FIDs) and initiate construction at scale.

The importance of 45V can be illustrated with a simple exemplar calculation: ExxonMobil's proposed [Baytown blue hydrogen project](#) was expected to produce approximately 2.5 million kilograms of hydrogen per year. At the full \$3.00/kg credit level, this output would generate roughly \$7.5 million annually, or \$75 million over the ten-year credit life (ignoring discounting). While modest relative to multi-billion-dollar capital expenditures, this support becomes decisive at the margin. Blue hydrogen production costs are [commonly estimated](#) at \$1.50–\$2.50 per kilogram before subsidies, with CCS accounting for a significant share of operating expenses. The 45V credit therefore improves early-year cash flows, raises expected internal rates of return, and reduces downside risk during the period of greatest uncertainty. Truncating or eliminating the credit can push otherwise viable projects below investment hurdle rates, delaying or preventing FIDs altogether.

Blue hydrogen faces a classic coordination problem. Industrial consumers are reluctant to sign long-term offtake agreements without reliable, large-scale supply, while producers are unwilling to invest billions of dollars without credible demand signals. Government intervention can serve as a catalyst in such markets by lowering early-stage risk and improving project bankability. An intent of 45V was to break this causal loop by allowing supply to come online, costs to decline through scale and learning effects, and demand to gradually expand.

Prior to the passage of OBBB, major U.S. energy firms responded accordingly. ExxonMobil announced plans to integrate blue hydrogen production into its Baytown refinery complex, and [Chevron unveiled Project Labrador](#), a proposed \$5 billion blue hydrogen facility in Port Arthur, Texas. These projects were led by firms with deep operational expertise, existing hydrogen demand, and access to CCS infrastructure, suggesting that policy support was enabling credible, execution-ready investments rather than speculative ventures.

The United States occupies a uniquely strong position in blue hydrogen development. The IEA reports that the U.S. accounts for nearly half of announced hydrogen production projects incorporating carbon capture by 2030. In contrast, several non-U.S. energy majors have recently retreated from blue hydrogen investments. Shell placed its Aukra blue hydrogen export project in Norway [on hold](#) in 2024, citing weak demand and poor economics, while Equinor has similarly slowed its hydrogen ambitions. These developments underscore that blue hydrogen markets

are unlikely to emerge organically in the near term; they will only develop where policy frameworks credibly support early investment.

OBBB's changes, therefore, carry outsized implications. Under the enacted legislation, the 45V credit terminates for projects that begin construction after December 31, 2027. Large hydrogen projects typically require five to seven years from concept to groundbreaking due to permitting, engineering, and financing constraints. As a result, the sunset functions less as a gradual phase-out than as a policy cliff, reintroducing the uncertainty that 45V was designed to mitigate.

Allowing the 45V credit to expire as currently enacted risks stalling the formation of a domestic blue hydrogen market just as global demand begins to materialize. This outcome would forfeit first-mover advantages in project development, CCS integration, workforce expertise, and potential export positioning. It also increases the likelihood that other global actors, particularly China, will fill emerging supply gaps and shape standards and supply chains to their advantage.

Maintaining the 45V credit in its original form would support billions of dollars in private investment, reinforce industrial communities (especially along the U.S. Gulf Coast) and demonstrate that American energy firms can expand supply while managing emissions responsibly. In this sense, 45V functions less as a climate subsidy than as a strategic industrial policy tool aligning energy security, economic competitiveness, and environmental stewardship. Prematurely curtailing it risks undermining all three.

*Max Lies is a second-year MBA student at the University of Texas at Austin's McCombs School of Business, concentrating in energy finance. Prior to the MBA, he worked in International Affairs for the U.S. Department of the Treasury in Washington, as well as stints at a boutique consulting firm and investment bank. Upon graduation, he will be entering a finance leadership development program at ExxonMobil headquarters in Houston.*

## MEMBER NEWS

### A Message from IEL

IEL is now accepting applications for the 2026-27 Leadership Class. Applications close Friday, May 29. Questions about the program? Email [iel@cailaw.org](mailto:iel@cailaw.org).

Grab your coffee and join the Young Energy Professionals Committee on Tuesday, May 19 from 2:00-3:00 PM Central, for Coffee with YEP, featuring an insightful virtual discussion on "The Strait of Hormuz and Beyond: Current Maritime Considerations for the US Energy Market." This session is open to all YEPs and IEL Members – [Register Online](#).

Mark Your Calendars for IEL's Fall 2026 Conferences: 17<sup>th</sup> Appalachia Energy Law Conference, September 10 in Pittsburgh, PA; Short Course on International Oil & Gas Law, Contracts and Negotiations, September 21-25 (Part I) and September 28 – October 2 (Part II) in Houston, TX; Upstream Operational Issues and M&A Trends Conference, October 7 in Houston, TX; 25<sup>th</sup> Annual Energy Litigation Conference, November 10 in Houston, TX. Check out our [Programs Calendar](#) for more information about upcoming programs.

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