

Texas has a demonstrated record of working with EPA to enforce environmental laws. Equally important, the State has a demonstrated record of successfully encouraging and implementing clean, renewable energy technologies that have fostered a cleaner environment.

V. THE ENDANGERMENT FINDING

The Administrator takes the position—and the State does not disagree—that the United States Supreme Court decision in *Massachusetts v. EPA* required the Administrator to: “determine whether or not emissions of greenhouse gases from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision.”³⁰

EPA’s Endangerment Finding explicitly acknowledges that its decision must be exclusively governed by science: “the [Supreme] [C]ourt clearly indicated that the Administrator’s decision must be a ‘scientific judgment.’ She must base her decision about endangerment on the science, and not on policy considerations about the repercussions or impact of such a finding.”³¹ Further, a federal law requires that she not base her decision on just *any* science, but rather “on the best reasonably obtainable science.”³² Also, the plain language of Section 202(a) requires that the Administrator’s decision be “*in [her] judgment...*”³³ (emphasis added). Thus, in reaching her Endangerment Finding, the Administrator is obligated to make her own, independent, ‘reasoned decision’ that is based exclusively on the best available science.

Evidence is mounting that the Administrator’s decision was (1) not well-reasoned, (2) based on faulty scientific analysis, and (3) not truly her own but instead a blind-faith acceptance of flawed scientific conclusions by third parties.

VI. THE IPCC REPORT’S CENTRAL RELEVANCE TO THE ENDANGERMENT FINDING

A. THE RELATIONSHIP BETWEEN THE ENDANGERMENT FINDING, THE IPCC AND THE CLIMATE RESEARCH UNIT AT EAST ANGLIA UNIVERSITY’S HADLEY CENTER

Established by the United Nations and the World Meteorological Organization, the IPCC is the self-proclaimed “leading body for the assessment of climate change.”³⁴ Among

³⁰ U.S. Environmental Protection Agency, Climate Change – Regulatory Initiatives, Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Clean Air Act, *available at* <http://www.epa.gov/climatechange/endangerment.html> (last visited Feb. 13, 2010).

³¹ Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 Fed. Reg. at 66515.

³² Exec. Order. No. 12,866, 58 Fed. Reg. 51,735 (Sept. 30, 1993).

³³ 42 U.S.C. § 7521.

³⁴ International Panel on Climate Change, Organization, *available at* <http://www.ipcc.ch/organization/organization.htm> (last visited February 14, 2010).

the IPCC's primary functions is the preparation and publication of assessment reports.³⁵ The reports, which are issued every six years, are divided into three separate books called Working Groups and a fourth called the Synthesis Report. The IPCC relies on a network of "[t]housands of scientists all over the world [who] contribute to the work of the IPCC on a voluntary basis as authors, contributors and reviewers" to draft the assessment reports.³⁶

The IPCC's primary governing principles are: "Comprehensiveness, objectivity, openness and transparency."³⁷ The EPA, citing principles issued by the IPCC in 2006, explained that the "role of the IPCC is to assess on a comprehensive, objective, open and transparent basis the scientific, technical and socio-economic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts and options for adaptation and mitigation. IPCC reports should be neutral with respect to policy."³⁸ Notwithstanding those principles, key contributors to the IPCC report were anything but comprehensive, objective, open, and transparent.

According to EPA, "the IPCC features the HadCRUT global surface temperature record."³⁹ That refers to temperature data collected and maintained by the Hadley Center's Climate Research Unit ("CRU") at Great Britain's East Anglia University.⁴⁰ The IPCC's primary temperature data source is the CRU. The CRU and its scientists are virtually ubiquitous within the climate research community.

Until recently, the CRU's Director was Dr. Phil Jones, one of the world's most prominent climate scientists. Dr. Jones played a substantial role in the development of the IPCC's Fourth Assessment Report ("AR4" or the "Fourth Assessment"). In addition to serving as the lead author of AR4's high-profile *Summary for Policy Makers*, Dr. Jones was a contributing author of the *Technical Summary* and the lead author of *The Physical*

³⁵ International Panel on Climate Change, Procedures, *available at* http://www.ipcc.ch/organization/organization_procedures.htm (last visited Feb. 16, 2010).

³⁶ International Panel on Climate Change, Structure, *available at* http://www.ipcc.ch/organization/organization_structure.htm (last visited February 14, 2010).

³⁷ *Id.*

³⁸ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments Volume I: General Approach to the Science and Other Technical Issues, at 13 (Dec. 7, 2009), *available at* <http://www.epa.gov/climatechange/endangerment.html>. *See also* International Panel on Climate Change, Structure (explaining that the IPCC's primary governing principles are: "Comprehensiveness, objectivity, openness and transparency."), *available at* <http://www.ipcc.ch/organization/organization.htm> (last visited February 14, 2010).

³⁹ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments Volume II: Volume 2: Validity of Observed and Measured Data, at 27, (Dec. 7, 2009), *available at* <http://www.epa.gov/climatechange/endangerment.html>.

⁴⁰ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments Volume II: Volume 2: Validity of Observed and Measured Data, at 19 (Dec. 7, 2009), *available at* <http://www.epa.gov/climatechange/endangerment.html>.

Science Basis, Chapter 3: *Observations: Atmospheric, Surface, and Climate Changes* (Chapter 3).⁴¹

But limiting a description of Dr. Jones's involvement to simply the portions of the Fourth Assessment that he personally authored does not adequately describe his influence on the report. Dr. Jones's research is cited 39 times in AR4.⁴² His work is referenced by all three of AR4's Working Groups and appears in 21 separate chapters of the report.⁴³ Further, Dr. Jones's influence within the tight-knit community of climate scientists is rooted not only in his role as lead IPCC contributor, but also in the significant influence that the Hadley Center's climate data has on the IPCC reports, which rely on CRU data. As was noted above, "IPCC features the HadCRUT global surface temperature record."⁴⁴ Further, "EPA displays Hadley global surface temperature data (i.e., the HadCRUT dataset) in Figure 4.2 in the TSD, and this figure is from IPCC."⁴⁵

Significantly, EPA also *directly* relied on the CRU's data. That is, although EPA did not conduct its own scientific assessment—instead allowing IPCC and others to serve as the "the primary scientific and technical basis for her endangerment finding"⁴⁶—the Technical Support Document ("TSD") that purports to provide the scientific bases for the Administrator's Endangerment Finding "refers to trends in three global surface temperature records."⁴⁷ The three temperature data sources cited in the TSD are: the CRU ... NOAA's global land-ocean surface temperature dataset... [and] NASA's global surface temperature analysis."⁴⁸

But according to the TSD, the CRU's temperature data "applies an urbanization adjustment"—scientific vernacular for applying a mathematical calculation to the raw temperature data which is intended to account for variables, such as the location of a particular weather station.⁴⁹ Thus, the CRU temperatures cited by both the IPCC and EPA do not reflect temperatures that were actually captured by weather station

⁴¹ IPCC Fourth Assessment Report: Climate Change 2007: Working Group I, Chapter 3, *Observations: Atmospheric, Surface, and Climate Changes*, available at http://www.ipcc.ch/publications_and_data/ar4/wg1/en/contents.html

⁴² IPCC Fourth Assessment Report: Climate Change 2007, available at http://www.ipcc.ch/publications_and_data/publications_and_data_reports.htm.

⁴³ *Id.*

⁴⁴ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments Volume II: Volume 2: Validity of Observed and Measured Data, at 27 (Dec. 7, 2009), available at <http://www.epa.gov/climatechange/endangerment.html>.

⁴⁵ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments Volume II: Volume 2: Validity of Observed and Measured Data, at 26 (Dec. 7, 2009), available at <http://www.epa.gov/climatechange/endangerment.html>.

⁴⁶ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. at 66,511, <http://www.epa.gov/climatechange/endangerment.html> (last visited Feb. 16, 2010).

⁴⁷ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: EPA's Response to Public Comments Volume II: Validity of Observed and Measured Data (U.S. Environmental Protection Agency Dec. 7, 2009) at 19, available at <http://www.epa.gov/climatechange/endangerment.html> (last visited Feb. 16, 2010).

⁴⁸ *Id.*

⁴⁹ *Id.* at 20.

thermometers, but rather temperatures that have been recalculated by the CRU for one purported scientific reason or another.

According to the TSD, EPA's other two temperature sources—the United States Commerce Department's National Oceanographic and Atmospheric Administration (“NOAA”) and the National Aeronautics and Space Administration (“NASA”) – also manipulate their raw temperature data using computer models. But importantly, the significance of CRU's modeling methodology is amplified by the fact that data from the NOAA has also been subjected to the CRU's data modeling calculations: “The NOAA global surface temperature dataset (Smith et al., 2008) employs the same methodology for addressing urbanization as is used in the HadCRUT.”⁵⁰ Thus, two of the three temperature sets that EPA relied on to reach its Endangerment Finding were homogenized based on CRU mathematical models.

Because the IPCC relied on the CRU data and modeling methodologies, the CRU's scientists must be shown to be objective and impartial arbiters of the science—or much of the world's climate data is necessarily flawed by the modelers' lack of objectivity. But Dr. Jones and his colleagues were far from objective. To the contrary, there is overwhelming evidence of outcome-oriented conduct that severely undermines the objectivity of their scientific research.

That lack of objectivity was made abundantly clear on November 13, 2009, when files from the CRU's backup server were anonymously copied and posted on the Internet.⁵¹ Those copied files contained years' worth of emails between Dr. Jones and his scientific allies from CRU and around the world. The emails do not reflect the work of objective scientists dispassionately conducting their work and zealously pursuing the truth. Rather they reveal a cadre of activist scientists colluding and scheming to advance what they *want* the science to be—even where the empirical data suggest a different outcome. The emails also reveal some of the world's most well-known climatologists demonizing those who question their climate change research. Such behavior directly contravenes the objectivity and skepticism fundamental to the scientific method.

In addition to Dr. Jones, other key figures in the emails—and therefore key figures in this Petition—are CRU climatologist Dr. Keith Briffa, former CRU Director Tom Wigley, Pennsylvania State University professor Dr. Michael Mann, Dr. Ben Santer of the Lawrence Livermore National Laboratory, NASA Climatologist Dr. Gavin Schmidt, Dr. Kevin Trenberth of the National Center of Atmospheric Research (“NCAR”), the University of Arizona's Dr. Jonathan Overpeck, NCAR's Dr. Caspar Ammann, and others. Importantly, these scientists not only surface in the CRU emails—they are also significant contributors to the Fourth Assessment. For example, Dr. Trenberth co-

⁵⁰ *Id.*

⁵¹ Fred Pearce, *Search for Hacker May Lead Police Back to East Anglia's Climate Research Unit*, THE GUARDIAN, Feb. 9, 2010, available at <http://www.guardian.co.uk/environment/2010/feb/09/hacked-emails-police-investigation> (last visited Feb. 14, 2010).

authored the Working Group I's Chapter 3 with Dr. Jones,⁵² the CRU's Dr. Briffa and Dr. Overpeck were lead contributors to Chapter 6,⁵³ and Dr. Wigley also contributed to the report.⁵⁴

Moreover, research by the scientists named above is specifically referenced as authority in the AR4. For example, AR4 cites Dr. Jones's work 38 times in 21 chapters of two Working Groups, Mann is cited 27 times in 7 chapters of two Working Groups, Briffa is cited 23 times in 9 chapters of two Working Groups, Wigley is cited 66 times in 18 chapters of all three Working Groups, Overpeck is cited 15 times in 5 chapters of two Working Groups, Osborn is cited 30 times in 10 chapters of two Working Groups, Trenberth is cited 58 times in 18 chapters of two Working Groups, and Santer is cited 26 times in 8 chapters of two Working Groups, just to name a few.⁵⁵

Clearly the CRU, its scientists, and their colleagues wielded tremendous authority over the IPCC. Thus, to the extent their objectivity, impartiality, truthfulness, and scientific integrity are compromised or in doubt, so too is the objectivity, impartiality, truthfulness, and scientific integrity of the IPCC report, the CRU temperature data, the NOAA temperature data, and other scientific research that is shown to have relied on their compromised research.

B. THE IPCC'S—AND THE CRU'S—EXPANDED FOOTPRINT

Under Section 202(a) of the Clean Air Act, the Administrator is to evaluate whether “*in [her] judgment...*” a pollutant presents a risk to the health or safety of the public.⁵⁶ Notwithstanding Section 202's requirements, the Endangerment Finding and the TSD acknowledge that the Administrator effectively outsourced the scientific assessment process to the IPCC, the U.S. Global Climate Research Program (the “USGCRP”), and the National Research Council (“NRC”).⁵⁷ That is, EPA's conclusion depended on summaries of existing reports that were provided by third parties rather than on an analysis that was within EPA's own quality control.⁵⁸

⁵² See IPCC Fourth Assessment: Climate Change 2007: Working Group I: The Physical Science Basis, Chapter 3, *Supplementary Materials, Observations: Surface and Atmospheric Climate Change* (listing Kevin Trenberth and Phil Jones as “Coordinating Lead Authors” of chapter 3) (last visited Feb. 16, 2010).

⁵³ See IPCC Fourth Assessment: Climate Change 2007: Working Group I: The Physical Science Basis, Chapter 6, *Supplementary Materials, Paleoclimate* (listing Jonathan Overpeck as a “Coordinating Lead Author” and Keith Briffa as a “Lead Author” of Chapter 6).

⁵⁴ See IPCC Fourth Assessment: Climate Change 2007: Working Group I: The Physical Science Basis, Annex 2 at 967 (listing Tom Wigley as a “Contributor” to the Working Group I report).

⁵⁵ See generally IPCC Fourth Assessment Report: Climate Change 2007.

⁵⁶ 42 U.S.C. § 7521 (emphasis added).

⁵⁷ See Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. at 66,511 (listing the reports on which the EPA relied in drafting the Endangerment Finding).

⁵⁸ See Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, EPA Response to Public Comments Volume 1 at 7 (conceding that “EPA did not develop new science as part of this action and instead summarized the existing peer-reviewed assessment literature.”).