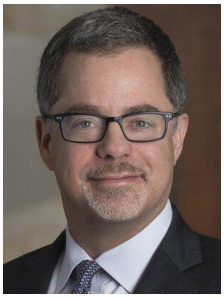
The Expanding Litigation Front Against the Data Center Boom

By **Jonathan Martel, Ethan Shenkman and Adam Masurovsky** (August 27, 2026)

Jonathan Martel



Ethan Shenkman

Adam Masurovsky

McKinsey & Co. Inc. has projected that data center expenditures could reach $7 trillion globally by 2030 in order to meet the growing demand for compute power.[1] The Trump administration has made data center buildout a national priority, directing agencies to fast-track permitting and remove regulatory hurdles.[2]

On the other hand, the rapid and large-scale deployment of data centers has run into intense political, social and legal backlash from states, local communities and advocacy groups.

Local moratoria on data centers are popping up in cities and counties nationwide. Most states now have at least one local jurisdiction that has hit the pause button, with one tracker reporting more moratoria adopted in June alone (80) than in all of 2025 (59).[3] And fierce debates over data centers have been front and center in several recent primary races for congressional seats.[4]

This backlash has also generated a new wave of novel disputes and litigation.[5] Communities are raising concerns about the environmental impacts of data centers, transparency with respect to agreements between regulators and developers, and the social and economic implications of AI technology.

Below, we survey the environmental and land use claims raised in data center disputes across the country.

Much of the current litigation remains pending. The outcomes of these disputes will have significant implications for the future of data center development.

But they may also shed light on how unburdening infrastructure development from regulations and permitting requirements can backfire on developers that do not have a clear plan for managing public engagement and a sound litigation strategy.[6]

Citizen Suits Under Federal Environmental Statutes

Litigation over data centers is raising novel issues under the citizen suit provisions of the Clean Air Act and the Clean Water Act.

Several environmental statutes authorize citizen suits, allowing private enforcement when the federal government does not act. Section 304 of the CAA, for example, allows "any person" to sue for a violation of an "emission standard or limitation."[7]

A citizen plaintiff must first notify the federal government, and the suit is barred if the government steps in and "diligently prosecutes" the violation.[8]

In one such case, NAACP v. X.AI Corp., the NAACP, the nation's oldest civil rights organization, is **pursuing** a citizen suit against xAI and its subsidiary MZX Tech LLC in the U.S. District Court for the Northern District of Mississippi, alleging that the fleet of gas turbines powering xAI's Colossus data center in Memphis, Tennessee, is in violation of the CAA.

In June, the U.S. Department of Justice **moved to intervene** as of right as a plaintiff and to dismiss the suit. Specifically, the government argued that allowing the case to proceed over the executive branch's objections would raise separation of powers concerns under Article II of the U.S. Constitution.

Without engaging on the merits of the NAACP's claim, the government explained that it seeks dismissal based on national security interests tied to xAI-supported military operations.

If the government succeeds in dismissing the NAACP's citizen suit in this case, it could set a precedent significantly narrowing the availability of environmental citizen suits as a tool for challenging data centers and other infrastructure projects where the government objects for reasons that may be unrelated to the merits of the suit.

Air Permitting and Emissions From On-Site Energy Generation

In the NAACP v. X.AI case, the plaintiffs' substantive claim raises novel issues for CAA permitting and emissions standards for fossil fuel-fired generation assets. The plaintiffs in that case allege that xAI has constructed and is operating over 33 natural gas turbines without the requisite CAA permits and/or in violation of emissions standards.[9]

Under the CAA, new or modified stationary fossil fuel-fired turbines can qualify as major sources subject to the New Source Review program — including prevention of significant deterioration review and best available control technology — along with Title V operating permit requirements, performance standards and hazardous pollutant standards generally administered under state implementation plans approved by the U.S. Environmental Protection Agency.[10]

The defendants contended that the gas turbines are temporary, trailer-mounted mobile sources exempt from CAA stationary-source permitting because they sit on flatbed trailers and are expected to remain on site for under 12 months.

If that theory succeeds, it could remove CAA permitting requirements for a wide range of similarly designed energy facilities — making the case an important one to watch, for this issue and the citizen suit arguments, as it progresses in the district court and through potential appeals.

Water Permitting, Use and Contamination Issues

Data centers also use significant volumes of water for cooling purposes, with large data centers consuming roughly 2 million liters per day.[11] This level of use has raised concerns among local communities, particularly in water-scarce areas.

The types of water-related claims brought in litigation against data centers, however, have tended to focus on water pollution — i.e., from the construction of the data center or discharges of the cooling water.

The evaporative cooling process that many data centers use can concentrate contaminants and dissolved solids already found in the water; the periodic flushing of cooling water to avoid scaling and corrosion releases that wastewater into the environment.[12]

These disputes have relied on federal environmental statutory causes of action, common-law nuisance and state tort law. For example, the plaintiffs in Pearson v. Amazon Data Services Inc., a proposed class action brought in the U.S. District Court for the District of Oregon in March, alleged that high-nitrate wastewater associated with the data center cooling processes contributed to nitrate contamination of groundwater and drinking water supplies.

The plaintiffs in the Oregon action brought an imminent-and-substantial-endangerment claim under the Resource Conservation and Recovery Act,[13] together with Oregon common-law claims for negligence, trespass and private nuisance.

In June, the district court preliminarily approved a proposed class settlement that provided for a settlement fund, reportedly valued at $20.5 million, for improving access to clean drinking water among class members.[14]

In May, in another dispute, landowners neighboring a data center campus in Fayetteville, Georgia, represented by Flint Riverkeeper, an environmental group, issued a notice of intent to bring a citizen suit in federal court in under the CWA.

The notice alleges discharges of sediment-laden stormwater from clearing and grading of more than 350 acres at the data center campus, in violation of CWA Sections 402 and 404. The notice further demands abatement of nuisance and trespass under Georgia law.

These disputes reveal that while water consumption by data centers may be the issue garnering the most public attention and political opposition, litigants and environmental groups are finding creative avenues under federal environmental statutes and state tort and nuisance law to challenge alleged water pollution.

Environmental Review Adequacy

Many states have their own statutes similar to the National Environmental Policy Act that require environmental review of state authorizations of major projects. Data center opponents are increasingly using these laws to attack the adequacy of the review that supported data center approval.

These disputes involve, for example, claims that state agencies improperly exempted components of a data center project from environmental review,[15] failed to include connected facilities — e.g., power generation — in the scope of the review[16] or failed to prepare an environmental impact statement where one was required.[17]

In one case that has received a merits ruling, In re: Archer Datacenters Environmental Assessment Worksheet, the Minnesota Court of Appeals found in June that a city's decision not to prepare an EIS was unsupported and remanded the proceeding.[18]

Common-Law Nuisance Claims

Common-law nuisance claims are among the more common causes of action against data center developers and operators. In such disputes, plaintiffs — typically neighboring residents — allege that a facility's operations unreasonably interfere with the use and

enjoyment of their property.

In one putative class action with over 10,000 members, Haley v. X.AI Corp., **filed in June** in the Northern District of Mississippi, the plaintiffs allege that the gas turbines from a power plant adjacent to and serving a data center expose nearby residents to "loud, persistent, and low-frequency noise and vibrations."

The plaintiffs brought public and private nuisance claims, along with state tort claims for negligence and emotional distress.[19] These issues are not new to gas-fired power plants, and can be mitigated through design features, setbacks and other measures that reduce sound and vibrations.

Even so, similar class actions pleading public and private nuisance along with tort claims regarding the noise and vibrations associated with continuous operation of data centers continue to be brought around the country.[20]

Local Zoning and Land Use Issues

The most numerous challenges to data center development have arisen at the local level, where project opponents challenge the procedures used to enact rezonings, zoning amendments or violations of comprehensive plans for localities.

Plaintiffs have alleged, for example, defective or incomplete public notice, failure to make proposed ordinances and supporting materials available before a hearing, and failure to observe statutory intervals between publication and adoption.

In one case, Board of County Supervisors v. Oak Valley Homeowners Association, the Virginia Court of Appeals affirmed the **invalidation** of three data center rezonings in April, because the county advertised proposed ordinances that were not yet available for public inspection, and failed to provide adequate time for public feedback.

The court emphasized that these public notice and comment rules are procedural safeguards for meaningful public participation.[21]

Other examples of challenges to data centers contend that approvals were arbitrary or constituted illegal spot zoning, or that the authorized data center use conflicted with the locality's comprehensive plan and the stated purposes of the underlying zoning district.[22]

These cases demonstrate that local opposition to data center development — which may be borne out of concern for their environmental impacts or other potentially disruptive characteristics as well as more general policy or social/economic opposition — can manifest most strongly in disputes before local zoning authorities.

Data Center Moratoria and Developer-Side Challenges

Localities are increasingly enacting temporary moratoria on data center approvals, prompting developers to challenge those moratoria in court alleging procedural defects, exceedances of state statutory authority, and claims under the state and federal constitutions.

In several cases, for example, developers have alleged that moratoria are ultra vires, exceeding statutory authority under state law and procedurally invalid by failing to satisfy notice-and-hearing or emergency legislation requirements.[23]

Developers are also pursuing regulatory takings claims, as well as alleging procedural and substantive due process violations and equal-protection claims, premised on the assertion that underlying permits or authorizations are protected property interests.

At least one developer has brought a First Amendment claim, in Imperial Valley Computer Manufacturing LLC v. City of Imperial, in the U.S. District Court for the Southern District of California, alleging retaliatory actions by municipal officials.[24]

While these disputes have not reached merits decisions yet, some have resulted in rescissions of moratoria and settlements.[25] This suggests that these types of claims may provide a successful avenue for developers to push back against local moratoria.

Regulatory Reforms Aimed at Facilitating Data Center Development

Even as data center opponents pursue the litigation strategies surveyed above, the federal government has moved aggressively to advance a suite of regulatory reforms designed in part to remove or streamline environmental requirements for data center development and their supporting energy infrastructure.

Executive Order No. 14318, issued in July 2025, was aimed at accelerating federal permitting of data centers. It directed agencies to establish new categorical exclusions for data centers under NEPA.

The order also called on the EPA to streamline environmental permitting by developing or modifying regulations under the CAA; the CWA; the Comprehensive Environmental Response, Compensation and Liability Act, also known as the Superfund law; and the Toxic Substances Control Act.

Agencies have already started implementing this strategy. The EPA has advanced a series of CAA regulatory reforms, including:

- Loosening limits on beginning construction of a new major source prior to obtaining a New Source Review permit by allowing construction of nonemitting components;[26]
- Proposing to eliminate public notice requirements for minor NSR permits;[27] and
- Issuing guidance concluding that "islanded" off-grid generation serving data centers is not subject to the Acid Rain Program.[28]

The EPA has also finalized a rule that subjects smaller purportedly temporary fossil fuel-fired turbines to less stringent standards under the CAA's New Source Performance Standards, as well as a conditional exclusion from stationary source requirements for turbines that meet the definition of a mobile source.[29]

Outside of the CAA, the U.S. Army Corps of Engineers has updated its nationwide permits, which allow for streamlined CWA permitting, to explicitly include data centers.[30]

These regulatory reforms may themselves become the target of litigation under the Administrative Procedure Act, creating additional risks for developers relying on them.

Implications for Data Center Development and Infrastructure Writ Large

The wide range of federal and state environmental claims, as well as nuisance, tort and local zoning and land use causes of action, reflects a rapidly evolving landscape of legal challenges facing data center development across the country.

Although much of the litigation remains at early procedural stages, these disputes are already affecting the landscape of data center development as well as broader efforts to build out new energy infrastructure.

Project proponents and developers should be closely following these emerging trends as they develop their legal strategies moving forward.

Novel Legal Theories

Plaintiffs, developers and governmental entities are pursuing a wide range of legal theories, and how these are ultimately resolved will have implications not only for data centers, but for infrastructure development well beyond this sector.

The argument that the federal government has ultimate authority to dismiss citizen suits under federal environmental laws, for example, would provide federal power to override citizen opposition to pursue broader federal policies favoring projects, regardless of the merits of the environmental claims.

Moreover, how disputes over local moratoria unfold may embolden developers to pursue these claims in other localities.

Opposition Strategy

The range of causes of action being brought against data centers reveals that opponents are flexible and pursuing a variety of litigation strategies in service of their ultimate objectives to frustrate data center development.

How these cases are resolved on the merits may push litigants toward certain causes of action. For example, if citizen suits under federal environmental statutes become effectively foreclosed, opponents may focus further on state and common-law claims.

As more and more project opponents resort to the courthouse, this will put a premium on developing robust community engagement strategies in an effort to avoid adversarial litigation in the first place.

Chilling Effect on New Energy Investments

The AI and data center boom has been the primary catalyst for investments in new energy infrastructure development around the country to power these facilities.

While these disputes are still at the early stages, they are already affecting the risk calculus for new energy investments as developers weigh the potential delays or cancellation of projects.

How these disputes are ultimately resolved, both with regard to preliminary relief — i.e., injunctions — and the merits, will affect siting decisions and the legal risk calculus going forward. Such trends could also have major implications for investments in other types of infrastructure development.

Jonathan Martel is a partner and co-chair of the environmental practice group at Arnold & Porter Kaye Scholer LLP.

Ethan Shenkman is a partner at the firm. He previously served as deputy general counsel at the EPA, and as deputy assistant attorney general at the DOJ's Environment and Natural Resources Division.

Adam Masurovsky is a senior associate at Arnold & Porter.

Arnold & Porter counsel Travis Annatoyn contributed to this article.

[1] The $7 trillion data center build-out: How industrials can capture their share, McKinsey & Company (March 2026).

[2] See, e.g., Executive Order 14318, Accelerating Federal Permitting of Data Center Infrastructure, alongside Winning the AI Race: America's AI Action Plan.

[3] https://mjbommar.github.io/moratorium-data-2026/index.html.

[4] Data centers show their primary colors, Politico (Aug. 5, 2026), https://www.politico.com/newsletters/power-switch/2026/08/05/data-centers-show-their-primary-colors-01025879.

[5] Exclusive: Over 530 Local Laws Now Seek to Ban or Restrict Data Centers in U.S., Heatmap News (July 30, 2026), https://heatmap.news/politics/data-center-local-laws-bans-total.

[6] This tension is front and center in the debate over permitting reform and the "abundance" movement. See, e.g., Shenkman, The Abundance Agenda: Seizing the Opportunity for Bipartisan Progress, Environmental Forum (Jan. 15, 2026), https://www.eli.org/environmental-forum-column/abundance-agenda-seizing-opportunity-bipartisan-progress.

[7] 42 U.S.C. § 7604.

[8] Id. § 7604(b)(1).

[9] Data centers require enormous amounts of energy for the computing and storage capacity as well as the cooling needed to keep them running. A "hyperscale" data center — i.e., one with at least 5,000 servers — requires hundreds of megawatts of electricity.[9] To meet these energy needs at the speed of deployment, data centers increasingly rely on on-site and backup generation.

[10] See 42 U.S.C. §§ 7470-7492 (PSD); id. §§ 7661-7661f (Title V); 42 U.S.C. §§ 7411, 7412.

[11] Cong. Rsch. Serv., R48646, Data Centers and Their Energy Consumption: Frequently Asked Questions 9 (May 12, 2026).

[12] U.S. Dep't of Energy, Fed. Energy Mgmt. Program, Cooling Water Efficiency Opportunities for Federal Data Centers, https://www.energy.gov/cmei/femp/cooling-water-efficiency-opportunities-federal-data-centers.

[13] 42 U.S.C. § 6972(a)(1)(B).

[14] Order Granting Preliminary Approval of Class Settlement and Providing for Notice, Pearson v. Amazon Data Services Inc., No. 2:26-cv-00633-SI (D. Or. June 12, 2026).

[15] See, e.g., Sierra Club v. County of Imperial and Imperial County Board of Supervisors, No. ECU004734 (Imperial Cnty. Super. Ct.).

[16] See, e.g., Sierra Club v. Wisconsin Department of Natural Resources, No. 2026CV000294 (Ozaukee Cnty. Cir. Ct., Branch 2 July 10, 2026).

[17] Id; see also In re: Archer Datacenters Environmental Assessment Worksheet, No. A25-1617 (Minn. Ct. App. June 8, 2026) (nonprecedential).

[18] Id.

[19] Haley v. X.AI Corp., No. 3:26-cv-00148-MPM-RP (N.D. Miss. June 8, 2026).

[20] See, e.g., Valenzuela v. Alliance Cloud Servs. LLC, No. 1:26-cv-01694 (W.D. Mich.).

[21] See Bd. of Cnty. Supervisors v. Oak Valley Homeowners Ass'n, 87 Va. App. 201, 241-46, 257, 927 S.E.2d 157, 178–80, 186 (2026).

[22] See, e.g., Caparoula v. Bd. of Cnty. Supervisors, No. 1137-24-4, slip op. at 5-9 (Va. Ct. App.); Decatur Township Civic Council v. Metropolitan Development Commission, No. 49D05-2604-PL-021609 (Ind. Super. Ct.); Coalition for Responsible Data Center Development v. City of Farmington, No. 19HA-CV-24-5838 (Minn. Dist. Ct.).

[23] See, e.g., ECO TIP West LLC v. Chatham County, No. 26CV000456-180 (N.C. Super. Ct., Chatham Cnty.); Thor Equities LLC et al. v. City of Urbana et al., No. 3:26-cv-00196-MJN-CHG (S.D. Ohio).

[24] See Imperial Valley Computer Manufacturing LLC v. City of Imperial et al., Case No. 3:26-cv-00128-JLS-BJW (S.D. Cal.).

[25] See, e.g., RCM Hill, LLC v. Hill County, Shane Brassell, Jim Holcomb, and Larry Crumpton, No. 6:26-cv-00340-CRW-DTG (W.D. Tex.).

[26] See U.S. EPA, Guidance on Clean Air Act Nonattainment New Source Review Emissions Offsets (July 1, 2026).

[27] See 91 Fed. Reg. 41,591 (July 7, 2026).

[28] See U.S. EPA, Clarification of Acid Rain Program Regulatory Provisions Concerning Islanded Power Generation Facilities (July 16, 2026).

[29] See 91 Fed. Reg. 1,910, 1925-27 (Jan. 15, 2026).

[30] See 91 Fed. Reg. 768, 867 (Jan. 8, 2026).