

III. STANDARD OF REVIEW

Section 307 of the Clean Air Act directs that the Administrator “*shall* convene a proceeding for reconsideration” if two things are shown:

First, it was either “impracticable” to raise the objection during the public comment period, or the grounds for such objection arose after the period of public comment (but within the time specified for judicial review). . . .⁸ Second, the objection is of central relevance to the outcome of the rule—in this case the Endangerment Finding.⁹ The State’s Petition meets both requirements.

The information on which this Petition is based came to light after the June 23, 2009 deadline for public comment ended. The deadline for seeking judicial review of the Endangerment Finding is February 16, 2010.¹⁰ Therefore, the grounds for the objections presented in this Petition arose after the period of public comment but within the time specified for seeking judicial review.¹¹

The Endangerment Finding stipulates that “the Administrator [relied] on the major assessments of the USGCRP, IPCC, and NRC as the primary scientific and technical bases of her endangerment decision.”¹² The appropriateness of the Administrator’s misplaced reliance on those assessments is *of central relevance* to the Endangerment Finding.¹³

IV. THE STATE OF TEXAS’ COMMITMENT TO THE ENVIRONMENT

A. TEXAS’ RECORD OF ENVIRONMENTAL ENFORCEMENT

This Petition should not be misconstrued as a waning commitment by Texas to protect the environment. Rather, Texas asserts that environmental protection is best achieved when based on sound legal and scientific principles. Texas has aggressively protected air quality. The State has joined with EPA in record-setting enforcement actions and has become a national leader in renewable energy sources that have reduced greenhouse gas emissions.

Last December, the State of Texas teamed with EPA and the U.S. Department of Justice in a successful enforcement effort against the mining and refining company Asarco, LLC. As a result, Asarco will spend \$1.8 billion remediating 80 hazardous waste sites in 19

⁸ See 42 U.S.C. § 7607(d)(7)(B).

⁹ *Id.*

¹⁰ Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clear Air Act, 74 Fed. Reg. 66,496.

¹¹ See 42 U.S.C. § 7607(d)(7)(B) (providing that an objection to an agency rule under the CAA may be filed before the end of the period of judicial review if the grounds for the objection arose after the period for public comment).

¹² Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clear Air Act, 74 Fed. Reg. at 66,510.

¹³ See 42 U.S.C. § 7607(d)(7)(B) (an objection must be of “central relevance to the outcome of the rule”)