

U.S. House of Representatives
Committee on Oversight and Government Reform
Darrell Issa (CA-49), Ranking Member

Select Committee on
Energy Independence and Global Warming
F. James Sensenbrenner, Jr., (WI-05), Ranking Member



The Politics of EPA's Endangerment Finding

JOINT STAFF REPORT
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&
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MINORITY STAFF REPORT

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Findings:

- The Environmental Protection Agency (EPA) prejudged the outcome of its endangerment finding on greenhouse gases (GHGs) to fulfill the Obama Administration's political agenda.
- The U.S. Supreme Court's decision in *Massachusetts v. EPA* does not require EPA to issue an affirmative endangerment finding. The Court expressly held that EPA could decline to regulate GHGs.
- Energy is the lifeblood of the U.S. economy. Because the U.S. energy portfolio is heavily reliant on fossil fuels, we emit large amounts of carbon dioxide into the atmosphere. Until we are able to significantly increase the availability of zero carbon sources of energy, like nuclear, wind, and solar, effective regulation of GHGs requires management of energy consumption. Therefore, EPA's effort to control GHGs will give the Agency authority over the entire U.S. economy.
- By rushing to complete its endangerment finding before an arbitrary deadline, EPA failed to build a sound scientific record demonstrating negative human health impacts or to consider the effects its decision would have on the U.S. economy. EPA did not conduct its own analysis in drafting the Technical Support Document (TSD). Instead, it heavily relied on the already-dated Intergovernmental Panel on Climate Change and the U.S. National Assessment of Climate Change.
- EPA's apparent refusal to substantively review the thousands of public comments sent to EPA in response to the previous Administration's Advanced Notice of Proposed Rulemaking (ANPR) deprived the agency of valuable information regarding the economic consequences of its proposed actions.
- In an effort to fulfill its own policy goals and issue an affirmative endangerment finding, EPA erected internal barriers to stifle dissent within the agency.
- The Administration inappropriately sought to marginalize public dissent. In one case, it even breached internal protocols to reveal the identity of a civil servant who raised concerns about the endangerment finding.
- Energy and Environment Czar Carol Browner may have violated the Presidential Records Act during fuel economy negotiations between EPA, the Department of Transportation, the State of California, and the auto industry.

I. Introduction

Despite warnings from Congress, industry leaders, and numerous legal experts, EPA is moving forward with a regulatory determination that carbon dioxide (CO₂) and other Greenhouse Gases (GHGs) endanger human health and welfare. The 1970 Clean Air Act (CAA) refers to this determination as an endangerment finding.

The CAA is poorly designed to regulate GHGs. The determination could result in an unprecedented expansion of EPA authority, enabling the agency to regulate every sector of the American economy.¹ The 1970s command-and-control style CAA leaves the Administrator with little discretion to minimize the economic impact of the law's application. The former Chairman of the House Committee on Energy and Commerce, Congressman John Dingell (D-MI), famously stated that regulating GHGs under the CAA would lead to a "glorious mess" and that it would be "insane" to leave the judgments necessary for climate change regulation to a long and complex regulatory process that would spawn "litigation upon litigation."²

According to the Congressional testimony of a CAA expert, Peter Glaser, such regulation "will experience years, if not decades, of regulatory agony, as EPA will be required to undertake numerous, controversial, time-consuming, expensive, and difficult regulatory proceedings, all of which ultimately will be litigated."³ Even President Obama and EPA Administrator Lisa Jackson have admitted that they would prefer that Congress address global warming rather than have EPA issue regulations that will generate lawsuits.⁴

Several petitions and lawsuits to force the regulation of various sources of emissions are already pending: three petitions seek to regulate GHGs from ocean-going vessels; two petitions seek to regulate aircraft; one petition seeks to regulate fuel; and four lawsuits seek to force EPA to regulate power plants, oil and gas production and refining, and nitric acid plants.⁵ An affirmative endangerment finding under Section 202 of the CAA would leave EPA vulnerable to dozens of new lawsuits under the Act as interest groups will seek to force the Agency to greatly restrict energy consumption in the United States.

Despite the numerous problems associated with regulating GHGs under the CAA, EPA has adhered to an extremely truncated schedule and is moving forward with regulation of GHGs under section 202 of the CAA at an expedited pace.

¹ Regulating Greenhouse Gas Emissions under the Clean Air Act, 73 Fed. Reg. 44,355 (July 30, 2008).

² *A Glorious Mess*, Wall Street Journal (April 12, 2008).

³ *Strengths and Weaknesses of Regulating Greenhouse Gas Emissions Under Existing Clean Air Act Authorities*, Hearing Before the Subcommittee on Energy and Air Quality of The House Committee on Energy and Commerce, 110th Congress (2008) (Statement of Peter Glaser, Partner, Troutman Sanders).

⁴ Bryan Walsh, *Lisa Jackson: The New Head of the EPA*, Time Magazine (April 23, 2009), available at <http://www.time.com/time/health/article/0,8599,1893155,00.html>.

⁵ Memorandum from the Congressional Research Service on Climate Change: Selected Legal Topics (Sept. 17, 2009).

II. Background

A. The Supreme Court and EPA

In *Massachusetts v. EPA*, the Supreme Court found that CO₂ from mobile sources, such as cars and trucks, are pollutants under the CAA.⁶ The outstanding question for EPA was whether CO₂ emissions endanger human health and welfare. The Court instructed EPA to adopt one of three paths:

1. Find, based on the science, that GHG emissions . . . contribute to air pollution that may reasonably be anticipated to endanger public health or welfare;
2. Find, based on the science, that GHG emissions . . . do not contribute to air pollution that may reasonably be anticipated to endanger public health or welfare; or
3. Provide some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether GHG emissions . . . endanger public health or welfare.⁷

EPA has falsely claimed that an affirmative endangerment finding was “inevitable given the mandate by the Supreme Court” and the “compelling and overwhelming” scientific evidence that climate change endangers human health and welfare.⁸ The Supreme Court explicitly left this question open, however, stating that it did not rule on “whether policy concerns can inform EPA’s actions in the event it makes such a finding.”⁹ EPA has the authority to consider the policy implications and negative economic effects of regulating GHG emissions under the CAA. The Supreme Court did not require EPA to make an affirmative endangerment finding.

B. The Clean Air Act Is Not Designed to Regulate GHGs

The CAA is poorly designed to respond to the challenges posed by GHGs. GHGs are fundamentally different than the air pollutants that EPA traditionally regulates under the CAA. Unlike traditional pollutants, manmade sources of CO₂ and GHGs are inextricably linked to the production of energy. Because energy is essential to all economic activity, GHG producing activities cannot be easily separated from economic activity.¹⁰ Therefore regulation of GHGs requires regulation of the entire U.S. economy. The CAA leaves EPA with little ability to consider the economic impact of regulations.

⁶ *Massachusetts v. The Environmental Protection Agency*, 549 U.S. 497 (2007).

⁷ *Id.* at 533.

⁸ Walsh, *supra* note 4.

⁹ 549 U.S. at 534-35.

¹⁰ Letter, Edward Lazear, Chairman Council of Economic Advisers and John Marburger, Director, Office of Science and Technology Policy to Susan Dudley, Administrator, Office of Information and Regulatory Affairs (July 10, 2009) (Appendix 1).

In addition, Congress drafted the CAA in the 1970s to control pollution in the U.S. and to improve national air quality by focusing on local emissions and state level controls. If, for example, levels of particulate matter (PM) exceed maximum levels, then states and localities can respond by mandating local sources to reduce their PM emissions. CO₂ and other GHGs, however, are highly diffuse and mix rapidly in the atmosphere, which means that CO₂ emitted anywhere in the world is distributed globally. As a result, CO₂ emissions from power plants in China impact the CO₂ concentrations in the atmosphere above the United States. The highly diffuse nature of GHGs will render local controls virtually meaningless.

Accordingly, the challenges posed by climate change demand a global rather than a local solution, and sensible regulation must take into account the burden that emission controls will have on the wider economy. The CAA, as written, is capable of neither.

C. Advanced Notice of Proposed Rulemaking

EPA's apparent refusal to substantively review the thousands of public comments sent to EPA in response to the previous Administration's Advanced Notice of Proposed Rulemaking (ANPR) deprived the agency of valuable information regarding the economic consequences of its proposed actions.

Following the Supreme Court's decision in *Massachusetts v. EPA*,¹¹ the Agency began evaluating whether GHGs endangered human health and the environment. EPA quickly realized that it was impossible to regulate GHGs from motor vehicles without also triggering regulation of stationary sources, large and small. Because of the complexity of the CAA and the unique attributes of GHGs, EPA released an ANPR on July 30, 2008 to solicit public feedback on the best course forward.¹² The ANPR was a 1,000-plus page document that laid out a detailed plan for economy-wide regulation of GHG emissions. Sources vulnerable to regulation include mobile sources like cars and trucks, as well as stationary sources like farms, churches, schools, and hospitals. According to the plain language of the CAA, EPA must regulate all these sources once they regulate any source.

According to a former Administrator of the Office of Information and Regulatory Affairs (OIRA), "trying to address greenhouse gas emissions through the existing provisions of the CAA will not only harm the U.S. economy, but will fail to provide an effective response to the global challenge of climate change."¹³

Despite the repeated warnings about negative economic consequences of regulating GHGs under the CAA, Administrator Jackson pressed ahead at a rapid pace to propose an affirmative endangerment finding.

¹¹ 549 U.S. 497.

¹² *Regulating Greenhouse Gas Emissions under the Clean Air Act*, 73 Fed. Reg. 44,355 (July 30, 2008).

¹³ Letter, the Honorable Susan Dudley, Administrator, OIRA to the Honorable Administrator Johnson, Administrator, EPA (July 10, 2009) (on file with author).

In a letter dated, March 12, 2009, Congressman Darrell Issa (R-CA), Ranking Member on the House Oversight and Government Reform Committee, expressed alarm at EPA's accelerated schedule to propose an affirmative endangerment finding.¹⁴ Barely a month after Lisa Jackson was sworn-in as Administrator, EPA had already crafted an affirmative endangerment finding, along with the underlying technical support document (TSD).¹⁵ In his letter, Congressman Issa asked EPA over a dozen questions to better understand EPA's process to evaluate and incorporate the public's response to the ANPR. EPA did not respond to the questions until after it issued the ANPR.¹⁶ At which point, it did not substantively respond, but simply referred Congressman Issa to the ANPR. No one outside of EPA knows how, or even if, the agency reviewed the thousands of public comments or addressed the concerns that they raised.

III. Discussion: An Affirmative Endangerment Finding was a Predetermined Outcome

A. EPA's Truncated Schedule

Administrator Jackson acted with reckless speed to issue a proposed endangerment finding. According to interviews with EPA staff, the Administrator decided to move forward with an affirmative endangerment finding within a month of her Senate confirmation. This decision is confirmed by a February 26, 2009 memorandum, distributed by Stuart Miles McClain at EPA.¹⁷ Attached to the email was a form titled, "Saved Action Initiation (Tiering) Form for the Proposal for Endangerment Finding of Greenhouse Gases under the Clean Air Act." This form indicated that Administrator Jackson requested to sign the proposal on April, 16, 2009.¹⁸

EPA's endangerment workgroup held its first meeting on March 3, 2009.¹⁹ By March 9, 2009, the Office of Air and Radiation (OAR) sent the internal workgroup a draft copy of the endangerment finding.²⁰ On March 10, *Greenwire* reported that EPA planned to fast-track the process.²¹ The article cited a leaked EPA document, which stated that EPA planned to finish its internal review by March 18.

¹⁴ Letter, the Honorable Darrel Issa, Ranking Member, Oversight and Government Reform to the Honorable Lisa Jackson, Administrator, EPA (March 12, 2009) (Appendix 2).

¹⁵ Darren Samuelsohn, *Leaked EPA Document shows Endangerment Finding on Fast Track*, ENERGY AND ENVIRONMENT DAILY, March 10, 2009, available at <http://www.eenews.net/public/Greenwire/2009/03/10/1>.

¹⁶ Letter, Elizabeth Craig, Acting Assistant Administrator for EPA, to the Honorable Darrell Issa, Ranking Member, Oversight and Government Reform Committee (May 18, 2009) (Appendix 3).

¹⁷ Email, Stuart Miles-McLean, OPEI Regulatory Steering Committee Representative, EPA to Angela Suber, *et al.*, *Second Expedited Interim February 2009 Tiering Request – Responses due by c.o.b. Friday, Feb. 27* (Feb. 26, 2009) (Appendix 4).

¹⁸ *Id.*

¹⁹ Email, Rona Birnbaum, Chief, Climate Science and Impacts Branch, EPA to Alice Gilliland *et al.* (March 2, 2009) (Appendix 5).

²⁰ Telephone Interview with Dr. John Davidson, Environmental Scientist, NCEE (July 9, 2009) (hereinafter Davidson Interview) (Appendix 6).

²¹ Samuelsohn, *supra*, note 15.

Because of this accelerated timetable, the interagency workgroup was given limited time to respond to the draft produced by OAR. According to Dr. John Davidson, Senior Analyst at EPA's National Center for Environmental Economics (NCEE), nothing of this scope and importance had ever been expedited so quickly.²² Dr. Alan Carlin, Senior Analyst at NCEE, requested to slow down the review process to give staff more time to examine the TSD, but his request was summarily dismissed.²³ Dr. Al McGartland, Director of the NCEE, also said that the timeframe for review was "unusually short" and "extremely truncated."²⁴

EPA's leadership made clear to staff involved in the internal review process that they were only seeking technical, not substantive, comments. As a result of this pressure, Dr. McGartland was reluctant to pass comments from NCEE's staff to OAR. In an email to Drs. Davidson and Carlin, he emphasized that there was "very little time" to review the TSD.²⁵ In addition, multiple internal EPA emails stressed that the Administrator had set a "very aggressive schedule required for an April 16 Administrator's signature."²⁶ In an email reporting on the first endangerment meeting, Steve Newbold, an economist at NCEE, reported that EPA leadership issued "profuse apologies for the compressed timeline, but at the same time the high priority of the action was heavily stressed. They asked if there was any 'discomfort' with the timeline, but it was clear that there was no room for adjustment anyway."²⁷ This manufactured sense of urgency discouraged staff from raising legitimate concerns about the process and substance of the endangerment finding.

In addition to limiting debate, the tight deadlines prevented EPA from performing additional or independent studies of the health and welfare impacts of GHGs. Instead, the finding relied heavily on the United Nation's Intergovernmental Panel on Climate Change (IPCC) report, along with reports issued by the U.S. Climate Change Science Program and the National Research Council. According to internal EPA sources, the TSD for the endangerment finding was substantially the same document as the 2007 draft.²⁸ This meant scientific developments over the last two years were not meaningfully incorporated into the TSD.²⁹

²² Davidson Interview, *supra* note 20.

²³ Telephone Interview with Dr. Alan Carlin, Senior Research Analyst, NCEE (July 9, 2009) (hereinafter Carlin Interview) (Appendix 7).

²⁴ Telephone Interview with Dr. Al McGartland, Director, NCEE (July 1, 2009) (hereinafter, McGartland Interview) (Appendix 8).

²⁵ *Id.*; see also Email, Dr. Al McGartland to Chris Dockins, PhD, Director Science Policy, *et al.* (March 10, 2009) (Appendix 9).

²⁶ Email, Chris Dockins to Al McGartland, *et al.*, *RE: Quick Update on the Endangerment Finding* (March 4, 2009) (Appendix 10).

²⁸ Email, Steve Newbold to John Davidson and Alan Carlin, *RE: Endangerment Meeting* (March 6, 2009) (Appendix 11).

²⁸ Davidson Interview, *supra* note 21; McGartland Interview, *supra* note 25; Carlin Interview, *supra* note 24.

²⁹ *Id.*

It was this accelerated process that prompted Dr. Alan Carlin to draft a report that criticized EPA's process. Dr. Carlin wrote:

I have become increasingly concerned that EPA has itself paid too little attention to the science of global warming. EPA and others have tended to accept the findings reached by outside groups, particularly the IPCC and the CCSP, as being correct without a careful and critical examination of their conclusions and documentation. If they should be found to be incorrect at a later date, however, and EPA is found not to have made a really careful independent review of them before reaching its decisions on endangerment, it appears likely that it is EPA rather than these other groups that may be blamed for any errors. *Restricting the source of inputs into the process to these two sources may make EPA's current task easier, but it may come with enormous costs later if they should result in policies that may not be scientifically supportable.*³⁰

Echoing Dr. Carlin's concern that EPA failed to properly evaluate the science, Dr. Davidson reported that while OAR made some attempt to update the findings of the IPCC, the published TSD was out-of-date by as much as 18 months.³¹

Dr. Davidson, Dr. Carlin, and Steve Newbold attempted to arrange a meeting with staff at OAR to discuss their concerns. The meeting, originally scheduled with Jason Samenow, Ben DeAngelo, Rona Birnbaum and others for Thursday March, 12, 2009, was ultimately cancelled due to the "demands on everyone's time."³² Ironically, the "compressed timeline" did not allow EPA staff time to express their concerns even when those concerns related to the timeline. Accordingly, it appears that, in EPA's pursuit of an affirmative endangerment finding, substantial barriers were erected to intimidate key policy analysts and stifle dissent.

EPA issued its proposed endangerment finding on April 17, 2009—devoting less than two months to the full process of drafting, editing, reviewing, and finalizing the most significant regulatory action of our time. EPA provided stakeholders with a similarly short timeline, 60 days, to respond to the proposal.

In a letter dated June 10, 2009, ten Members of Congress wrote EPA and argued that the 60 day comment period was inadequate for a rule of such magnitude. They argued:

As you are aware, once a pollutant is "subject to regulation under the act," a regulatory dragnet is triggered, subjecting thousands of businesses, large and small, to onerous Prevention of Significant

³⁰ Alan Carlin, *Comments on Draft Technical Support Document for Endangerment Analysis for Greenhouse Gas Emissions under the Clean Air Act*, (March 16, 2009) (emphasis added), available at http://www.carlineconomics.com/files/pdf/end_comments_7b1.pdf.

³¹ Davidson Interview, *supra* note 21.

³² *Id.*; see also Email, Jason Samenow to John Davidson, Alan Carlin, *et al.* (March 11, 2009) (Appendix 12).

Deterioration (PSD) and Title V permitting requirements. Such a decision could have immediate effects, impeding the construction and permitting of new energy projects. Nothing in the CAA limits the application of permitting requirements to energy sources, so it could be applied to thousands of small businesses, farms, churches, and schools, subjecting the owners to unknown civil liabilities if they fail to obtain necessary permits. Clearly, EPA's final decision on the Proposed Endangerment Findings will have great consequence to the U.S. economy and to businesses struggling to survive these harsh economic times.³³

EPA declined the Congressional request to extend the time available for the public to submit comments.³⁴

EPA apparently sacrificed thorough deliberation of a critical regulatory document for the sake of rapid action, and the Obama Administration's political appointees in the EPA openly ignored the concerns of the agency's career policy experts. It is impossible to know what other concerns would have been raised if not for the strict timeframe that prevented staff from articulating their opinions. As Dr. Carlin pointed out, this timeframe "may come with enormous costs" if EPA's decision is ultimately found to be scientifically flawed.³⁵

B. EPA Systematically Marginalizes Dissent

In addition to acting with extreme haste, EPA took retaliatory action against career civil servants who questioned the Agency's political agenda. These actions harmed the targeted individuals and likely chilled additional dissent.

1. OMB Memo Suppression

On April 24, 2009, EPA posted an internal memorandum on its public docket that expressed the consolidated views of the Office of Management and Budget (OMB) and other Federal agencies regarding EPA's draft endangerment finding.³⁶ This memorandum was made public in accordance with the requirements of the CAA.

The OMB memorandum warned EPA about the severe economic consequences that would spring from an affirmative endangerment finding. The memo stated:

Making the decisions to regulate CO₂ under the CAA for the first time is likely to have serious economic consequences for regulated entities

³³ Letter, the Honorable Darrel Issa, Ranking Member, Oversight and Government Reform, *et al.* to the Honorable Lisa Jackson, Administrator, EPA (June 10, 2009) (Appendix 13).

³⁴ Letter, the Honorable Lisa Jackson Administrator, EPA to the Honorable Darrel Issa, Ranking Member, Oversight and Government Reform, *et al.* (June 17, 2009) (Appendix 14).

³⁵ See Carlin Report, *supra* note 30.

³⁶ Office of Mgmt. & Budget, Exec. Office of the President, *Discussion of Scientific and Support Analysis* (2009) (Appendix 15).

throughout the US economy, including small businesses and small communities . . . [who could] be subject to costly regulatory programs such as New Source Review.”³⁷

The memo also noted that EPA had not “undertaken a systematic risk analysis” or cost benefit analysis.³⁸

The memo prompted criticism from Members of Congress and the media. In an attempt to stifle the debate, the Obama Administration dismissed these warnings as irrelevant, in part, because they originated from “a Bush holdover.”³⁹ The so-called “holdover,” however, was a career civil servant who was originally hired during the Clinton Administration and had served the Office of Advocacy with distinction. Moreover, her previous political experience was as an aide to a Democratic Member of Congress.⁴⁰ The author of the memo cannot simply be dismissed as a partisan hack.

In a letter to Senator Barrasso (R-WY), OMB conceded that by disclosing the name of the “Bush holdover” to the media, OMB broke its own protocol.⁴¹ These protocols exist because such revelations could have a chilling effect on interagency communication by discouraging advice that may be politically unpopular. OMB justified the revelation based on the Administration’s need to “correct inaccurate and misleading media reports.”⁴² These media reports, however, directly quoted an OMB document that EPA posted on its Docket in accordance with law. OMB never clarified what “inaccuracies” its breach of protocol rectified.

The Administration’s efforts to discredit the memo’s author not only broke with protocol, but exposed the Administration as so committed to its political agenda that it had become deaf to contrary evidence.

2. Mistreatment of Dr. Alan Carlin

a. Background

Evidence gathered by our Committees strongly suggests that EPA deliberately set up procedural roadblocks to limit internal opposition to the endangerment finding. This practice is most clearly demonstrated in the treatment of a 37-year career civil servant, Dr. Alan Carlin. EPA reacted swiftly to stifle his work when he attempted to voice his concerns about the process of developing the endangerment finding and the underlying TSD. Worse still, EPA punished Dr. Carlin by demoting him and removing him from all work related to climate change.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Ian Talley, *EPA Chief Says CO₂ Finding May Not ‘Mean Regulation,’* Wall Street Journal (May 13, 2009), available at <http://online.wsj.com/article/SB124214922088511421.html>.

⁴⁰ Robin Bravender, *Barrasso Accuses White House of Playing Politics with OMB*, E & E News PM (May 13, 2009), available at [memohttp://www.eenews.net/eenewspm/print/2009/05/13/2](http://www.eenews.net/eenewspm/print/2009/05/13/2).

⁴¹ Letter, Peter Orszag, Director OMB, to Senator John Barrasso (July 31, 2009) (Appendix 16).

⁴² *Id.*

In a joint letter dated June 23, 2009, Ranking Members Issa and Sensenbrenner (R-WI) raised concerns about a series of emails, dated March 12-17, 2009, in which the NCEE's Director expressly refused to include a staff member's report in the official record.⁴³ Senators John Barrasso and Inhofe (R-OK) sent similar letters,⁴⁴ as did House Energy and Commerce Ranking Member Joe Barton (R-TX).⁴⁵

In these emails, NCEE's Director, Dr. Al McGartland, refused to include relevant scientific evidence because, in his view, the Administration had already reached a conclusion regarding the endangerment finding.⁴⁶

On March 16, 2009, Dr. Alan Carlin reiterated his request that his comments be included in EPA's record for the proposed endangerment finding. Dr. Carlin wrote:

I believe my comments are valid, significant, and contain references to significant new research since the cut-off for IPCC and CCSP [U.S. Climate Change Science Program] inputs. They are significant because they present information critical to the justification (or lack thereof) for the proposed endangerment finding. They are valid because they explain much of the observational data that have been collected which cannot be explained by the IPCC models.⁴⁷

In response, Dr. McGartland once again declined to forward Dr. Carlin's comments, stating that he could "only see one impact of [the] comments given where we are in the process, and that would be a very negative impact on our office."⁴⁸ Dr. McGartland did not question the scientific merit of the proposed studies, but rather explained that "[t]he administrator and administration has decided to move forward on endangerment, and your comments do not help the legal or policy case for this decision."⁴⁹

An email from Dr. Davidson at NCEE made clear that Dr. McGartland had made additional efforts to cover up Dr. Carlin's report. In an email dated March 16, 2009, Dr. Davidson wrote to Paul Balsarak, "Please keep [the Carlin memo's] existence confidential between you and me. Al [McGartland] sent several of us a note late last

⁴³ Letter, the Honorable F. James Sensenbrenner, Ranking Member, House Select Committee on Energy Independence and Global Warming and the Honorable Darrell Issa, Ranking Member, Committee on Oversight and Government Reform to the Honorable Lisa Jackson, Administrator, EPA (June 23, 2009) (Appendix 17).

⁴⁴ Letter, the Honorable John Barrasso, U.S. Senator and the Honorable James Inhofe, Ranking Member, Senate Environment and Public Works Committee to the Honorable Lisa Jackson, Administrator, EPA (June 30, 2009) (Appendix 18).

⁴⁵ Letter, the Honorable Joe Barton, Ranking Member, Energy and Commerce Committee to the Honorable Lisa Jackson, Administrator, EPA (June 24, 2009) (Appendix 19).

⁴⁶ Email, Al McGartland to Alan Carlin (March 17, 2009) (Appendix 20).

⁴⁷ Email, Alan Carlin to Al McGartland (March 16, 2009) (Appendix 21).

⁴⁸ See McGartland Email, *supra* note 46.

⁴⁹ *Id.*

week that seemed to say he didn't want even the existence of the draft to be known outside of NCEE."⁵⁰

Dr. McGartland then sent a follow-up email, forbidding Dr. Carlin from continuing his work: “[Y]ou need to move on to other issues and subjects. I don’t want you to spend any additional EPA time on climate change. No papers, no research etc.”⁵¹ Dr. McGartland reiterated in a subsequent interview with Committee staff that, while the report held some important ideas, attempting to submit it for the record would have negatively impacted NCEE and undermined its role within EPA.⁵²

b. EPA Misleads the Public to Discredit Dr. Carlin

As with its suppression of the OMB memo, EPA initially responded to allegations of suppression by attempting to discredit the report’s primary author, Dr. Carlin. EPA initially claimed that Dr. Carlin was “not a scientist” and was “not part of the working group dealing with the issue.”⁵³ The *New York Times* recently reported this same claim, writing that “[Carlin] has never been assigned to work on climate change” and “was not invited to submit comments on the document.”⁵⁴

Dr. Alan Carlin was, in fact, a 37-year EPA civil service employee who holds a degree in physics from the California Institute of Technology. While his doctorate is in economics, NCEE had assigned Dr. Carlin to cover climate change issues for the past 7 years and had specifically tasked him with responding to the TSD.⁵⁵

Contrary to the assertion by the *New York Times*, EPA has admitted to Congress that Dr. Carlin was working in his official capacity on the endangerment finding.⁵⁶ In a letter to EPA, Congressman Joe Barton asked, “Was Dr. Alan Carlin’s work commenting on the Technical Support Document (TSD) dated March 2009 prepared as part of his official EPA duties?”⁵⁷ EPA responded, “Yes...Dr. Carlin was one of several members

⁵⁰ Email, John Davidson to Paul Balsarak (March 16, 2009) (Appendix 22).

⁵¹ Email, Al McGartland to Alan Carlin (March 17, 2009) (Appendix 23).

⁵² McGartland Interview, *supra* note 24.

⁵³ Ian Talley, *US Lawmakers Demand Probe Into Claims EPA Suppressed CO₂ Study*, Dow Jones Newswire (July 2, 2009).

⁵⁴ John M. Broder, *Behind the Furor over a Climate Change Skeptic*, *New York Times* (Sept. 24, 2009), available at <http://www.nytimes.com/2009/09/25/science/earth/25epa.html>.

⁵⁵ Letter, the Honorable Lisa Jackson, Administrator, EPA, to the Honorable F. James Sensenbrenner, Ranking Member, Select Committee on Energy Independence and Global Warming (September 3, 2009) (Appendix 24).

⁵⁶ Letter, the Honorable Lisa Jackson, Administrator, EPA, to the Honorable Joe Barton, Ranking Member, Energy and Commerce Committee (Sept. 3, 2009) (This letter is the product of a separate and ongoing investigation by the Energy and Commerce Committee Minority. The conclusions contained in this staff report do not necessarily reflect the conclusions and opinions of that investigation).

⁵⁷ Letter, the Honorable Joe Barton, Ranking Member, Energy and Commerce Committee, *et al.* to the Honorable Lisa Jackson, Administrator, EPA (July 16, 2009) (Appendix 25).

of the NCEE workgroup that reviewed the draft TSD for EPA's proposed endangerment finding for greenhouse gases."⁵⁸

Moreover, interviews with Committee staff and several internal EPA emails document that Dr. Carlin actively participated in NCEE's review of the TSD and climate change issues in general. For example, on March 10, 2009, Dr. McGartland emailed Drs. Carlin and Davidson to outline NCEE's role in the review of the endangerment finding.⁵⁹ On March 11, 2009, Paul Balsarak from the Office of Policy, Economics, and Innovation (OPEI) forwarded a copy of the 2009 TSD with track changes to Dr. Carlin and others to assist in their review.⁶⁰ Dr. Carlin was also a required participant in the meeting with OAR staff to discuss NCEE's concerns with the TSD.⁶¹ Finally, in an email sent by Dr. McGartland to Drs. Carlin and Davidson, titled "Endangerment Comments???", McGartland wrote, "Dina Kruger has several calls into me...I know its about endangerment. I have seen Steve and John's preliminary comments, Alan I would be surprised if you weren't planning to submit comments. I'd like to see them."⁶²

Several additional emails document Dr. Carlin's active role in the internal agency review process of the draft TSD. EPA's admission in conjunction with this series of emails amply demonstrates the active role Dr. Carlin played in reviewing the draft TSD. Dr. Carlin's contributions on climate change were not in question prior to this controversy. Before attempting to discredit him, EPA even listed him as a coauthor/contributor of both the 2007 and 2009 TSD reports.⁶³

Furthermore, Dr. John Davidson was an original coauthor of Dr. Carlin's report and was also an active participant in the TSD comment process. Dr. Davidson was a named participant in the interagency workgroup tasked with the responsibility of drafting and evaluating the endangerment finding and the TSD.⁶⁴ He worked closely with Dr. Carlin on climate change issues and considered Dr. Carlin a valuable resource.⁶⁵ Dr. Davidson was a consistent recipient of a series of emails sent to workgroup members, such as the March 2, 2009 email from Rona Birnbaum with the materials for Agency review of the endangerment finding.⁶⁶

c. EPA Retaliates Against Dr. Carlin and the NCEE

⁵⁸ See Jackson Letter, *supra* note 56.

⁵⁹ See McGartland Email, *supra* note 25.

⁶⁰ Email, Paul Balsarak to Drs. Davidson and Carlin, *RE: FW Internal EPA draft of Endangerment Tech Support Doc for Workgroup Review* (March 11, 2009) (Appendix 26).

⁶¹ Email, *Carlin acceptance of 03/12/2009 meeting between NCEE and CCD to discuss Science/TSD* (Appendix 27).

⁶² Email, Dr. McGartland to Drs. Carlin and Davidson, *RE: Endangerment Comments??* (March 12, 2009) (Appendix 28).

⁶³ Benjamin DeAngelo *et al.*, *Technical Support Document for Endangerment and Cause or Contribution Findings for Greenhouse Gases Under Section 202 (a) of the Clean Air Act*, EPA, available at http://www.epa.gov/climatechange/endangerment/downloads/TSD_Endangerment.pdf.

⁶⁴ Carlin Interview, *supra* note 23; Davidson interview, *supra* note 20.

⁶⁵ Davidson interview, *supra* note 20.

⁶⁶ See Birnbaum Email, *supra* note 19.

c. EPA Retaliates Against Dr. Carlin and the NCEE

Our Committees have also uncovered evidence of retaliation against Drs. Carlin and Davidson. As noted above, after Dr. Carlin raised concerns about EPA's TSD, his office director forbade him to continue his work on climate change. Dr. McGartland wrote, "I don't want you to spend any additional EPA time on climate change. No papers, no research etc."⁶⁷ This was not an idle threat. Dr. McGartland reiterated his decision in a subsequent email exchange with Dr. Ann Wolverton, an economist at NCEE. Wolverton asked, "If Alan is no longer allowed to participate in climate-related activities, does that mean he is off the team, off the seminar committee that plans seminars, etc?" Dr. McGartland replied, "Yes, he is [o]ff everything. If people ask just say I needed to assign him to other things."⁶⁸

Following these exchanges, NCEE reassigned Dr. Carlin to tasks previously performed by junior staff members and contractors.⁶⁹ Immediately following submission of his report, NCEE removed Dr. Carlin from the climate change workgroup at NCEE, deleted him from the group's email distribution list, stopped inviting him to the group's periodic meetings, and forbade him to do any work on the climate issues he had previously handled. Dr. McGartland even reprimanded Dr. Carlin for attending a general briefing on climate change.⁷⁰ These retaliatory actions were clearly taken in response to Dr. Carlin's dissenting report and they dramatically changed the nature of Dr. Carlin's long-standing role within EPA.

Dr. Carlin was not the only civil servant whose job is at risk of being significantly "redefined." Dr. Davidson has expressed concern that EPA is acting to eliminate his position at NCEE.⁷¹ Dr. Davidson's concerns are confirmed by media reports that EPA plans to dismantle NCEE by removing all scientific staff, decoupling the science from the economics, and therefore, marginalizing the office.⁷² As a recent editorial in the *Washington Times* argued, such a move would "undermine the entire reason for its existence namely 'researching environmental health issues to improve risk assessment data used in economic analyses for [new regulatory] rules.'⁷³ If NCEE cannot weigh scientific evidence, it will not have a basis for advising the Administrator on the economic impact of proposed regulations. Such a move would impair the Administrator's ability to determine if the cost of a regulation exceeded its benefits. The rumored reorganization would also eliminate Dr. Davidson's position.⁷⁴

⁶⁷ See McGartland Email, *supra* note 51.

⁶⁸ Email, Dr. Al McGartland to Ann Wolverton, RE: qu re Alan Carlin (April 27, 2009) (Appendix 29).

⁶⁹ Carlin Interview, *supra* note 23.

⁷⁰ *Id.*

⁷¹ Davidson interview, *supra* note 20.

⁷² Anthony Lacey, *EPA Eyes Scrapping Policy Office's Science Role After Climate Flap*, Inside Washington Publishers (August 24, 2009)

⁷³ Editorial, *Bury the Messenger*, Wash. Times (August 25, 2009).

⁷⁴ Davidson interview, *supra*, note 20.

Ranking Members Issa and Sensenbrenner first raised this concern in a July 17, 2009 letter.⁷⁵ EPA responded to this letter on September 3, 2009. In its response, EPA wrote:

As part of the orderly transition to new EPA leadership, the Office of the Administrator asked for briefings and related discussions on how best to deploy the personnel and functions within OPEI, which is part of the Office of the Administrator. At EPA, any potential office reorganization is considered through an internally open and transparent process in which numerous internal stakeholders, including the Agency's labor unions, are offered opportunities to engage in discussions regarding an office reorganization, consistent with the applicable laws. No final decisions have been made in this regard.⁷⁶

In a follow up response, EPA stated that, "The 'news reports' referred to by Congressman Sensenbrenner are inaccurate and always have been, as is the rumor that the EPA's National Center for Environmental Economics is being eliminated. All of which was communicated to the Congressman by the EPA in a formal response earlier this month. . . . We are not restructuring."⁷⁷

While Ranking Members Sensenbrenner and Issa applaud EPA for keeping NCEE intact, EPA's response ignores its own internal emails and sources that documented EPA's discussions to restructure NCEE.⁷⁸ EPA's claim that it communicated the above information to Congressman Sensenbrenner is simply false.

3. Lack of Transparency

In violation of the Administration's pledge of unparalleled transparency, Carol Browner, President Obama's Energy and Environment Czar, may have violated the Presidential Records Act by attempting to keep negotiations on climate policy secret.⁷⁹

In a Memorandum for the Heads of Executive Departments and Agencies, President Obama stated: "My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and

⁷⁵ Letter, the Honorable F. James Sensenbrenner, Ranking Member, House Select Committee on Energy Independence and Global Warming and the Honorable Darrell Issa Ranking Member, Committee on Oversight and Government Reform to the Honorable Lisa Jackson, Administrator, EPA (July 17, 2009) ("Additionally we have been informed that EPA is attempting to reorganize the NCEE in a manner that would result in the elimination of Dr. Davidson's position. The reorganization would potentially eliminate the scientific staff from the office—effectively disbanding the staff who argued that the science underlying EPA's endangerment record should be updated.") (Appendix 30).

⁷⁶ See Jackson Letter, *supra* note 55.

⁷⁷ Robin Bravender, *GOP reignites firestorm over 'suppressed' EPA Economist*, E&E News (Sept 15, 2009).

⁷⁸ Email, Nathalie Simon to Al McGartland, *et al.*, *Re: Agenda to Today's All Hands* (July 14, 2009) (detailing agenda item to discuss NCEE reorganization) (Appendix 31).

⁷⁹ Presidential Records Act, 44 U.S.C § 2203.

establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.”⁸⁰

The Administration has not, however, lived up to this promise. Carol Browner has actively worked to keep White House efforts on climate change and the endangerment finding hidden.

According to Mary Nichols, the head of the California Air Resources Board (CARB), the White House held a series of secret meetings with select special interests as they were crafting the new Corporate Average Fuel Economy (CAFE) standards. Mary Nichols was a key player in these negotiations because of California’s determined efforts to regulate fuel economy standards at the state level – an effort commonly known as the California Waiver. Ms. Nichols admitted there was a deliberate “vow of silence” surrounding the negotiations between the White House and California on vehicle fuel economy standards.⁸¹ According to her interview, “Browner quietly orchestrated private discussions from the White House with auto industry officials.”⁸² Great care was taken to “put nothing in writing, ever.”⁸³

The effort to leave no paper trail may have violated the requirements of the Presidential Records Act (PRA). PRA requires every Administration to take, “all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as Presidential records.”⁸⁴ Clearly Browner’s actions were intended to leave little to no documentation of the deliberations that led to the development of stringent new CAFE standards, which will for the first time regulate GHG emissions under authority of the CAA.

IV. Conclusion

The speed with which EPA has moved forward with its endangerment finding and the secrecy with which negotiations have been conducted—when combined with clear examples of EPA marginalizing and then retaliating against dissent—raises serious concerns about the integrity of the decision to find that GHGs endanger human health and the environment within the context of the CAA. Contrary to EPA’s assertions, an affirmative endangerment finding was not compelled by the Supreme Court. The finding will, however, have far reaching consequences, encumbering our economy and complicating our ability to effectively mitigate GHG emissions without seriously

⁸⁰ Memorandum from President Barack Obama to the Heads of Executive Departments and Agencies, *Subject: Transparency and Open Government* (Jan. 21, 2009) (emphasis added), available at http://www.whitehouse.gov/the_press_office/Transparency_and_Open_Government/.

⁸¹ Colin Sullivan, *Vow of Silence Key to White House-California Fuel Economy Talks*, Greenwire (May 20, 2009).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ 44 U.S.C § 2203

damaging our economy. Such a far reaching decision should not have been made subject to a politically-prescribed deadline.

EPA recently claimed that “under this administration, science is, and will always remain, the compass for all EPA decisions and policy.”⁸⁵ The reality, however, is that the Obama Administration took office with a preexisting political agenda and then worked with singular focus to implement it.

⁸⁵ Bravender, *supra* note 77.

APPENDIX 1



Executive Office of the President
Council of Economic Advisers



Executive Office of the President
Office of Science and Technology Policy

July 10, 2008

The Honorable Susan E. Dudley
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

Subject: Environmental Protection Agency's Advance Notice of Proposed Rulemaking
"Regulating Greenhouse Gas Emissions under the Clean Air Act"

Dear Administrator Dudley:

The Council of Economic Advisers and Office of Science and Technology Policy would like to offer our views on the science and economics that relate to EPA's ANPR entitled "Regulating Greenhouse Gas Emissions under the Clean Air Act." Our comments are divided into two parts. In the first, we address complexities associated with the phenomenon of anthropogenic climate change that distinguish it from traditionally regulated phenomena and that significantly increase the technical difficulty of regulation. In the second, we address the likely consequences for public welfare of various proposals for mitigating greenhouse gas (GHG) emissions.

Part I: Implications of the Complex Nature of Anthropogenic Climate Change

According to the Intergovernmental Panel on Climate Change (IPCC), "Warming of the climate system is unequivocal," "...Most of the observed increase in global average temperatures...is very likely due to the observed increase in anthropogenic greenhouse gas concentrations" and "...evidence from all continents and most oceans shows that many natural systems are being affected by regional climate changes, particularly temperature increases" (IPCC Fourth Assessment). These straightforward and widely accepted scientific conclusions cover a huge range in the diversity, timing, and severity of climate change impacts on the public welfare that greatly complicate their analysis. While it is true, as the ANPR authors point out, that "The exact benefits and costs of virtually every environmental regulation are at least somewhat uncertain," (p 39) the authors nevertheless acknowledge that "In the case of climate change, the uncertainty inherent in most economic analyses of environmental regulations is magnified by the long-term and global scale of the problem and the resulting uncertainties regarding socioeconomic futures, corresponding GHG emissions, climate responses to emissions changes, the bio-physical and economic impacts associated with changes in climate, and the

costs of reducing GHG emissions.” The ability to assess potential costs and benefits of a particular regulatory mechanism is critical to informed policymaking. However, the long-term nature and global scale of climate change and the nature of the associated uncertainties, such as those raised in the ANPR and listed above, is such as to overwhelm the capability of existing technical means to trace public welfare impacts to specific regulated activities.

GHG emissions, especially of CO₂, arise from a very wide variety of natural, domestic, and industrial activities, nearly all of which are beneficial to society. Because the geographical and temporal patterns of emissions vary with technology and market-driven human choices, a regulatory approach to the mitigation of GHGs that is based on an assortment of activity-specific regulatory mechanisms, such as those described in the ANPR, must necessarily be responsive on relatively short time-scales to the changing emissions picture. No reliable model of technical innovation exists to forecast how these patterns are likely to change even in the immediate future. Current rapid changes in transportation and energy production and use, for example, came as a surprise to economists and markets around the world. In the absence of much more accurate forecasting for the array of CO₂ emitting activities, the regulatory process will be continually out of step with reality unless it can be designed to adjust itself on realistic time scales. Historical time scales for environmental regulation in the U.S. suggest that this will be impossible, especially for the very large array of interconnected activities that would need to be regulated to mitigate CO₂ emissions.

This technical complexity is indeed one of the reasons why economists and policy-makers favor broad market-oriented frameworks such as carbon taxes, technology-neutral subsidies, or carbon trading schemes for GHG mitigation. The widespread support for such schemes is itself evidence for the impracticality of the array of regulatory mechanisms on which the ANPR seeks comment.

The diversity and complex distribution in space and time of GHG sources combine with intrinsic features of relevant climate phenomena to multiply further the obstacles to traditional regulation. Anthropogenically driven climate impacts are in nearly every case indistinguishable from naturally occurring phenomena. The anthropogenic contribution is apparent primarily in retrospective statistical analyses, and its adverse impacts cannot be readily distinguished from impacts that would have occurred in the absence of anthropogenic warming. Although few deny that anthropogenic causes underlie much of the general observed patterns, it is not the case that all “new” impacts exceeding historical means can be attributed to anthropogenic warming. The individual phenomena causing the impacts show strong regional variation and differing sensitivity to human behavior. Hurricane impacts, for example, are linked to coastal development patterns and to long term ocean circulation trends that occur with and without anthropogenic warming. Efforts to identify and evaluate specific localized adverse impacts uniquely associated with activities that lend themselves to regulation are nearly impossible under such circumstances. Tracing climate change causes to effects invariably requires simulations of the entire climate system. Such simulations are feasible for broad measures such as global and annually averaged surface temperatures, on whose link to GHG emissions there is broad agreement among scientists. The success of these simulations depends on thorough mixing of GHGs from all sources, so the individual characteristics and global distribution of different sources can be ignored. This same feature renders attribution of public welfare impacts to

specific regulated activities subject entirely to elaborate schemes for accounting and allocating emissions on a global basis. Such attributions cannot be accomplished based on U.S. data alone. And the global atmospheric CO₂ budget is not simply the sum of all emissions – the Earth “breathes” seasonally in a striking pattern whose details depend on a mix of human behaviors (e.g. deforestation) and natural causes (e.g. volcanic activity). Consequently a useful model for assessing significance and attributing share of public welfare impacts will necessarily be extremely complicated. As the ANPR authors note: “Quantifying the *exact* (emphasis added) nature and timing of impacts due to climate change over the next few decades and beyond, and across all vulnerable elements of U.S. health, society and the environment, is currently not possible.” Nor is it currently possible to quantify impacts even to a *less exact* standard that is needed to regulate GHGs through the Clean Air Act.

Overarching all these complexities is the unprecedented temporal quality of global climate change. Activities currently proposed for regulation will have no impact on public welfare for decades (except for possible beneficial side effects on traditional pollutants). Consequently, all approaches to the assessment of impacts necessarily involve forecasts. While the physical phenomena involved in anthropogenically induced global climate change are reasonably well understood, despite their complexity, the social phenomena that influence GHG producing activities are not at all well understood, which creates huge uncertainties in climate projections. All current forecasts of global warming that extend beyond roughly a decade are based on scenarios that assume a pattern of human behavior. These scenarios vary widely, but probably not widely enough given the very weak ability of science to predict how nations, markets, and individuals respond to their environments. Within its continually expanding limits, science can estimate the implications of social scenarios for anthropogenic global warming, but it has little power to assess the validity of the scenarios themselves.

Of all the effects that complicate the scientific analysis of GHG regulation, none is more profound and less tractable than the unpredictability of human behavior. Because the largest sources of anthropogenic CO₂ are linked to the use and production of energy, and because energy is an essential ingredient of all economically productive activity, GHG producing activities cannot be simply extracted from the tightly woven matrix of any economy. And economic globalization ensures that the matrix of anthropogenic climate influence is global. Regulation of specific GHG producing activities to achieve a specific target entails an analytical framework that gives some assurance that the targets can be reasonably met. No credible framework exists for this purpose. This fact seems to have been appreciated by political leaders who have endeavored to forge broad international agreements to reduce GHG emissions. As President Bush noted when launching a new U.S. policy for limiting emissions earlier this year, “The Clean Air Act, the Endangered Species Act, and the National Environmental Policy Act were never meant to regulate global climate.” Given the long-term nature and global scale of climate change and the nature of the uncertainties inherent in its associated impacts, the machinery of the Acts’ regulatory frameworks are clearly not adequate to the task.

Part II: Consequences of Proposed Remedies

Any attempt to use the Clean Air Act to regulate greenhouse gases efficiently is fraught with difficulties, for two reasons. First, the EPA, which is charged with overseeing the Clean Air Act, is unlikely to have the statutory authority to implement economically neutral approaches such as a carbon tax, a cap-and-trade with a safety valve, and/or technology-neutral subsidies. Such approaches, which are typically the centerpiece of economic mechanisms to GHG regulation, allow markets to choose the best and most cost-effective way to deal with GHGs and do the least harm to the economy. Limitations on authority are mentioned in EPA's Advanced Notice of Proposed Rule-Making (ANPR). Second, and perhaps as a consequence of such limitations, the regulations considered by the authors of the ANPR are a cumbersome set of rules and restrictions that are in some cases excessive, inadequate, redundant, inordinately burdensome to the economy, and almost certain to fail to produce the desired climate results. Because of specific limitations in the law, the Clean Air Act does not permit the EPA to attain economic efficiency while reducing GHG emissions, even in the narrow context of emissions by the United States. It is even less effective when viewed in the global context appropriate for greenhouse gases. We detail some of our concerns in what follows.

First, the Clean Air Act would result in excessive regulation. Under one likely scenario, the same standard for GHG emissions would be required from each state in the country, which might force the EPA to regulate GHGs much too stringently in some situations. To obtain economic efficiency, it is necessary to equalize marginal abatement costs across sources, which is extremely unlikely to occur if states are required to meet the same standard. Consequently, some states would be required to reduce emissions in an extremely expensive manner, while others that are better able to reduce emissions cheaply would have little incentive to do so. The consequence would be higher costs to the economy than necessary, borne disproportionately by specific industries, workers and consumers. Ann Klee, former General Counsel for the EPA, stated in her Senate testimony of April 24, 2007:

“Although the argument could be made that CO₂ meets the statutory threshold for designation and regulation as a criteria pollutant, it is evident that this would make little sense from a regulatory perspective. If the standard were set at a level intended to force reductions in emissions, i.e., at some atmospheric concentration below current levels (approximately 370-380 parts per million CO₂), then the entire country would be designated as being in nonattainment. This would trigger the regulatory mechanisms of the NAAQS program ... This should be of concern to States that face potentially significant penalties for persistent nonattainment.”

An alternative scenario under the Clean Air Act would regulate GHG emissions by requiring every source to meet some average emissions standard, irrespective of costs. This means that each sector would be required to reduce emissions to a point that is considered technologically achievable rather than economically efficient.

The Clean Air Act also makes it very difficult to loosen constraints, once regulations have been promulgated. Because the inherent benefits of limiting emissions remain uncertain, it is important to retain the ability to adjust stringency up or down over time.

Second, the Clean Air Act may be inadequate. The ANPR recognizes that the Clean Air Act was designed to protect local and regional air quality by controlling emissions with a limited range of impacts. GHGs however, become relatively evenly distributed through the atmosphere, irrespective of their point of origin. The specific source of emission reduction has little or no bearing on the benefit of reduction, but the cost of reductions may vary greatly by source. However, the Clean Air Act generally precludes decision makers from considering costs, and does not permit regulations to depend on mitigation actions taken by other countries. The failure to allow for contingencies of this sort removes an important tool for inducing other countries to take actions that benefit Americans and the rest of the world.

Third, regulation of GHG through the Clean Air Act will prove inordinately burdensome. For instance, one section of the Act specifies threshold levels, which, for traditional pollutants, captures only the larger polluters. The same thresholds applied to GHGs would increase the number of affected sources by an order of magnitude, implying the regulation of sources that were not previously regulated nor intended to be regulated under the Clean air Act. The statute sets a "major source" threshold value of, at most, 100 tons per year of any air pollutant (or less in non-attainment areas.)¹ Small manufacturing facilities, schools, and shopping centers have potential emissions of 100 tons per year or more. If GHGs are regulated under the Clean Air Act, those sources will become a "major sources" and must undergo full major source permitting and would be required to adhere to EPA regulations.

Fourth, the Clean Air Act entails redundancy. The ANPR acknowledges that even if an economy-wide program were legally possible under the Clean Air Act, it would have to be accompanied by source-specific or sector-based requirements as a result of other Clean Air Act provisions. This could result in multiple, overlapping and perhaps conflicting incentives to reduce GHG emissions.

Finally, any GHG regulation imposed under the Clean Air Act is almost certain to fail. Even an economy-wide system will not be effective unless it is coupled with significant GHG reductions by all major economies. The Clean Air Act is not the appropriate vehicle to accomplish worldwide reductions in GHG emissions. Furthermore, acting in a globally uncoordinated fashion will put the United States at a competitive disadvantage, will induce economic distortions and may actually be counter productive in reducing GHGs. The most obvious example of this involves "leakage," where the U.S. imposes costs on businesses that emit greenhouse gases to which other countries are not subject. If businesses in other countries do not suffer the penalty for emitting GHGs, production has an incentive to move abroad, even when producing in the U.S. would be more economically efficient.

¹ EPA. Advanced Notice of Proposed Rulemaking. Section VII, Part E.2.

We believe that the Clean Air Act is not the appropriate statutory framework for dealing with climate change. The Clean Air Act was never intended to address issues with the global complexity of GHG emissions. Challenges in addressing climate change under the Clean Air Act are compounded by intrinsic characteristics in both its science and its economics. Instead, Congress needs to examine this issue directly, make the difficult choices that are inherent in any regulatory policy, and come up with an approach that imposes the minimum economic distortion for the maximum climate change benefit.



Edward P. Lazear
Chairman
Council of Economic Advisers



John H. Marburger, III
Director
Office of Science and Technology Policy

APPENDIX 2

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AARON SCHOCK, ILLINOIS

March 12, 2009

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Jackson:

I am writing to express serious concern about recent media reports that the Environmental Protection Agency is finalizing an Endangerment Finding under Section 202 of the Clean Air Act to regulate Carbon Dioxide (CO₂) and other greenhouse gasses (GHGs). If finalized, an endangerment finding would have an immediate and negative impact on many sectors of the economy that are already struggling in these challenging times.

As you are aware, on July 30, 2008, EPA released an Advanced Notice of Proposed Rulemaking (ANPR) to solicit comments on possible regulation of Carbon Dioxide under the Clean Air Act (CAA). The 1,000 page document laid out a detailed plan for economy-wide emission regulation, covering dozens of mobile sources and many stationary sources, such as farms, churches, schools, and hospitals, to name a few. EPA solicited the public's input because, "*the potential regulation of greenhouse gases under any portion of the CAA could result in an unprecedented expansion of EPA authority that would have profound effect on virtually every sector of the economy and touch every household in this land.*"¹ EPA received thousands of comment letters in response to this unprecedented solicitation.

According to a news article published in Greenwire, "*EPA Document Shows Endangerment Finding on Fast Track,*" the U.S. EPA is now on a schedule to complete Final Agency Review of an Endangerment Finding for CO₂ and other GHGs by March 18, 2009.² Moreover, it appears that EPA intends to issue an endangerment finding under

¹ Regulating Greenhouse Gas Emissions under the Clean Air Act, 73 Fed. Reg. 44,355 (July 30, 2008), (emphasis added).

² Darren Samuelsohn, *EPA Document Shows Endangerment Finding on Fast Track*, GREENWIRE, March 10, 2009, available at <http://www.eenews.net/Greenwire/2009/03/10/1>.

Section 202 of the CAA for both public health and welfare in the very near future.³ However, there is no indication that EPA intends to issue any accompanying regulations.

As you are aware, the CAA is very clear that once an endangerment finding occurs under any section of the Act, the newly labeled pollutant is subject to regulation under the entire Act, as a matter of law. The decision of whether to regulate is not left to the Administrator's discretion. The result is a regulatory dragnet that entangles even the smallest of entities. While appropriate for other criteria pollutants, the 250 tons per year (TPY) emissions threshold that triggers regulation is a relatively small amount of CO₂/GHG emissions. In fact, once EPA issues an endangerment finding, thousands of small businesses, farms, churches, and schools, could be regulated by EPA.

However, it is a certainty that the immediate result of issuing an endangerment finding is that thousands of American small businesses, already struggling in one of the toughest economic climates our generation has ever seen, will be thrown into a sea of legal uncertainty, further depressing their ability to stay viable. Literally hundreds of thousands of small businesses could be newly obligated to obtain a permit to emit CO₂ and other GHGs. Moreover, the issuance of an endangerment finding immediately exposes the owners of these small businesses to unknown civil liabilities if they fail to obtain the necessary permits.

Clearly, as scores of commentators discussed in their response to the ANPR, the ramifications of an affirmative endangerment finding for CO₂ or other GHGs to the American economy could be absolutely devastating.

As a result of the enormous ramifications that accompany an endangerment finding, along with the Administration's accelerated timeline to issue such a finding, I respectfully request that you provide detailed explanations to the following questions, no later than March, 18, 2009.

1. According to the briefing document, the Endangerment Determination will respond to key comments EPA received on the ANPR⁴.
 - a. How many pages of comments did EPA receive in response to the July 30, 2009 ANPR by the November 28, 2008 deadline?
 - b. How many of these comments, received by the deadline, were in favor of an endangerment determination? And how many were opposed?
 - c. Describe the process the agency employed in order to review such a large volume of comments.
 - d. Are all the comments publically available? If so, how long did it take EPA to make all comments, received by the November 28 deadline, publically available?
 - e. How did the Agency determine what "Key Comments" should be responded to?

³ Proposed Endangerment Finding for GHGs in Response to *Mass. v. EPA*, Guidance Option Selection Briefing, (March 6, 2009) [hereinafter, *Option Selection Slides*]

⁴ *Option Selection Slides* at 8.

2. How will EPA respond to the widespread concern that an endangerment finding for new motor vehicles under Section 202(a)(1) will, as a matter of law, result in the mandatory imposition of National Ambient Air Quality Standards (NAAQS)?
3. How will EPA respond to the widespread concern that an endangerment finding for new motor vehicles under Section 202(a)(1) will, as a matter of law, result in the mandatory imposition of New Source Performance Standards (NSPS)?
4. How will EPA respond to the widespread industry concern that an endangerment finding for new motor vehicles under Section 202(a)(1) will, as a matter of law, result in the mandatory imposition of Title V permitting, as well as the widespread exposure to the Prevention of Significant Deterioration (PSD) permit program to stationary sources?
 - a. An August 2008 EPA analysis of PSD/NRS permitting cost found that the average cost in 2007 for 282 permits was \$125,120 to the applicant and a burden of 866 hours. The additional cost to state and local agencies was \$23,280 and 301 hours per application.⁵ According to a recent study created for the U.S. Chamber of Commerce, at least one million mid-sized to large commercial buildings emit enough CO₂ per year to become EPA regulated stationary sources, subject to permitting requirements.⁶
 1. Describe how EPA plans to handle the dramatic increase in volume of PSD/NSR permits that will accompany a positive endangerment finding.
 2. Did EPA account for such a foreseeable increase in operating expenses in its 2010 Budget? If not, why not?
 3. How many additional staff does EPA plan to hire in order to process the spike in PSD.NSR permit requests?
 - b. Has EPA conducted an analysis of the expected cost to private entities that will have to comply with PSD/NSR permitting requirements? Please describe the analysis. If no such analysis has been conducted, please explain why not.
5. What is EPA's projected timeline for issuing CO₂/GHG regulations for mobile sources under Section 202 of the Clean Air Act?
6. What is EPA's projected timeline for issuing regulations or additional endangerment findings under other sections of the CAA?
7. According to the briefing document, there are no direct health effects associated with elevated CO₂/GHG ambient concentrations "the range of projected ambient

⁵ Information Collection Request for Prevention of Significant Deterioration and Nonattainment New Source Review (40 CFR Part 51 and 52). Carrie Weaver, Operating Permits Group (C504-03), Air Quality Policy Division, Office of Air Quality Planning Standards, Office of Air and Radiation, USEPA, p. 16-20.

⁶ "A Regulatory Burden: The Compliance Dimension of Regulating CO₂ as a Pollutant." Portia M.E. Mills and Mark P. Mills. September 2008, p.3.

concentrations of CO₂ and other GHGs will remain well below published thresholds for any direct adverse health effects, such as respiratory or toxic effects.”⁷

- a. Has EPA ever before found a pollutant to “endanger human health” under section 202 of the CAA solely on the basis of indirect health effects? Under any other section of the CAA?
 - b. Please list all relevant precedents EPA relied on to justify its decision to find endangerment on the basis of indirect health effects.
8. According to the briefing document, EPA “does not confine analysis to observed and projected effects attributable only to U.S. transportation GHG emissions.” However, the plain language of Section 202 of the CAA explicitly narrows the scope of the Administrator’s review to emissions from mobile sources.⁸ Please explain why EPA did not confine its analysis to the CO₂/ GHGs emitted by mobile sources.
9. The Office of Advocacy, within the Small Business Administration, indicated in its comment letter that if “EPA chooses to go forward with plans to use the CAA to address climate change, the Office of Advocacy will insist that the views of small entities be considered in the pre-proposal stage required by the Small Business Regulatory Enforcement Fairness Act (SBREFA).”⁹ Given the obligation to regulate once an endangerment determination has been made, has EPA conducted a Small Business Advocacy Review (SBAR) panel with the Office of Advocacy? If not, does EPA intend to participate in an SBAR panel before issuing an endangerment finding? Before issuing any other regulations controlling CO₂/GHGs?

If you have any questions concerning this letter, please contact Kristina Moore of the Committee Staff at 202-225-5074.

Sincerely,



Darrell E. Issa
Ranking Member

cc: Edolphus Towns, Chairman

⁷ Option Selection Slides at 14.

⁸ 42 U.S.C. section 202 (stating, “the Administrator shall by regulation prescribe...standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines...which cause or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.”)

⁹ Letter to EPA Administrator Stephen Johnson by Thomas M. Sullivan, Chief Counsel for Advocacy, Small Business Administration Office of Advocacy. July 8, 2008.

APPENDIX 3



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 18, 2009

OFFICE OF
AIR AND RADIATION

The Honorable Darrel E. Issa
U.S. House of Representatives
Washington, DC 20015

Dear Congressman Issa:

Thank you for your letter to Administrator Jackson, dated March 12, 2009, regarding media reports that EPA was in the process of making endangerment determinations for greenhouse gas emissions under section 202(a) of the Clean Air Act (CAA). The Administrator asked that I respond on her behalf.

On April 17, after a thorough scientific review ordered in 2007 by the U.S. Supreme Court, EPA issued proposed findings that greenhouse gases (GHGs) contribute to air pollution that may reasonably be anticipated to endanger public health or welfare and that emissions of those gases from mobile sources cause or contribute to the endangerment. EPA is now accepting public comments on those proposed findings.

EPA's proposed findings are based on rigorous, peer-reviewed scientific analysis of six GHGs. As discussed in the proposal, the science clearly shows that concentrations of those gases are at unprecedented levels as a result of emissions from man-made sources, and the high levels are very likely the cause of the increase in average temperatures and other changes in our climate.

You posed several specific questions in your letter. Please find EPA's responses below.

Response to Question 1: The 2008 Advanced Notice of Proposed Rulemaking invited public comment on the potential application of Clean Air Act authorities to GHGs. EPA would not promulgate any GHG emission reduction requirement without responding to public comments. In keeping with the administrative provisions of the Clean Air Act – and in the interest of full transparency and informed public participation – EPA would spell out any proposed requirement, accept comment on that specific proposal, and prepare responses to the significant comments before finalizing the requirement. EPA has not yet proposed any GHG emission reduction requirement for mobile or stationary sources.

Response to Questions 2, 3, and 4: Before establishing any GHG emission reduction requirement under the Clean Air Act, EPA would not only propose that requirement and seek public comment on it, but also include in the notice a summary of the major legal interpretations underlying the proposal. Again, EPA has not yet proposed any GHG emission reduction requirement for mobile or stationary sources.

Response to Questions 5 and 6: EPA will take one step at a time. The Agency would not decide on a timeline for issuing a final GHG emission reduction requirement until after proposing that requirement and reviewing the public comments on it. EPA has not issued final endangerment findings, much less proposed any GHG emission reduction requirement for mobile or stationary sources.

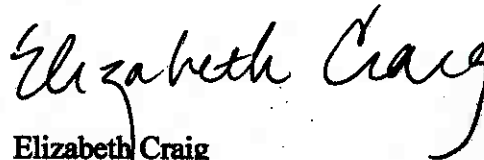
Response to Question 7: EPA's notice of the proposed endangerment findings identifies the precedents that the agency relied on in making the proposal.

Response to Question 8: EPA's notice of the proposed endangerment findings sets out the reasoning for the scope of GHG emissions addressed by the proposed findings.

Response to Question 9: EPA is following all statutory requirements that apply to making findings on endangerment. If, in the future, EPA undertook a process to institute a GHG emission reduction requirement, the agency would follow all statutory requirements that apply to that process.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Cheryl Mackay, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2023.

Sincerely,



Elizabeth Craig
Acting Assistant Administrator

APPENDIX 4

From: Stuart Miles-McLean/DC/USEPA/US
To: Angela Suber/DC/USEPA/US@EPA, Betsy Shaw/DC/USEPA/US@EPA, Bill Hanson/DC/USEPA/US@EPA, Chuck Kent/DC/USEPA/US@EPA, Dan Fiorino/DC/USEPA/US@EPA, David Guest/DC/USEPA/US@EPA, David Widawsky/DC/USEPA/US@EPA, George Wyeth/DC/USEPA/US@EPA, Gerald Filbin/DC/USEPA/US@EPA, John Davidson/DC/USEPA/US@EPA, Katherine Dawes/DC/USEPA/US@EPA, Richard Kashmanian/DC/USEPA/US@EPA, Robert Benson/DC/USEPA/US@EPA, Robert Sachs/DC/USEPA/US@EPA, Sandra Panetta/DC/USEPA/US@EPA
Cc: Lesley Schaaff/DC/USEPA/US@EPA
Date: 02/26/2009 06:03 PM
Subject: Second Expedited Interim February 2009 Tiering Request - Responses due by c.o.b. Friday, February 27

Note: This Expedited Interim Tiering Request is an Administrator Priority Action. Please provide workgroup members by Friday, February 27, 2009.

To all OPEI offices:

This is the second expedited tiering request (1 OAR) for the month of February. **Your response to this expedited tiering is due to me on or before Friday, February 27, 2009.** After receiving your input, I will prepare and submit OPEI's consolidated response to the Regulatory Steering Committee.

Please review each request and on behalf of your organization respond regarding the following:

- Do you agree with the proposed tier?
- Do you want to participate in the development of the action? *

Silence will be interpreted as concurrence with the proposed tier and no desire to participate on the action.

Thanks, Stuart

New Tiering Request

OAR - Tier 1 - SAN 5335: Proposal for Endangerment Finding for Greenhouse Gases under the Clean Air Act

Link-> 

^^
Stuart Miles-McLean
OPEI Regulatory Steering Committee Representative, Alternate
AO/OPEI/ORPM/Policy and Regulatory Analysis Division
Phone: 202-564-6581
FAX: 202-564-7322
=====

SAVED ACTION INITIATION (TIERING) FORM
Contains historical data "frozen" at the time of SAN assignment
(* indicates fields required for the Regulatory Agenda)

Original Title of Action:	Proposal for Endangerment Finding for Greenhouse Gases under the Clean Air Act (Updated title of action): Proposal for Endangerment Finding for Greenhouse Gases under the Clean Air Act Short title
Initiating AAShip	OAR
Program Office	OAP
Type of action	Other Action Type (Please Describe) If Other, describe: Other Action Type (Please Describe) Description of other action: Proposal of Endangerment Finding
SAN:	5335 (Updated san of action): 5335
Abstract:	The Supreme Court decision on Mass. v. EPA in April 2007, stated that carbon dioxide (CO2) meets the CAA definition of greenhouse gas. EPA must decide whether or not greenhouse gases cause endangerment (or whether scientific uncertainty precludes EPA reasoned judgment). The basis for this decision must be the statutory criteria laid out under Section 202 of the CAA. In 2007, EPA developed and submitted to OMB a proposal for an endangerment finding (in conjunction with a proposed GHG transport rule) which was withdrawn a few weeks later following passage of the Energy Independence and Security Act. This action is to issue a pr

determination:

This action is time sensitive and the process will be expedited. Many individuals who participate in this EPA workgroup will reviewed, and concurred on much of the material as the December, 2007 Draft Finding is being used as a starting point for action. Furthermore, the Technical Support Document (TSD for Endangerment Analysis for Greenhouse Gas Emissions) was also previously reviewed in the December, 2007 draft as well as the more recent June, 2008 Advanced Notice of Proposed Rulemaking document is being revised to reflect recent scientific literature, particularly from the U.S. Climate Change Science Program
220 words

Final anniversary:
610

Major issues and
Cross-Media
Concerns:

Tier: 1 and Rationale: Raises novel policy and legal issues. High visibility.
Date Tiering Approved by RSC:
Tiering Round: (old forms only)
Updated Tier Level: 1
Current Tier: 1

Good Guidance Significant

What process Action Development Process
Other process description:

Legal Deadlines: 04/16/2009, Administrator has requested to sign the proposal on this date

Science Issues:

comments:

Peer Review: Yes

Human Health Impact Yes
 No

TBD

comments:

Human Health any population Yes
 No

TBD

comments:

Human Health disproportionate impact Yes
 No

TBD

comments:

tribal governments Yes
 No

TBD

comments:

state and local governments Yes
 No

TBD

comments:

Assistance needed

Agency Contact Information: Workgroup Chair: Rona Birnbaum
AAship: OAR
Progoffice: OAP, CCD
Phone: 202-343-9076
E-Mail: Birnbaum.Rona@epamail.epa.gov
Fax: 202-565-2140
Mail Code: 6204J
Street Address:
City:
State:
Zip:
old citystatezip
old TDD Phone:

Current Workgroup Chair: Rona Birnbaum

Second Contact
AAShip: OAR
Program Office: OAP,CCD
Name: Ben DeAngelo
Phone: 202-343-9107
E-Mail: DeAngelo.Ben@epamail.epa.gov
Fax:
Mail Code:
Street Address:
City:
State:
Zip:
old City,State,Zip:
old TDD Phone:

Requested Workgroup members
OGC
OPEI
ORD
OW
WG comment:
OA wg member:
Other WG:

Include in Regulatory Agenda?
N
Reg Agenda entry comment:
RIN: NA2060

Action	Detailed Analytic Blueprint	Options Selection	Final Agency Review	Proposed OMB Significance	To OPEI for OMB	Signature
01. Proposed Endangerment Finding	03/05/2009	03/05/2009	03/24/2009	Significant	03/26/2009	04/16/20

Yes STF Created:02/25/2009 stage:Proposed Endangerment Finding FR Pub:04/00/2009 TE Created:02/25/2009

Calcs1 Proposed Endangerment Finding

Calcp1 04/00/2009

Old Hidden fields:

Date Created: 02/25/2009 Name of Preparer: Jeremy Arling
Date Approved: 02/25/2009 03:10:27 PM Name of Approver: Jeremy Arling
Submitted to RMD: 02/25/2009 03:20:50 PM AAShip Approver: Wanda Farrar
Date SAN Assigned: 02/25/2009 03:43:14 PM RMD Desk Officer: Lakeshia Walker
Date to Steering Committee: Approved by Steering Committee:
DEX Tiering Submission:

Authors:

~~~~~  
~~~~~

Stuart Miles-McLean
OPEI Regulatory Steering Committee Representative, Alternate
AO/OPEI/ORPM/Policy and Regulatory Analysis Division
Phone: 202-564-6581
FAX: 202-564-7322
=====

APPENDIX 5



Materials for Workgroup Kick-off: Endangerment Proposal for GHG

Rona Birnbaum

Alice Gilliland, Amanda Evans, Amy Caprio,
Andy Miller, Anne Grambsch, Barry Elman,
Ben DeAngelo, Carol Holmes, Dale Evarts,
Darrell Winner, Donna Peria, Doug Grano,
Fran Kremer, Fred Dimmick, Gene Stroup,
Jackie Krieger, Jeff Kodish, Joel Scheraga,
John Davidson, John Hannon,
johnson.thomas, Jordan West, kruger.dina,
Natalie Firestone, Neil Stiber, Paul Balsarak,
Rebecca White, Tim Benner, William
Nickerson

03/02/2009 06:19 PM

Workgroup members:
materials for Tuesday at 3:00. Talk to you then.
thanks, Rona



endangerment Overview workgroup-mar.3.2009.ppt

Rona Birnbaum
Chief, Climate Science and Impacts Branch
USEPA, Climate Change Division
birnbaum.rona@epa.gov
202-343-9076

Briefing on the Status of the Proposed Endangerment Finding for Greenhouse Gases

March 3, 2009



Draft Deliberative



Overview



- EPA's charge to make an endangerment finding
- Elements of an endangerment finding
- EPA's actions to date
- Timing

EPA's Charge to Make an Endangerment Finding



- According to *Mass v. EPA* decision of April 2007, EPA must find that GHGs from new motor vehicles:
 - cause or contribute to air pollution that endangers, or
 - do not cause or contribute to air pollution that endangers, or
 - that the science is too uncertain to make a reasoned judgment
- Language under Sec. 202 of the CAA:
 - The Administrator shall by regulation prescribe...standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.
 - Other sections of the CAA have nearly identical endangerment language

Elements of an Endangerment Finding



“Cause or contribute” test for air pollutants must be analyzed in context of prior determinations and unique attributes of GHGs

“Air pollutants” that cause or contribute to air pollution (and thus subject to control) must be identified

The Administrator shall by regulation prescribe... standards applicable to the **emission of any air pollutant** from any class or classes of new motor vehicles or new motor vehicle engines, **which in his judgment cause, or contribute to, air pollution** which may reasonably be anticipated to endanger public health or welfare.

Scope and definition of “**air pollution**” that endangers needs to be defined

Is there endangerment to **public health, welfare, or both?**

General Considerations for an Endangerment Finding



- Precautionary nature of CAA endangerment finding based on 1977 legislative history
- Administrator advised to:
 - Take action to prevent harm before it occurs
 - Assess risks
 - reasonably project into the future
 - rather than wait for proof of actual harm
 - Consider the limitations and difficulties inherent in information on public health and welfare
 - In the endangerment analysis, consider air pollution collectively and in the context of all sources of the contaminant (e.g., not a single source or category of sources, or single media)

How We Approached Endangerment



- In the Summer/Fall 2007, EPA/OAR developed a technical support document that became the basis for discussions and eventually summarized in the December 2007 draft endangerment proposal.
- ANPR released in July 2008. ANPR did not make an endangerment proposal. TSD released as supporting material.
- The technical support document (now being updated):
 - Describes climate change and associated risks broadly; does not confine analysis to how U.S. transportation in isolation contributes to climate change
 - Relies heavily on IPCC Fourth Assessment and CCSP reports
 - Underwent peer review by federal scientific experts (all of whom are IPCC and/or CCSP authors). Will circulate revised TSD to same reviewers.
 - Does not contain policy/legal endangerment discussion, nor does it convey any judgment regarding endangerment
 - Focuses on the basket of six directly emitted, long-lived greenhouse gases that are typically the focus of climate change science and policy

Health Effects Associated with Elevated GHG Concentrations

(In approximate order of our level of understanding)



- **Direct effects**
 - The range of projected ambient concentrations of CO₂ and other GHGs will remain well below published thresholds for any direct adverse health effects, such as respiratory or toxic effects
- **Temperature effects**
 - Severe heat waves are projected to intensify in magnitude and duration over the portions of the U.S. where these events already occur, with likely increases in mortality and morbidity, especially among the elderly, young and frail.
 - Climate change is projected to bring some benefits, such as fewer deaths from cold exposure.
- **Air quality changes**
 - Climate change is expected to lead to increases in regional ozone pollution, with associated risks in respiratory infection, aggravation of asthma, and premature death.
 - Directional impact on PM remains uncertain
- **Extreme events**
 - Storm impacts are likely to be more severe, especially along the Gulf and Atlantic coasts.
 - Intensity of precipitation events is projected to increase in the U.S. and other regions of the world, increasing the risk of flooding, greater runoff and erosion, and thus the potential for adverse water quality effects
 - Projected trends will increase the number of people suffering from disease and injury due to floods, storms, droughts and fires
- **Climate-sensitive diseases**
 - Expanded ranges of vector-borne and tick-borne diseases are expected but with modulation by public health measures and other factors.
- **Aeroallergens**
 - No definitive conclusions on how climate change might impact aeroallergens and subsequently the prevalence of allergenic illnesses

Sources: EPA's Tech Support Doc. 2008, IPCC 2007, CCSP SAP 4.6 2008

Draft Deliberative

Endangerment Finding Workplan/Timeline



Task	Milestone
Guidance-Option Selection Meeting (w/Administrator and/or L. Heinzerling)	3/5/09
Draft Finding and update of scientific literature assessment (the "TSD") ready for internal EPA review	3/13/09
Internal Agency review complete	3/20/09
Final Agency Review (FAR, with Administrator)	3/24/09
Submit for Formal Interagency Review	3/26/09
Resubmit TSD to existing federal technical peer review team	3/26/09
Complete Interagency Review	4/10/09
Final signature by Administrator	4/16/09
Publish in Federal Register: - Proposed Endangerment Determination for Greenhouse Gases under the CAA and Technical Support Document - Announcement of 2 public hearings to be held during public comment period	4/?/09

Work Group Meetings/Calls



March 11 at 11:00-12:00

March 18 at 11:00-12:00

March 25 at 11:00-12:00

April 7 at 11:00-12:00

April 15 at 11:00-12:00



Appendix

General Science Points From the Technical Support Document: Current Observations



- **The global atmospheric CO₂ concentration has increased about 35% from pre-industrial levels to 2005, and almost all of the increase is due to anthropogenic emissions**
- **Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level**
- **Most of the observed increase in global average temperatures since the mid-20th century is very likely due to the observed increase in anthropogenic GHG concentrations**
- **There is strong evidence that global sea level gradually rose in the 20th century and is currently rising at an increased rate**
- **Widespread changes in extreme temperatures have been observed in the last 50 years across all world regions including the U.S.**
- **Observational evidence from all continents and most oceans shows that many natural systems are being affected by regional climate changes, particularly temperature increases**

General Science Points From the Technical Support Document: Future Projections



- **All of the U.S. is very likely to warm during this century, and most areas of the U.S. are expected to warm by more than the global average**
- **Through about 2030, the global warming rate is affected little by different scenario assumptions or different model sensitivities**
- **Intensity of precipitation events is projected to increase in the U.S. and other regions of the world, increasing the risk of flooding, greater runoff and erosion, and thus the potential for adverse water quality effects**
- **Severe heat waves are projected to intensify in magnitude and duration over the portions of the U.S. where these events already occur**
- **The IPCC projects with virtual certainty declining air quality in U.S. and other world cities due to warmer and fewer cold days and nights and/or warmer/more frequent hot days and nights over most land areas**
- **Moderate climate change in the early decades of the century is projected to increase aggregate yields of rain fed agriculture by 5-20% in the U.S., but with important variability among regions**
- **Disturbances like wildfire and insect outbreaks are increasing and are likely to intensify in a warmer future with drier soils and longer growing seasons**
- **Climate change will constrain over-allocated water resources in the U.S., increasing competition among agricultural, municipal, industrial, and ecological uses**
- **Climate change impacts in certain regions of the world may exacerbate problems that raise humanitarian and national security issues for the U.S.**

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APPENDIX 6

Interview with Dr. John Davidson

On July 9, 2009, Congressional investigators interviewed Dr. John Davidson, Senior Analyst at the National Center for Environmental Economics. The following notes summarize the conversation.

1. Dr. John Davidson is an environmental scientist, with a PhD in Physics from the University of Michigan. He has been with the EPA since 1983.
2. He has been a member of the NCEE climate change team since 2007 (approximately). Most of his previous work focused on the peak oil issue.
 - a. Ann Wolverton is the manager of the climate change team. She organizes meetings and is responsible for inviting attendees.
 - b. Davidson confirmed that Dr. Carlin had been removed from the Climate Change Team in mid march 2009. He confirmed also that Carlin no longer receives emails from the team and is no longer invited to meetings.
3. Davidson is neither a climate skeptic nor an advocate. He believes that climate change is an extraordinarily complex issue. Most scientists focus in on one issue – fail to study/ understand big picture. He is bothered by the incredible level of conflict between the believers and skeptics.
4. Davidson was not involved in the review of the 2007 draft TSD under the Bush Administration.
5. Dr. Davidson first formally heard about the Administrator's decision to move forward with an affirmative endangerment finding in a Memo sent on Thursday, February 26, 2009. This memo was distributed by Stuart Miles McClain. It was requesting expedited interim tiering for the Endangerment finding. (Tier I is this highest priority action and requires the attention of the Administrator). This memo requested offices respond the next day with their opinion on whether the office agreed that this was a tier I action, and whether the office wanted to participate in review.
6. On Monday, March 2, 2009 at 4:21 pm, an announcement for the first work group meeting was made. This memo stated the purpose of the meeting was to brief the workgroup on the status of the proposed action and major points covered by the TSD. (accurate?) Davidson could not tell from the email whether or not Carlin received the announcement as well.
7. On Tuesday March 3, 2009, EPA held first workgroup meeting. Davidson did not attend. Not sure if Carlin attended. On Monday, March 9, 2009 at 8:25 pm, OAR sent to the workgroup, including Davidson, a draft copy of the endangerment finding for workgroup review. It is unclear whether or not Carlin received the document at this time.
8. On Monday, March 9, Dr. Davidson first viewed the proposed endangerment finding and TSD. Comments were due back to OAR on March 16.
9. On Tuesday, March 10 (?) McGartland sent an email to Davidson and Carlin regarding the role to be played by the NCEE. He said that the endangerment finding built on the package developed in 2007, which had already been cleared by their office. Accordingly, McGartland was not expecting his office to make substantive comments to the TSD.

10. On Tuesday, March 10 at 12:30 pm, OAR sent a note informing workgroup members that the options selection material had been leaked to the press.
11. On Wednesday, March 11, 2009, there was a staff level meeting of the workgroup. Carlin and Davidson attended via conference call. The Administrator attended. She was very upset about the leak, that it was internally delicate material, and that leaking it was a violation of trust. After this meeting, access to deliberative material was severely restricted. NCEE staff had to filter their comments through Paul Balsarak who was at OPEI.
12. Staff at NCEE requested time to meet with OAR about concerns with the TSD. This meeting was originally scheduled for Thursday, March 12, but was cancelled on Tuesday due to time constraints. Alan Carlin, Ben DiAngelo, Marcus ?, Rona Birnbaum, and Steve Newbold were scheduled to attend this meeting. Paul B. was an optional attendee. The purpose of the meeting was to have a quiet relaxed discussion on climate science, including some of the ideas included in Carlin's report.
13. Davidson said that the schedule to consider the endangerment finding was on an unusually fast track – nothing of this scope and importance – that he was aware of – had ever been expedited this quickly.
14. Steve, Alan, and John sent their material to Paul Balsarak. and Al McGartlan by COB Friday, March 13.
 - a. Davidson and Steve worked together on comments and Carlin worked in parallel on his more detailed report. Davidson sent his comments to Steve on Friday morning and Steve compiled their comments. He said that his comments were in the form of track changes to the TSD. He had brought up some of the same issues as Carlin – but in bullet form. To his knowledge, he and Steve's comments, including the bullets based on Carlin's material, were submitted by McGartland and Paul Balsarak.
 - b. Carlin's piece was intended to go into greater detail. Davidson said that he believed that Carlin's comments were never intended to be public – but rather to educate the staff at OAR on more recent material that was not included in the TSD.
 - c. While OAR made some attempt to update the findings of the IPCC, Davidson said that it was at least several months, and up to 1.5 years out of date. He appreciated the difficulty in including all points and new science due to the complexity of the issue but felt that it was insufficient to only rely on the IPCC and CCSP. He said that he and Carlin were trying to raise points that a reasonable person would be concerned about.
 - d. To his knowledge, his comments were forwarded on to OAR.
15. Regarding Carlin's removal from the climate team, he said it was unfortunate. Carlin had built up a wealth of knowledge and was a help to John as he attempted to grapple with the enormity of big picture climate science.
16. Regarding McGartland's email RE: March 12, 2009, instructing he and Alan to refrain from outside communications, he understood that to be limited to discussion of their work on the endangerment finding.
17. He did attend the May Seminar where PEW Center was presenting. He confirmed Carlin's story that he was reprimanded by McGartland for his participation at the

event. He said that Carlin had been asking pointed and pestering questions of the speakers. He said this behavior was very unusual at these events which were typically very cordial and informative. He said that Carlin's questioning created a tense atmosphere.

18. In response to a question about job security, Davidson was informed in person on Tuesday, July 7, 2009 by Chris Dotkins, that the NCEE was being reorganized and that his position might be eliminated but nothing was confirmed to date. This reorganization would impact about 5-7 other staff at the NCEE. The stated goal would be to remove the climate team make the center more focused on economics. He reiterated that nothing had been set in stone and he was not given any timeline of final decision. It is unclear whether this stems from the 66% budget cut that McGartland mentioned in his interview.
19. In response to a question about the climate at EPA, he said the mainstream views (e.g. IPCC) dominates the discussion. This marginalizes related views that are relevant but not mainstream. He said there needs to be a more serious and senior level discussion of the evolving science.

APPENDIX 7

Interview with Dr. Alan Carlin

On July 9, 2009, Congressional investigators interviewed Dr. Alan Carlin, Senior Analyst at the National Center for Environmental Economics. The following notes summarize the conversation.

1. Dr. Carlin has been employed by EPA since it was formed during the Nixon Administration. He has worked on climate change issues for app. 7 years, and was assigned to the Climate Work Group within NCEE in 2007, following the Mass v EPA decision. He has 4 papers published in law review journal's and 5th is in draft form, but he has not been permitted to work on climate change issues since March 2009.
2. During the Bush Administration, he participated in the review process of the technical support document for the draft endangerment finding. He had about a month to review and provide comments to the 2007 draft TSD. This document was forwarded to OMB – but was never finalized. Instead, the Bush Administration issued a proposed endangerment finding. Carlin did not review the ANPR. He believes some of his work from 2007 was included in the 2007 draft TSD.
3. EPA has publically maintained that Dr. Carlin was not a member of the agency wide workgroup that was charged with drafting the endangerment finding/ TSD. However, he believed he was a member of the agency wide workgroup. He said he received organizational emails and attended meetings, organized by Dina Kruger and Ben DiAngelo. These meetings were process oriented.
 - a. The first of these meetings were held in either late February or early March.
 - b. It was decided at these meetings to use the draft TSD from 2007 for the 2009 finding. The 2007 TSD relied primarily on the 2007 IPCC and the CCSP report.
 - c. Chris Dockensen, John Davidson, and Steve Newbold from NCEE also attended these meetings. Paul Balzereak from OPEI also attended.
 - d. With respect to the process for reviewing the 2009 draft TSD, Carlin understood that OAR was soliciting technical comments, and improvements to the TSD, not substantive comments. This instruction was given by Ben DiAngelo in an email and during the meetings.
 - e. During these meetings, Carlin urged Dina and Ben to give the agency more time to review the draft finding and TSD. Other members of the workgroup also made this request. Ben and Dina made it clear that they were facing extremely tight deadlines – set by either the Administrator or her office.
4. Carlin received the draft 2009 TSD on Monday, March 9. Steve Newbold set a deadline of Friday, March 13 at noon for Carlin's comments.
 - a. The 2009 draft TSD was substantially similar to the 2007 TSD. Carlin said that to his knowledge, no changes had been made.

- b. Drs. Carlin and Davidson exchanged information on the comments, but the short timeframe prevented them from collaborating together. First Draft has both their names. Second draft has Carlin as the lead author, and Davidson as the contributor.
 - c. Carlin said he submitted these extensive comments because he felt the TSD was overly reliant on the IPCC and CCSP – which rely on models. The IPCC assumes you can make judgments based on the models. He does not believe the models prove anything.
5. Carlin's name is on the 2009 authors/ contributors list – most likely b/c this attribution was made in 2007. To his knowledge, the 2009 TSD does not incorporate any of his recent work.
6. On March 12, McGartland instructed Carlin to not have any direct communication with anyone outside of NCEE on endangerment. Carlin originally interpreted this instruction to relate to his work on the endangerment finding. However, he later believed that he was prohibited from spending anytime working on climate change issues.
7. After attending an EPA conference on March 12, 2009, where PEW center was making a presentation, Carlin claimed that McGartland pulled him out of the audience and reprimanded him for his participation. According to Carlin, McGartland said Carlin had exercised very poor judgment in attending the conference – and that he couldn't understand how he had not been sufficiently clear. After this exchange, Carlin believed that he was not to work on anything related to climate change.
 - a. On March 13, 2009 – Carlin was removed from the NCEE climate workgroup – and stopped receiving emails from the group.
8. On March 17, Carlin was assigned to work on the grants database and the market incentives report. Previously, a junior staffer was working on the data base, and a contractor had previously worked on the market incentives report. He is also working on the NCEE website, which was previously maintained by a contractor. Carlin had previously worked on all three projects – but the specific assignments are new.
 - a. Carlin does not believe that he is being punished.
 - b. Carlin said that McGartland told him personally that if he hadn't reassigned him, that his job would be in jeopardy. He said he asked McGartland why he thought this was the case, but that he did not receive an answer. (date?)
9. When asked if, in his view, EPA promotes an environment that fosters discussion and debate on the science behind climate change – he replied that under Bush, when he was a climate believer, he felt his views were welcomed and was never discouraged from offering his view point. However, under the Obama Administration, it is clear to employees that the Administration's views on climate are settled and it is clear that his views are out of sync.
10. Carlin said that he is currently a climate change skeptic, but that until 2007, he believed that climate change was a serious environmental issue.

APPENDIX 8

07/01/09 – Interview with Al McGartland
Director, National Center for Environmental Economics
US EPA

On July 1, 2009, investigators from the Oversight and Government Reform minority staff interviewed Dr. Al McGartland, Director of the National Center for Environmental Economics. The following notes summarize the conversation.

1. Dr. Alan Carlin was a former Division Director and is now the second highest paid person at the NCEE. McGartland said it was a challenge to utilize him within his department. Most assignments at the NCEE are self selected. Assignments are flexible depending on Agency's needs.
2. Carlin was assigned to the Climate Team in 2007 (Mass v EPA) – strong background in geoengineering. In 2007, Carlin wrote comments reflecting his view that [the IPCC(?)] underestimated the threats of climate change. Report dated August 29, 2007. Carlin was involved in the evaluation of the ANPR under Bush II.
3. March 12 email
 - a. The “turn of events” referred to in the March 12 email was the news that the NCEE only had 4.5 days to evaluate the Technical Support Document (TSD), which provides the scientific basis for the endangerment finding. McGartland said that this timeframe was “unusually short” and an “*extremely truncated*”
 - b. OAP, within OAR, requested that the NCEE only provide specific text changes – substantive comments were not encouraged. Paul, the Office Director (*not sure which office*), had to approve all comments going to the Endangerment workgroup.
 - c. McGartland conceded that the instruction that Carlin “not have any direct communication with anyone outside of NCEE on Endangerment” sounds bad, but said that this should have been modified to “with respect to the commenting process.”
4. March 16 email –
 - a. McGartland said that what Carlin submitted was not good science – “90% of report was unpublished/nonpeer reviewed analysis.”
 - b. With McGartland's permission, Carlin had previously given a presentation and written a paper (published in a law review) on similar topic.
 - c. McGartland felt that submission of Carlin's report would hurt his office, which is already viewed as a stumbling block to regulation.
5. March 17 email (8:12)
 - a. Given the timeframe for response and instructions from above, McGartland imposed an extremely high hurdle for any comments to be passed on.

- b. Emphasized that the TSD was not a criteria document (like the type that would be used in development of a NAAQS recommendation). EPA was not gathering its own evidence on climate change.
 - c. Carlin's points would be more appropriate for a criteria document. McGartland agreed that the science had advanced since 2007, and therefore the 2007 IPCC report is not an up to date account of the science. He noted that while there may be peer reviewed literature that goes against the IPCC findings, there is also PR literature that goes further than the IPCC.
6. March 17 email (8:20)
- a. Carlin was reassigned to the grants database, which is used to run the social science grant program. Carlin had originally designed the database. Marrietta, a junior staffer, had been previously managing the database, but had done a poor job. McGartland said he was concerned about the database not being in order when internal audits are performed.
 - b. Carlin was also assigned to update the market incentives report – which he had helped coauthor in 1999. McGartland said the reference to the 66% budget cut related to the inability to hire an outside contractor to assist on the report.
 - c. No other staff on McGartland's team received similar reassignments.
7. McGartland described a series of meetings attended by Administrator Jackson where the decision to rely on the IPCC as the scientific basis for the Endangerment finding was made. NCEE wasn't invited to these meetings, but McGartland attended one under the seat reserved for the Policy Office. Obama EPA relied on Bush science report. Brian McLean, OAP (Air Policy) informed McGartland that EPA had made a decision to go with mainstream IPCC science. (time?). McGartland agreed that more recent and relevant literature was left out of the TSD.
8. McGartland speculated that if Carlin's report was sent to the endangerment team, that it would have been received Ben DiAngelo, and dismissed because it was out of the main stream.
- a. NCEE did submit substantive comments to OAR, which did include some of Carlin's work, but was much more nuanced. He said this submission "broke the rules." I verbally requested a copy of this document.
9. McGartland stated that at the time the emails were written, others at EPA, outside of the NCEE were not aware of Carlin's comments and that he had not received any direction from above to suppress the report.
10. McGartland was being considered for an academic position at the University of Arizona (?) in March 2009, but later withdrew his name from consideration.

APPENDIX 9



endangerment comments

Al McGartland to: dockins.chris, John Davidson,
Steve Newbold, wolverton.ann, 03/10/2009 09:50 AM
bowen.jennifer, Brett Snyder,
Alan Carlin

History: This message has been replied to.

The endangerment work is proceeding, and building on the package developed last year. We need to be clear about our process since there is very little time. Steve Newbold should be the lead for NCEE, and any and all comments should go through him, to me. I am not expecting that we should be making major comments, since we closed on the last package with concurrence.

Steve, if that isn't the case, let me know.

Al McGartland, PhD.
Director, National Center for Environmental Economics
US EPA
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20460

202.566.2244 .

APPENDIX 10

53

From: Chris Dockins/DC/USEPA/US
To: Al McGartland/DC/USEPA/US@EPA, Jennifer Bowen/DC/USEPA/US@EPA, Brett Snyder/DC/USEPA/US@EPA
Cc: John Davidson/DC/USEPA/US@EPA, Steve Newbold/DC/USEPA/US@EPA, Alan Carlin/DC/USEPA/US@EPA
Date: 03/04/2009 06:57 AM
Subject: Quick update on the endangerment finding meeting

The meeting was entirely about process and the very aggressive schedule required for an April 16 Administrator's signature.

↙
↘
on welfare.

The prior draft relied heavily (perhaps exclusively)

Some key things to be done are revising the Tech Support Document (TSD) followed by a week of Agency review. It will then be sent concurrently for OMB/Interagency review and technical peer review. The peer reviewers are all feds who participated in the IPCC and CCSP reports, and who reviewed the document in 2008 for the ANPRM.

An early guidance/options selection meeting is expected tomorrow or Friday with Lisa Heinzerling. OAR confirmed that Lisa H. will be leading things.

We asked some procedural questions about revising the TSD and plans to respond to comments on the ANPRM. OAR will send a summary of comments and responses along with the TSD. Any comments we have will depend upon what is in that TSD, which we're working on.


- Chris
202-566-2286

Chris Dockins, PhD
Director, Science Policy and Analysis Division
National Center for Environmental Economics

US EPA (1809T)
1200 Pennsylvania Ave, NW
Washington, DC 20460

APPENDIX 11



Re: Enganderement meeting 
John Davidson to: Steve Newbold
Cc: Alan Carlin, Chris Dockins

03/06/2009 12:36 PM

Hi Steve,

I agree; Alan and I are already working on our comments on the existing TSD. We will have a first cut on Monday. But that is only phase 1 of a two-part effort that I think is needed.

The other part is meeting with Jason & Co. At this point I have not received a response from yesterday's e-mail seeking such an informal discussion.

Let's discuss Monday AM.

Cheers,

John
Enganderement meeting



Enganderement meeting
Steve Newbold to: John Davidson

03/06/09 12:13 PM

Cc: Chris Dockins, Alan Carlin

Hi John,

I listened in on the endangerment work group meeting via at 11am today via conference call. The upshot seems to be that the draft TSD will be distributed for work group review Monday afternoon, March 9. The draft endangerment finding will be distributed for work group review Wednesday afternoon, March 11. Work group member comments are due the next Monday, March 16. For all practical purposes, this is the only window for us to comment on these documents since FAR is scheduled for 3/18 and then on 3/20 the documents will be submitted for formal interagency review, which includes OMB review. EPA expects the OMB review to be completed by 4/10 and on 4/16 the proposed finding will be signed by the administrator.

I heard profuse apologies for the compressed time line, but at the same time the high priority of this action was heavily stressed. They asked if there was any "discomfort" with the time line, but it was clear that there was no room for adjustments anyway.

I suggest that we take a close look at the draft TSD and endangerment finding next week and compile our comments into one document. I think we can maximize the likelihood that our suggestions are adopted by recommending specific changes to the text. General comments are fine, of course, but I don't think we should expect anything other than specific edits to be even considered for adoption. Regardless of whether or not our suggestions are actually adopted, I still think it is important to go on the record with our comments.

What do you think?

I have attached a June 12 2008 version of the TSD to this email in case you want to get a head start...

Steve Newbold
U.S. EPA
National Center for Environmental Economics (NCEE)
EPA West, 4316T, MC 1809T
1200 Pennsylvania Ave NW
Washington, DC 20460
(202) 566-2293

[attachment "2008 06 12 ANPRM TSD.pdf" deleted by John Davidson/DC/USEPA/US]

APPENDIX 12



Canceling Science/TSD meeting

Jason Samenow to: John Davidson, Alan Carlin, 03/11/2009 03:43 PM
Chris Dockins, Steve Newbold
Cc: Ben DeAngelo, Marcus Sarofim, Rona Birnbaum, Paul
Balserak

John, Alan, Chris, and Steve.,

In light of demands on everyone's time, we've decided to cancel tomorrow's meeting.

We will review OPEI's comments next week. If we have questions on the comments that require meeting, we'll set something up...

Thanks...

Jason

Jason Samenow
Climate Analyst
U.S. EPA Office of Atmospheric Programs
Climate Change Division

Mailing address
1200 Pennsylvania Avenue, NW (6205J)
Washington, DC 20460
tel: 202-343-9327
fax: 202-343-2202
e-mail: samenow.jason@epa.gov

Office location and express mail delivery
1310 L St., NW
Washington, DC 20005
<http://www.epa.gov/climatechange>

APPENDIX 13

Congress of the United States
Washington, DC 20515

June 10, 2009

Environmental Protection Agency
EPA Docket Center, Mailcode 6102T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Request for Extension of Comment Period
Proposed Endangerment and Cause or Contribute Findings for
Greenhouse Gases Under Section 202(a) of the Clean Air Act
Docket EPA-HQ-OAR-2009-0171

Dear Administrator Jackson:

We respectfully request the Environmental Protection Agency (EPA) extend, by 60 days, the comment period on EPA's Proposed Endangerment and Cause and Contribute Findings for Greenhouse Gases under the Clean Air Act ("Proposed Endangerment Findings").¹

As you are aware, Members of Congress have expressed grave concern that an affirmative endangerment finding for carbon dioxide and other greenhouse gases would place thousands of American small businesses, already struggling in one of the toughest economic climates our generation has ever seen, in a legally uncertain position, further threatening their survival in this economy.² What is more, these same businesses are currently responding to several other rules proposed by your agency, including a Proposed Rule on Mandatory Reporting of Greenhouse Gases,³ EPA's proposed revisions to the National Renewable Fuel Standard Program⁴ and analyzing the recently reported H.R. 2454, American Clean Energy and Security Act, authored by Representatives Waxman and Markey. We are concerned that given the relationship between these climate change proposals and the cumulative demands they impose, EPA's June 23, 2009 deadline does not allow stakeholders adequate time.

It is true the Proposed Endangerment Findings do not, in isolation, establish any regulatory requirements. However, this fact is immaterial as such findings are a clear predicate for any standard-setting rulemaking for greenhouse gases. The recently announced Notice of Upcoming Joint Rulemaking to Establish Vehicle GHG Emissions and CAFE Standards, relying in part on authority from the Clean Air Act (CAA), specifically Section 202, reveal the Administration's intention to regulate immediately following the finalization of the Proposed Endangerment Findings.

¹ Proposed Endangerment and Cause and Contribute Findings for Greenhouse Gases under the Clean Air Act, 74 Fed. Reg. 18886 (April 24, 2009).

² Letter from Congressman Darrell Issa, Ranking Member, House Committee on Oversight and Government Reform to The Honorable Lisa Jackson, Administrator, Environmental Protection Agency, March 12, 2009 (hereinafter "Letter").

³ Proposed Rule on Mandatory Reporting of Greenhouse Gases, 74 Fed. Reg. 16448 (April 10, 2009).

⁴ Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, 74 Fed. Reg. 24904 (May, 26, 2009).

6/10/2009

Page 2

As you are aware, once a pollutant is "subject to regulation under the act," a regulatory dragnet is triggered, subjecting thousands of businesses, large and small, to onerous Prevention of Significant Deterioration (PSD) and Title V permitting requirements.⁵ Such a decision could have immediate effects, impeding the construction and permitting of new energy projects.⁶ Nothing in the CAA limits the application of permitting requirements to energy sources, so it could be applied to thousands of small businesses, farms, churches, and schools, subjecting the owners to unknown civil liabilities if they fail to obtain necessary permits.⁷ Clearly, EPA's final decision on the Proposed Endangerment Findings will have great consequence to the U.S. economy and to businesses struggling to survive these harsh economic times.

For a rule of this magnitude, 60 days is simply inadequate.

As you are aware, it is clearly within EPA's discretion to extend the comment period. The Supreme Court in *Massachusetts v. EPA* made clear that EPA has discretion in the timing of its issuance of any regulations.⁸ Moreover, the D.C. Circuit has also stated that nothing in the Supreme Court's decision "imposes a specific deadline by which EPA must determine whether a particular air pollutant poses a threat to public health or welfare."⁹ Accordingly, we foresee no legal obstacles to EPA granting this request.

Given these concerns, we respectfully request EPA provide a 60-day extension to the comment period so that interested parties are permitted adequate time to respond to the Proposed Endangerment Findings. If you choose to not grant this request, we request your staff provide our offices with a detailed explanation justifying the decision. Please contact Senior Counsel Kristina Moore, with Oversight and Government Reform Committee, if you have any questions.

Sincerely,



Darrell E. Issa
Ranking Member

Committee on Oversight and Government Reform



Joe Barton
Ranking Member

Committee on Energy and Commerce

⁵ Letter from William Kovacs, Vice President, U.S. Chamber of Commerce to the Honorable Stephen Johnson, Administrator, Environmental Protection Agency, Oct. 10, 2008, (stating that, "PSD is triggered the moment CO2 becomes a regulated pollutant under the CAA.") (available at <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=EPA-HQ-OAR-2008-0318-0402.1>).

⁶ *Id.*

⁷ Letter, *supra*, note 2.

⁸ *Massachusetts v. EPA*, 549 U.S. 497, 533 (2007).

⁹ *Massachusetts v. EPA*, No. 03-1361, Order, Document No. 0121688432, at 2 (D.C. Circuit June 26, 2008).

6/10/2009

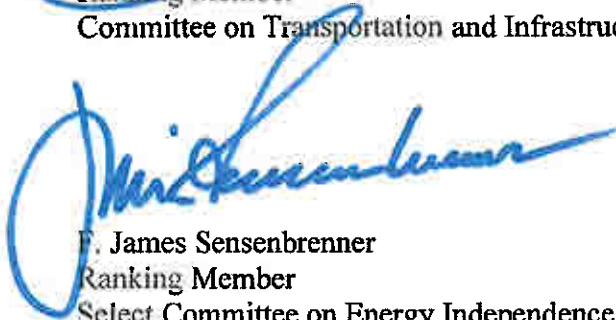
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John Mica
Ranking Member
Committee on Transportation and Infrastructure



Ralph Hall
Ranking Member
Committee on Science and Technology



F. James Sensenbrenner
Ranking Member
Select Committee on Energy Independence
And Global Warming



Doc Hastings
Ranking Member
Committee on Natural Resources



Jerry Lewis
Ranking Member
Committee on Appropriations



Paul Ryan
Ranking Member
Committee on the Budget



Frank Lucas
Ranking Member
Committee on Agriculture



Fred Upton
Ranking Member
Energy and Environment Subcommittee
Committee on Energy and Commerce

APPENDIX 14



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 17 2009

THE ADMINISTRATOR

The Honorable Darrell Issa
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Issa:

Thank you for your letter of June 10, 2009, co-signed by 9 of your colleagues, requesting a 60-day extension of the comment period for *EPA's Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(1) of the Clean Air Act*, beyond the current deadline of June 23, 2009. You base your request on your concerns that an affirmative finding would place small businesses in a legally uncertain position. You also express concerns that these same businesses are currently reviewing and responding to several actions simultaneously within a limited period of time.

I would like to reiterate what I stated on April 17, the day I signed and formally proposed these findings. With that proposal, I responded to the Supreme Court decision, in which the Court found that greenhouse gases are air pollutants under the Clean Air Act and held that the Administrator must determine whether or not emissions of greenhouse gases from new motor vehicles or engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision.

EPA's proposed endangerment finding is based on rigorous, peer-reviewed scientific analysis of six gases that have been the subject of intensive analysis by scientists in the United States and around the world. However, the proposed finding does not include any proposed regulations.

I assure you that EPA will conduct an appropriate process and consider stakeholder input as it evaluates regulatory programs to reduce greenhouse gases. Furthermore, although this regulatory process is required to be responsive to the Supreme Court, I have repeatedly indicated my preference for comprehensive legislation to address this issue and create the framework for a clean energy economy.

I recognize that the proposed findings and the associated Technical Support Document, like any proposed formal action, take adequate time to review. However, a very large part of the underlying information and analysis for the proposed findings were previously released on July 11, 2008, as part of the *Advance Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act* (73 FR 44353). The comment period for that Advance Notice was 120 days, and several months have followed since the close of that comment period. As a result, a large majority of the underlying information and analysis supporting the proposed findings has been in the public domain for almost one year. Furthermore, the major recent scientific assessments upon which the Agency relied, including the U.S. Climate Change Science Program and the Intergovernmental Panel on Climate Change, all had their own public review processes, and have been publicly available for some time now.

I also recognize the importance of this proposed action for Members of Congress and the public. However, given the considerations described above, EPA is not extending the formal comment period beyond June 23, 2009. Under the circumstances present here, the 60-day comment period provides adequate opportunity to review and comment on the proposed findings.

EPA remains committed to maintaining an open and transparent rulemaking process on all of our efforts. We have maintained an open door policy on the proposed findings, and have indicated our willingness to discuss the proposed action with multiple audiences. Furthermore, we will continue to consider comments received after the close of the comment period, to the extent practicable.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Cheryl Mackay, in EPA's Office of Congressional and Intergovernmental Relations, at 202-564-2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", with a stylized flourish at the end.

Lisa P. Jackson

APPENDIX 15

DELIBERATIVE—ATTORNEY CLIENT PRIVILEGE

Discussion of scientific support and analysis.

The NPRM fails to articulate the process by which the Administrator came to the conclusion on p. 30, line 41-46:

“The Administrator believes that the scientific findings in totality point to compelling evidence of human-induced climate change, and that serious risks and potential impacts to public health and welfare have been clearly identified, even if they cannot always be quantified with confidence. The Administrator’s proposed endangerment finding is based on weighing the scientific evidence, considering the uncertainties, and balancing any benefits to human health, society the environment that may also occur.”

The finding document remains very separate from the TSD, with only occasional references to the IPCC or particular CCSP report findings, and it is up to the reader’s interpretation of the TSD to determine how the evidence has been weighed to arrive at the conclusions above. The finding rests heavily on the precautionary principle, but the amount of acknowledged lack of understanding about basic facts surrounding GHGs seem to stretch the precautionary principle to providing for regulation in the face of unprecedented uncertainty. (The TSD notes several areas where essential behaviors of GHGs are "not well determined" and "not well understood" (e.g., why have U.S. methane levels decreased recently?)). This could be remedied by expanding the discussion on pp. 25-31 to articulate more clearly how the Administrator weighed the scientific evidence related to each impact or how/whether she gave more or less weight to particular impacts for either the public health or the welfare finding and how she weighed uncertainty in her deliberations.

For example, the NPRM and TSD outline the following 5 human health effects from climate change: temperature effects, air quality changes, extreme events, climate-sensitive diseases and aeroallergens. It is unclear whether temperature effects will result in net mortality increases or decreases and the scientific literature does not provide definitive data or conclusions about aeroallergen impacts. Further, the impact of climate-sensitive diseases may be minimal in a rich country like the US.

Hence, it seems that the Administrator’s public health endangerment conclusion is based on the other two impacts, with the most significant health risks being posed by air quality changes. If so, the discussion here should state this explicitly. Further, the argument for why the increases in ozone from climate change pose a health impact could be fleshed out more thoroughly (p. 27, line 34-39). Since tropospheric ozone is already regulated under the Clean Air Act, EPA should explain why those regulations are inadequate to protect public health from the ozone impacts of climate change.

In addition, the finding could be strengthened by including additional information on benefits, costs, and risks (where this information exists); meeting appropriate standards for peer review; and accepted research protocols. Some issues to cover that would address costs, benefits, and risks include the following:

DELIBERATIVE—ATTORNEY CLIENT PRIVILEGE

- Methodology or methodologies used for weighing risks and various outcomes and the risks associated with each;
- Confidence intervals related to model results at the regional and local scales;
- Underlying assumptions of findings, publications on which the findings are based, and “business-as-usual” scenarios;
- Quality and homogeneity of temperature data from surface networks that may affect estimates of past temperature trends, and calibration and verification of models;
- Impacts of climate change on the value of net economic benefits.

The Finding should also acknowledge that EPA has not undertaken a systematic risk analysis or cost-benefit analysis.

In the absence of a strong statement of the standards being applied in this decision, there is a concern that EPA is making a finding based on (1) "harm" from substances that have no demonstrated direct health effects, such as respiratory or toxic effects, (2) available scientific data that purports to conclusively establish the nature and extent of the adverse public health and welfare impacts are almost exclusively from non-EPA sources, and (3) applying a dramatically expanded precautionary principle. If EPA goes forward with a finding of endangerment for all 6 GHGs, it could be establishing a relaxed and expansive new standard for endangerment. Subsequently, EPA would be petitioned to find endangerment and regulate many other “pollutants” for the sake of the precautionary principle (e.g., electromagnetic fields, perchlorates, endocrine disruptors, and noise).

Endangerment without consideration of regulatory consequences.

EPA should explain whether it considered a finding that methane and the other four non-CO₂ GHGs do in fact contribute to climate change, based on their higher warming potential, but that overriding policy concerns make such a finding infeasible concerning CO₂. Because methane and the other four non-CO₂ GHGs are either already regulated under the CAA or are functionally equivalent to pollutants typically regulated under the CAA, an endangerment finding for these GHGs would be relatively routine. Because GHGs are understood to be long-lived, well-mixed in the atmosphere, and generated by many nations around the globe, the most analogous regulatory approach for controlling GHGs would seem to be Title VI of the CAA. EPA's relevant experience with controlling ozone-depleting substances should inform its decisions on an approach to regulating GHGs.

In contrast, an endangerment finding under section 202 may not be not the most appropriate approach for regulating GHGs. Making the decision to regulate CO₂ under the CAA for the first time is likely to have serious economic consequences for regulated entities throughout the U.S. economy, including small businesses and small communities. Should EPA later extend this finding to stationary sources, small businesses and institutions would be subject to costly regulatory programs such as New Source Review.

The role of mitigation, adaptation, and/or benefits of climate change

To the extent that climate change alters our environment, it will create incentives for innovation and adaptation that mitigate the damages from climate change. The document should note this possibility and how it affects the likely impacts of climate change.

For example, climate change is likely to unfold slowly and people may migrate from hot regions (e.g., Arizona) to more temperate regions (e.g., Minnesota) and this would mitigate the adverse impacts on health (although people would incur migration costs). Further, climate change is likely to lead to innovation that mitigates the ozone related health impacts; it seems reasonable to assume that in the absence of regulation of GHS, new medicines that lessen the health impacts of ozone will be developed. Moreover, advances in technology and the development of public health programs (e.g., cooling centers) are likely to lessen the negative welfare impacts of heat waves.

Similarly, the document would appear more balanced if it also highlighted whether particular regions of the US would benefit, and to what extent these positive impacts would mitigate negative impacts elsewhere in the United States. For example, it might be reasonable to conclude that Alaska will benefit from warmer winters for both health and economic reasons. Deschenes and Moretti (2007 *Review of Economics and Statistics*) demonstrate that extremely cold days are more dangerous to human health than extremely hot days. Please add this paper to the literature review in Section 7(a) of the TSD.

Further, there should be a consideration of the fertilizing effect of CO₂, which may overwhelm the negative impact of additional hot days on agricultural yields in some regions of the US. In others regions, the net effect is likely to be negative.

Agency compliance with other environmental mandates

There is some concern that an endangerment finding, and some of the language used to support the finding, will make it more difficult to comply with NEPA and other environmental planning statutes.

- This finding and the associated emission standards for these six greenhouse gases may make it much more expensive and difficult to develop other air quality standards (NAAQS in particular). For example, EPA has recently asked BLM to use models that sometimes exceed current budgets in developing resource management plans and environmental impact statements. Also, there are currently no models available that forecast the potential impacts of greenhouse gases on climate change at the regional or local level, which are the levels at which our decisions are made. This rule also could make findings that would leave agencies vulnerable to litigation alleging “inadequate NEPA” due to new information (i.e., the endangerment finding) that was not considered when the EIS was developed. Without a model available, an agency would be left with little ability to respond because (i) there are no standards to serve as thresholds, (ii) there are no tools to analyze impacts, and (iii) the cost of analyzing impacts could be exorbitant.

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- Unnecessarily broad or expansive language with respect to the effects of GHGs or the certainty with which effects will occur could create a basis for finding all GHG emissions significant for purposes of NEPA analysis, thus requiring an EIS for all direct and indirect effects that change GHG emissions in any amount. Similarly, EPA should be very careful to state which effects are significant and their scale to avoid unintentionally trigger NEPA for Federal actions not otherwise considered to have environmental impacts.

Four chemicals v. six chemicals

EPA proposes to make an endangerment finding on six directly emitted and long-lived GHGs—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride, treated as a group as an air pollutant. The proposal, however, defines the terms “air pollution” and “air pollutant” for purposes of section 202(a) as the six GHGs, two of which are not addressed in the underlying petition and which EPA recognizes are not emitted by new motor vehicles or motor vehicle engines, and on page two, this action is characterized as a “response” to the Supreme Court’s decision in Massachusetts v. EPA, 549 U.S. 497 (2007), which arose from a petition with respect to the four GHGs. Although the latter two GHGs have similar characteristics and are addressed in UN documents, it is not clear why they are included in the endangerment and “cause or contribute” findings. While it appears that section 202(a) provides sufficiently broad authority for EPA to do so and the draft explains this decision as based on the uniform, global nature of GHG ambient concentrations, a seemingly simpler regulatory action might be to base the definition of “air pollution” or “air pollutant” on the four GHGs emitted by new motor vehicles or motor vehicle engines.

- This raises the question of the extent to which EPA intends or does not intend this finding to extend beyond section 202 to the same terms used in other key parts of the CAA, e.g., section 101(a) (general findings and purpose), section 108 (National Ambient Air Quality Standards), and section 111(b) (New Source Performance Standards). EPA would benefit from making its position explicit in this proposal. Commenters are sure to take this important issue on in some fashion so EPA may as well do what it can to shape the debate and the comments being invited. For example, it could note that the same terms are important parts of other key CAA provisions, but then state that EPA at this time is only addressing and seeking comment on issues directly associated with section 202. Alternatively, it could state that it views these findings as to GHGs to be broadly applicable to the Act as a whole, but nonetheless make clear that EPA is not in this rulemaking attempting to consider or address any of the other regulatory findings that would be necessary to trigger GHG regulation under other CAA programs. A third option would be to invite comment on whether interested parties believed there was any basis for distinguishing the understanding of the terms in the section 202 context from the understanding of the terms in other parts of the Act.

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- EPA fails to make a case of why the six GHGs should be treated as a single pollutant and why all six should be treated as a group. Treating the gases as a group yields the indefensible result that emissions of PFCs, SF₆ and HFCs other than HFC-134a from motor vehicles are asserted to “cause or contribute to air pollution, when there are no such emissions from motor vehicles. Further, EPA states that: “Depending on the circumstances... it may be appropriate to set standards for individual gases [of the 6], or some combination of group and individual standards.” EPA asserts that these regulatory flexibilities would exist whether or not greenhouse gases are treated as multiple pollutants or as individual pollutants. [See discussion on page 32-33.]
- These greenhouse gases differ significantly in terms of physical properties, formation mechanisms, and possible mitigation techniques.
 - Mobile source CO₂ is formed by burning fossil fuels. Virtually all of the carbon in the fuel is converted to CO₂. The more efficient the combustion process, the more complete the conversion to CO₂. Unlike for traditional criteria pollutants (*e.g.*, NMHC, CO, NO_x), which can be converted to other substances through emissions aftertreatment (*i.e.*, catalytic converters), no mobile aftertreatment device can convert CO₂ to something that does not contribute to global warming.¹ Therefore, mobile source CO₂ emissions can only be reduced by burning less fossil fuel, either by improving fuel economy or converting to less carbon-intensive fuels.
 - Mobile source CH₄ and N₂O emissions are by-products of fossil fuel combustion. However, burning less fossil fuel does not necessarily mean reducing CH₄ and N₂O emissions. For example, using methane (CH₄) rather than petroleum could increase CH₄ emissions
 - Mobile source HFC emissions arise from releases of HFC refrigerants from mobile air conditioners. Therefore, mobile source HFC emissions can only be reduced by using different refrigerants and/or “hardening” mobile air conditioners to reduce the potential for refrigerant leaks.
 - Mobile source CO₂, CH₄, N₂O, and HFC emissions not only have different global warming potentials, they remain in the atmosphere for different amounts of time and are removed from the atmosphere by different mechanisms.
- In contrast to EPA’s citation of Class I and Class II substances under Title VI, under Title II, EPA’s treats mobile source NMHC and NO_x as separate pollutants, even though both are precursors to the formation of tropospheric ozone (*i.e.*, urban smog), and both are mitigated through a combination of fuel improvements,

¹ In fact, current catalytic converters operate by convert HC, CO, and NO_x into CH₄, N₂O, and CO₂ (and water).

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combustion process changes, and emissions aftertreatment. Considering that mobile source CO₂, CH₄, N₂O, and HFC emissions are even more distinct from one another than are mobile source NMHC and NO_x emissions, and that EPA classifies NMHC and NO_x as separate pollutants, EPA should classify these as separate pollutants or, alternatively, classify CO₂ as one pollutant, classify CH₄ and N₂O as another pollutant (class), and classify HFCs as a third pollutant (class).

Accounting for the Global Nature of Greenhouse Gas Pollution in the Findings

In this draft proposal, EPA finds under Clean Air Act (CAA) section 202(a) that (1) “air pollution” in the form of the global mix of six greenhouse gases (or the GHGs) may be reasonably anticipated to endanger public health and welfare (the endangerment finding); and (2) emissions of an “air pollutant” in the form of the global mix of the GHGs from new motor vehicles or motor vehicle engines cause or contribute to that air pollution (the contribution finding). The agency characterizes the “global” nature of the GHG emissions and concentrations (page 16), notes the effects of GHG emissions globally in making the endangerment finding (page 29), and assesses the contribution of the GHGs emitted by section 202(a) sources as a percentage of global emissions (page 36). The proposal appears to assume, but does not explicitly discuss why (or solicit comment on whether) these are relevant legal inquiries under section 202(a) the Clean Air Act. This is virtually certain to be a subject of public comment; and we recommend that EPA directly address this matter in the proposal.

EPA also factors international considerations into the endangerment and contribution findings differently. On page 29, the agency states: “The Administrator judges that impacts to public health and welfare occurring within the U.S. alone warrant her proposed endangerment finding.” On page 36, however, EPA bases its finding on the “significance” of the GHG emissions from section 202(a) sources for purposes of the contribution finding in part on their global contribution:

It is the Administrator’s judgment that the collective GHG emissions from section 202(a) source categories are significant, whether the comparison is global (over 4 percent of total GHG emissions) or domestic (24 percent of total GHG emissions). The Administrator believes that consideration of the global context is important for the cause or contribute test but that the analysis should not solely consider the global context.

It is unclear from the proposal why a difference in treatment of the two findings is necessary or appropriate. Because the Administrator regards the domestic contribution comparison in itself to be significant, it may be simpler (and less open to challenge) to base the contribution finding solely on domestic considerations. (This would not foreclose a discussion of global contribution, provided, as requested above, it is made clear how relevant this is under section 202(a)).

Group Versus Individual Approach to “Air Pollutant”

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On page 32, EPA proposes to designate the six GHGs, collectively, as the "air pollutant" for which the endangerment finding is being made. The proposal, however, then goes on at pages 33-40 to analyze the contribution issue both as to the six GHGs collectively, and as to each individually. Although EPA hints that it believes either a collective or individual approach could be valid and would reach similar results, see page 34, the agency never really says expressly whether or not it is soliciting comment on these issues and whether it would be open to considering a pollutant-by-pollutant-based approach for the final rule. We recommend that this be made explicit.

Comment Solicitation

EPA limits solicitation of comment on the proposal to the simple statements on page six to the effect that it seeks comment on all aspects of this action (data, methodology, and major legal and policy considerations). While this is efficient and legally sufficient, the agency may want to highlight a few key areas in which comment would be most useful. The first two issues that we've identified above might be worthy of an express request for comment. EPA may also need to clarify the relationship between comment on this proposal and the July 30, 2008 Advance Notice of Proposed Rulemaking on Greenhouse Gas Emissions (ANPR). In footnote 11, EPA indicates that it is responding to a few key comments from the ANPRM in this proposal related to the endangerment and contribution findings and asks commenters to "submit to the docket for today's action any comments they want EPA to consider as it makes a decision on this proposed determination." We recommend that EPA move the footnote 11 discussion up to the main body of the proposal at page 6 and explicitly state that commenters may not rely on prior submission of comments to the ANPR and that if parties wish EPA to consider comments made in response to the ANPR or other rulemakings, they should re-submit those comments here with an appropriate explanation as to how the commenter believes those comments relate to issues raised in this proposal. We can imagine a party trying to make out a challenge to this endangerment finding based on arguments that were raised entirely or primarily in comments submitted in response to the ANPR, not this proposal (a prospect that is somewhat more likely due to the fact that EPA in various places discusses comments made in response to the ANPR).

Agricultural Production

The proposed Finding erroneously suggests that Intergovernmental Panel on Climate Change (IPCC) predicts an increase in both crop and forest production in the U.S. (e.g., pg. 28 lines 21 and 34 of the Proposed Finding, pg 80 line 26, page 87 line 9). The IPCC findings refer to North America, not the U.S.

The Synthesis and Assessment Product 4.3 (SAP 4.3) "The Effects of Climate Change on Agriculture, Land Resources, Water Resources, and Biodiversity in the United States" (U.S. Climate Change Science Program/Backlund et al. 2008), which includes more recent and more geographically-specific publications, tempered IPCC's findings substantially, citing water limitations, northward progression of production zones, diminished grain set period, pest infestations, nutrient limitations, air pollution, and wildfire, among other dampening factors to production in agriculture and forestry in the

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U.S. Significant increases in production may be possible within North America as a whole, but are unlikely within the U.S. itself.

The Findings document should be corrected to reflect that IPCC is referring to North America rather than the U.S. More importantly, the Findings document should be revised to accurately reflect the discussion in the Technical Support Document (TSD).

In addition, the placement of the IPCC prediction near the beginning of each section in the absence of any summarization gives the impression that large production increases are conclusive. This overrides the very salient and far more equivocal discussion which follows, leaving readers with the mistaken impression that climate change is a boon to U.S. agriculture and forestry. A summary statement which more accurately reflects the content of the technical discussions should be composed to lead each section.

Emissions from the combustion of different fuels vs. emissions from different mobile source categories.

Mobile source CO₂ is formed by burning fossil fuels. Virtually all of the carbon in the fuel is converted to CO₂. Therefore, and considering that CO₂ remains in the atmosphere for a long time, national aggregate consumption of different types of fuels provides the most accurate basis for estimating CO₂ emissions.

IPCC guidelines for national reporting of GHG emissions account for this fact, and EIA and EPA both use fuel consumption—not vehicle sales and fuel economy—as a basis for estimating and reporting CO₂ emissions. According to the IPCC (emphasis added), “Emissions of CO₂ are best calculated on the basis of the amount and type of fuel combusted (**taken to be equal to the fuel sold**, see section 3.2.1.3) and its carbon content.”²

Such reporting addresses petroleum consumption in the aggregate and for different petroleum-based fuels, such as shown below from EIA (<http://www.eia.doe.gov/oiaf/1605/ggrpt/carbon.html>):

² http://www.ipcc-nggip.iges.or.jp/public/2006gl/pdf/2_Volume2/V2_3_Ch3_Mobile_Combustion.pdf, p. 3-10.

Table 5. U.S. Carbon Dioxide Emissions from Energy and Industry, 1990, 1995, and 2000-2007
(Million Metric Tons Carbon Dioxide)

Fuel Type or Process	1990	1995	2000	2001	2002	2003	2004	2005	2006	P2007
Energy Consumption										
Petroleum	2,176.6	2,206.1	2,459.0	2,470.2	2,467.7	2,512.4	2,602.6	2,619.9	2,596.2	2,579.9
Coal	1,799.9	1,898.9	2,146.4	2,094.4	2,094.1	2,131.3	2,157.6	2,161.2	2,139.8	2,162.4
Natural Gas	1,033.6	1,193.0	1,239.8	1,189.3	1,245.7	1,212.6	1,194.2	1,162.6	1,158.9	1,237.0
Renewables ^a	6.3	10.5	10.6	11.2	13.1	11.8	11.5	11.6	11.8	11.6
Energy Subtotal	5,016.7	5,308.5	5,855.8	5,755.1	5,820.6	5,863.1	5,953.2	5,975.3	5,903.7	5,980.9
Nonfuel Use Emissions ^b	98.8	105.5	110.8	105.8	106.2	103.9	112.1	107.0	111.5	117.6
Nonfuel Use Sequestration ^c	251.2	266.5	309.2	293.8	293.9	269.6	311.9	302.3	302.0	301.5
Adjustments to Energy	-82.4	-62.4	-60.9	-45.3	-37.8	-28.3	-44.3	-46.5	-65.8	-74.2
Adjusted Energy Subtotal	4,936.3	5,246.0	5,794.8	5,709.8	5,792.8	5,839.7	5,921.0	5,928.9	5,839.9	5,916.7
Other Sources	85.1	102.3	97.8	97.0	97.7	98.9	102.0	103.4	105.9	105.1
Total	5,021.4	5,348.4	5,892.6	5,806.9	5,890.6	5,938.7	6,023.0	6,032.3	5,945.8	6,021.8

^aIncludes emissions from electricity generation using nonbiogenic municipal solid waste and geothermal energy.
^bEmissions from nonfuel uses are included in the energy subtotal above.
^cThe 5tu value of carbon sequestered by nonfuel uses is subtracted from energy consumption before emissions are calculated.
P = preliminary data.
Notes: Data in this table are revised from the data contained in the previous EIA report, *Emissions of Greenhouse Gases in the United States 2006*, DOE/EIA-0573(2006) (Washington, DC, November 2007). Totals may not equal sum of components due to independent rounding. Adjusted energy subtotal includes U.S. Territories but excludes international bunker fuels.
Source: EIA estimates.

General Editorial issues

“New Motor Vehicle or Motor Engine” Reference. The draft sometimes simply refers to emissions from “motor vehicles” rather than emissions from “new motor vehicles or motor vehicle engines.” (The draft could indicate initially that the term “motor vehicle” is intended to refer to both of these.)

Statements regarding consideration of current and near-term emissions [page 35], and cumulative emissions [page 17] appear to be inconsistent, and should be clarified.

EPA clearly intends that the definition of the “air pollutant” emitted by new motor vehicle or motor engine sources to be the six GHGs. In several places, however, the proposal appears to describe the four GHGs emitted by new motor vehicles or motor vehicle engines as the “air pollutant.” See, e.g., pages 1 (lines 36-37), 2 (lines 24-27), and 36 (lines 34-37).

APPENDIX 16



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

July 31, 2009

The Honorable John Barrasso, M.D.
Ranking Member
Subcommittee on Oversight
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Barrasso:

Thank you for your letter of May 13, 2009, regarding documents related to the Environmental Protection Agency's (EPA) proposed finding under Section 202 of Clean Air Act that greenhouse gases in the atmosphere endanger public health and welfare, and that emissions of greenhouse gases from new motor vehicles and engines contribute to air pollution that causes such endangerment.

The Office of Management and Budget (OMB) concluded review of this proposed rule under our executive order procedures on April 13, 2009, and EPA published this rule on April 24, 2009. When a rule is published, the Clean Air Act requires EPA to make available to the public all written comments they received from other agencies during OMB review. To facilitate EPA's compliance with this requirement, OMB typically conducts an interagency review process to collect written comments from many agencies and pass those comments to EPA. OMB only discloses the name of the agencies associated with each set of comments under special circumstances, in order not to chill the interagency process. In this case OMB did release the name of the commenting agency to correct inaccurate and misleading media reports. OMB did not release or authorize the release of any individual's name in connection with the comment.

Please let me know if you have further questions.

Sincerely,

Peter R. Orszag
Director

cc: The Honorable Lisa Jackson
The Honorable Sheldon Whitehouse

APPENDIX 17

Congress of the United States
Washington, DC 20515

June 23, 2009

The Honorable Lisa Jackson
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Administrator Jackson:

We would like to reiterate our request that the Environmental Protection Agency (EPA) reopen the comment period on its Proposed Endangerment and Cause and Contribute Findings for Greenhouse Gases under the Clean Air Act ("Proposed Endangerment Findings").¹

In a previous letter dated June 8, 2009, we argued that the 60 day comment period was inadequate for a rule of such magnitude.² While we acknowledge and appreciate your prompt response to that letter, we stand by our initial argument. Further, new evidence strengthens the need for continued examination of EPA's proposed endangerment finding.

Our Committees recently obtained a series of emails, dated March 12-17, 2009, between the Office Director of EPA's National Center for Environmental Economics (NCEE) and a career senior analyst. In these emails, the Director expressly refused to include relevant scientific evidence because, in his view, the Administration had already reached a conclusion regarding the endangerment finding.

On March 16, a senior analyst with EPA reiterated his request that his comments be included in EPA's record for the proposed endangerment finding. The analyst wrote:

"I believe my comments are valid, significant, and contain references to significant new research since the cut-off for IPCC [Intergovernmental Panel on Climate Change] and CCSP [U.S. Climate Change Science Program] inputs. They are significant because they present information critical to the justification (or lack thereof) for the proposed endangerment finding. They are valid because they explain much of the observational data that have been collected which cannot be explained by the IPCC models."³

In response, the Director refused to forward the analyst's comments, stating that he could "only see one impact of [the] comments given where we are in the process, and that would be a very negative impact on our office."⁴ He never questioned the scientific merit of the proposed studies, but rather explained that "[t]he administrator and administration has decided to move forward on endangerment, and your comments do not help the legal or policy case for this decision."⁵

¹ Proposed Endangerment and Cause and Contribute Findings for Greenhouse Gases under the Clean Air Act, 74 Fed. Reg. 18886 (April 24, 2009).

² Letter from Congressmen Issa, Barton, Mica, Hall, Sensenbrenner, Hastings, Lewis, Ryan, Lucas, and Upton to the Honorable Lisa Jackson, Administrator, Environmental Protection Agency, March 12, 2009.

³ Email from Senior Operations Research Analyst, EPA NCEE to Office Director, EPA NCEE, March 16, 2009.

⁴ Email from Office Director of EPA's NCEE to Senior Operations Research Analyst at NCEE (March 17, 2009) (emphasis added).

⁵ *Id.*

The Director then sent a follow-up email, forbidding the analyst from continuing his work: “[y]ou need to move on to other issues and subjects. I don’t want you to spend any additional EPA time on climate change. No papers, no research etc.”⁶

This email exchange portrays an agency culture set in a predetermined course. It documents at least one instance in which the public was denied access to significant scientific literature and raises substantial questions about what additional evidence may have been suppressed. Were other documents barred from the record? What arguments were never raised because of a culture intolerant of divergent points of view?

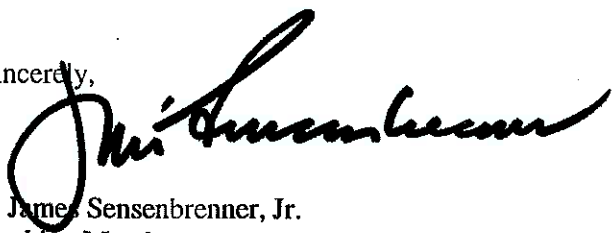
In light of this new evidence, we ask that the comment period be reopened to include the EPA analyst’s scientific comments. We further ask that you provide the House Select Committee on Energy Independence and Global Warming and the House Committee on Oversight and Government Reform with all documents, including memos, email correspondence, and minutes from meetings related to EPA’s consideration of its Endangerment Finding dated from January 20, 2009 to June 1, 2009. Please provide these documents to the minority offices of our Committees by July 21, 2009.

EPA’s Endangerment Finding is one of the most significant regulatory finding in the country’s history. It would give EPA unprecedented authority to regulate every aspect of American life. It is truly alarming that EPA apparently prejudged this outcome and then moved forward on an incomplete record.

We respectfully request that EPA make public the relevant studies by entering them into the endangerment docket. We further request that EPA reopen and extend the comment period to allow public responses to the study. We also request that EPA provide our Committees with reassurance that it will engage in no reprisals against the senior analyst, who has been a loyal career civil servant for over 35 years.

If you have any questions, or to coordinate document delivery, please contact Bart Forsyth with the Select Committee at (202) 225-0110 or Kristina Moore with the Committee on Oversight and Government Reform at (202) 226-6080.

Sincerely,



F. James Sensenbrenner, Jr.
Ranking Member
Select Committee on
Energy Independence and Global Warming



Darrell E. Issa
Ranking Member
Committee on Oversight and
Government Reform

⁶ *Id.*

APPENDIX 18

BARBARA BOXER, CALIFORNIA, CHAIRMAN

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6179

BEYBINA POWRIE, STAFF DIRECTOR
ALITH YAN MARR, ANNUITY/STAFF DIRECTOR

June 30, 2009

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

On April 23rd 2009, you issued a Memo to all EPA employees focusing on transparency, which we believe is vitally important to achieving the Agency's mission. In this memo, you expressed your commitment to uphold the values of transparency and openness by "letting more sunlight into our Agency." You also stated that, "The success of our environmental efforts depends on earning and maintaining the trust of the public we serve." In addition, you wrote, "In all its programs, EPA will provide for the fullest possible public participation in decision-making," and that, "EPA [will] remain open and accessible to those representing all points of view, [and] EPA offices responsible for decisions [will] take affirmative steps to solicit the views of those who will be affected by these decisions."

Having clearly articulated your commitment to transparency, one would expect Agency officials to uphold your commitment through its actions. Over the last few days, however, we have learned that a senior EPA official suppressed a detailed, rigorous account of the most up-to-date science of climate change. This account, written by two agency employees, raises serious questions about the process behind, and the substance of, the Agency's proposed finding that greenhouse gases endanger public health and welfare.

In short, the authors raise an issue that is difficult to ignore or dismiss: the scientific data supporting the endangerment finding is out of date, is from non-EPA sources, and is inconsistent. As the authors wrote, "These inconsistencies are so important and sufficiently abstruse that in our view EPA needs to make an independent analysis of the science of global warming rather than adopting the conclusions of the IPCC and CCSP without much more careful and independent EPA staff review than is evidenced by the Draft TSP."

According to a series of emails obtained by a non-governmental organization, the director of EPA's National Center for Environmental Economics (NCEE) refused to consider the report, and rejected a request to forward the report to agency officials tasked with analyzing the science behind the endangerment finding. Moreover, the director specifically barred one of the authors from disseminating or discussing the report's findings.

We believe this and many other issues and complexities involved in the endangerment finding were either ignored or given short shrift in EPA's proposal. In our view, this lack of transparency seriously undermines the integrity of EPA's actions. Indeed, in reviewing the EPA's proposed rule, there are only three pages (out of 130) devoted to discussion of key uncertainties.

In the coming weeks, we will make a series of inquiries to ensure EPA's process governing the development of the endangerment finding is open and transparent—and that the Agency considers all view-points, and makes use of the best available, and most up-to-date, scientific data. We believe you share our commitment to transparency; therefore, we hope through your leadership that EPA will be an open, accessible, and science-based agency.

To assist us with our inquiries, please respond to the following questions:

Do you believe the process governing the development and review of the proposed endangerment finding reflects the Agency's, and this Administration's, commitments to transparency and scientific integrity, as outlined in your April 23rd and May 9th memos?

How can you ensure that the Agency's rulemakings will be based on the best available, and most up-to-date, scientific data? What process will you develop to make this happen?

The NAAQS review process requires a five year review to assess the latest scientific data on criteria pollutants. Would you consider implementing a similar process to review the scientific data supporting the endangerment finding?

In an effort to resolve uncertainties documented in the report mentioned above, will you commit to resolve the Proposed Endangerment Finding solely on the record of the scientific evidence, utilizing the procedures of APA sections 556-557?

Thank you for your consideration of this important matter. Please respond to these questions by July 10, 2009. If you have any questions or concerns, please speak to Tom Hassenboehler of the Environment and Public Works Committee Staff at (202) 224-6176.

Sincerely,



Senator James M. Inhofe
Ranking Member
Senate Committee on Environment and
Public Works



Senator John Barrasso
Ranking Member
Subcommittee on Oversight
Senate Committee on Environment and
Public Works

APPENDIX 19

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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

Majority (202) 225-3921
Facsimile (202) 225-2525
Minority (202) 225-3541

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June 24, 2009

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The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

I write with reference to certain EPA emails which raise serious questions about the integrity, transparency and completeness of the Environmental Protection Agency's (EPA) rulemaking process for the agency's proposed finding that carbon dioxide and other greenhouse gases endanger public health and welfare.

I recently learned of agency emails that suggest that substantive analysis that was critical of the proposed endangerment finding, and that had been prepared by the agency's own staff, was barred from agency consideration by supervising EPA officials, based on concerns of negative consequences for the office from which the analysis had been generated. Further, the emails suggest the staff analysis was suppressed because the Administrator and the Administration had already decided to go forward with the endangerment finding, and that the office's budget would be further reduced if analysis or comments critical of the proposed finding were forwarded (see emails, attached).

On March 16, 2009, an email from what is reported to be a senior career economist in EPA's National Center for Environmental Economics (NCEE) requested to have his comments on the proposed finding forwarded within an apparent deadline to the agency's Office of Air and Radiation which apparently was managing development of the proposed finding. In pertinent part, the email notes:

"I believe my comments are valid, significant, and contain references to significant new research since the cut-off for IPCC and CCSP [climate science assessment] inputs. They are significant because they present information

critical to the justification (or lack thereof) for the proposed endangerment finding. They are valid because they explain much of the observational data that have been collected which cannot be explained by the IPCC models."

A subsequent March 17, 2009, email from the Director of the NCEE refuses to submit the document for further agency consideration, based on concerns that you and the Administration had already decided to move forward and that forwarding comments critical of the finding would have negative impacts for the office of NCEE. In pertinent part the email reads:

"The time for such discussion of fundamental issues has passed for this round. The administrator and the administration has [sic] decided to move forward on endangerment, and your comments do not help the legal or policy case for this decision.... I can only see one impact of your comments given where we are in the process, and that would be a very negative impact on our office."

Following this exchange, the employee was directed to spend no more agency time on the EPA's endangerment finding. In an email of that same date, the Director of NCEE also noted that "our budget was cut by 66%."

I understand NCEE to be an office located in EPA's Office of Policy, Economics and Innovation (OPEI), and that OPEI is the primary policy arm of EPA and has responsibility for managing the development of regulations. The agency's website (<http://www.epa.gov/opei/>.) also indicates that NCEE "provides EPA with the expertise to take economic issues, such as benefits and costs, into account" and that it is a resource for information regarding "benefit-cost research techniques," "economic impact models and measures," and "economic incentive mechanisms."

These emails, to the extent they accurately reflect decisions and events in the run-up to your April 2009 proposed endangerment finding, raise serious questions not only about the completeness and reliability of the information you relied upon in making the proposed endangerment finding, but also whether you truly sought objective and complete information in exercising your judgment. Suppression of material information from EPA's own staff and concerns about budget cuts for offices that submit comments critical of the proposed endangerment finding also raise serious questions concerning the transparency and integrity of EPA's analyses and the atmosphere of open and free intellectual discourse at the Agency.

The issue of climate change policy as well as EPA's regulation of greenhouse gases has been at the forefront of Congressional deliberation in recent months. It is imperative that we can be assured EPA operates with full information when making its regulatory science decisions, that information or analysis is not suppressed, that critical offices within EPA that are involved in policy and cost analyses do not receive retaliatory budget cuts if they offer views contrary to those of the Administration, and that the process for these decisions, which Congress relies upon, is not driven by a political agenda or an atmosphere that chills open and honest agency deliberation.

Accordingly, I write to seek information and documents relating to the aforementioned emails. Given the serious implications and concerns raised by these emails, I believe it is incumbent upon you to provide an immediate explanation regarding agency procedures and directives you have implemented for collecting information relating to the proposed endangerment finding. Please respond within two weeks of the date of this letter to the following:

1. Did you issue any directive or instructions to any agency staff that research or analyses relating to the endangerment finding by agency staff cease?
2. Have you or the EPA received any instructions from the Administration, including the Executive Office of the President, to cease any ongoing agency inquiry and analyses relating to the proposed endangerment finding?
3. Have you issued any direction to the NCEE office not to conduct any further analyses relating to the proposed endangerment finding?
4. Has EPA been seeking to reduce the budget of the NCEE office within EPA?
5. If yes, given the importance of economic analysis to rulemaking, including the importance of cost-benefit analyses, why has the NCEE budget been reduced?
6. Please provide all staff analyses submitted by the NCEE to the OAR relating to the proposed endangerment finding.
7. Please provide the documents, including any draft analysis, prepared by Dr. Alan Carlin, as referenced in the aforementioned emails.
8. Please provide all directives and information you supplied to agency employees, or the relevant office or department directors, concerning your process for collecting agency staff comments on the proposed endangerment finding.

Please provide the written responses and documents requested by no later than two weeks from the date of this letter. I would respectfully request, if the Agency withholds any documents or information in response to this letter, that a Vaughn Index or log of the withheld items be attached to the response. The index should list the applicable question number, a description of the withheld item (including date of the item), the nature of the privilege or legal basis for the withholding, and a legal citation for the withholding claim.

Letter to the Honorable Lisa Jackson
Page 4

Should you have any questions, please contact Mr. Peter Spencer of the Minority
Committee staff at (202) 225-3641.

Sincerely,



Joe Barton
Ranking Member

cc: The Honorable Henry A. Waxman
Chairman



Re: endangerment
Alan Carlin to: Al McGartland
Cc: John Davidson

03/12/2009 04:08 PM

Agreed.
Alan

Al McGartland

In light of the tight schedule and the turn of events, please do not have any dire...

03/12/2009 02:40:31 PM

From: Al McGartland/DC/USEPA/US
To: Alan Carlin/DC/USEPA/US@EPA, John Davidson/DC/USEPA/US@EPA
Cc: Chris Dockins/DC/USEPA/US@EPA, Steve Newbold/DC/USEPA/US@EPA
Date: 03/12/2009 02:40 PM
Subject: endangerment

In light of the tight schedule and the turn of events, please do not have any direct communication with anyone outside of NCEE on endangerment. There should be no meetings, emails, written statements, phone calls etc. All communication needs to go through Steve and me and then to Paul, and then to OAR.

Al McGartland, PhD.
Director, National Center for Environmental Economics
US EPA
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20460

202.566.2244

Fw: Comments on the Endangerment TSD
Alan Carlin to: Steve Newbold
Cc: Al McGartland, John Davidson, Chris Dockins

03/16/2009 03:55 PM

Steve,

I have not heard from Al as of now so presumably the decision is yours as we approach the COB deadline today.

Since Friday I have endeavored to respond to your concerns about the extent of the material in my comments that have not so far appeared in the peer-reviewed scientific literature and about the title page in the hope that you will change your decision as to forwarding my comments to Paul and



then hopefully onto OAR. I am attaching a revised copy *Endangment comments v7b.doc* with some improvements in the list of references and the title page changes you requested. I have not had time to improve the formatting, however. I would like to note, however, that by my rough count roughly two-thirds of my references are to peer-reviewed publications. It is also my view that the critical attribute of good science is its correspondence to observable data rather than where it appears in the technical literature. I believe my comments are valid, significant, and contain references to significant new research since the cut-off for IPCC and CCSP inputs. They are significant because they present information critical to the justification (or lack thereof) for the proposed endangerment finding. They are valid because they explain much of the observational data that have been collected which cannot be explained by the IPCC models.

There is still time to submit my comments to Paul and I urge you to do so.

Alan

— Forwarded by Alan Carlin/DC/USEPA/US on 03/16/2009 03:04 PM —

From: Alan Carlin/DC/USEPA/US
To: Steve Newbold/DC/USEPA/US@EPA
Cc: John Davidson/DC/USFPA/IS@FPA
Date: 03/13/2009 10:49 AM
Subject: Re: Fw: Comments on the Endangerment TSD

Hi Steve,

The authorship is clearly indicated on the last page. Actually, much of the non-observational material (ie, statements that do not involve direct interpretation of existing data) is actually in peer-reviewed literature somewhere and I have tried to reference everything. If it is not going anywhere, I will postpone changing the cover, although this is easily done.

Alan

Steve Newbold

Alan, At the moment, I am working on combining John's and my comments into...

03/13/2009 10:28:45 AM



Re: endangerment comments???
Al McGartland to: Alan Carlin
Cc: John Davidson, Steve Newbold

03/17/2009 08:12 AM

Alan, I decided not to forward your comments. The time for such discussion of fundamental issues has passed for this round. The administrator and the administration has decided to move forward on endangerment, and your comments do not help the legal or policy case for this decision. I have stressed in previous emails that this is not a criteria document for climate change and greenhouse gases. If such a document is ever drafted, then perhaps your comments might be considered.

I can only see one impact of your comments given where we are in the process, and that would be a very negative impact on our office.

Al McGartland, PhD.
Director, National Center for Environmental Economics
US EPA
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20460

202.566.2244



climate change work
Al McGartland to: Alan Carlin

03/17/2009 08:20 AM

History: This message has been forwarded.

With the endangerment finding nearly final, you need to move on to other issues and subjects. I don't want you to spend any additional EPA time on climate change. No papers, no research etc, at least until we see what EPA is going to do with Climate.

I would like you to work with Marrietta to get that grants data base in place. I am not sure what the problem is there. Maybe its further along than I realize.

Also, I'd like you to update part of the market incentives report – inventorying the market incentive programs undertaken by the states (updating part of the market incentives report).

Let me know if you have even more time for other endeavors.

You may have heard that our budget was cut by 66%. This work will have to be done inhouse.

Al McGartland, PhD.
Director, National Center for Environmental Economics
US EPA
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20460

202.566.2244

APPENDIX 20



Re: endangerment comments??? 

Al McGartland to: Alan Carlin

Cc: John Davidson, Steve Newbold

03/17/2009 08:12 AM

Alan, I decided not to forward your comments. The time for such discussion of fundamental issues has passed for this round. The administrator and the administration has decided to move forward on endangerment, and your comments do not help the legal or policy case for this decision. I have stressed in previous emails that this is not a criteria document for climate change and greenhouse gases. If such a document is ever drafted, then perhaps your comments might be considered.

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Al McGartland, PhD.
Director, National Center for Environmental Economics
US EPA
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20460

202.566.2244

APPENDIX 21

Fw: Comments on the Endangerment TSD

Alan Carlin to: Steve Newbold

Cc: Al McGartland, John Davidson, Chris Dockins

03/16/2009 03:55 PM

Steve,

I have not heard from Al as of now so presumably the decision is yours as we approach the COB deadline today.

Since Friday I have endeavored to respond to your concerns about the extent of the material in my comments that have not so far appeared in the peer-reviewed scientific literature and about the title page in the hope that you will change your decision as to forwarding my comments to Paul and



then hopefully onto OAR. I am attaching a revised copy *Endangerment comments v7b.doc* with some improvements in the list of references and the title page changes you requested. I have not had time to improve the formatting, however. I would like to note, however, that by my rough count roughly two-thirds of my references are to peer-reviewed publications. It is also my view that the critical attribute of good science is its correspondence to observable data rather than where it appears in the technical literature. I believe my comments are valid, significant, and contain references to significant new research since the cut-off for IPCC and CCSP inputs. They are significant because they present information critical to the justification (or lack thereof) for the proposed endangerment finding. They are valid because they explain much of the observational data that have been collected which cannot be explained by the IPCC models.

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Alan

— Forwarded by Alan Carlin/DC/USEPA/US on 03/16/2009 03:04 PM —

From: Alan Carlin/DC/USEPA/US
To: Steve Newbold/DC/USEPA/US@EPA
Cc: John Davidson/DC/USFPA/ISIS@FPA
Date: 03/13/2009 10:49 AM
Subject: Re: Fw: Comments on the Endangerment TSD

Hi Steve,

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Alan

Steve Newbold

Alan, At the moment I am working on combining John's and my comments into...

03/13/2009 10:28:46 AM

APPENDIX 22



Re: Fw: Endangerment TSD comments 
Paul Balsarak to: John Davidson

I understand. thanks John.
Paul

John Davidson

Hi Paul, Just a quick follow-up on my comment o...

03/16/2009 04:57:17 PM

From: John Davidson/DC/USEPA/US
To: Paul Balsarak/DC/USEPA/US@EPA
Date: 03/16/2009 04:57 PM
Subject: Fw: Endangerment TSD comments

Hi Paul,

Just a quick follow-up on my comment on Alan's rough draft.

Please keep its existence confidential between you and me.

Al sent several of us a note late last week that seemed to say he didn't want even the existence of the draft to be known outside of NCEE.

John

— Forwarded by John Davidson/DC/USEPA/US on 03/16/2009 04:53 PM —

From: John Davidson/DC/USEPA/US
To: Paul Balsarak/DC/USEPA/US@EPA
Cc: Al McGartland/DC/USEPA/US@EPA, Alan Carlin/DC/USEPA/US@EPA, Chris Dockins/DC/USEPA/US@EPA, nickerson.william@epa.gov, Steve Newbold/DC/USEPA/US@EPA
Date: 03/16/2009 07:35 AM
Subject: Re: Endangerment TSD comments

Good Morning Paul,

As you go through our comments, it should be pretty obvious that the ES and Section 5 both have multiple comments that are significant.

Cheers,

John

Paul Balsarak

Hi Steve, Thanks very much for the email/attach...

03/13/2009 05:14:55 PM

From: Paul Balsarak/DC/USEPA/US
To: Steve Newbold/DC/USEPA/US
Cc: Al McGartland/DC/USEPA/US@EPA, Alan Carlin/DC/USEPA/US@EPA, Chris Dockins/DC/USEPA/US@EPA, John Davidson/DC/USEPA/US@EPA, nickerson.william@epa.gov
Date: 03/13/2009 05:14 PM
Subject: Re: Endangerment TSD comments

Hi Steve,

Thanks very much for the email/attachment with comments. I'd be interested which if any are significant comments. I can (and am) looking through the document to see the comments for myself, but if you know

APPENDIX 23



climate change work
Al McGartland to: Alan Carlin

03/17/2009 08:20 AM

History: This message has been forwarded.

With the endangerment finding nearly final, you need to move on to other issues and subjects. I don't want you to spend any additional EPA time on climate change. No papers, no research etc, at least until we see what EPA is going to do with Climate.

I would like you to work with Marrietta to get that grants data base in place. I am not sure what the problem is there. Maybe its further along than I realize.

Also, I'd like you to update part of the market incentives report -- inventorying the market incentive programs undertaken by the states (updating part of the market incentives report).

Let me know if you have even more time for other endeavors.

You may have heard that our budget was cut by 66%. This work will have to be done inhouse.

Al McGartland, PhD.
Director, National Center for Environmental Economics
US EPA
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20460

202.566.2244

APPENDIX 24



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 03 2009

THE ADMINISTRATOR

The Honorable F. James Sensenbrenner
Ranking Member
Select Committee on Energy Independence and Global Warming
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Sensenbrenner:

Thank you for your letter of July 17, 2009, co-signed by Congressman Issa, requesting additional information and documents related to the U.S. Environmental Protection Agency's (EPA or Agency) proposed endangerment and cause or contribute findings and technical support document (TSD).

Your letter asks a number of questions and requests supporting documents related to the timeline used for developing the draft TSD as well as the role that the National Center for Environmental Economics (NCEE) and its staff played in reviewing the proposal and the draft TSD. Many of your questions also focus on the comments of Dr. Alan Carlin, a member of NCEE. I appreciate your interest in this important issue, and I agree with you that science and the law should be the forces that guide our work.

Dr. Carlin's views on climate science were included in the public docket of the Agency's proposed endangerment and cause or contribute findings for greenhouse gases on July 8, 2009. (Docket No. EPA-HQ-OAR-2009-0171). I believe that high quality science should inform the ultimate decision on this proposal. EPA will fully consider Dr. Carlin's views as we develop final endangerment and cause or contribute determinations.

As you know, EPA staff from across the Agency have been working for a number of years on evaluating the science that led to the proposed endangerment and cause or contribute findings, which EPA published in the Federal Register in April 2009. 74 Fed. Reg. 18886 (April 24, 2009). EPA is working expeditiously to review the approximately 400,000 comments it received during the 60-day public comment period and two public meetings it held. Please be assured that EPA decision makers are open to a diversity of viewpoints from both inside and outside the Agency. We are committed to using the best available science when evaluating these comments and making final endangerment and cause or contribute findings.

Attached, please find detailed answers to your questions, as well as responsive documents. EPA has carefully reviewed each of the documents responsive to your request and understands the time sensitivity of your request. At this time, we are not releasing a number of documents that would ordinarily remain internal to EPA in these circumstances, due to their inclusion of detailed personal privacy information about personnel matters. We are also not releasing a number of internal documents due to the ongoing deliberative process with respect to the proposed endangerment and cause or contribute findings. We are willing to re-visit and re-evaluate this body of documents upon completion of the deliberative process:

Thank you again for your letter. If you have further questions, please contact me, or your staff may contact Arvin Ganesan in EPA's Office of Congressional and Intergovernmental Affairs at (202) 564-4741.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa P. Jackson', written in a cursive style.

Lisa P. Jackson

Enclosures

cc: The Honorable Ed Markey, Chairman, Select Committee on Energy Independence and Global Warming
The Honorable Edolphus Towns, Chairman, Oversight and Government Reform Committee (without enclosures)
The Honorable Darrell Issa, Ranking Member, Oversight and Government Reform Committee

EPA Response to July 17, 2009 Letter

- 1. Was Dr. Carlin a member of a climate group within NCEE? Was he a member of any agency-wide climate groups?**

Dr. Carlin was a member of a climate group within the National Center of Environmental Economics (NCEE), which is part of EPA's Office of Policy and Economic Innovation (OPEI). That group was tasked with reviewing the draft Technical Support Document (TSD) for EPA's proposed endangerment finding for greenhouse gases. Dr. Carlin was not formally a member of the Agency-wide workgroup on climate change, although he did attend some meetings via conference call.

- 2. Was Dr. Carlin forbidden to work on climate change issues? Was he removed from any working groups on the topic?**

Because of personal privacy interests, we cannot provide detailed information on personnel matters.

The topics on which NCEE works vary according to the types of issues that arise at EPA, and assignments made to NCEE staff in part reflect that fact. In the case of the 2009 draft TSD, NCEE's role was limited and did not extend beyond developing the comments that were submitted to the OPEI representative on the Agency-wide workgroup.

Dr. Al McGartland, the Director of NCEE, informed Dr. Carlin on March 17, 2009, that he had decided not to forward Dr. Carlin's comments on the draft TSD, in their original form, separate from the consolidated comments submitted by NCEE. Dr. McGartland instructed Dr. Carlin to move on to subjects other than climate change, including completion of work on a database and other tasks Dr. Carlin had previously been assigned.

In making decisions about utilizing staff resources, EPA supervisors routinely weigh a number of factors, including an office's priorities and an individual's duties, skills, experience and work performance. Although Dr. Carlin is currently not working on climate change issues, he is one of several NCEE staff members who is available to work on climate change projects as the need and opportunity arises within NCEE, consistent with other workload demands.

- 3. If Dr. Carlin was removed from climate issues and related working groups, who made the decision to remove him?**

According to Dr. McGartland, he made decisions regarding Dr. Carlin's climate-related and other work. Please see the response to Question 2, above.

- 4. Does EPA currently have any plans to reorganize NCEE? If so, what is the basis for the reorganization? When were such plans first discussed?**

As part of the orderly transition to new EPA leadership, the Office of the Administrator asked for briefings and related discussions on how best to deploy the personnel and functions within OPEI, which is part of the Office of the Administrator. At EPA, any potential office reorganization is considered through an internally open and transparent process in which numerous internal stakeholders, including the Agency's labor unions, are offered opportunities to engage in discussions regarding an office reorganization, consistent with the applicable laws. No final decisions have been made in this regard.

5. What was EPA's timeline for its proposed endangerment finding? How long was NCEE given to review the TSD supporting the proposed finding?

In April 2007, the Supreme Court issued its decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), directing EPA to issue a finding as to whether greenhouse gas emissions endanger public health or welfare. Under the previous Administration, EPA prepared a draft TSD to provide a basis for making an endangerment finding in response to the Supreme Court's decision. Ultimately, that Administration decided not to propose an endangerment finding and instead issued in 2008 an Advance Notice of Proposed Rulemaking that was accompanied by the draft TSD as updated by EPA to reflect more recent scientific information. The public was given an opportunity to comment on the TSD, and EPA staff reviewed those comments and began the process of revising the draft TSD as appropriate.

On February 4, 2009, staff briefed me on the status of their progress on the endangerment issue. At the end of this briefing I stated that I wanted staff to complete their work on the TSD so that I could make determinations on whether greenhouse gases from motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. Then and now, I felt strongly that too much time had passed since the Supreme Court's decision in *Massachusetts v. EPA*, and that it was essential for the Agency to carry out its legal obligation in an expedited manner.

Considering the progress EPA staff made, I instructed staff to complete a proposed endangerment finding and accompanying draft TSD for my signature by mid-April of this year. As is typical in such processes, the specific details of the schedule for the endangerment proposal were developed by staff in the responsible office (in this case, the Office of Air and Radiation) considering the scope of the task and the associated workload. The TSD was updated and underwent internal EPA review by an EPA workgroup, which included representatives from NCEE, from March 9 – 16, 2009. The workgroup's Final Agency Review meeting regarding the draft TSD was held on March 18, 2009. The TSD, along with the draft proposal, was submitted to the Office of Management and Budget for formal interagency review on March 20, 2009. OMB returned the package to EPA with approval for final signature on April 16, 2009. I signed the proposal on April 17, 2009.

APPENDIX 25

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

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CHAIRMAN EMERITUS
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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

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FACSIMILE (202) 225-2525
MINORITY (202) 225-3641

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July 16, 2009

JOE BARTON, TEXAS
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MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE
PHIL GINGREY, GEORGIA
STEVE SCALISE, LOUISIANA

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

We write to follow up on Ranking Member Barton's June 24 letter to you (attached) to request additional information and documents relating to the facts and circumstances surrounding the preparation of the Environmental Protection Agency (EPA) proposed endangerment finding.

Questions about the process and treatment of critical opinion and debate within EPA have only increased since we wrote three weeks ago. Since that time, you or EPA spokesmen have issued statements at once minimizing the critical comments by a senior career employee, Dr. Alan Carlin, on the quality of the agency's basis for the proposed endangerment finding, and ignoring the substantive questions about the integrity of the EPA process raised by the alleged suppression of Dr. Carlin's report.

An EPA spokesperson said in response to press inquiries about emails indicating document suppression: "The individual in question [Dr. Carlin] is not a scientist and was not part of the working group dealing with this issue." This statement stands in conflict with the plain fact that Dr. Carlin is listed as an author and contributor to the EPA's Technical Support Document (TSD) prepared in support of the proposed endangerment finding, raising questions about the actual authorship and review process of this key document. In light of the apparent expedited pace with which this TSD was internally reviewed during your tenure, we also question whether listed authors, if they did contribute, had sufficient opportunity to evaluate and document whether the TSD represented a full, up-to-date examination of scientific evidence and uncertainties surrounding climate change.

In another instance, you testified during a July 7, 2009 Senate Environment and Public Works Committee hearing that you personally directed staff to inform Dr. Carlin that he could share his views widely, but you made no comments relating to the email evidence that Dr. Carlin was instructed not to discuss endangerment outside his immediate office, that he was to spend no more agency time on climate change or endangerment issues, and that his supervisor feared negative consequences for his office. These comments, therefore, left unaddressed our serious concerns about potential retaliation for dissenting views and the atmosphere for open debate, as well as the integrity of "scientific decision-making" at the agency for the proposed endangerment finding.

Your July 10 letter response and subsequent telephone conversation with Ranking Member Barton about that response did not mitigate our concerns about agency process and atmosphere. At this point, we cannot accept as plausible your contention that neither you nor your staff nor direct reports supplied or authorized timelines or other directives for collecting internal comments and for preparing the proposed endangerment finding, which was apparently sought by the Administration.

Furthermore, your letter was not fully responsive to the information and documents requested in our initial letter. Given the incomplete responses from EPA on this matter to date, we seek additional clarification to ensure Congress has the full and complete facts surrounding this matter. Accordingly, we write to seek additional information and documents pursuant to the inquiry sent on June 24, 2009. Please respond within two weeks of the date of this letter to the following:

1. Was Dr. Alan Carlin's work commenting on the Technical Support Document (TSD) dated March 2009 prepared as part of his official EPA duties?
2. Was the set of comments prepared during March 2009 by Dr. Carlin concerning the March 2009 draft of the TSD forwarded to EPA staff outside the National Center of Environmental Economics (NCEE)?
 - a. If so, please identify by name and office all EPA staff who received the document and explain how EPA staff outside NCEE came into possession of a document his supervisor said he would not forward to the program office responsible for preparing the proposed endangerment finding?
 - b. Please provide all documents, including, but not limited to, emails, calendar records, and meeting notes, relating to (1) Dr. Carlin's written comments on the draft(s) of the TSD, (2) his expressed views about climate change, and (3) his analysis or comments about the EPA process for developing an endangerment proposal.
3. Why was Dr. Carlin directed not to work any longer on climate change on March 17, 2009? (See email, attached). Do you support this directive? If not, when was Dr. Carlin allowed to work on climate change again?

4. Concerning the March 12, 2009, email from Dr. Al McGartland to Dr. Carlin and Dr. John Davidson: (1) explain the "tight schedule and the turn of events" and (2) explain why these two individuals were not to have "any direct communication with anyone outside of NCEE on endangerment," including "no meetings, emails, written statements, phone calls etc." (see attachment).
 - a. Were similar directives applied to others identified as authors and contributors to the TSD? If so, which person(s) originated these directives and when and how were they issued?
 - b. Have you, your staff, or EPA management restricted communication by any other career staff, particularly senior career professional staff, on the topic of climate change or any other science policy matter? If no, did this directive reflect your policies? Are you in agreement with this directive?
 - c. Please provide all documents, including, but not limited to, emails, calendar records, and meeting notes, relating to the decision to direct Dr. Carlin or Dr. Davidson not to communicate with anyone outside of NCEE on endangerment, including any directives or memoranda relating to your guidance on staff communication and/or on ensuring the scientific integrity and transparency at the EPA.
 - d. Have you had any concerns about unauthorized disclosures of information? Did those concerns ever involve NCEE?
5. In your July 10, 2009, telephone conversation with Ranking Member Barton, you stated that Al McGartland was "counseled" about his actions or emails regarding Dr. Carlin. Please explain how and when he was counseled, who counseled him, what specifically he was counseled about, and who ultimately directed that he be counseled. What was the basis for the counseling? Did EPA conduct an internal investigation of Dr. McGartland's conduct? If so, what was the allegation, and what did EPA find?
6. Please identify and provide documentation for the specific events you referenced in your July 7 Senate testimony that formed the basis for your statements regarding Dr. Carlin's attendance at or participation in conferences, and identify which specific events occurred during prior administrations and which specific events, if any, occurred during the Obama Administration.
 - a. Please provide records of travel requests since January 1, 2004 sought by and granted or not granted to Dr. Carlin for attendance at conferences or speaking engagements on the topic of climate change.
7. Please provide the date(s) and list of attendees for each of the EPA brown bag lunches related to climate change science, policy, or economics, referred to in your July 7 Senate testimony, in which Dr. Carlin participated.

8. According to a June 29, 2009, press interview with Dr. Carlin by FOXnews.com, Dr. Carlin says his supervisor, Dr. Al McGartland, was pressured to take Dr. Carlin off of climate research when he attempted to submit his TSD comments. Please identify the person(s) who instructed Dr. McGartland to remove Dr. Carlin from climate research, and the basis for their instruction. If EPA does not have this information, please explain why and how Dr. McGartland could be counseled without all pertinent facts.
9. Please describe the purpose, role and functions of the Office of Policy, Economics, and Innovation (OPEI), including the NCEE, within your headquarters operation.
10. Please describe any ongoing efforts to evaluate the role of OPEI, the NCEE, or its other component offices and what your plans are for this office or any of its components, including plans for staffing increases (or decreases), for changes to staff expertise, for changes to its function or role within the Agency Action Development Plan process or rulemaking process or other advisory or support function.
 - a. Please provide any evaluations of OPEI or its components you or your staff have requested to be conducted.
11. Please describe the EPA resources that have been and are planned to be devoted to the OPEI, including detailed budget information, broken out by center and function, the number of EPA employee positions (FTEs) assigned to work in these offices and their roles, the availability of contract funding support, performance goals, and measures for these specific office functions. Please provide this information for each of the years FY2008, FY2009 and FY2010.
12. Please describe the development of the TSD, including its initial development during the Bush Administration, and how the draft that circulated for review in March 2009 differed from the draft prepared in the Bush Administration? How was it updated?
13. Please identify the office and branch and individual(s) in charge of developing the draft TSD initially and the TSD draft that circulated in March of this year. Please also identify who in your office was responsible for advising you on and monitoring the draft TSD and its development.
14. Please explain why the EPA identifies Dr. Carlin as an EPA author and contributor to the April 17, 2009, TSD. What specifically was his contribution, when did he make that contribution, and what was the interaction between Dr. Carlin and EPA staff preparing the April TSD about his contribution, if any?
15. What was the schedule for EPA's internal review of the TSD prior to submitting the proposed endangerment finding to the Office of Management and Budget for review?
 - a. Who set the deadline for submission to OMB for review?

- b. Did you or your staff attend or participate in any internal workgroup meetings or conference calls relating to the development of the TSD? If so, please identify who attended or participated, when, and why.
 - c. Please provide all documents relating to the schedule for preparation of the TSD, including but not limited to documents reflecting the schedules and timetables for the drafting of the TSD and obtaining comments from EPA agency staff, calendars and attendance records for TSD workgroup meetings and conference calls, as well as all internal guidance and directives for preparing the TSD.
 - d. Why were offices, including the OPEI, outside of the Office of Air and Radiation given only about one week to comment on the TSD?
 - e. Please list the last 10 proposed rulemakings for which OPEI or its component offices were asked to comment, and identify how much time was provided to OPEI and NCEE for comment on each of these rulemakings.
16. Please explain the specific role and contributions of Stratus Consulting, the reported contractor that assisted EPA staff with preparation of the TSD.
- a. Please provide all documents related to the work performed by contractor(s) that assisted EPA staff in the preparation for the TSD issued in April 2009, including scoping documents, contracts, and drafts and comments, and any editorial contribution made by the contractor(s).
 - b. Please provide all documents related to the work to be performed by contractor(s) that are and/or will be assisting EPA staff responding to comments on the proposed endangerment finding and/or TSD, including scoping documents, and contracts.
17. Please explain the specific contributions of other EPA staff listed as "authors and contributors" to the TSD and explain how their contributions and evaluations were documented.
18. Please explain (1) the process for choosing, (2) the specific role, and (3) contributions and date of contributions of the Federal expert reviewers listed in the April 17, 2009 TSD.
- a. Please provide all comments and contributions by these reviewers, and related responses from EPA staff authors.
19. During the July 10 telephone call with Ranking Member Barton, you participated in the call via a speaker phone. If others were in your office during this call, please list their names and affiliations and provide any notes taken of the phone conversation and when you muted the phone.

20. If the EPA withholds any documents or information in response to this letter, please provide a Vaughn Index or log of the withheld items. The index should list the applicable question number, a description of the withheld item (including date of the item), the nature of the privilege or legal basis for the withholding, and a legal citation for the withholding claim.

Please provide the written responses and documents requested by no later than two weeks from the date of this letter. Should you have any questions, please contact Mr. Peter Spencer of the Minority Committee staff at (202) 225-3641.

Sincerely,



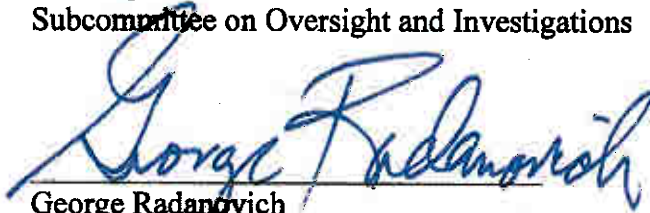
Joe Barton
Ranking Member



Greg Walden
Ranking Member
Subcommittee on Oversight and Investigations



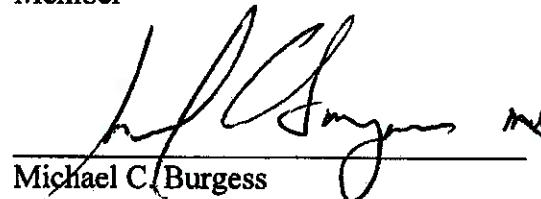
Nathan Deal
Member



George Radanovich
Member



John Sullivan
Member



Michael C. Burgess
Member



Marsha Blackburn
Member



Phil Gingrey
Member

cc: The Honorable Henry A. Waxman
Chairman

The Honorable Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

APPENDIX 26

**Fw: Internal EPA draft of Endangerment Tech Support Doc --
for Workgroup review**

Paul Balserak to: John Davidson, Alan Carlin, 03/11/2009 11:30 AM
Chris Dockins, Steve Newbold

thought you all might want this ... it's the track changes version comparing
the new TSD to the July 08 TSD.

~~~~~  
Paul Balserak  
Office of Policy, Economics, and Innovation  
Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Ariel Rios, Rm 3512-S (1804-A)  
Washington, DC 20460  
202-566-0072 (phone)  
202-566-0268 (fax)

----- Forwarded by Paul Balserak/DC/USEPA/US on 03/11/2009 11:30 AM -----

From: Ben DeAngelo/DC/USEPA/US  
To: Paul Balserak/DC/USEPA/US@EPA  
Date: 03/10/2009 10:51 PM  
Subject: Re: Internal EPA draft of Endangerment Tech Support Doc -- for Workgroup  
review

Paul, here is the track change version.

Paul Balserak---03/10/2009 03:35:19 PM---Hi Ben, You mention the TSD had  
been developed/released in July 08 - could you send me a track-ch

From: Paul Balserak/DC/USEPA/US  
To: Ben DeAngelo/DC/USEPA/US@EPA  
Date: 03/10/2009 03:35 PM  
Subject: Re: Internal EPA draft of Endangerment Tech Support Doc -- for  
Workgroup review

Hi Ben, You mention the TSD had been developed/released in July 08 - could  
you send me a track-changes version showing the changes from that document to  
the new draft we are reviewing? Or, alternatively, you could send the July 08  
version and I could do my own comparison of the two. Thanks,

Paul

~~~~~  
Paul Balserak
Office of Policy, Economics, and Innovation
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Ariel Rios, Rm 3512-S (1804-A)
Washington, DC 20460
202-566-0072 (phone)
202-566-0268 (fax)

APPENDIX 27



Accepted: NCEE and CCD discuss Science/TSD

Thu 03/12/2009 10:30 AM - 11:00

AM

Location: Room 856

Rooms: 1310L Room 856/DC-1310L-OAR@EPA

Alan Carlin has accepted this meeting invitation

Required:

Alan Carlin/DC/USEPA/US@EPA, Ben DeAngelo/DC/USEPA/US@EPA, Chris
Dockins/DC/USEPA/US@EPA, John Davidson/DC/USEPA/US@EPA, Marcus
Sarofim/DC/USEPA/US@EPA, Rona Birnbaum/DC/USEPA/US@EPA, Steve

Optional:

Paul Balsarak/DC/USEPA/US@EPA

APPENDIX 28



endangerment comments???

Al McGartland to: Alan Carlin, John Davidson

Cc: Steve Newbold

03/12/2009 12:23 PM

HI. Dina Kruger has several calls into me -- we keep missing each other. I'm not sure what she wants, but I know its about endangerment. I have seen Steve and John's preliminary comments, Alan I would be surprised if you weren't planning to submit comments. I'd like to see them

Above all, given the tight time frame and importance, please do not send comments to people outside of NCEE.

Al McGartland, PhD.
Director, National Center for Environmental Economics
US EPA
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20460

202.566.2244

redacted -
deliberate

APPENDIX 29



Re: qu re Alan Carlin 

Ann Wolverton o Al McGartland

04/27/2009 09:10 AM

OK, I will remove him from the team list - he is still accepting the team meetings - but of course, I am still sending them to him since he is on my list.

Ann

Al McGartland Yes he is off if everything. If people ask just say...

04/27/2009 09:05:48 AM

From: Al McGartland/DC/USEPA/US
To: Ann Wolverton/DC/USEPA/US@EPA
Date: 04/27/2009 09:05 AM
Subject: Re: qu re Alan Carlin

Yes he is off if everything. If people ask just say I needed to assign him to other things.
Sent via blackberry, please excuse typos and brevity

Al McGartland, PhD.
Director, National Center for Environmental Economics
US EPA
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20460

202.566.2244

Ann Wolverton

----- Original Message -----

From: Ann Wolverton
Sent: 04/27/2009 08:38 AM EDT
To: Al McGartland
Subject: qu re Alan Carlin

Hi Al,

If Alan is no longer allowed to participate in climate-related activities, does that mean he is off the team, off the seminar committee that plans the science seminars, etc? I just want to be cognizant of what he should be invited to.

Ann

APPENDIX 30

Congress of the United States
Washington, DC 20515

July 17, 2009

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Jackson:

Evidence recently uncovered by our respective Committees raises serious questions about the integrity of the regulatory decision making process at the Environmental Protection Agency (EPA). In a recent interview with Committee staff, an EPA employee described a polarized culture at EPA. It was "a battle," he said, "between climate believers and climate skeptics."¹ Objective science was getting lost.

You previously wrote that "Public trust in the Agency demands that we...fully disclose the information that forms the bases for our decisions."² Because we believe your commitment to this ideal is sincere, we respectfully request your cooperation as we work to resolve whether EPA suppressed internal dissent by inappropriately limiting staff contributions and by punishing staffers who opposed EPA's decision to propose an affirmative endangerment finding.

Specifically, credible evidence suggests that EPA proceeded on a predetermined course to propose the endangerment finding and erected substantial hurdles to limit opposing viewpoints.

In our joint letter dated June 23, 2009,³ we raised concerns about a series of emails, dated March 12-17, 2009, in which the director of EPA's National Center for Environmental Economics (NCEE) expressly refused to include a staff member's report in the official record. The staff member was Dr. Alan Carlin, a 37-year EPA employee. In the office director's view, the Administration was not interested in exploring questions of scientific uncertainty, as it had already "decided to move forward on endangerment" and Dr. Carlin's comments "[did] not help the legal or policy case for the decision."⁴ In another email, and in a subsequent interview with Committee staff, the director indicated that, while the report held some important ideas, attempting to submit it for the record would have negatively impacted NCEE and undermined its role within EPA.⁵ Given the

¹ Telephone Interview with Dr. Alan Carlin, Senior Research Analyst, National Center for Environmental Economics, in Washington, D.C. (July 9, 2009) [hereinafter *Carlin Interview*].

² Memorandum from Administrator Jackson to EPA Employees (Jan 23, 2009) available at <http://www.epa.gov/administrator/memotoemployees.html>.

³ Letter from Congressmen Sensenbrenner and Issa to EPA Administrator Jackson (June 23, 2009).

⁴ Email from Office Director of EPA's NCEE to Senior Operations Research Analyst at NCEE (March 17, 2009).

⁵ Telephone Interview with Dr. Al McGartland Director, National Center for Environmental Economics (July 1, 2009).

cultural battles that his staff described, the director's instinct to suppress the report may unfortunately have been warranted.

EPA attempted to dismiss these allegations by discrediting Dr. Carlin. An EPA spokeswoman stated that "certain opinions were expressed by an individual who is not a scientist and was not part of the working group dealing with the issue."⁶ EPA's response, however, directly conflicts with evidence gathered by Committee staff.

Interviews with Drs. Alan Carlin and John Davidson revealed that Dr. Carlin actively participated in the internal agency workgroup tasked with the responsibility of drafting and evaluating the endangerment finding and the Technical Support Document (TSD).⁷ It is our belief that his participation is adequately documented in emails sent between the organizers and members of the workgroup. Moreover, Dr. Carlin's important contributions on climate change were not in question previous to the suppression controversy, as both he and Dr. Davidson are listed as coauthors/contributors of the TSD report.⁸

Perhaps more troubling than the suppression of the report, we have uncovered serious and credible allegations of retaliation against Drs. Carlin and Davidson. It is our understanding that Dr. Carlin is now prohibited from working on climate change issues and has been reassigned to tasks previously performed by junior staff members and contractors.⁹ Specifically, Dr. Carlin has been removed from the climate change workgroup at NCEE, has been deleted from the group's email distribution list, is no longer invited to the group's periodic meetings, and has been forbidden from doing any work on the climate issues he had previously handled. According to sources, EPA took these actions in direct response to Dr. Carlin's submission of his report.

According to Dr. Davidson at NCEE, this action, while not unprecedented, deprived the center of a valuable resource on climate change. He said "Dr. Carlin had built up a wealth of knowledge and was a help as we attempted to grapple with the enormity of big picture climate science."¹⁰

Additionally, we have been informed that EPA is attempting to reorganize the NCEE in a manner that would result in the elimination of Dr. Davidson's position.¹¹ The

⁶ Ian Talley, *US Lawmakers Demand Probe Into Claims EPA Suppressed CO2 Study*, DOW JONES NEWSWIRE, (July 2, 2009).

⁷ Carlin Interview, *supra* note 1; Telephone Interview with Dr. John Davidson, Environmental Scientist, National Center for Environmental Economics, in Washington, D.C. (July 9, 2009) [hereinafter *Davidson interview*]

⁸ Benjamin DeAngelo et al., *Technical Support Document for Endangerment and Cause or Contribution Findings for Greenhouse Gases Under Section 202 (a) of the Clean Air Act*, available at http://www.epa.gov/climatechange/endangerment/downloads/TSD_Endangerment.pdf.

⁹ Carlin Interview, *supra* note 1.

¹⁰ Davidson interview, *supra*, note 6.

¹¹ *Id.*

reorganization would potentially eliminate the scientific staff from the office—effectively disbanding the staff who argued that the science underlying EPA's endangerment record should be updated.

As you are aware, your agency is under a legal obligation to consider all relevant evidence when making a regulatory determination, not just the facts and opinions that are politically expedient.¹² Moreover, the perception of retaliation against career civil servants, whose only offenses are to raise legitimate questions during review of a regulatory decision, raises serious questions about political retribution. Given your many commitments to the American people to an open and transparent process at EPA, we are alarmed that such activities are occurring under your watch.

As a preliminary matter, we request your agency provide our Committees with the following documents:

1. The February 26, 2009 email and attached documents sent to EPA offices requesting expedited interim tiering for the Endangerment Finding. This email was distributed by Stuart Miles McClain.
2. The March 2, 2009 email and any attached documents announcing the first intra-agency workgroup meeting on the endangerment finding.
3. All documents relating to the March 3, 2009 work group meeting, including all records of attendance and briefing memorandum distributed to members of the workgroup.
4. The March 9, 2009 email and any attached documents sent by OAR staff to members of the workgroup. This email contained a draft of the endangerment finding and the TSD.
5. The March 10, 2009 email from Dr. McGartland to Drs. Davidson and Carlin regarding the role to be played by the NCEE in the review of the TSD.
6. The March 10, 2009 email, sent at 12:30pm from OAR to members of the workgroup regarding the leak of options selection material.
7. All documents relating to the March 11, 2009 workgroup meeting, including all records of attendance and briefing memoranda distributed to members of the workgroup.

¹² *Ethyl Corp. v. EPA*, 541 F.2d 1, 36 (D.C. Cir. 1976) (stating the rulemaking record should include both "the evidence relied upon [by the agency] and the evidence discarded.")

8. All records related to the meeting scheduled for Thursday, March 12, 2009 between Alan Carlin, John Davidson, Ben DeAngelo, Rona Birnbaum, Stephen Newbold and others at the Agency.
9. The March 13, 2009 email to Paul Balsarak and Al McGartland by NCEE staff with their response to the draft technical support document.
10. NCEE's submission to OAR, commenting on the Endangerment TSD.
11. All documents relating to Dr. Carlin's removal from the climate change work group at the NCEE and his subsequent reassignment to other projects.
12. All documents relating to the potential reorganization of NCEE.

As this is a limited and narrow document request, we appreciate a prompt reply. If you withhold any of the requested documents, please state the basis and legal justification for doing so. All documents should be turned over to our respective Committees no later than July 30, 2009.

In addition to these documents, we would appreciate your assistance in arranging interviews with the following staff at EPA: Chris Dockins and Steve Newbolt from NCEE as well as Ben De Angelo, Dina Kruger, Paul Balsarak, and Rona Birnbaum. Because many of Dr. Carlin's statements related to our discussion with Dr. McGartland, we would appreciate the opportunity to briefly re-interview Dr. McGartland.

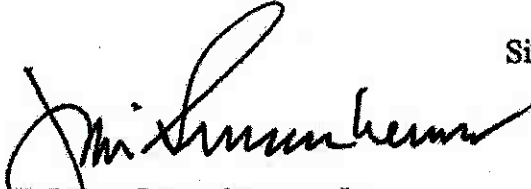
Finally, we request that you reply to the following questions before July 30:

1. Was Dr. Carlin a member of a climate group within NCEE? Was he a member of any agency-wide climate groups?
2. Was Dr. Carlin forbidden to work on climate change issues? Was he removed from any working groups on the topic?
3. If Dr. Carlin was removed from climate issues and related working groups, who made the decision to remove him?
4. Does EPA currently have any plans to reorganize NCEE? If so, what is the basis for the reorganization? When were such plans first discussed?
5. What was EPA's timeline for its proposed endangerment finding? How long was NCEE given to review the TSD supporting the proposed finding?

The Honorable Lisa Jackson
July 17, 2009
Page 5

We sincerely appreciate your cooperation with this investigation. If you have any questions regarding this request, please contact Bart Forsyth, General Counsel, House Select Committee on Energy Independence and Global Warming at 202-225-0110 or Kristina Moore, Senior Counsel with the Oversight and Government Reform Committee at 202-225-5074.

Sincerely,



F. James Sensenbrenner, Jr.
Ranking Member
Select Committee on Energy Independence
and Global Warming



Darrell Issa
Ranking Member
Oversight and Government Reform Committee

cc: The Honorable Edolphus Towns, Chairman
The Honorable Ed Markey

APPENDIX 31

From: Nathalie Simon/DC/USEPA/US
To: Nathaniel James/DC/USEPA/US@EPA, Diane Lynne/DC/USEPA/US@EPA
Cc: Al McGartland/DC/USEPA/US@EPA, Bill Evans/DC/USEPA/US@EPA, Amer
Al-Mudallal/DC/USEPA/US@EPA, Rosezella Canty-Letsome/DC/USEPA/US@EPA, Steve
Shapiro/DC/USEPA/US@EPA, Theresa Fleming-Blue/DC/USEPA/US@EPA, Ronald
Wiley/DC/USEPA/US@EPA, Anne-Marie Pastorkovich/DC/USEPA/US@EPA, Bernard
Schneider/DC/USEPA/US@EPA, Arelia Douglas/DC/USEPA/US@EPA, Tia
Green/DC/USEPA/US@EPA, Roseann Clark/DC/USEPA/US@EPA
Date: 07/13/2009 07:06 PM
Subject: Invitation to attend NCEE All Hands

Dear James and Diane--

I left you both voicemail messages earlier today, but thought I should follow up with an email as well.

As I indicated, we have an All Hands meeting scheduled with our NCEE staff tomorrow morning at 10:15 and one item on the agenda is the future of OPEI. We would like to invite representatives from each of the unions to attend. The meeting will take place in EPA West 5126.

I recognize that this invitation is arriving to you with very little advanced notice and we would of course like to provide you with every opportunity to participate. If you would like to participate in our meeting but are unable to attend tomorrow, please let me know as soon as possible and we will reschedule the meeting to better accommodate your schedules.

I apologize for the late notice.

Best Regards,
Nathalie

Nathalie B. Simon, PhD
Associate Director
National Center for Environmental Economics
USEPA, Mail Code 1809T
1200 Pennsylvania Avenue, NW
Washington, DC 20460
ph: (202) 566-2347 fax: (202)566-2363

----- Forwarded by Nathalie Simon/DC/USEPA/US on 07/24/2009 12:26 PM -----

From: Nathalie Simon/DC/USEPA/US
To: Al McGartland/DC/USEPA/US@EPA, Brett Snyder/DC/USEPA/US, Jennifer
Bowen/DC/USEPA/US, levitt.shelley@epa.gov
Cc: Chris Dockins/DC/USEPA/US
Date: 07/14/2009 08:41 AM
Subject: Agenda to today's All Hands

Hi--

Just wanted to make sure that our agenda items are covered for this morning's meeting. For the last two items, can you please let me know who will be covering these? If there is anything I can do to help follow up, please let me know.

Thanks!
Nathalie

Agenda for NCEE All Hands meeting
July 14, 2009

Not Responsive

- The future of OPEI and NCEE's economics function (AI)

Not Responsive