

## *How Did We Get Here?*

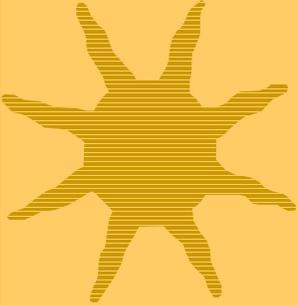
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From Massachusetts v. EPA to the  
GHG Tailoring Rule



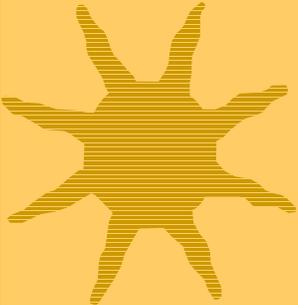
# *How Did We Get Here?*

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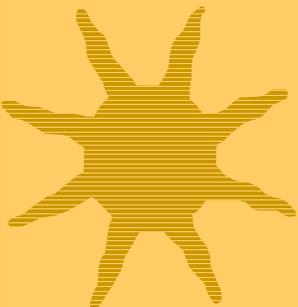


- ★ **Supreme Court –April 2007**  
Massachusetts v. EPA

- ★ **Endangerment Finding –**  
**December 2009**



- ★ **GHG Standards for Motor Vehicles**  
**–April 2010**

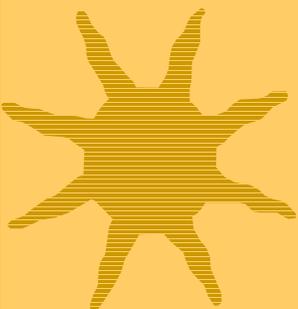
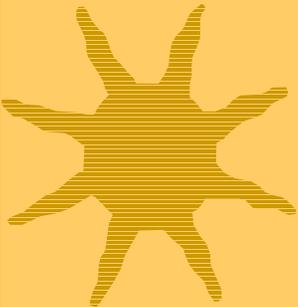
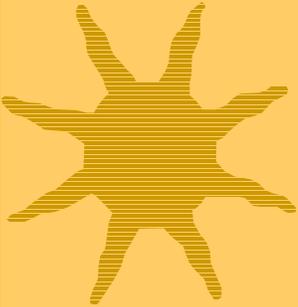


- ★ **GHG Standards for Stationary**  
**Sources –June 2010**



# *Massachusetts v. EPA*

*549 U.S. 497 (2007)*

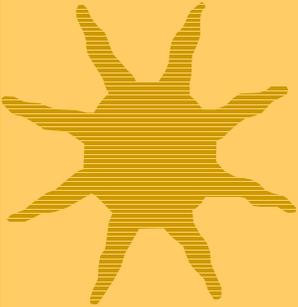


- ★ Statute is unambiguous: “any air pollutant” includes any physical or chemical substance that is emitted into the ambient air - therefore CAA gives EPA statutory authority to regulate CO<sub>2</sub>
- ★ EPA’s discretion is conditioned on a judgment that the air pollutant does not cause or contribute to an endangerment
- ★ EPA can only decide not to regulate if:
  - It determines that GHGs do not contribute to an endangerment; or
  - It provides a reasonable explanation why it cannot or will not make that judgment



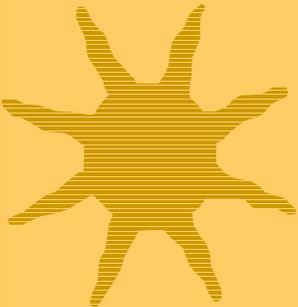
# *Endangerment Finding*

*74 FR 66496 (Dec. 15, 2009)*



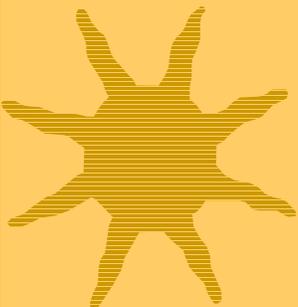
## ★ **Endangerment Finding:**

- Elevated concentrations of six GHGs constitute “air” pollution endangering public health and welfare: CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs and SF<sub>6</sub>



## ★ **“Cause or Contribute” Finding:**

- Four of these GHGs that are emitted by new light-duty motor vehicles cause or contribute to this air pollution (CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs)



## ★ **According to US EPA:**

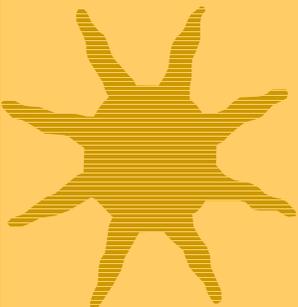
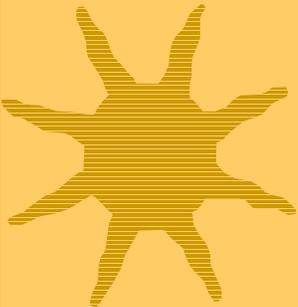
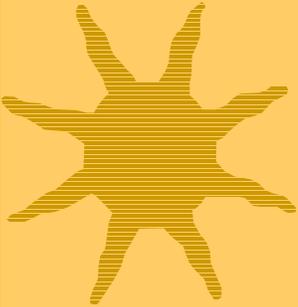
- These findings trigger a requirement to regulate GHG emissions from new light-duty motor vehicles



# *Johnson Memo Reconsideration*

*(75 Fed. Reg. 17004 (Apr. 2, 2010))*

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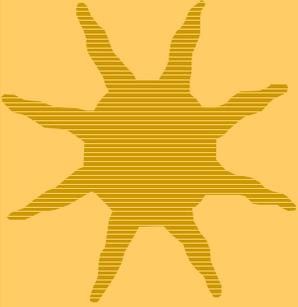
- ★ Affirms Administrator Johnson's 12/08 Memo that GHGs are not regulated air pollutants under PSD and Title V until EPA issues regulations actually controlling GHG emissions. Rejects environmental group position that GHGs were first regulated in 1990 CAA Amendments.
- ★ EPA's auto rules are such regulations triggering regulation of GHGs under PSD and Title V
- ★ GHGs will be deemed to be regulated under PSD and Title V beginning 1/2/11 when auto rule "takes effect"



# *LDV GHG Rule*

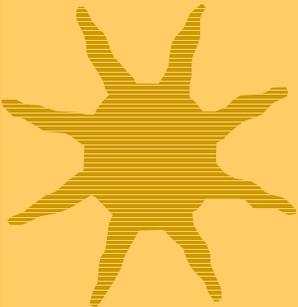
*75 FR 25324 (May 7, 2010)*

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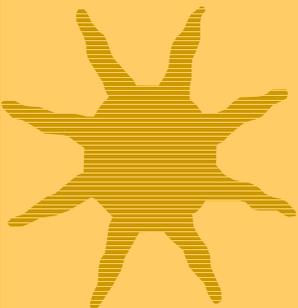
## ★ Joint DOT/EPA Rulemaking

- DOT MPG
- EPA gCO<sub>2</sub>/mi. standard



## ★ According to US EPA:

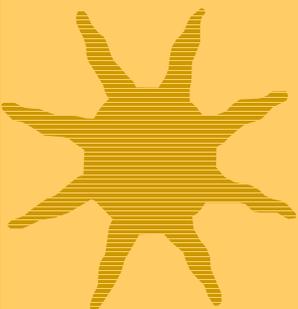
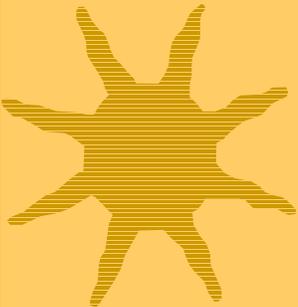
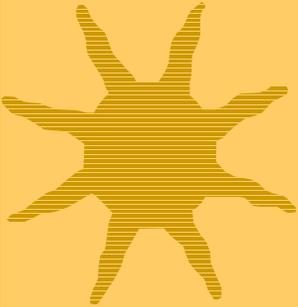
- National regulation of GHG emissions from Light Duty Vehicles makes the six GHGs regulated air pollutants fall under the PSD and Title V permit programs





# *Tailoring Rule*

*75 FR 31514 (Jun. 3, 2010)*



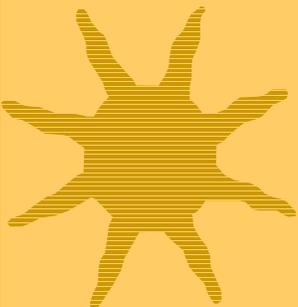
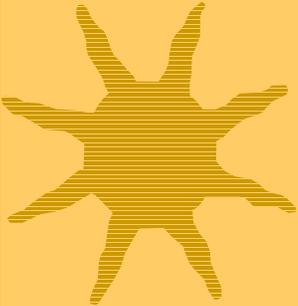
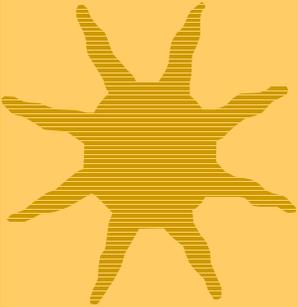
- ★ Addresses issue that statutory PSD thresholds are 100/250 tpy and Title V threshold is 100 tpy. Literally millions of sources have PTEs above 100 tpy for GHGs
- ★ Provides for phase-in (tailoring) of requirements under the definition of “subject to regulation”
  - Step 1 - 1/2/11: Sources subject to PSD “anyway” will be required to do GHG BACT if increase emissions by 75,000 tons per year. Title V only for “anyway” sources.
  - Step 2 - 7/1/11: New sources above 100,000 tpy and existing sources that increase emissions by 75,000 tpy subject to PSD. Title V threshold = 100,000 tpy.
  - Additional Steps: US EPA has stated that they will conduct additional rulemakings to evaluate the feasibility of lowering these thresholds further.



# *Mandatory Greenhouse Gas Reporting Rule*

*October 30, 2009 (74 FR 56260)*

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- ★ Stationary source threshold is 25,000 metric tons of CO<sub>2</sub>e.
- ★ Record keeping starts January 1, 2010 and first reports due March 2011.
- ★ Codified Table of Global Warming Potential factors to be used in calculating CO<sub>2</sub> equivalent
- ★ Minimal impact to EPD, but should give us a good indication of what sources may be affected by the GHG Tailoring Rule.
- ★ NOTE: This is not an “applicable requirement” under Title V
  - “As currently written, the definition of “applicable requirement” in 40 CFR 70.2 and 71.2 does not include a monitoring rule such as today’s action, which is promulgated under CAA sections 114(a)(1) and 208.” – 74 FR 56288