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Congress of the United States

House of Representatives

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June 23, 2009

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By Electronic Submission to: GHG-Endangerment-Docket@epa.gov

U.S. Environmental Protection Agency
EPA Docket Center (EPA/DC)
Mailcode 6102T
Attention: Docket ID No. EPA-HQ-OAR-2009-0171
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Comments Regarding the Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act

Dear Sir or Madam:

We write to provide comments on the Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under the Clean Air Act issued by the Administrator of the Environmental Protection Agency (EPA) on April 17, 2009, 74 Fed. Reg. 18,886 (April 24, 2009) (Proposed Findings).

I. INTRODUCTION

The Proposed Findings have been issued by EPA in response to the U.S. Supreme Court's ruling in *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007). In that opinion, the Supreme Court directed EPA to review a petition to determine whether it should regulate emissions of certain greenhouse gases, including carbon dioxide, from new motor vehicles under Section 202(a)(1) of the Clean Air Act (CAA). Section 202(a)(1) provides for regulation of emissions of a substance from any class or classes of new motor vehicles or new motor vehicle engines if the Administrator of EPA determines that a substance is an "air pollutant" that, in her judgment, will "cause" or "contribute to" "air pollution," and that such air pollution "may reasonably be anticipated to endanger public health or welfare." While the

Supreme Court found that carbon dioxide falls within the definition of “air pollutant,” the Supreme Court expressly held that EPA has authority to regulate carbon dioxide under section 202(a)(1) only “[i]f EPA makes a finding of endangerment” under that provision (*Id.* at 533). The Supreme Court stated that “[t]he statutory question is whether sufficient information exists to make an endangerment finding” (*Id.* at 534).

On April 17, 2009, EPA proposed to find that the atmospheric concentrations of the mix of six greenhouse gases -- carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride -- in the atmosphere endanger public health and welfare within the meaning of section 202(a) of the CAA. EPA further proposed to find that the combined emissions of four of those gases -- carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons -- from new motor vehicles and new motor vehicle engines are contributing to this mix of greenhouse gases in the atmosphere, and thus that emissions of these greenhouse gases from new motor vehicles and new motor vehicle engines are contributing to air pollution which is endangering public health and welfare under section 202(a) of the CAA.

II. COMMENTS

Our specific comments on the Proposed Findings are provided below.

1. The Administration Appears to Have Prejudged the Outcome of this Rulemaking Process:

As an initial matter, we believe the Administration and EPA have already prejudged the outcome of these proceedings. Even though the comment period is not scheduled to close until June 23, 2009, and EPA has not made final positive endangerment and cause or contribute findings, the Administration has already announced new fuel efficiency standards that would be premised on such findings.

On May 19, 2009, the White House issued a press release that stated that the Administration was “setting in motion a new national policy aimed at both increasing fuel economy and reducing greenhouse gas pollution for all new cars and trucks sold in the United States.” (*See* White House Press Release dated May 19, 2009.)¹ The press release stated that the new national policy was the result of collaboration by the Department of Transportation (DOT), EPA and others and that the new fuel efficiency standards that would be issued would cover model years 2012-2016, ultimately requiring an average fuel economy standard of 35.5 mpg in 2016. *Id.* On May 19, 2009, President Obama also held a Rose Garden event to announce the new national policy, stating that a settlement had been reached with automobile companies and that “[a] series of major lawsuits will be dropped in support of this new national standard.” (*See* May 19, 2009, Remarks by the President on National Fuel Efficiency Standards.)² The President also expressly stated that DOT and EPA would be adopting the new standards. (*Id.* stating that

¹ A copy is attached and is also available at http://www.whitehouse.gov/the_press_office/President-Obama-Announces-National-Fuel-Efficiency-Policy/.

² A copy is attached and is also available at http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-national-fuel-efficiency-standards/.

"because the Department of Transportation and EPA will adopt the same rule, we will avoid an inefficient and ineffective system of regulations that separately govern the fuel economy of autos and the carbon emissions they produce.")

In May 2009, EPA also announced it is presently engaged in a joint rulemaking with DOT and that it **will propose** new greenhouse gas emission standards under the CAA. (*See* EPA Will Propose Historic Greenhouse Gas Emissions Standards for Light-Duty Vehicles: Regulatory Announcement, hereafter "EPA Will Propose Historic Greenhouse Gas Emissions Standards for Light-Duty Vehicles".)³ Section 202(a) is the only source of authority EPA possesses to issue such standards and EPA has stated explicitly that it will use its section 202(a) powers to issue the joint regulations. (*Id.* stating "EPA expects to propose a national carbon dioxide (CO₂) vehicle emissions standard under section 202(a) of the Clean Air Act.") No such rulemaking, however, is possible unless the foundational endangerment finding in section 202(a) has already been made.

In stating unequivocally that EPA will issue new fuel efficiency regulations, we submit that the Administration has impermissibly prejudged the outcome to this rulemaking. We note that the Administration may be aware of the legal problem that it has prejudged its conclusion to find endangerment. The nearly identical commitment letters that the automobile companies and other participants to the settlement announced on May 19, 2009 and described above provided to the Administration relating to the new national standards reflect the Administration is making great efforts to assert that the joint rulemaking has not been prejudged. In those commitment letters, the participants to the settlement stated that each "fully supports proposal and adoption of such a National Program, which [they] understand will be subject to full notice-and-comment rulemaking, affording all interested parties. . . the right to participate fully, comment, and submit information, the results of which are not pre-determined but depend upon processes set by law."⁴ The parallel language in the commitment letters appears to be a condition inserted by the Administration (although it is not clear whether this language refers directly to the endangerment finding or to the agency's subsequent standard setting). It would not be possible, however, for the participants to the settlement to know whether or not the results of the future joint rulemaking have or have not been predetermined. Moreover, if the representation that predetermination has not occurred is true, it is not apparent how the Administration and EPA can be promising joint regulations in exchange for settling litigation. *Compare* EPA Will Propose Historic Greenhouse Gas Emissions Standards for Light-Duty Vehicles (the promise that EPA "**will propose**" such standards itself prejudices the regulatory premise of an endangerment finding).

2. EPA Should Have Granted Requests for a Reasonable Extension of the Comment Period:

In this rulemaking process, EPA has limited the comment period to 60 days. While there have been requests for a 60-day extension, including from Members of Congress, such requests have been denied. We submit that 60 days is not adequate time to review EPA's proposed findings and voluminous supporting documentation and to provide comments. For the Advance Notice of Proposed Rulemaking that preceded the issuance of the Proposed Findings there was a

³ A copy is attached and is also available at <http://www.epa.gov/otaq/climate/regulations/420f09028.htm>.

⁴ For copies of the commitment letters, *see* <http://www.epa.gov/otaq/climate/regulations.htm>.

120-day comment period. Given the extraordinary consequences in terms of future regulatory burdens and costs for the U.S. economy, businesses and consumers that would result from finalizing the Proposed Findings, we believe at least 120 days would have been warranted and reasonable in this rulemaking proceeding.

EPA's rush to complete the endangerment finding may be due to the joint rulemaking and settlement of litigation described above. As EPA noted in its announcement of the joint standards with DOT, "EPA currently anticipates release of these proposals in the late Summer of 2009." (*See EPA Will Propose Historic Greenhouse Gas Emissions Standards for Light-Duty Vehicles, supra.*) The fact that the announced standards led to a stay of multiple federal cases around the country, and the recognition that those courts are not likely to be willing to wait one or more years while EPA finalizes regulations designed to moot those cases, explains EPA's emphasis on speed. With a timetable to issue proposed joint regulations by late summer, any delay in finalization of the Proposed Findings could threaten to derail a settlement that the Administration has already promised will occur. Such considerations, however, do not justify expediting or circumventing the proper rulemaking process.

3. EPA Should Also Have Conducted Additional Hearings on the Proposed Findings:

For this rulemaking process, EPA scheduled only two public hearings regarding the Proposed Findings, one in Arlington, Virginia, and one in Seattle, Washington. While all States will be impacted by any future regulation by EPA of greenhouse gas emissions, greenhouse gas emissions regulations will impose particularly large costs and regulatory burdens for the Western, Midwestern and Southern United States which are heavily dependent upon fossil fuels and which have major automotive, railroad, transportation, energy, manufacturing, construction, agricultural and industrial industries. We believe that the Administrator should not have limited hearings on the Proposed Findings only to the Washington, D.C. metropolitan area and to Washington State.

4. EPA Should Consider Prior Federal Agency Comments:

In its instructions for submitting comments on the Proposed Findings, EPA has indicated that it will *not* consider any comments that were submitted with regard to the Advance Notice of Proposed Rulemaking (ANPR) "Regulating Greenhouse Gas Emissions Under the Clean Air Act" unless they are resubmitted. We believe that comments submitted by other federal agencies in 2008 to the Office of Management and Budget (OMB) as part of the ANPR process should be considered and addressed by the Administrator before issuing any final determination regarding the Proposed Findings. Accordingly, we request that the following documents, copies of which are submitted herewith, be made a part of the record and incorporated into our comments:

- July 10, 2008, letter from Susan B. Dudley, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, to Administrator Stephen Johnson;

- July 9, 2008, letter and comments from the Secretaries of the Departments of Agriculture, Commerce, Transportation and Energy relating to the Advance Notice of Proposed Rulemaking “Regulating Greenhouse Gas Emissions under the Clean Air Act” (July 2008 Agency Comments);
- July 10, 2008, letter from Edward P. Lazear, Chairman, Council of Economic Advisers, and John H. Marburger, III, Director, Office of Science and Technology Policy;
- July 10, 2008, letter from James L. Connaughton, Chairman, Council on Environmental Quality;
- July 8, 2008, letter from Thomas M. Sullivan, Chief Counsel for Advocacy, Small Business Administration; and,
- November 28, 2008, letter from Shawne C. McGibbon, Chief Counsel for Advocacy, Small Business Administration.

All of the above letters expressed concerns with any proposed endangerment finding, both as a matter of law and public policy. We believe EPA should respond to the comments and concerns raised by those agencies relating to any proposed endangerment and cause or contribute findings in this proceeding.

We also believe EPA should discuss whether these federal agencies were asked to submit new comments on the Proposed Findings, whether such agencies in fact submitted new comments to OMB as part of the development of the Proposed Findings, whether those new comments differed from the comments those federal agencies submitted to OMB in July 2008, how the views of those federal agencies may have changed since July 2008, whether all of the federal agencies that expressed concerns about regulation of greenhouse gas emissions under the Clean Air Act are now supporting the Proposed Findings, and whether and how EPA has addressed any comments and concerns of those agencies regarding the Proposed Findings.

5. EPA Should Base Any Final Determination on the Proposed Findings on Full and Complete Information:

The Proposed Findings state for the endangerment finding that “the case for finding that greenhouse gases in the atmosphere endanger public health and welfare is compelling and, indeed, overwhelming . . . The evidence points ineluctably to the conclusion that climate change is upon us as a result of greenhouse gas emissions, that climatic changes are already occurring that harm our health and welfare, and that effects will only worsen over time in the absence of regulatory action.” (See Proposed Findings, Section III, The Administrator’s Proposed Endangerment Finding, Summary, 74 Fed. Reg. 18,886, 18,904 (April 24, 2009).) The Proposed Findings further state that “[t]his is not a close case in which the magnitude of the harm is small and the probability great, or the magnitude large and the probability small. In both magnitude and probability, climate change is an enormous problem. The greenhouse gases that are responsible for it endanger public health and welfare within the meaning to the Clean Air Act.” (*Id.*) The Proposed Findings generally conclude that collectively four greenhouse gases emitted

by motor vehicles and motor vehicle engines contribute to air pollution which may reasonably be anticipated to endanger public health and welfare.

Prior to making her final determination, the Administrator should give further consideration to and address the scientific uncertainties associated with making the complex findings required under the CAA. This necessitates assessment of full and complete information regarding climate change and all relevant information concerning the factors contributing to climate change. We believe the Administrator is obligated, in providing a basis for her policy judgment, to demonstrate that full information has been evaluated. It is not evident from the discussion presented in the Proposed Findings that such full evaluation has taken place. It is also not evident that, as the proposal asserts, “climate change is upon us as a result of greenhouse gas emissions” or that the emissions at issue in this proposal “are responsible for” climate change. (See 74 Fed. Reg. 18,886, 18,904 (April 24, 2009).)

We leave it to others to comment on – and the Administrator to address – the particulars of the evidence adduced to support her judgment. With respect to details, however, the Administrator should provide, among other analysis, a more detailed explanation on uncertainties and inadequacies in climate modeling used to find patterns that suggest anthropogenic “fingerprints” in the observed climate. Reviews by the National Academies have noted inadequate efforts to test modeling fidelity to the observational record, *e.g.*, one review of climate modeling noted reliance on model intercomparisons failed to generate evidence that modeling “consensus behavior” is any nearer to that of nature. (See *Understanding Climate Change Feedbacks*, National Research Council, 2003, p. 35.)

Assertions that climate modeling has improved in recent years are also not adequate evidence that improvements are sufficient to overcome the limitations in the models to project reliably specific climate changes at the regional and sub-continental level, where specific positive and negative impacts on public health and welfare would develop. As the Intergovernmental Panel on Climate Change (IPCC) notes, “Assessments of our relative confidence in climate projections from different models should ideally be based on a comprehensive set of observational tests that would allow us to quantify model errors in simulating a wide variety of climate statistics, including simulations of mean climate and variability and of particular climate processes.... To have the ability to constrain future climate projections, [these measures or climate metrics] would ideally have strong connections with one or several aspects of climate change: climate sensitivity, large patterns of climate change...regional patterns or transient aspects of climate change.” Yet such “a set of model metrics that might be used to narrow the range of plausible climate change feedbacks and climate sensitivity *has yet to be developed.*” (See *Climate Change 2007: The Physical Science Basis*, IPCC 2007, pp. 639-640.) (Emphasis added.)

The Administrator should also explain in more detail her assessment of the reliability of the various assumptions and large uncertainties concerning future global emissions projections as outlined in the emissions scenarios used to describe future climate change; the IPCC notes these scenarios should be viewed not as predictions or projections, but as “storylines,” none of which can be considered more likely than others, or can be considered fully representative of what will happen in the future. (See, *e.g.*, *Special Report on Emissions Scenarios*, IPCC, 2000, p. 11.; National Research Council report, *Radiative Forcing of Climate Change: Expanding the*

Concept and Addressing Uncertainties (NRC 2005), Ch. 5, pp. 100-116 (chapter entitled “Uncertainties Associated With Future Climate Forcings”).) Given that teasing out future man-made impacts from natural climate change for the purposes of an endangerment finding relies upon these storylines, the record should fully explain why this is sufficient information for the Administrator to make her judgment. Relatedly, as information is expected to improve in the future, the Administrator should explain what factors she judges would apply to reassess her finding, and potentially reverse it, if the storylines prove unfaithful to a future conclusion that greenhouse gases, or carbon dioxide in particular, on balance have a *de minimus* impact on U.S. public health and welfare.

From our perspective, the Administrator so far has not established that the total weight of evidence supports the Proposed Findings, in part because we are not convinced the Administrator has considered all the relevant evidence, let alone some fundamental facts. At the outset, for example, the construct of her Proposed Finding that current and future climate change must be traced to man-made, or anthropogenic, emissions ignores the scientific consensus understanding that global warming is first and foremost a natural phenomenon and that climate change is not solely or necessarily the result of man-made emissions. The IPCC’s own definition of climate change underscores this point. As it notes: “Climate change in IPCC usage refers to any change in climate over time, whether due to natural variability or as a result of human activity.” (*See Climate Change 2007: The Physical Science Basis*, at p. 2, footnote 1, IPCC 2007.) In point of fact, the majority of the IPCC 2007 assessment involves observations of climate change under this definition. Substantive discussion of anthropogenic influence on climate change occurs in the context of climate modeling attribution studies in chapter nine. Reports by the National Academies and the IPCC also make clear that climate change represents the natural long-term fluctuation in regional temperature and weather patterns, as well as interaction involving the complex physical, chemical, and biological components of the atmosphere, oceans, land surface and glacier covered areas. So-called radiative forcing from greenhouse gases, the focus of the Proposed Findings, contributes just a portion to this mix of factors.

Moreover, while the IPCC approaches its assessment from the standpoint of radiative forcing from greenhouse gases, valid questions have been raised that the focus on greenhouse gas global forcing, without fully assessing substantial evidence of other climate forcings, risks overestimating the relative impacts of these substances against other climate drivers and raises questions about the evidentiary basis for the Administrator’s judgment. The National Research Council notes the prevailing use of the global warming metric, and related global radiative forcing metric, “has major limitations.” (*See Radiative Forcing of Climate Change: Expanding the Concept and Addressing Uncertainties (NRC 2005)*, *supra*, p. 144.) Testimony before the Energy and Air Quality Subcommittee of the House Energy and Commerce Committee also suggests the IPCC’s relatively narrow focus on global greenhouse gas forcing does not provide policy makers a full view of the evidence concerning the forces, local, regional or man-made, that affect climate. (*See Written Testimony, “A Broader View of the Role of Humans in the Climate System is Required in the Assessment of Costs and Benefits of Effective Climate Policy,”* Dr. Roger A. Pielke Sr., pp. 1-2, 21.) Such testimony also raises the troubling question that prevailing climate assessments do not consider fully and fairly all relevant, peer-reviewed climate science. *Id.* The Administrator should explicitly take these broader scientific perspectives and emerging evidence of climate change into account before passing judgment on

greenhouse gas impacts. She should demonstrate some assurance that the full record is accurately evaluated in the assessments; otherwise the Administrator risks decisions that will not only have little impact on health and welfare, but will misdirect resources for addressing public health and welfare concerns.

Aside from the lack of full evidence and evaluation of climate change to make a reasoned judgment, there are also valid questions concerning the reliability of the assessments used by the EPA. Assertions in the Proposed Findings that the IPCC and Climate Change Science Program (CCSP) have a transparent peer-review process do not necessarily mean the quality of the assessments can withstand objective scrutiny. A case in point concerns the IPCC's peer review and assessment process, as investigated by the House Energy and Commerce Committee in 2006, which revealed shortcomings in the independence and quality of key messages of the IPCC's 2001 climate assessment, including lead authors reviewing and assessing their own work. The Administrator should examine and discuss whether identified shortcomings concerning the independence of the reviews have been overcome. She should conduct an independent assessment of the process before asserting it is trustworthy. (*See* attached excerpts from "Questions Surrounding the 'Hockey Stick' Temperature Studies: Implications for Climate Change Assessments," Hearings before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, U.S. House of Representatives, July 19 and July 27, 2006. Serial No. 109-128.)

We note, as well, that the National Academies also raises questions about the quality of the IPCC as well as CCSP studies. In the latter instance, the National Research Council (NRC) noted in its review of one important CCSP report: "The committee feels that the current report suffered to some degree from the author group assessing their own work and excluding other independent work. This is evidenced by a lack of critical evaluations on some key data issues and numerous citations to their own work. To the extent possible, the authors should not be put in a position of assessing work where they have a vested interest in the outcome." (*See "Review of the U.S. Climate Change Science Program's Synthesis and Assessment Product on Temperature Trends in the Lower Atmosphere,"* NRC 2005, p. 5.) The Administrator should demonstrate that this questionable practice by the CCSP has been curtailed in subsequent reports relied upon by the Administrator. We are not convinced that it has. Recent allegations of questionable reporting by the related U.S. Global Climate Research Program only underscore our concern. That June 2009 document allegedly reported studies inaccurately and relied upon a chapter author's own work to suggest anthropogenic influence of storm damage in the United States. (*See "Government Study Warns of Climate Change Effects,"* *New York Times*, June 16, 2009, and "U.S. Climate Report Assailed," *NYTimes.com* at tierneylab.blogs.nytimes.com, June 18, 2009.) The Administrator should be fully cognizant of such potential controversies, and address them explicitly in her evaluation.

The National Academies has also raised questions about whether the IPCC assessment process is representative of the science community. It noted in its own assessment of the process in 2001 that "the IPCC process demands a significant time commitment by members of the scientific community. As a result, many climate scientists in the United States and elsewhere choose not to participate at the level of a lead author even after being invited. Some take on less time-consuming roles... Others choose not to participate. This may present problems for the

future. As the commitment to the assessment process continues to grow, this could create a form of self-selection for the participants. In such a case, the community of world climate scientists may develop cadres with particularly strong feelings about the outcome... If scientific participation in the future becomes less representative and governmental representatives are tied to specific postures, then there is a risk that future IPCC efforts will not be viewed as independent processes.” (See *Climate Change Science: An Analysis of Some Key Questions*, NRC 2001, p. 23.)

In sum, reviews of scientific studies, including by the IPCC and the National Academies, and testimony before the House Energy and Commerce Committee suggest that scientists cannot quantify how much anthropogenic greenhouse gases may be impacting the natural global temperature change and how much that may be effecting climate change impacts, especially in the future. The IPCC consensus document states that “the complexity of the climate system and the multiple interactions that determine its behaviour impose limitations on our ability to understand fully the future course of Earth’s global climate.” (See *Climate Change 2007: The Physical Science Basis*, p. 21, IPCC 2007.) In light of aforementioned potential shortcomings in the assessments and the limits of man’s ability to understand climate, the Administrator should more clearly examine the source of her evidence and ensure it is the full story, before exercising her judgment.

6. EPA Should Consider Global Greenhouse Gas Emissions:

As noted by the Secretaries of Agriculture, Transportation, Commerce, and Energy in their July 9, 2008 submission to OMB, “the Clean Air Act is premised on the idea that controlling emissions in the United States will improve air quality in the United States, and that a State or region can improve its air quality by controlling emissions.” The Proposed Findings do not appear to take this fundamental premise into consideration in making the endangerment and cause or contribute findings.

In particular, the U.S. can only effectively address greenhouse gas emissions and global climate change in coordination with other countries, and by addressing how to regulate greenhouse gas emissions while considering the effect of doing so on the Nation’s energy and economy security. Currently, the world’s largest and fastest growing greenhouse gas emitters, such as China and India, and the fast growing developing world, at present emit more greenhouse gases than the developed world combined, according to the Energy Information Administration’s International Energy Outlook (2009). By these estimates, at the current pace, the United States could cut its current energy-related emissions to zero, and by 2030 annual global energy-related carbon emissions are still projected to be nearly seven billion metric tons more than 2005 – equivalent to a doubling of all of North America’s current emissions in 20 years. In the meantime, all evidence from the developing world indicates no interest in submitting to binding emissions reductions. In point of fact, India and China have repeatedly and publicly stated no interest in binding emissions caps or emissions rationing. (See, e.g. 4/13/09 *Washington Post*: “India Rejects Calls For Emission Cuts; 6/13/09 *Washington Post* stating that “a Chinese foreign ministry spokesman said China would not agree to reduce its emissions”.)

7. EPA Should Address the Regulatory Consequences of the Proposed Findings:

While the Proposed Findings contend that the Administrator has very broad discretion to make the endangerment and cause or contribute findings (*see* Proposed Findings, Section II, Legal Framework for this Action, 74 Fed. Reg. 18,886, 18,890-18,892), we believe it also incumbent upon the Administrator to take into account the consequences of the proposed action. We believe that the potential regulatory burdens should be taken into account in determining whether there is indeed “sufficient information” to warrant the endangerment and cause or contribute findings at this time.

The potential regulatory burdens associated with the findings if they are finalized are enormous. On July 30, 2008, the ANPR attached for comment an EPA Staff draft document that set out a roadmap outlining the ways in which different provisions of the Clean Air Act could potentially be applied to address greenhouse gas emissions. Even if the broad array of approaches raised in the draft is not pursued, a positive endangerment finding will trigger the issuance by EPA of new proposed regulations to regulate greenhouse gas emissions from new motor vehicles. (*See Massachusetts v. EPA*, 594 U.S. at 533, 127 S. Ct. at 1462: “[if] EPA makes a finding of endangerment, the Clean Air Act requires the agency to regulate emissions of the deleterious pollutant from new motor vehicles”.)

Further, a positive endangerment finding and the subsequent regulations will also trigger application of the Prevention of Significant Deterioration (PSD) program which regulates stationary sources that either emit or have the potential to emit 250 tons per year of a regulated pollutant or, if they are included on a list of source categories, at least 100 tons per year of a regulated pollutant. Because these thresholds are extremely low when considered with respect to greenhouse gases, thousands or more of new sources likely would be swept into the PSD program, thereby necessitating time consuming permitting processes, costly new investments or retrofits to reduce or capture greenhouse gas emissions, increasing costs, and creating vast areas of uncertainty for businesses and commercial and residential development. (*See, e.g.*, DOE July 2008 ANPR Comments; November 2008 SBA Comment Letter; December 12, 2007, Letter from U.S. Chamber of Commerce to the Members of the United States Congress; *see also* U.S. Chamber of Commerce report entitled “A Regulatory Burden: The Compliance Dimension of Regulating CO₂ as a Pollutant,” September 2008.) We believe the Administrator should consider and address the concerns that have been raised by other federal agencies with regard to the PSD program if EPA makes a final positive endangerment finding.

Moreover, as stated by DOE in that agency’s July 2008 ANPR Comments: “[i]n addition to the PSD program, it is widely acknowledged that a positive endangerment finding could lead to three potential avenues of stationary source regulation under the CAA: (1) the setting of national ambient air quality standards (NAAQS) under sections 108 and 109; (2) the issuance of new source performance standards (NSPS) under section 111; and/or (3) the listing of one or more greenhouse gases as hazardous air pollutants (HAP) under section 112.” (DOE July 2008 ANPR Comments, p. 30.) We believe the Administrator should consider and address these concerns about excessive regulatory burdens as well.

* * *

We request that the above comments be considered and that the enclosed documents be made a part of the record in this proceeding. Should you have any questions concerning this submission, please contact Ms. Mary Neumayr of the Committee Minority staff at (202) 225-3641.

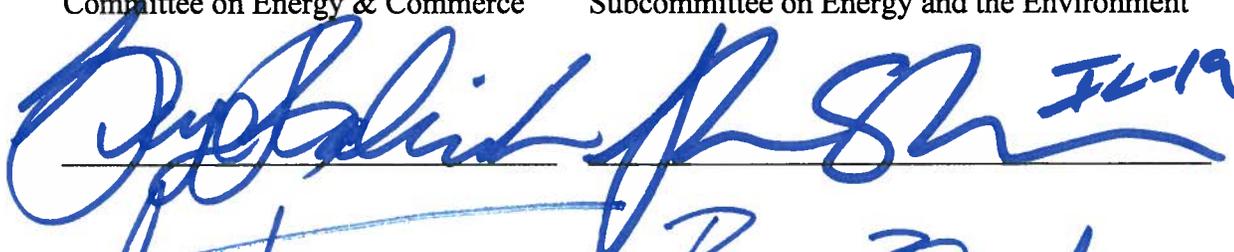
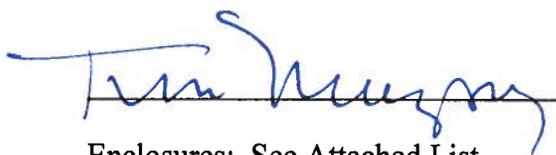
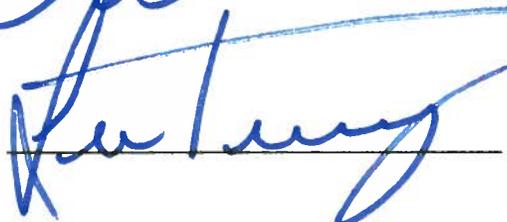
Sincerely,



Joe Barton
Ranking Member
Committee on Energy & Commerce



Fred Upton
Ranking Member
Subcommittee on Energy and the Environment

 FL-19

Enclosures: See Attached List

ENCLOSURES

1. White House Press Release dated May 19, 2009, and entitled “President Obama Announces National Fuel Efficiency Policy”
2. White House Press Release dated May 19, 2009, and entitled “Remarks By the President on National Fuel Efficiency Standards”
3. EPA Regulatory Announcement entitled “EPA Will Propose Historic Greenhouse Gas Emissions Standards for Light-Duty Vehicles,” EPA-420-F-09-028, May 2009
4. July 10, 2008, letter from Susan B. Dudley, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, to Administrator Stephen Johnson
5. July 9, 2008, letter and comments from the Secretaries of the Departments of Agriculture, Commerce, Transportation and Energy relating to the Advance Notice of Proposed Rulemaking “Regulating Greenhouse Gas Emissions under the Clean Air Act” (July 2008 Agency Comments)
6. July 10, 2008, letter from Edward P. Lazear, Chairman, Council of Economic Advisers and John H. Marburger, III, Director, Office of Science and Technology Policy
7. July 10, 2008, letter from James L. Connaughton, Chairman, Council on Environmental Quality
8. July 8, 2008, letter from Thomas M. Sullivan, Chief Counsel for Advocacy, Small Business Administration
9. November 28, 2008, letter from Shawne C. McGibbon, Chief Counsel for Advocacy, Small Business Administration
10. Written Testimony, “A Broader View of the Role of Humans in the Climate System is Required in the Assessment of Costs and Benefits of Effective Climate Policy,” Dr. Roger A. Pielke, Sr.
11. Excerpts from “Questions Surrounding the ‘Hockey Stick’ Temperature Studies: Implications for Climate Change Assessments,” Hearings before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, U.S. House of Representatives, July 19 and July 27, 2006. Serial No. 109-128
12. December 12, 2007, Letter from U.S. Chamber of Commerce to Members of Congress
13. U.S. Chamber of Commerce report entitled “A Regulatory Burden: The Compliance Dimension of Regulating CO₂ as a Pollutant,” September 2008