

November 26, 2008

The Honorable Stephen L. Johnson
Administrator, U.S. Environmental Protection Agency
Air and Radiation Docket Information Center
Mailcode: 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

The undersigned trade associations represent businesses from virtually every sector of the American economy. All of the signatories to this letter are committed to taking positive steps to address the issue of global climate change. However, all of these same entities will also be harmed if the Environmental Protection Agency regulates greenhouse gas emissions under the existing Clean Air Act (CAA).

EPA's Advance Notice of Proposed Rulemaking (ANPR) on this issue would set forth a multitude of costly, burdensome CAA programs it would use to regulate all of the undersigned businesses. As EPA acknowledges in the ANPR, a finding of "endangerment" for motor vehicles—a decision EPA is required to confront as a result of the Supreme Court's holding in *Massachusetts v. EPA*—would likely trigger not only vehicle controls but also invasive CO₂ controls on buildings and other stationary emissions sources. Four programs that would be triggered are: National Ambient Air Quality Standards (NAAQS); New Source Performance Standards (NSPS); Prevention of Significant Deterioration (PSD); and Title V.

NAAQS for CO₂ would result in a permanent scaling down of society, as every state in the union grapples with nonattainment status and the penalties that result: loss of federal highway funding; offsets to new construction on a 1:1 basis or greater; and imposition of the strictest technology standards and pollution controls available under the CAA. NSPS would require the imposition of "best available technology" for both new and existing stationary sources in a potentially limitless number of source categories. Regulation of CO₂ under the CAA would, according to a study by the U.S. Chamber of Commerce,¹ subject 1.2 million buildings in the U.S. to PSD permitting as a condition to new construction or modifications, a process that takes 6 to 12 months and costs, on average, \$125,120 with a paperwork burden of 866 hours.² If only 40,000 of the 1.2 million choose to make modifications or new construction, PSD compliance alone would cost over \$5 billion and would require the devotion of 17,320 full-time employees. Finally, these same 1.2 million entities (if not more) would have to obtain Title V operating permits as a condition to their operations, a program that requires at least a \$25-per-ton compliance fee³ and grants a 60-day window through which any U.S. citizen may challenge the permit via citizen suit. Together, PSD and Title V give activists yet another set of legal tools to stall construction on any non-residential building.

¹ "A Regulatory Burden: The Compliance Dimension of Regulating CO₂ as a Pollutant," *available at* <http://www.uschamber.com/environment>.

² Information Collection Request for Prevention of Significant Deterioration and Nonattainment New Source Review (40 CFR Part 51 and 52), Carrie Wheeler, Operating Permits Group, Air Quality Policy Division. *Available at* Docket No. EPA-HQ-OAR-2004-0081.

³ At this time the permit fees are normally limited to the first 4,000 tons per source or \$100,000 (adjusted for inflation). If additional pollutants require permitting the state might need to change their fee schedule to ensure the program is funded by the fees; a higher cost per ton or a higher tonnage ceiling for fees are options. The regulations also provide the flexibility that different pollutants may have different fee schedules.

The compliance costs for the four CAA programs triggered by a finding of endangerment would be financially and administratively unreasonable for millions of new regulated entities. Congress would have to quadruple amounts appropriated to EPA, or greater, for state and local air quality grants just to administer the permit programs for CO₂. Construction in the U.S. could stop, millions of greenhouse gas-related citizen suits could arise, and strict offset requirements could mean a permanent scaling-down of industry in the U.S. Businesses forced to limit their emissions in the U.S. would simply move to other nations which have lesser environmental standards than the United States, and would continue to emit. These emissions would virtually ensure that domestic greenhouse gas concentrations would not improve, since the standards in the developing world are less stringent than in the U.S. Regulation of greenhouse gases under the CAA could therefore result in economic chaos with little, if any, actual benefit to the environment.

Although EPA can do little to escape the effects of these four programs once the cascade is triggered, there are actions that can be taken now. EPA can use its discretionary authority to deny the pending petition in *Massachusetts* based on economic hardship and regulatory cascade concerns, which together constitute a reasonable explanation as to why EPA cannot or will not exercise its discretion to determine whether endangerment exists. EPA can affirmatively respond to *Massachusetts* by pointing to the new vehicle standards (of which EPA had significant input into formulating) by the U.S. Department of Transportation, which were mandated by Congress pursuant to the Energy Independence and Security Act of 2007—a law enacted after *Massachusetts*. Finally, EPA can call on Congress to enact legislation preventing greenhouse gases from being regulated under the Act. No matter which path is chosen, the undersigned organizations respectfully call upon EPA to protect the fragile American economy and ensure that greenhouse gases are not regulated under the CAA.

Sincerely,

Agricultural Retailers Association
American Farm Bureau Federation
American Petroleum Institute
Arizona Federation of Taxpayers
Associated General Contractors of America
Center for Environmental Innovation in Roofing
Florida Auto Dealers Association
Florida Chamber of Commerce
Glass Packaging Institute
Greater Cleveland Partnership
Industrial Energy Consumers of America
Industrial Minerals Association – North America
Louisiana Association of Business and Industry
Michigan Chamber of Commerce
Missouri Chamber of Commerce
Nebraska Chamber of Commerce and Industry
National Agricultural Aviation Association
National Association of Manufacturers
National Auto Dealers Association

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National Black Chamber of Commerce

National Milk Producers Federation

National Mining Association

National Oilseed Processors Association

National Roofing Contractors Association

National Tooling & Machining Association

Ohio Chamber of Commerce

Portland Cement Association

Small Business & Entrepreneurship Council

The Fertilizer Institute

U.S. Chamber Institute for 21st Century Energy

U.S. Chamber of Commerce