

C. OIL & GAS SECTOR

More than 30,000 Texas businesses are in industries that are identified as greenhouse gas emitting.¹⁸⁰ In 2006, the energy sector employed nearly 375,000 Texans who earned more than \$35 billion in wages.¹⁸¹ Of those, 312,000—3.1% of the State’s work force—were employed directly in the oil and gas business.¹⁸² According the Comptroller of Public Accounts, the oil and gas sector contributed \$159 billion to—nearly 15% of—the State’s Gross Domestic Product.¹⁸³

More than 17% of the State’s revenue is derived from oil and gas taxes, income on mineral interests, and related payments.¹⁸⁴ In 2006, the State’s annual oil production tax revenue was \$444,124,979 and its natural gas tax revenue was \$160,024,732, which combined for a total of more than \$604 million.¹⁸⁵ That direct positive fiscal impact is in addition to the more than \$6 billion in annual indirect economic benefit that the State enjoys from severance, ad valorem, and indirect taxes that are levied on oil and gas production.

The refining side of the energy sector also contributes significantly to the Texas economy. In 2008, the petroleum refining sector produced shipments worth over \$62 billion.¹⁸⁶ Texas-based chemical refiners produced shipments that exceeded \$70 billion in value.¹⁸⁷

IX. FALLOUT

Since the Administrator’s Endangerment Finding was made final on December 15, 2009, both chambers of Congress have responded with bipartisan efforts to prevent EPA from regulating greenhouse gasses. In the House of Representatives, House Agriculture Committee Chairman Collin Peterson (D-Minnesota) and Armed Services Committee Chairman Ike Skelton (D-Missouri)—both appointed to their chairmanships by House Speaker Nancy Pelosi—along with Congresswoman Jo Ann Emerson (R-Missouri), have authored a bill that would statutorily prevent EPA from regulating greenhouse gas emissions. That is, House Resolution 4572 would amend the Clean Air Act to include the following: “The term ‘air pollutant’ shall not include any of the following solely on the basis of its effect on global climate change: (1) Carbon dioxide, (2) Methane, (3)

¹⁸⁰Texas Advisory Panel on Federal Environmental Regulations, Comments on the Environmental Protection Agency’s Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(A) of the Clean Air Act, at 14 (June 23, 2009).

¹⁸¹ *Id.*

¹⁸² *Id.* at 18.

¹⁸³ Hon. Susan Combs, American Clean Energy and Security Act, *available at* <http://www.window.state.tx.us/finances/captrade/perspective.html> (last visited Feb. 16, 2010).

¹⁸⁴ Texas Advisory Panel on Federal Environmental Regulations, Comments on the Environmental Protection Agency’s Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(A) of the Clean Air Act, at 19 (June 23, 2009).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 27.

¹⁸⁷ *Id.*

Nitrous oxide, (4) Hydrofluorocarbons, (5) Perfluorocarbons, “(6) Sulfur hexafluoride.”¹⁸⁸

A separate, bipartisan effort is underway in the United States Senate, where Senator Lisa Murkowski (R-Alaska) has authored legislation with Sen. Mary Landrieu (D-Louisiana), Sen. Ben Nelson (D-Nebraska), Sen. Blanche Lincoln (D-Arkansas), and thirty-five other senators finding that “Congress disapproves the rule submitted by the Environmental Protection Agency relating to the endangerment finding.”¹⁸⁹ This bipartisan action in both chambers of Congress reflects broad concern over EPA’s handling of the Endangerment Finding.

Further, the Small Business Administration’s Office of Advocacy has also expressed concern over the Endangerment Finding. In a December 23 letter to EPA, the Office of Advocacy wrote: “it is clear that EPA’s Clean Air Act greenhouse gas rules will significantly affect a large number of small entities. . . . These small entities are concerned that EPA has not adequately considered regulatory alternatives that could achieve greenhouse gas emission reductions without imposing heavy new compliance burdens on large numbers of small entities.”¹⁹⁰

In light of these federal officials’ concerns with the implementation and impact of the Endangerment Finding—which the State of Texas shares—the Administrator’s improper handling of the scientific assessment process takes on even greater meaning. Without the IPCC’s flawed scientific assessment relied upon by the Administrator, there could be no Endangerment Finding because, as the Administrator acknowledged: “The major assessments by the U.S. Global Climate Research Program (USGCRP), the Intergovernmental Panel on Climate Change (IPCC), and the National Research Council (NRC) serve as the primary scientific basis supporting the Administrator’s endangerment finding.”¹⁹¹

This Petition has shown multiple examples of improper conduct by key scientists who coordinated, drafted, and contributed to the IPCC—and for the reasons explained above, therefore also to the NRC and USGRP—assessments. Importantly, the State of Texas is not alone in expressing concern about the practices and conduct that have been revealed since the CRU emails were released last November.

Many well-respected scientists who have said that human activity is to blame for global warming have nonetheless been highly critical of the conduct revealed in the CRU. For example, Professor John Beddington, Chief Scientific Advisor to the British Government, said: “I don’t think it’s healthy to dismiss proper skepticism. Science grows and improves

¹⁸⁸ H.R. 4572, 111th Cong. (2010).

¹⁸⁹ S.J.R. 26, 111th Cong. (2010).

¹⁹⁰ Letter from Susan M. Walthall, Acting Chief Counsel of Advocacy, to Hon. Lisa Jackson, Administrator, U.S. Environmental Protection Agency (December 23, 2009), available at www.regulations.gov, docket #: EPA-HQ-OAR-2009-0171.

¹⁹¹ 74 F.R. 66497.

in the light of criticism.”¹⁹² Sir David King, former chief scientist to the British Government, said of the CRU: “The emails from scientists at the University of East Anglia suggest that certain members of the IPCC felt that consensus was so precious that some external challenges had to be kept outside the discussion. That is clearly not acceptable.”¹⁹³

Dr. William Sprigg, who oversaw the IPCC’s first assessment report, recently commented at a climate change conference: “The IPCC is biased, conflicted, [and] pushing political agendas. We need to stick to our scientific principles. We need to improve our peer review process, and expand the stakeholders’ role to keep us all honest.”¹⁹⁴

Even a CRU scientist, Professor Mike Hulme, has criticized the IPCC: “Many of its pronouncements have been used by political advocates to justify their political prescriptions...not everything written by the IPCC—or declared by its senior spokesperson—is true...[T]he rules must be revised, especially regarding the use of non-peer-reviewed sources and the way reviewers comments are handled.”¹⁹⁵

The President of the National Academy of Scientists also commented on the negative impact of the CRU emails, saying that they “raised concern about the standards of science.”¹⁹⁶ And the Director of Greenpeace’s British operation has called for the IPCC Chairman’s replacement in light of the organization’s lost credibility: “The IPCC needs to regain credibility. Is that going to happen with Pachuari? I don’t think so. . . . If we get a new person in with an open mind, prepared to fundamentally review how the IPCC works, we would regain the confidence of the organization.”¹⁹⁷

And the British newspaper, *The Guardian*, which favors greenhouse gas emissions regulations, has opined: “[W]e have uncovered an abject failure to ensure essential records were kept on Chinese weather stations, determined maneuvering to exclude critics from leading journals and international reports, and suggestions of deleting

¹⁹² Ben Webster, *Science Chief John Beddington Calls for Honesty on Climate Change*, THE TIMES OF LONDON, January 27, 2010 available at <http://www.timesonline.co.uk/tol/news/environment/article7003622.ece?&EMC-Bln=99KCH2F> (last visited on Feb. 16, 2010).

¹⁹³ David King, *IPCC runs against the spirit of science*, THE TELEGRAPH, February 6, 2010, available at <http://www.telegraph.co.uk/earth/environment/climatechange/7170299/Sir-David-King-IPCC-runs-against-the-spirit-of-science.html> (last visited on Feb. 16, 2010).

¹⁹⁴ Insert cite and confirm Sprigg’s exact title from IPCC Vol. I (Source = #138)

¹⁹⁵ Mike Hulme, *The IPCC’s problems have been compounded by its imperious attitude*, THE GUARDIAN, Feb. 5, 2010, available at <http://www.guardian.co.uk/environment/2010/feb/05/rajendra-pachauri-hacked-climate-science-emails>

¹⁹⁶ Andrew C. Revkin, *Signs of Damage to Public Trust in Climate Findings*, NYT’S DOT EARTH BLOG, Feb. 5, 2010, available at <http://www.guardian.co.uk/environment/2010/feb/05/rajendra-pachauri-hacked-climate-science-emails> (last visited on Feb. 16, 2010).

¹⁹⁷ Ben Webster, *IPCC Chief Rajendra Pachuari Under Pressure Over Glacier Claim*, THE TIMES, February 4, 2010, available at <http://www.timesonline.co.uk/tol/news/environment/article7014203.ece> (last visited on Feb. 16, 2010).

potentially embarrassing correspondence with a view to evading the Freedom of Information Act.”¹⁹⁸

Governments around the world are also reacting to the release of the CRU emails and the multitude of errors in the IPCC report. Lü Xuedu, Deputy Director General of China’s National Climate Center and a Chinese delegate to the IPCC has called for reforms within the organization and has been quoted saying: “Some scientists take a political stance and wear colored glasses, which means they do not look at issues in a comprehensive way. The managing institute, authors, and contributors of the assessment reports should be more objective in order to be more convincing.”¹⁹⁹

Britain’s MET Office—an agency of the Defense Ministry that serves as the country’s official weather service—has opened a formal inquiry and plans to reexamine 160 years of temperature data.²⁰⁰ The MET’s review of the climate data is expected to take three years to complete.²⁰¹

The British House of Commons is also investigating the matter. On December 2, 2009, Science and Technology Committee Chairman Phil Willis wrote to the Vice Chancellor of East Anglia University asking for an explanation of CRU’s conduct and expressing concern about allegations that CRU “data may have been manipulated or deleted in order to produce evidence on global warming.”²⁰²

Similarly, Dutch Environment Minister Jacqueline Cramer has ordered a thorough investigation into the quality of climate reports that she relies upon to develop public policy.²⁰³ This decision was made shortly after it was learned that the IPCC had incorrectly reported that 55% of the Netherlands is under sea level; a claim which is simply not true.

Finally, a separate inquiry by East Anglia University will investigate multiple items, including “CRU’s policies and practices for acquiring, assembling, subjecting to peer review, and disseminating data and research findings.”²⁰⁴ All of the aforementioned

¹⁹⁸ Editorial, *Climate science: Truth and tribalism*, THE GUARDIAN, February 6, 2010, available at <http://www.guardian.co.uk/commentisfree/2010/feb/06/climate-science-truth-and-tribalism> (last visited on Feb. 16, 2010).

¹⁹⁹ Jonathan Watts, *Senior Chinese Climatologist Calls for Reform of IPCC*, THE GUARDIAN, February 9, 2010, available at <http://www.guardian.co.uk/environment/2010/feb/09/chinese-climatologist-ipcc-reform> (last visited on Feb. 16, 2010).

²⁰⁰ Ben Webster, *Met Office to Re-Examine 160 Years of Climate Data*, THE TIMES, December 5, 2009, available at <http://www.timesonline.co.uk/tol/news/environment/article6945445.ece> (last visited on Feb. 16, 2010).

²⁰¹ *Id.*

²⁰² Letter from Hon. Phil Willis, Chairman, Science & Technology Committee, House of Commons, to Edward Acton, Vice-Chancellor, East Anglia University (December 7, 2009), available at: http://www.parliament.uk/parliamentary_committees/science_technology/s_t_pn04_091207.cfm

²⁰³ Rob Kievit, *Sea level blunder enrages Dutch minister*, Radio NETHERLANDS WORLDWIDE, February 4, 2010, available at <http://www.rnw.nl/english/article/error-dutch-polder-data-undermines-trust-ipcc> (last visited Feb. 16, 2010).

²⁰⁴ Mark Kinver, *Climategate E-Mails Inquiry Under Way*, BRITISH BROADCASTING CORPORATION (February 11, 2010).


investigations are in addition to what the British Information Commissioner's Office (ICO) has already publicly said: "requests under the Freedom of Information Act were not dealt with as they should have been under the legislation. Section 77 of the Freedom of Information Act makes it an offence for public authorities to act so as to prevent intentionally the disclosure of requested information."²⁰⁵ But the ICO's inquiry continues because the commissioner is reviewing whether the British Freedom of Information Act needs to be revised in light of the CRU's refusal to disclose public information.²⁰⁶

X. CONCLUSION

Since the CRU emails first appeared on the Internet in November, 2009, there has been a parade of controversies as new examples of improprieties and erroneous information are revealed to the public. Because the Administrator chose to rely on assessments by the IPCC, USGCRP, and the NRC—the latter two of which this petition has shown relied on the IPCC—as the primary scientific and technical basis for her Endangerment Finding, the Administrator's decision is of central relevance to the Endangerment Finding within the meaning of Chapter 307 of the Clean Air Act. Thus, in light of the serious misconduct the State has demonstrated—data manipulation, loss or destruction of information, reliance on questionable source materials, abuse of the peer review process, suppression of dissent, conflicts of interest, and failure to comply with freedom of information laws—the EPA should grant this petition and reconsider the Endangerment Finding. Granting this petition would be consistent with actions taken by governments worldwide to assess problems afflicting the IPCC and it would further allow the agency to conduct its own scientific assessment, independently consider the available scientific information, and then, in the *Administrator's own judgment*, make a determination that is supported by the law and facts.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas


C. ANDREW WEBER
First Assistant Attorney General
Post Office Box 12548
Austin, Texas 78711-2548
(512) 463-2191 (Telephone)
(512) 936-0545 (Facsimile)
Andrew.Weber@oag.state.tx.us
ATTORNEYS FOR PETITIONERS

²⁰⁵ Email from the Information Commissioner's Office Press Office to Jonathan Leake, The Times of London, January 22, 2010, available at <http://www.docstoc.com/docs/23993708/Climate-Email> (last visited Feb. 16, 2010).

²⁰⁶ *Id.*