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Kill the Death Tax. Protect Social Security. Ensure energy Security.

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November 25, 2008

Air and Radiation Docket and Information Center
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Re: Regulating greenhouse gases under the Clean Air Act Docket ID: EPA-HQ-OAR-2008-0318

The 60 Plus Association submits these comments in response to the Advance Notice of Proposed Rulemaking (ANPR) on Regulating Greenhouse Gases under the Clean Air Act (CAA), issued by the Environmental Protection Agency (EPA) and published in the *Federal Register* on July 30, 2008.

I. Based on its careful analysis of this ANPR and its likely impacts on American businesses, jobs, minorities, low and fixed income families, and others, the 60 Plus Association concludes that EPA should *not* make an endangerment finding or promulgate these proposed rules. Such an action would have disproportionate impacts on minorities and would violate civil rights and accepted standards of science, economics and environmental justice.

The Clean Air Act is not an appropriate vehicle for regulating greenhouse gas emissions. EPA Administrator Stephen Johnson himself has noted: the Clean Air Act is “outdated,” intended to control “regional pollutants that cause direct health effects,” and “ill-suited for the task of regulating global greenhouse gases.” Pursuing the course of action outlined in the ANPR, he continued, “would inevitably result in a very complicated, time-consuming and likely convoluted set of regulations” that “would have a profound effect on virtually every sector of the economy and touch every household in the land.”

Making a finding that CO₂ emissions “endanger” the health and welfare of American citizens – and promulgating rules to restrict and control energy use and greenhouse gas emissions – would have major, far-reaching and harmful impacts on millions of businesses and families. Poor and minority families would be especially hard hit. Moreover, the environmental benefits of these proposed rules would be minimal, at best.

EPA must therefore *not* move forward with a proposed rule or any other type of regulation of CO₂ emissions under the Act. Regulating carbon dioxide and other greenhouse gases under the Act would result in a cascade of unintended consequences that will wreak economic havoc on all sectors of business and commerce in the United States, and on families and communities throughout our nation.

- It would severely affect communities, states and regions that are heavily dependent on hydrocarbons for electricity generation, heating, cooling and manufacturing.
- It would seriously disrupt agriculture, tourism, manufacturing and other sectors that are the principal sources of jobs and revenue in many areas.
- It would have particularly severe impacts on poor, elderly and minority families that are already struggling with high energy prices, and reduced employment and economic opportunities.
- By driving up the cost of fuel, food, consumer products and hiring or retaining workers, regulating greenhouse gases under the Clean Air Act would impair human health and welfare, hobble civil rights progress and roll back civil rights gains – because all these earmarks of life, liberty and pursuit of happiness are dependent upon continued supplies of abundant, reliable, affordable energy.

By driving up the cost of energy, instituting major permitting and compliance costs on businesses and other organizations, and micro-managing virtually every business, economic and personal decision, the proposed regulatory program would impose the equivalent of a massive tax hike – in the midst of our most severe economic crisis in decades.

The proposed EPA rules would undermine all efforts to resuscitate our economy. They would deepen and prolong the recession; reduce family incomes, business profits and government revenues; and make it far more difficult for families, the private sector or government to respond to and recover from future crises and disasters, whether due to normal weather, climate change (natural or human) or other causes.

The proposed rules would cut off vital sources of critically needed energy and revenue, by making it difficult or impossible to develop new domestic oil, gas and coal deposits that could generate trillions of dollars in lease bonuses, rents and royalties, corporate taxes and worker income taxes. They would force the United States to import more energy and result in more jobs being export or outsourced to countries that do not operate under such restrictive, anti-competitive regulatory regimes.

The rules might eventually create a few million new “green-collar” jobs. But they would eliminate many millions of jobs that depend on the production and use of hydrocarbon fuels and the abundant, reliable, affordable energy that “carbonless” energy cannot provide, and will not provide for decades to come.

The regulatory regime contemplated in the ANPR would have extensive and profoundly negative impacts on every aspect of our energy, economic and business infrastructure; on employment, investment and incomes; on people’s ability to afford even heating, air-conditioning, food and other basic necessities; on living standards, economic opportunities, civil rights, and basic concepts of social and environmental justice; on the very social, legal, free enterprise and Constitutional structure of our nation; and most importantly, on the health and welfare of Americans of every ethnic, social and economic class, but especially minorities, people in blue collar jobs and families earning less than \$50,000 per year.

Therefore, EPA needs to demonstrate – with replicable, science-based evidence that is clear and convincing, if not beyond a reasonable doubt – that:

(1) greenhouse gas emissions will in fact cause floods, droughts, malnutrition, disease, rising sea levels and other manifestations of major global warming, and do in fact endanger human health and welfare;

**(2) the actions contemplated in the ANPR will indeed keep global temperatures from rising, prevent the harms that EPA predicts, and safeguard the health and welfare of American citizens; and
(3) the proposed regulations will not cause such significant damage that they themselves threaten human health and welfare even more than the alleged climatic effects of GHG emissions.**

We believe EPA has failed to meet a reasonable burden of proof on any of these fundamental issues. The agency has presented no convincing evidence demonstrating that CO₂/GHG emissions cause significant or catastrophic climate change, and thereby endanger the human health and welfare of Americans.

Computer models, worst-case scenarios, headlines, assertions, and reports that simply repeat these claims do not constitute evidence. Moreover, the models, scenarios, assertions and reports relied on by EPA are contradicted by empirical observations and analyses by numerous atmospheric, climate and other scientists. The models and reports that predict climate-related cataclysms thus constitute nothing more than speculation, completely insufficient as the basis for such far-reaching regulations as these.

The alleged consensus on global warming and its effects, as asserted by EPA, simply does not exist. Major battles are raging in the scientific community over virtually every aspect of catastrophic climate change theory, and literally hundreds of climate scientists and thousands of other scientists vigorously contest the assertions and conclusions being made by EPA and others, regarding the alleged effects of carbon dioxide and greenhouse gas emissions on climate and human health and welfare.

These “skeptical” scientists also recognize – as must EPA and other policy makers – that CO₂ is vital for all life on Earth. That more CO₂ and moderately higher temperatures bring numerous benefits, especially for agriculture, as well as potentially negative effects. And that existing climate models do a very poor job of representing and analyzing our still very limited understanding of highly complex atmospheric and climatic processes – rendering their projections, forecasts and worst-case scenarios of little or no value in making far-reaching policy decisions like those presented in this ANPR.

The “skeptical” scientists also point out that Earth’s climate has changed, often dramatically, many times in the past – obviously for reasons having nothing to do with human greenhouse gas emissions. They note that the Earth has not warmed for nearly a decade; the temperature graph is flat. They also emphasize that malaria and other diseases were widespread in the United States, Europe and even Siberia before 1960; have nothing to do with warmer temperatures; are instead spread and perpetuated by poorly conceived policies, extensive poverty, and misallocation of human and financial resources; and thus represent a misleading and deceptive rationale for trying to prevent a few degrees of hypothetical global warming.

Canadian environmentalist Lawrence Solomon’s book, *The Deniers: The World Renowned Scientists Who Stood Up Against Global Warming Hysteria, Political Persecution, and Fraud**And those who are too fearful to do so*, is an informative and compelling compilation of their expertise, research and views. The Senate Environment and Public Works Committee Minority website summarizes the perspectives of nearly 500 “skeptical scientists.” And the Oregon Institute for Science and Medicine lists 32,000 scientists who challenge the theory of global warming cataclysm. These are just a few of many available compendiums of solid, fact-based scientific thinking that contradicts EPA claims and calls for action.

Basic principles of ethics, sound science and honest, responsible policy-making require that EPA consider *their* findings and conclusions, as fully and fairly as the Agency considers the findings and conclusions of those scientists who say carbon dioxide and other greenhouse gas emissions are causing a climate crisis.

A full and honest weighing of differing or competing views, findings and conclusions is essential under any circumstances. It is absolutely critical in this instance, which involves rules that will profoundly (and

often disproportionately) affect our nation's energy supplies, revenues and expenditures, energy and economic structure and sectors, employment, geographic regions, and especially the health, welfare, dreams, aspirations and civil rights of minority, poor and elderly families.

II. EPA's proposed EPA regulations would have far-reaching, significant and potentially disastrous impacts on human health and welfare in the United States.

Based on our analysis of these EPA proposals, and the science and economics behind them, the 60 Plus Association concludes that the *real threats* to the human health and welfare of American citizens will come – not from greenhouse gas emissions or climate change – but from the very regulations that EPA is proposing under this Advance Notice of Proposed Rulemaking to curb emissions and supposedly prevent global warming.

American families are already struggling to cope with a severely weakened economy, decreased equity in their homes, reduced credit availability and, in many cases, lost jobs. They face sharply higher food, electricity, gasoline and natural gas prices, compared to just four years ago. Lower income families have been especially hard hit and face particularly bleak prospects if these proposed rules are promulgated.

According to Energy and Census Department studies, families that earn \$50,000 or more annually spend “just” 4% of their income on energy. In stark contrast, families earning less than \$10,000 per year spend nearly half of their annual income (46%) on energy, forcing them to make drastic cuts in other spending. Families in between, those that earn less than \$50,000 a year – 54% of all American households – tell researchers that they are often compelled to make difficult decisions on which bills to pay.

In many minority and blue collar communities, the effects of high energy prices, prolonged shortages and frequent electricity interruptions are especially severe. They include fewer goods and services sold, disrupted assembly line production, lost business revenue, lost wages and jobs, more frequent interruptions in computer, telephone, television and lighting, and health and mortality concerns. Impacts on elderly communities are similar.

The threats to human health and welfare from imposing these proposed regulations (or a cap-and-trade or other restrictive energy and climate change program) will hit poor families hardest. They include:

- Soaring energy prices, and thus skyrocketing prices for all consumer products;
- Inability to afford proper heating and air-conditioning, leading to hyperthermia and hypothermia;
- Having to choose between heating and eating, paying the rent or mortgage, buying clothing or medicine, taking a vacation, paying bills, giving to charity, or saving for college and retirement;
- Increasing unemployment, as companies cut work forces, suspend construction projects, outsource work to other countries, and reduce purchases from other companies, to pay for compliance costs and more expensive energy – and as other companies simply file for bankruptcy, or close their doors;
- Reduced tax payments and government revenues, as companies and families pay less in taxes because they are earning less – thus leaving local, state and federal government agencies with fewer funds for LIHEAP, welfare and other social programs;
- Shifting to wood and coal in open fires, in cold/damp homes, because poor families are unable to pay soaring energy bills – thereby bringing back tuberculosis and other diseases that were common in an era that most Americans thought was gone forever, and probably lowering life expectancy;
- Reduced nutrition, doctor visits, medical checkups and quality of health, because people lose their jobs, insurance, and ability to afford wholesome food and regular medical care;

- Especially severe impacts on industries and regions that are heavily dependent on hydrocarbon-based energy, such as airline, trucking, tourism and manufacturing industries ... agriculture, housing and automobile sectors ... and Midwestern states where coal-fired power plants predominate;
- Growing anger and resentment over having every aspect of their business, professional and personal lives regulated by politicians, bureaucrats, courts and activists, and seeing their jobs and savings exported to countries that do not have to operate under such regulatory restrictions;
- Increased stress, anxiety, depression, family violence, and suicide, due to lost jobs, soaring costs of living, untreated cancer and disease, heat and cold-related illness and other negative effects of prolonged economic hardship;
- Widespread civil disobedience, civil unrest and crime, as a result of the economic suffering and impacts of the regulations on people's daily lives, freedoms and living standards;
- Reduced minority advancement and a rolling back of civil rights gains, because actually realizing legally and constitutionally protected rights and opportunities depends on a strong economy and secure supplies of reliable, affordable energy;
- Increased poverty, disease and premature death among people in Third World countries, who are dependent for their livelihoods on goods sold in an America that becomes increasingly protectionist, economically depressed, and unwilling to spend money on anything except basic necessities, due to draconian EPA policies on energy use and emissions. (This is over and above the poverty and disease caused by a dearth of electricity and over-reliance on wood and dung fires for energy, due in large measure to developed-country policies that discourage, obstruct and refuse to finance the construction of coal, gas, nuclear and hydro electricity projects.)

Every one of these impacts from the ANPR rules deprives people of their human and civil rights, their opportunities to improve their lives, living standards and socio-economic status, their fundamental rights to equal justice and equal protection under the law.

In every instance, these adverse impacts will be felt most severely by minority, blue collar, elderly and other families on low or fixed incomes. They will be least able to afford higher energy, food, transportation and healthcare costs. They will be the first to lose their jobs in an economy that faces increasingly more expensive, less reliable and less available energy.

Middle and upper class families will be much better able to endure and survive these hardships. The very rich will feel the impacts of these EPA regulations and policies least of all. However, no one, rich or poor, should be forced to endure and pay for unnecessary, counterproductive, punitive regulations like these.

The ultimate result of the regime contemplated by the ANPR would be to overturn the most fundamental earmarks of American society, law, justice and civil rights: equal rights, equal opportunities, and a chance to achieve the American Dream. All will be threatened by EPA policies and regulations that drive up the price of energy, food and consumer goods, retard or stop economic growth, destroy jobs, and drive entire companies, industries, families, communities and geographic regions into poverty.

III. A new Heritage Center study supports 60 Plus's concerns about the social, economic and civil rights impacts of EPA's proposed climate change rules.

The 60 Plus Association's conclusions about the significant adverse economic and social impacts of EPA's proposed global warming regulations under the Clean Air Act reflect and are based in part on the October 2008 report by the Heritage Center for Data Analysis – "CO₂ Emission Cuts: The economic costs of EPA's ANPR regulations," by David Kreutzer and Karen Campbell. That report is hereby incorporated

by reference into these comments. A copy of the report is attached to or included with these comments, and should be considered an integral part of them.

60 Plus notes, however, that this Heritage Center analysis of the ANPR's economic impacts assumes that EPA can cut CO₂ emissions gradually, as envisioned in the Lieberman-Warner bill: that is, reduce CO₂ by about 2% per year from 2012 to 2050. An endangerment finding would result in far faster, more dramatic and less flexible CO₂ reductions, driving costs much higher, much more quickly.

Moreover, the Heritage Center study does not include any estimate of administrative compliance costs. A U.S. Chamber of Commerce study estimates that there may be over 1,000,000 new entities that will need permits under the Clean Air Act, if it is used to regulate CO₂. This dramatic increase in permits will cost billions of dollars annually and burden both businesses and state regulatory agencies.

The Heritage Center study likewise does not include estimates of the social and economic costs of the impaired health and well-being of people who are forced to change to smaller houses, smaller vehicles, lower thermostat settings in the winter and higher settings in the summer – or respond to the many other impacts noted above that would result from regulations contemplated under the ANPR.

Finally, the impacts calculated by the Heritage Center are only for the initial years 2010 to 2029. By 2029, CO₂ emissions are targeted to be 31% below 2005 levels. This level is not even half of the ultimate target of 70-80% reduction by 2050. The Center's calculations are only for the first 20 years of a 40-year schedule of carbon dioxide emission cuts, under a much more gradual reduction schedule, and for far fewer sources, than those contemplated by EPA.

All of this means a likely doubling or tripling of the Heritage Center's estimates of 3,000,000 lost manufacturing jobs and \$7 trillion in lost GDP. In other words, the regulatory regime proposed by this ANPR could ultimately cost the United States as many as 9,000,000 jobs and \$21 trillion in lost GDP.

IV. Economic growth and hydrocarbon use in other countries will further increase carbon dioxide levels, no matter what the United States does.

China, India, Brazil, Indonesia and other developing countries are moving forward with aggressive plans to use coal and other hydrocarbon fuels to foster rapid economic growth and lift their people out of poverty. Their combined CO₂/GHG emissions are now nearly twice those of the United States. CO₂ emissions from China alone are projected to double over the next 20 years. And none of these countries is willing or able to restrict its economic growth and delay improving its citizens' lives, based on computer models, worst-case scenarios, exaggerated fears of climate cataclysms, or broken promises by wealthy countries that signed the Kyoto Protocol but now emit far more GHG than they did in 1990.

As if to underscore its unwillingness to curtail economic growth, and its inability to reduce greenhouse gas emissions in the near term, China is now insisting that the United States and other developed nations must devote 1% of their GDP to help developing nations cut emissions. For the U.S. alone, that would mean over \$100 billion annually. That simply can not and will not happen.

In Europe, people and politicians are beginning to realize that global temperatures are not rising, and that climate change policies exact huge costs on people, businesses, jobs and the environment. Countries are demanding cost effectiveness studies before any further action is taken. Italy and former Eastern Bloc countries have said flatly that they can not and will not sacrifice their industrial base and economy, by eliminating coal-based electricity generation and other hydrocarbon use to promote global warming policies. Europe is now making any future climate change policies dependent on what China and India do.

That means global levels of atmospheric carbon dioxide will continue to rise rapidly, even if the EPA imposes these draconian regulations on the United States – destroying businesses, jobs, prosperity, life savings, economic opportunities and civil rights in the process.

Indeed, the International Energy Agency's "World Energy Outlook 2008" report states bluntly that the current goal of stabilizing atmospheric carbon dioxide levels at 450 ppm for *the world as a whole* is less than the level of projected emissions for non-OECD countries alone. In other words, the developed/OECD countries cannot by themselves enable the world to achieve this 450-ppm level, *even if they reduced their emissions to zero*.

The IEA is not even talking about the political feasibility of reaching 450 ppm. The "Outlook 2008" report concludes that it is highly uncertain that reaching this goal is even technically achievable, as the emission-reduction scenario assumes there will be broad deployment of technologies that have not yet even been proven, and certainly are not commercially available.

Simply put: Even if carbon dioxide really does drive climate change, the onerous costs that EPA's proposed rules would impose on consumers, taxpayers, seniors, minorities and poor families would keep global temperatures from rising by a mere (and probably undetectable) 0.1 degrees Fahrenheit, or less. Such widespread, intense and intolerable pain for such minimal environmental gain would be immoral, unjust and unconscionable.

V. EPA's proposed rules would reduce coal-based electricity generation, increase electricity prices substantially, and harm businesses, families and communities.

As Energy Information Administration data document, with few exceptions, those states that have the least coal-fired electricity generation impose the highest electrical rates on their consumers. Those states that depend most heavily on coal for electricity generation enjoy the lowest electrical utility rates.

In 12 states where coal generates 47-98% of the electricity, rates average less than 7 cents per kilowatt hour. In 12 more states where coal generates 45-77% of the electricity, rates average less than 8.4 cents per kWh. Rates in less-coal-dependent continental states range from 8.5 to 16.2 cents per kWh, except in the Pacific Northwest, where hydroelectric power ensures some of the lowest rates in the nation.

These proposed EPA rules would likely increase electrical rates in coal-dependant states by 25-50 percent, according to government and industry studies. The impacts of such rate hikes on families, manufacturers, small businesses, farms, schools and hospitals would be enormous, even disastrous.

Moreover, outside of the Northeast, Alaska and Hawaii, the three states with the highest electricity rates in the nation – California, Texas and Florida – have the largest number of Hispanics: nearly 56% of the total U.S. Hispanic population. They also have sizable populations of African Americans and other minorities. This raises troubling questions of disproportionate impacts, environmental injustice and trampling on civil rights as a result of the proposed EPA rules.

We also note that the still theoretical and untested carbon capture and storage (CCS) technology which some propose as the only acceptable way to keep coal-fired electrical generating plants in operation will be expensive to design, build and install. It will require long pipelines to distant subterranean storage sites – and could require as much as 25% of a plant's generated electricity to capture, store and transport carbon dioxide. That would necessitate building a 1250-MW power plant to get 1000 MW of electricity

output for consumers. That, in turn, would mean financing more expensive construction, retrofitting and maintenance of power plants that include CCS technology; burning 25% more coal to power the facilities; further upward price pressure on coal; a 25% increase in electricity prices just to cover fuel costs; and probably a 35% or more overall increase in electricity prices. (CCS studies should nevertheless proceed, but these considerations must be recognized at all times.)

The alternatives to this would be equally painful and problematic: less electricity for a nation that depends on this energy resource more and more every year, and on coal for half of its electricity; more nuclear plants, which will encounter numerous regulatory and legal delays; or vastly more wind turbine farms that require extensive acreage and raw materials (concrete, steel and fiberglass), generate intermittent and unreliable electricity, and must be backed up by natural gas-fired power plants.

It is therefore unnecessary, wrong, immoral, unjust, and harmful to human health, welfare and basic Constitutional rights for EPA to make an endangerment finding and adopt any of the policies and regulations outlined in the ANPR.

Moreover, doing so would do little or nothing to prevent climate change. It would bring little or no environmental gain. And in fact, it would result in significant environmental damage, as people cut down trees for firewood, burn wood and coal in open fires, build massive wind turbine farms and solar panel arrays across millions of acres of scenic lands and wildlife habitat, and take other (legal or illegal) steps to ensure the survival of families, businesses, jobs and communities.

VI. Despite these deep concerns, the 60 Plus Association nevertheless does support the political decision to Issue an ANPR.

Much has been made of EPA's decision to issue the ANPR in lieu of an endangerment finding and proposed rule, and of its decision to issue the ANPR as drafted in lieu of a more "traditional" ANPR that seeks comment on a few general, open-ended questions. In our view, these issues are irrelevant or moot. What is important now is that *Congress* decides whether it or EPA is the appropriate institution to determine climate policy, and whether it is willing to allow EPA to make that decision through an administrative rulemaking procedure in response to a Supreme Court decision.

Content aside, EPA's political decision to issue an ANPR was a good public policy decision, because it allows an open debate as to how the CAA will operate in the context of greenhouse gases. Undertaking environmental regulations without a full understanding of the legal, economic and policy decisions can only lead to disaster, and for this reason the ANPR approach of gathering facts and information is often a good one. The record developed in response to this ANPR will, conceivably at least, inform the public as to what the nation can expect if EPA regulates greenhouse gases under the CAA.

EPA is acting under a directive from the U.S. Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007). In *Massachusetts*, the Court made two key findings: First, greenhouse gases fall within the capacious definition of "air pollutant" found in CAA section 301, thereby giving EPA authority to regulate greenhouse gases under the CAA. Second, EPA must determine either:

- (i) that GHGs *do* cause or contribute to air pollution levels that may reasonably be anticipated to endanger public health or welfare, as required by section 202(a)(1);
- (ii) that greenhouse gases do *not* contribute to climate change; or
- (iii) that there is a reasonable explanation (which the agency must provide) as to why EPA can not or will not exercise its discretion to make an endangerment finding.

To date, EPA has not made a formal endangerment finding, nor is it under a firm deadline to do so. The Court stated in *Massachusetts* that “EPA no doubt has significant latitude as to the manner, timing, content and coordination of its regulations with those of other agencies.” *Id.* at 1462. The matter is therefore before EPA on remand of *Massachusetts* and must be addressed in the context of regulatory petitions and other requests made to EPA to regulate greenhouse gases.

Because EPA has such latitude as to the matter, timing and content of its response to *Massachusetts*, the ANPR is a good vehicle for EPA to determine whether and how to make a final decision on the ultimate issue left open by the Court: whether greenhouse gas emissions from any class or classes of new motor vehicles or new motor vehicle engines endanger public health or welfare – or why EPA cannot or will not exercise its discretion to make an endangerment finding.

Moreover, it is clear from the ANPR that EPA itself does not know how to apply the CAA to greenhouse gases. The ANPR contains roughly 400 open-ended legal and policy questions, ranging from the general (the best available science for an endangerment finding) to the specific (application of section 179B to attainment plan requirements).¹ It is unreasonable to think that EPA would have had correct answers to even a fraction of these questions, enabling it to withstand judicial review, had it just jumped into the regulatory briar patch by finding endangerment.

A formal CAA greenhouse gas rule of the magnitude covered by the ANPR could require hundreds of rulemakings and could ultimately result in a decade or more of litigation. There are simply too many questions to be addressed and decisions to be made, and proceeding with a formal rule prior to answering the questions raised in the ANPR would have been bad public policy.

There is therefore nothing wrong with taking 120 days (at least) to examine the many issues involved in applying the rigid requirements of the CAA to greenhouse gas emissions.

VII. If implemented, the Clean Air Act regulatory structures set forth by EPA in the ANPR would cause regulatory chaos.

Although the 60 Plus Association agrees with EPA’s initial decision to issue an ANPR, we have major concerns with the actual content of the ANPR as drafted by EPA staff. Put simply, the Clean Air Act is not an appropriate vehicle to regulate greenhouse gases. The ANPR, both intentionally and unintentionally, makes this fact abundantly clear.

A. EPA vastly oversteps its authority and communicates a false and dangerous belief that it can control the U.S. economy through CAA regulation.

The scope of the endangerment finding required by *Massachusetts* is relatively limited, and pertains only to the precise issue of whether greenhouse gas emissions from any class or classes of *new motor vehicles* or *new motor vehicle engines*, in EPA’s judgment, cause endangerment.

However, as described further in part C of this section, an endangerment finding limited to motor vehicles could quickly and easily lead to an inevitable regulatory cascade – initiated by agency decisions, litigation and interest group “petitions,” and triggering obligations to promulgate National Ambient Air Quality

¹ The 600-page ANPR is backed up by more than 11,450 pages of highly complex, technical materials that EPA has placed in the ANPR public docket. As if that were not enough, these 11,450 pages of technical materials refer in turn to more than 6,613 pages of core references and scientific studies.

Standards (NAAQS), New Source Performance Standards (NSPS) and other requirements such as Prevention of Significant Deterioration (PSD) and Title V operating permits.

Finding endangerment for vehicles, therefore, could easily lead to vast regulation of *buildings and other stationary sources*. Perhaps for this reason, EPA went far beyond motor vehicle regulations in the ANPR and set forth regulations for *all* sources of greenhouse gas emissions – in other words, the entire economy.

By “all sources of greenhouse gas emissions,” EPA means *everything*: cars, trucks, planes, trains, boats, office buildings, refineries, manufacturing plants, tractors, lawnmowers, motorcycles, schools, hospitals, data centers, breweries, bakeries, farms, and countless other sources. EPA details in the ANPR the methods it could use, not only to regulate the specific emissions from those sources, but also to set radical new standards for the *design and operation* of those sources. Virtually the only greenhouse gas emissions the ANPR does not cover are the CO₂ emissions exhaled when animals and human beings breathe.

From a legal standpoint, EPA believes the CAA gives it full authority to take such invasive action. In fact, EPA begins its discussion of relevant legal authorities with this statement: “The CAA provides broad authority to combat air pollution. Cars, trucks, construction equipment, airplanes and ships, as well as a broad range of electric generation, industrial, commercial and other facilities, are subject to various CAA programs.” 73 Fed. Reg. at 44417.

EPA ultimately concludes that, because regulation of motor vehicles under Title II would lead to regulation under other CAA provisions, it should use the ANPR to outline in great detail the wide range of CAA programs it believes it can invoke and even tangentially apply to greenhouse gas emissions.

Many of EPA’s suggested regulatory options would reshape business models and long-term planning for manufacturers, parts suppliers and vendors. They would affect research and development, bottom-line profits and employment decisions of numerous businesses, both large and small.

EPA routinely suggests radical options such as engine redesign, fuel switching, new infrastructure, equipment and work practice standards, product redesign and aerodynamics, early retirement of equipment, and even sector-specific cap-and-trade programs. EPA makes these suggestions with little or no concern for the fate of businesses engaged in these particular sectors.

For instance, EPA nonchalantly suggests replacing two-stroke gasoline engines in all handheld lawn care applications and recreational vehicles with four-stroke engines. If carried out, such a regulation would literally eliminate an entire line of business for lawn care equipment and recreational vehicle manufacturers, and force a retooling of entire industries, diverting hundreds of billions of dollars from arguably far more vital and productive purposes.

Some technical and operational changes presented in the ANPR border on the absurd. For instance, a common solution EPA suggests for most mobile sources (cars, trucks, planes, trains and motorcycles) is a regulatory limit on speed. In other words, force Americans to drive (or fly, cruise or float) more slowly, and thus reduce their productivity, and available time for other endeavors.

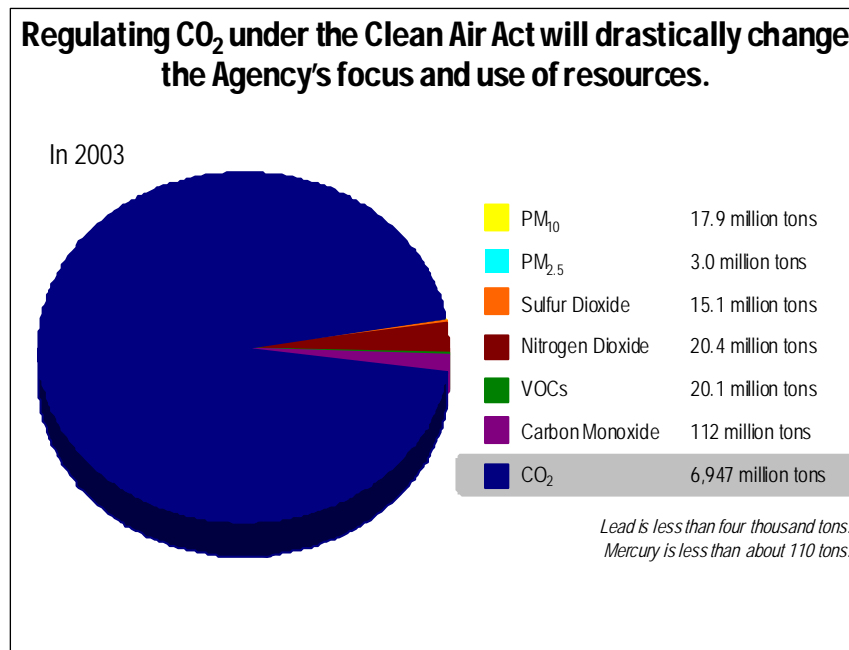
EPA truly believes it can control the economy through programs embedded within the CAA. This is far too much economic control by an agency that was created by an Executive Order without an overarching mission set forth by Congress.

B. Greenhouse gases are not suited for regulation under the Clean Air Act.

The fundamental problem with using the Clean Air Act to control greenhouse gas emissions is that CO₂ is a much different gas than any other gas typically covered by the Act. For one thing, it is emitted in much greater quantities. As of 2003, roughly 19 times more CO₂ was emitted than the six existing CAA criteria pollutants combined.

Because CO₂ is emitted in far greater quantities by a much wider range of sources, the thresholds for regulation built into various CAA sections (for instance, those dealing with PSD, Title V and Hazardous Air Pollutants) are so low that they will “catch” a much broader segment of the population than Congress could possibly have intended when it wrote the CAA.²

That means attempting to regulate carbon dioxide under the Clean Air Act would dramatically change the agency’s focus and its use of personnel and financial resources. Those resources would have to be redirected away from regulating the six criteria pollutants – and devoted almost entirely toward CO₂ and other greenhouse gases. State and local government agencies would likewise have to devote their much more limited personnel and financial resources to reviewing and processing thousands of additional applications that would be submitted by businesses and facilities that emit greenhouse gases.



CO₂ also differs from other CAA-covered gases in that it has a long atmospheric lifetime and is capable of long-range transport. CO₂ emissions from the U.S. are transported to other nations, and CO₂ emissions from other nations (such as China and India) are carried to the U.S.³ Put another way, even if the U.S.

² For instance, facilities that emit greater than 250 tons per year of CO₂ (or, in the case of 28 industrial categories, 100 tons per year) will be subject to PSD permitting. A study by the U.S. Chamber of Commerce, discussed later in these comments, estimates that over 1 million buildings will be exposed to possible regulation under PSD rules. An even greater number will be forced to obtain Title V operating permits, which has a 100-ton-per-year threshold. The number of regulated facilities balloons even further if CO₂ is designated a Hazardous Air Pollutant (HAP); the threshold for HAP regulation is 10 tons per year of a single pollutant or 25 tons per year of a combination of pollutants. Many American houses easily cross the 10 ton-per-year threshold.

³ EPA acknowledges in the ANPR that long-range transport of greenhouse gases is a serious problem, and suggests using CAA Section 179B as a means to address the issue. Section 179B requires that EPA approve a state

were to eliminate all of its greenhouse gas emissions today, our CO₂ levels would not be zero, and CO₂ concentration in the atmosphere would still increase. For this reason, any action to address greenhouse gas emissions must be international in scope. The programs in the ANPR would be domestic only, and ultimately will do very little to curb global greenhouse gas concentrations.

Finally, carbon dioxide differs from other pollutants in that it is in no way a pollutant in the normal legal and regulatory sense of being dangerous or hazardous to human health or welfare. It has the potential for being regulated as a “pollutant” solely because it is alleged to be a cause of global climate change that could result in floods, droughts, storms and other events that might threaten health or well-being. Even more important, as pointed out earlier, CO₂ is a natural component of the Earth’s atmosphere – a natural compound that is essential for plant growth and all life on our planet.

C. An endangerment finding could lead to an unmanageable regulatory cascade.

Perhaps the most troubling aspect of CAA regulation of greenhouse gases is that, despite the assertions of EPA and others, EPA simply cannot regulate “a little.” A finding of endangerment for motor vehicles under Section 202(a)(1), on its own, could trigger a regulatory cascade and force EPA to begin regulating the entire U.S. economy through various other major CAA programs. According to EPA, “[w]hile no two endangerment tests are precisely the same,” 73 Fed. Reg. at 44419, they generally call for similar elements: whether the emissions cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. EPA notes that “similar” endangerment language is found in sections 108 (NAAQS), 111 (NSPS), 112 (HAPs), 115 (international air pollution), 211 (fuels), 213 (non-road engines and vehicles), 231 (aircraft) and 615 (ozone protection). *Id.*

It is therefore highly likely – maybe even inescapable – that an endangerment finding for mobile sources will lead to mandatory NAAQS and NSPS for CO₂, as well as trigger PSD and Title V permit obligations for hundreds of thousands of previously-unregulated businesses. Each of these issues is discussed in greater detail below.

1. National Ambient Air Quality Standards (NAAQS)

If EPA finds endangerment for mobile sources, NAAQS may be unavoidable. NAAQS rules are predicated on a finding of endangerment under Section 108. However, once that finding is made, EPA has *no choice* but to begin the NAAQS process.

As Peter Glaser of Troutman Sanders LLP explained to the House Select Committee on Global Warming on September 4, 2008: The process of establishing a NAAQS begins under Section 108 with EPA’s publication of a “Criteria Document,” describing the public health and welfare effects of the pollutant at issue. Section 108(a) obligates the EPA Administrator to issue such a document for pollutants –

- (a) which may reasonably be anticipated to cause or contribute to air pollution that endangers public health or welfare;
- (b) which are emitted by “numerous or diverse mobile or stationary sources”; and

implementation plan if the submitting state establishes that it would have met the relevant NAAQS but for emissions emanating from outside the United States. However, Section 179B appears to apply only to NAAQS. Moreover, in a response to a petition for rulemaking that the U.S. Chamber submitted in December 2006 requesting implementation of Section 179B, EPA stated that it does not believe Section 179B provides material relief (i.e., EPA does not believe it can place a state in attainment or mitigate certain nonattainment penalties) beyond the relief literally authorized by the statute.

- (c) for which air quality criteria had not been issued prior to the date of enactment of the 1970 CAA, but for which EPA plans to issue air quality criteria.

Prongs (b) and (c) of Section 108 are easily satisfied for CO₂.⁴ Therefore, if EPA makes an endangerment finding for CO₂, a Criteria Document is inescapable. There is no turning back. Section 108 is not optional; it states that EPA *shall* issue the list of criteria pollutants.

Similarly, once CO₂ is listed as a criteria pollutant, NAAQS are inescapable. Section 109 states that EPA *shall* publish regulations prescribing NAAQS for every criteria pollutant, and Section 110 states that each state *shall* adopt and submit to EPA a plan for implementation, maintenance and enforcement of every NAAQS (called State Implementation Plans or SIPs).

EPA itself says that NAAQS for CO₂ will be extremely difficult. In the ANPR, EPA admits it would likely have to assess air quality assessment on a *national* scale, meaning the *entire* U.S. would either be designated attainment or non-attainment. Whether the entire U.S. is (literally) in non-attainment will depend on where the Administrator sets the NAAQS.

However, even designating the entire United States as nonattainment – and even assuming, contrary to growing scientific evidence to the contrary, that carbon dioxide causes climate changes that will threaten public health of welfare – few or no benefits will result from the designation. Carbon dioxide is a *global* emissions issue. The CO₂ emitted by all U.S. sources combined represents a steadily diminishing portion of global CO₂. And EPA’s actions, no matter how comprehensive and draconian they might be, will do little to reduce global or U.S. emissions or reduce the alleged “endangerment.”

Even ignoring this fundamental reality, if the entire country were designated nonattainment, every state would have to develop and submit a SIP that includes: Reasonably Available Control Measures (RACT); areas for interim progress toward attainment; an emissions inventory; NSR/PSD permits; and contingency measures to be implemented if the area does not meet the NAAQS by the attainment deadline. In addition, the federal government may provide financial assistance, issue a permit or approve an activity in a nonattainment area *only to the extent that* a facility or other source conforms to an approved SIP – and all transportation plans, programs and projects must conform to an approved SIP.

The purpose of a SIP for CO₂ is to reduce carbon dioxide and ensure that levels of the gas in the state’s ambient air satisfy the NAAQS. If a state fails to submit or implement a SIP, or if it submits a SIP that is unacceptable to EPA, EPA has the power to impose sanctions or other penalties on that state. Typical sanctions include cutting off federal highway funds and setting more stringent pollution offsets for certain emitters. For CO₂, this means a state in nonattainment will be able to build as many bicycle paths as it wishes, but will have a difficult time financing and constructing highway improvements.

Moreover, global CO₂ emission levels are increasing steadily – from millions of sources in China, India, Brazil, Indonesia, Australia, Canada, Austria, Portugal, Spain, Poland and nearly every other country. That means no state will ever be able to NAAQS criteria for carbon dioxide, no matter what it does – no

⁴ It has been argued by some that EPA may avoid issuing a Criteria Document even if it concedes endangerment, due to prong (c). However, the Second Circuit explicitly rejected this argument in *NRDC v. Train*, 545 F.2d 320 (2d Cir. 1976). In *Train*, EPA had conceded that lead endangers public health and welfare and is emitted by numerous or diverse sources, but EPA contended that it had discretion under prong (c) of Section 108 not to issue a Criteria Document. The Court rejected EPA’s statutory interpretation, ruling that the third factor applied only to pollutants included on the initial list of pollutants to be regulated under the NAAQS program, which EPA was required to promulgate within thirty days after December 31, 1970. For more discussion of *Train*, see Peter Glaser, Responses to Questions of the Select Committee on Energy Independence and Global Warming, September 4, 2008, at 11.

matter how severely it regulates and cripples its economy – unless and until all these countries, somehow, in the distant future, begin actually reducing their CO₂ emissions.

If, on the other hand, EPA sets the NAAQS *above* existing CO₂ levels, it would in essence be finding that no endangerment exists. Therefore, if EPA makes an endangerment finding, then the agency must set the NAAQS *below* existing CO₂ levels – and place the entire United States in near perpetual nonattainment – in order to pass legal muster.

NAAQS for CO₂ could therefore easily result in a revolving door of punishment for state governments and their SIPs, for federal appropriators who cannot give money to states due to nonattainment constraints, for localities that have been redlined against permitting new business, and for the millions of businesses that will be forced to deal with arbitrarily and excessively stringent control measures.

Foreign emissions will continue to waft over to the United States from nations such as China and India, keeping the nation in nonattainment. Businesses could eventually choose to close their doors, lay off employees, or move to other, more environmentally-lenient nations, harming our international competitiveness. To add insult to injury, the “leakage” of emissions from new or expanded installations in these more lenient countries will only exacerbate our own domestic nonattainment problems.

In short, NAAQS for CO₂ means nonattainment, possibly forever.

2. New Source Performance Standards (NSPS)

Much like NAAQS, NSPS are triggered by a finding of endangerment. Section 111 states that EPA *shall* include a category of sources in the NSPS list if it endangers public health or welfare. One year after the source category is listed, EPA *shall* publish regulations establishing federal standards of performance for new sources within such category.

Current NSPS categories include boilers, landfills, petroleum refineries and turbines; there are 70 categories and sub-categories in all. A “standard of performance” is defined in pertinent part as “a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction.” This standard is better known as “best demonstrated technology.”

Once EPA has established NSPS, states are required to submit to the agency a procedure for implementing and enforcing such standards for new or modified sources located in the state. In addition, EPA must promulgate regulations setting forth procedures for state establishment of standards for *existing* sources. This process is similar to the SIP process for NAAQS.

EPA theorizes in the ANPR that it could use a cap-and-trade program in lieu of plant-by-plant standards of performance. However, the D.C. Circuit’s decision vacating the Clean Air Interstate Rule (CAIR) had not been issued prior to drafting of the ANPR. The CAIR decision calls into serious question, if not completely invalidates, EPA’s authority to create a cap-and-trade program on its own.

Therefore, it seems inevitable that an endangerment finding will force EPA to issue plant-by-plant standards of performance for CO₂ – and businesses will have to install best demonstrated technologies pursuant to NSPS. If greenhouse gases are regulated, the categories would be limitless.⁵ The federal

⁵ EPA does not specify in the ANPR just how many new categories it would create NSPS for, but does discuss the creation of various “super-categories” covering major groupings of stationary sources. It is not clear whether such super-categories would withstand judicial review.

government and states will likely be forced to create a new NSPS “police force” to handle all the new categories and look for violators. Even more problematical, there are at this time no “demonstrated technologies” (best or otherwise) for capturing and storing carbon dioxide, which means companies will be forced to redesign engines, use them in ways that steadily decreases hydrocarbon energy use, or simply stop using them all together.

3. Prevention of Significant Deterioration (PSD)

PSD is triggered the moment carbon dioxide becomes a “regulated pollutant” under the CAA. It happens instantaneously – sooner, even, than a NAAQS or NSPS.⁶ And it may have the greatest impact.

Under the CAA, should CO₂ be deemed regulated under the Act – even if the regulation is for vehicles or fuels and is specifically not directed at stationary sources – no new or existing “major” stationary source of CO₂ can be built or modified without first obtaining a PSD permit, if the construction or modification would increase net emissions. Major sources are defined as either a source in one of 28 listed categories (mostly industrial manufacturers and energy producers) that emits at least 100 tons per year (tpy) of an air pollutant, or *any other source* with the *potential* to emit 250 tpy of an air pollutant.

According to a report released by the U.S. Chamber of Commerce entitled “A Regulatory Burden: The Compliance Dimension of Regulating CO₂ as a Pollutant,”⁷ over one million businesses will be exposed to PSD for CO₂. Many of these are previously-unregulated establishments, such as:

- a. 260,000 office buildings;
- b. 150,000 warehouses;
- c. 92,000 health care facilities;
- d. 71,000 hotels and motels;
- e. 51,000 food service facilities;
- f. 37,000 churches and other places of worship; and
- g. 17,000 farms.

The PSD process is far from easy. Often it requires a determination of *best available control technologies* (BACT), performed on a case-by-case basis and with considerable cost and burden placed on the applicant.⁸ For sources covered for other pollutants, PSD can take months or even years, and can cost

⁶ A finding of endangerment alone would not trigger PSD. However, because so many provisions in the CAA are tied to endangerment, PSD applies the moment regulation occurs through one of those programs,.

⁷ Available at <http://www.uschamber.com/environment>.

⁸ The existing BACT determination process under the CAA for covered pollutants typically involves a lengthy five-step process, with a great deal of the legwork handled by the regulated source:

1. *Identification of available pollution control options.* Applicants must identify all “air pollution technologies or techniques with a practical potential for application to the emissions unit and the regulated pollutant under evaluation.” The search for available pollution control options is relatively limitless, and can extend to: technology vendors; federal, state, and local NSR permits; technology or emissions control practices required under other CAA programs; environmental consultants; technical journals and reports; and air pollution control seminars.
2. *Elimination of technically infeasible options.* To determine whether a control technology is technically feasible, an evaluation must be made of its availability and applicability. A technology is “available” when it has been licensed and can be obtained through ordinary commercial channels, as opposed to a concept or experimental technology, such as “carbon capture and storage.” A technology is “applicable” if its emissions control qualities or characteristics are physically or chemically compatible with the emissions

hundreds of thousands or even millions of dollars. State agencies will be crippled by the weight of these many new permit applications. If the necessary control technologies are not “available” (as is the case with carbon capture and storage technology), would a PSD determination mean that *no* construction or modification would be permitted, until CCS technology does become available?

PSD is a preconstruction requirement, and applies to new construction or modifications. EPA estimates that it currently issues 200 to 300 PSD permits annually. EPA does not process a large number of PSD permits because, at present, few facilities emit enough of a regulated pollutant to cross the 100/250 tpy threshold. An endangerment finding would change that. (*See, e.g.*, chart entitled “Regulating CO₂ under the Clean Air Act will drastically change the Agency’s focus and use of resources,” page 11, *supra*.)

If this number were to balloon to just 30,000 or 50,000 new PSD permits, EPA and state agencies would crumble under their weight. They would be unable to process the permits, and businesses forced to comply with PSD would be barred from construction for potentially long periods of time, immediately placing all U.S. economic development at risk. If the PSD burden is too great, many businesses will simply not undertake new construction projects or modifications.

Moreover, once a source is classified as a major source for one pollutant, it is considered a major source for all other regulated pollutants under the CAA. As a result, the tens of thousands of actual PSD sufferers would likely have to install BACT not only for CO₂ – but also potentially for nitrous oxide, particulate matter, lead, mercury, sulfur dioxide and other pollutants, prior to any new construction.

The regulatory burden is so enormous, and the number of required PSD permits so staggering, that construction in cities throughout the nation will literally stop the minute CO₂ is regulated under the CAA.

stream being evaluated, taking into consideration the chemical and physical characteristics of the emissions stream.

3. *Ranking of remaining control technologies by control effectiveness.* Technologies not eliminated by Step 2 above are ranked, from best to worst, according to their emissions reduction potential. Manufacturing data, engineering estimates, and determinations for other permits should be considered in determining achievable emissions control. Data to be considered include, but are not limited to: expected emission rate (e.g., tons per year); emissions performance level (e.g., pollutant removal efficiency); emissions per unit product (e.g., parts per million, lbs/mmBtu); expected emissions reduction (e.g., tons per year); economic impacts of technology (e.g., total annualized costs, cost-effectiveness, incremental costs); environmental impacts resulting from application of technology (e.g., impacts on other media such as soil or water); and energy impacts (e.g., significant energy use or conservation).
4. *Evaluation of the most effective controls (considering energy, environmental, and economic impacts) and documentation of the results.* The energy impact analysis is essentially a determination of the amount of energy that must be expended to obtain incremental emissions reductions. The economic analysis compares the costs of control options as an element of their efficiencies to various technologies. The environmental impact analysis includes consideration of secondary or collateral impacts from use of the technology (e.g., production of other pollutants; waste products or by-products that affect water or groundwater).
5. *Making of the BACT selection.* The regulated source submits proposed BACT selections to the state permitting agency, which makes the final selection.

EPA NEW SOURCE REVIEW WORKSHOP MANUAL (draft), at B.6 (1990). Even more troubling is the fact that BACT is determined at the state level. That means BACT for CO₂ will be subject to a great deal of interpretation, and will vary from state to state. Some states may decide that BACT requires energy efficiency measures, while others could conceivably decide that BACT for a coal-fired power plant requires replacement with a wind farm.

4. Title V of the Clean Air Act

Title V (operating permits) poses a similar problem to PSD, although the permit process itself is not nearly as onerous as PSD. However, Title V reaches an even broader segment of society, because it applies to *all sources* that emit over 100 tons per year of an air pollutant, *regardless* of source categories.

Worse, Title V includes a citizen suit provision that, if exploited, could have severe consequences because each permit and permit application could be challenged by any citizen.

When a source becomes subject to Title V, it must apply for a permit within one year of the date it became subject. The permitting authority then uses this information to issue the source a permit to operate, as appropriate. A Title V source generally may not operate without a permit.

EPA estimates there are currently just 15,000 to 16,000 Title V sources in the United States. However, because the threshold for Title V is only 100-tpy across the board, an endangerment finding would mean that well over 1.2 million new sources will be subject to Title V permitting.⁹

EPA estimates in the ANPR that 550,000 new permits will be required under Title V. However, it gives no support for this calculation, and the number could easily be far higher. Even accepting the agency's potentially very conservative estimates, "[t]he sheer volume of new permits would heavily strain the resources of state and local Title V programs," as even EPA admits.

The Title V permitting authority must take final action on permit applications within 18 months of receipt. EPA has 45 days from receipt of a proposed permit to object to its issuance, and *citizens have 60 days to petition EPA to object*. It is therefore conceivable – likely, even – that activist groups could challenge every single Title V permit and bring nationwide operations to a screeching halt. Again, like PSD, Title V is triggered the moment CO₂ becomes a regulated pollutant under the CAA.

The most careful and thoughtful analysis and decision-making actions by the Environmental Protection Agency is therefore not just vital, but mandatory. Anything less would be irresponsible, and a gross dereliction of EPA's duty.

VIII. EPA must exercise its authority NOT to regulate greenhouse gases under the Clean Air Act.

In his recent speech to the G-20 World Economic Conference, President Bush observed that "free-market capitalism ... is the engine of social mobility, the highway to the American Dream." To that we would add the critical point that it is abundant, reliable, affordable energy that provides the fuel for this engine.

A carbon dioxide "endangerment" finding would make it increasingly difficult to continue using the hydrocarbon fuels that provide 85% of all the energy that currently electrifies, transports, employs, feeds and clothes America. It would affect millions of businesses, farms, buildings, power plants and other sources of CO₂ emissions. It would raise energy prices substantially, impair American competitiveness on the world market, threaten the jobs, livelihoods, civil rights, health and welfare of tens of millions of Americans – and put blue collar, minority, poor and elderly families most at risk.

⁹ The study by the U.S. Chamber estimates 1.2 million new buildings will be exposed to PSD, when the threshold is 100 tpy for 28 specific industries and 250 tpy for everyone else. Because the threshold for Title V is 100 tpy regardless of source category, the number of Title V permittees will be at least 1.2 million, and will very likely be much greater.

It would make a mockery of any rational definition of civil and environmental justice.

An endangerment finding would deepen and prolong the near-recession that has already shaken U.S. markets, investments, retirement and college savings, consumer confidence and employment to their core. It would vitiate any benefits that might accrue from costly federal rescues or bailouts of our nation's banking, housing and automotive industries. It would divert incalculable human and financial resources away from serious health and welfare problems that sound EPA programs would actually reduce. It would undermine President-Elect Obama's efforts to make restoring economic prosperity his "top priority," force our nation to dismantle a trillion-dollar carbon-based economy, and attempt to replace it with costly, untested "green" technologies that currently provide barely 1% of all the energy our nation uses.

Perhaps worst of all, this extensive pain and suffering would bring virtually no environmental benefits. Even if further research determines that CO₂ is indeed a primary factor in climate change, even the most draconian actions by the United States will not reduce national or global carbon dioxide levels by a noticeable amount, because CO₂ will continue to reach America from nations all over the world – including China, India, Europe and Latin America, which are actually *increasing* their CO₂ emissions.

EPA's introduction to the Advance Notice of Proposed Rulemaking admits that "the ANPR illustrates the complexity and interconnections inherent in Clean Air Act regulation of greenhouse gases. These complexities reflect [the fact] that the CAA was not specifically designed to address GHGs and illustrate the opportunity for new legislation to reduce regulatory complexity. *However, unless and until Congress acts, the existing CAA will be applied in its current form.*" 73 Fed. Reg. at 44,397 (emphasis added).

Nevertheless, despite its own reservations about applying the CAA to greenhouse gases, EPA makes it clear that the agency intends to proceed with actual regulations, unless Congress steps in. Several observers have said this amounts to an effort to blackmail Congress and the American people into accepting an onerous, punitive and economically devastating cap-and-trade system – or an arrogant action by regulators, courts and environmental pressure groups that are not likely to be held properly or fully accountable for the negative consequences of their decisions.

Moreover, the rest of the Executive Branch does not believe the CAA is the appropriate vehicle to regulate greenhouse gases. Nine federal agencies have already expressed strong disapproval and, as noted above, even EPA Administrator Stephen Johnson shared this view in his preamble to the ANPR.

Most important, as we emphasized earlier, the actual, real threats to the human health and welfare of American citizens will come – not from greenhouse gas emissions or climate change – but from the very regulations that EPA is proposing under this Advance Notice of Proposed Rulemaking to curb emissions and supposedly prevent global warming.

For these reasons, the 60 Plus Association firmly believes –

- the Clean Air Act is not the appropriate vehicle for regulating greenhouse gases,
- an endangerment finding would be inappropriate, contrary to the intent and history of the Clean Air Act, of no environmental benefit, and harmful to the health and welfare of the American people;
- an endangerment finding and the regulations conceived under this ANPR would furthermore violate basic principles of avoiding disproportionate impacts on poor and minority communities, ensuring economic and environmental justice, and safeguarding life, liberty, the pursuit of happiness and other fundamental civil rights; and
- EPA should thus refrain from regulating greenhouse gas emissions from any source under the Act.

If despite our deep concerns about the unavoidable impacts of any regime implemented to “prevent” hypothetical catastrophic climate change, the United States is nevertheless determined to take action to control carbon dioxide and other greenhouse gases, 60 Plus furthermore insists that the decision should be for Congress and the American people to make.

Moreover, that decision should be made in a responsible fashion that recognizes our nation’s economic situation, our reliance on hydrocarbon fuels, the continued output of carbon dioxide and other greenhouse gases by other nations (along with nuclear, hydroelectric, biomass, wind and solar, greater conservation and improved efficiency), and the need for robust, unfettered debate, sound science, and careful balancing of competing needs and interests on this subject.

The impacts on America’s economy, living standards and people are too great – and the environmental benefits of such intrusive climate change regulations too few – to accept anything less.

Respectfully submitted,

James L. Martin

James L. Martin
President

Attachment:

CO₂ Emission Cuts: The economic costs of EPA’s ANPR regulations

by David Kreutzer and Karen Campbell

Heritage Center for Data Analysis

The 60 Plus Association is a 15-year-old nonpartisan organization working for death tax repeal, saving Social Security, affordable prescription drugs, lowering energy costs and other issues featuring a less government, less taxes approach. 60 Plus calls on support from nearly 4.5 million citizen activists. 60 Plus publishes a magazine, SENIOR VOICE, and a Scorecard, bestowing awards on lawmakers of both parties who vote “pro-senior.” 60 Plus has been called “an increasingly influential senior citizen’s group.”