

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In re:)
) EPA Docket No.
Endangerment and Cause or Contribute)
Findings for Greenhouse Gases Under) EPA-HQ-OAR-2009-0171
Section 202(a) of the Clean Air Act)

PETITION FOR RECONSIDERATION OF ENDANGERMENT AND
CAUSE OR CONTRIBUTE FINDINGS FOR GREENHOUSE GASES
UNDER SECTION 202(a) OF THE CLEAN AIR ACT

I. INTRODUCTION

Pursuant to Section 307 of the Clean Air Act (“CAA”), the State of Texas (“Texas” or the “State”), through its Attorney General and on behalf of its Governor, Commissioner of Agriculture, Commissioner of the General Land Office, Commission on Environmental Quality, and the Chairman of the Public Utility Commission, files this Petition for Reconsideration requesting that the Administrator of the U.S. Environmental Protection Agency (the “EPA”) reconsider her Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act (“Endangerment Finding”).¹ In support of this Petition, the State of Texas shows the following:

II. OVERVIEW

Texas has an acclaimed record of working with EPA to enforce environmental laws. Texas is also a recognized leader in using renewable energy sources. But, Texas is compelled to take action against EPA’s Endangerment Finding issued on December 15, 2009 because it will lead to unprecedented bureaucratic licensing and regulatory burdens on farmers, ranchers, small businesses, hospitals, and even schools.² Any location that

¹ See Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009) (describing procedures for requesting that the Administrator convene a proceeding for reconsideration).

² As the Texas Commission on Environmental Quality observed in its June 23, 2009 Comment on the mobile source Endangerment Finding, “The positive endangerment finding and cause or contribute findings under Section 202(a) will trigger a similar finding under provisions of Clean Air Act regulating point sources.” Letter from Mark Vickery, Executive Director, Texas Commission on Environmental Quality to Hon. Lisa Jackson, Administrator, U.S. Environmental Protection Agency (June 23, 2009), *available at* www.regulations.gov, Docket: EPA-HQ-OAR-2009-0171. That is, as the Texas Commission on Environmental Quality noted, by finding that mobile source GHG emissions—which are regulated exclusively by EPA and not by the states—constitute a danger to the public’s health and safety within the meaning of Section 202(a) of the Clean Air Act, the Administrator has essentially required that stationary source GHGs—which are regulated by the states—shall also be regulated. The Executive Director of the Texas Commission on Environmental Quality put it succinctly, “the findings that the four specific GHG[s]...emitted from motor vehicles cause or contribute to air pollution that is reasonably anticipated to endanger public health and welfare necessarily triggers regulation of [state-regulated] point sources of GHG ‘pollutants’ under Title I and Title V of the CAA.” This position is shared by the National Association of Clean Air Agencies, which represents state and local regulatory agencies that are

has a natural gas powered heater necessarily emits greenhouse gasses to warm the air. Texas farmers rely on diesel-powered tractors to plow fields and operate cotton gins. Most public universities have boilers and some even have small power plants. Virtually every sector of the Texas economy will be affected by EPA's Endangerment Finding.

Despite the Endangerment Finding's remarkably broad impact, EPA's Administrator relied on a fundamentally flawed and legally unsupported methodology to reach her decision. And although the Administrator is legally required to undertake a scientific assessment before reaching a decision that is supposed to be based on scientific conclusions, the Administrator outsourced the actual scientific study, as well as her required review of the scientific literature necessary to make that assessment. In doing so, EPA relied primarily on the conclusions of outside organizations, particularly the United Nations International Panel on Climate Change ("IPCC").

EPA's reliance on the IPCC's assessment to make a decision of this magnitude is not legally supported. Since the Endangerment Finding's public comment period ended in June, 2009, troubling revelations about the conduct, objectivity, reliability, and propriety of the IPCC's processes, assessments, and contributors have become public. Previously private email exchanges among top IPCC climatologists reveal an entrenched group of activists focused less on reaching an objective scientific conclusion than on achieving their desired outcome. These scientists worked to prevent contravening studies from being published, colluded to hide research flaws, and collaborated to obstruct the public's legal right to public information under open records laws.

In addition to the improper collusion and cover-ups revealed by the release of these emails, since the public comment period ended, some of the IPCC's methodologies and conclusions have been discredited. Not surprisingly, respected scientists and climatologists from around the globe have roundly criticized and correctly questioned the IPCC's process, while calling for programmatic reforms.

Indeed, there has been worldwide fallout from scandals enveloping the IPCC. In Britain, four separate investigations have been launched, and the British Broadcasting Corporation has convened an inquiry into the journalistic appropriateness of its IPCC coverage. India has announced that it will create its own climate change institute rather than rely exclusively on the IPCC. And the United States Department of Commerce has created a new Climate Science Institute—though it has remained noticeably silent on the scandals plaguing the IPCC.

responsible for Clean Air Act enforcement, "Once EPA has issued an endangerment and cause or contribute finding with respect to a pollutant and class of motor vehicles, section 202(a) requires it to promulgate emissions standards for that pollutant and class of motor vehicles...Most would concede that, if adopted, these proposed limitations would clearly subject the affected pollutants to 'regulation' and trigger the applicability of the PSD and Title V programs under the Act to GHG emissions." Letter from G. Vinson Hellwig, NACAA Co-President, Larry Greene, NACAA Co-President, Robert Hodanbosi, Co-Chair NACAA Permitting Committee, and Ursula Kramer, Co-Chair NACAA Permitting Committee, to U.S. Environmental Protection Agency (December 28, 2009), *available at* www.regulations.gov, Docket: EPA-HQ-OAR-2009-0517.

As a result, bipartisan legislation has been introduced in both chambers of Congress to prevent implementation of the Endangerment Finding and the related regulation of greenhouse gas emissions. Notwithstanding the multitude and scope of these responsive measures, EPA has not indicated a willingness to review allegations that have shocked and appalled policy makers, regulators, scientists, and concerned citizens worldwide. Thus, while the State of Texas remains committed to working cooperatively with EPA to protect the environment, this State must exercise its legal right to challenge a fundamentally flawed and legally unjustifiable process that will have a tremendously harmful impact on the lives of Texans and the Texas economy.

In light of the disturbing revelations detailed in the State's Petition—which strike directly at the heart of the objectivity, procedural legitimacy, and scientific validity of the assessments relied on by the Administrator—EPA should grant the State of Texas' Petition for Reconsideration, conduct the rigorous, agency-led assessment that fully complies with Office of Management and Budget (“OMB”) rules governing federal agency processes, and then rely on that scientifically—and *legally*—sound mechanism before reaching a potentially trillion-dollar decision as to whether greenhouse gases from mobile sources constitute a danger to the public health and welfare.

Thus, on behalf of the farmers and ranchers who use fossil fuels to cultivate their land and fertilize their crops; the 3,800 farms and 28,000 cattle operations that will have to undergo the costly, complicated Title V Air permitting process just to continue operating as they always have;³ the 375,000 hard-working Texans who rely on the energy sector for employment;⁴ the estimated 30,000 Texas businesses that face new regulations and increased costs because they emit greenhouse gases;⁵ the already financially strapped Texas families who face \$1,200 in increased annual living costs;⁶ and the public school systems across the State that depend on the Permanent School Fund—which earned more than \$2 billion in revenue from oil and gas leases over the last five years—for the more than \$700 million it provided for public education last year,⁷ Texas, through its Attorney General and by its Governor, Agriculture Commissioner, Land Commissioner, Commission on Environmental Quality, and the Chairman of the Public Utility Commission, hereby requests that the Administrator reconsider the Endangerment Finding.

³ 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 16 (June 23, 2009).

⁴ 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 14 (June 23, 2009)

⁵ *Id.*

⁶ Rick Perry, Governor of Texas, Speech Urging EPA to Withdraw Ruling on Danger of Carbon Dioxide (Dec. 9, 2009), available at <http://governor.state.tx.us/news/speech/14021/> (last visited Feb. 15, 2010).

⁷ Texas Education Agency, Texas Permanent School Fund Annual Report, December, 2009 at 4, available at <http://ritter.tea.state.tx.us/psf/PSFAR09.pdf>.