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## The Perfect Storm: Congress, EPA and the Courts Tackle Climate Change

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The last two weeks in September offered a perfect storm of federal activity on climate change, with significant developments in all three government branches. On September 21, 2009, the U.S. Court of Appeals for the Second Circuit decided *State of Connecticut et al. v. American Electric Power Company, Inc., et al.*, opening the door for litigation by public and private entities opposing climate change through "public nuisance" theories. On September 30, 2009, the U.S. Environmental Protection Agency ("EPA") announced two proposals setting forth its plan for regulating greenhouse gases ("GHGs") under existing Clean Air Act authority. That same day, Senators Kerry and Boxer released the long-awaited Senate climate change legislation.

It is uncertain whether the specter of EPA regulation of GHGs and/or potential litigation-driven control of major sources of GHGs will prompt swing senators to support the Kerry-Boxer legislation. It is certain, however, that companies and institutions involved in climate change at all levels, from electric utilities to building owners, from financial institutions to industrial facilities, will face consequences flowing from one or more of these developments. Rarely have all three branches of the federal government acted on an issue as important as climate change in such a

concentrated timeframe. In this Climate Alert we discuss the legislation, the Agency's proposed regulations, and the Second Circuit decision (and two subsequent federal decisions), and identify some of the more critical ramifications and key action items to the wide range of interested entities.

To read the full alert, please click on the attached PDF.

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