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November 24, 2008

Air and Radiation Docket and Information Center
Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Via E-mail: a-and-rDocket@epa.gov

Re: Regulating Greenhouse Gases Under the Clean Air Act
Docket ID: EPA-HQ-OAR-2008-0318

The American Environmental Coalition ("AEC"), a broad-based coalition of 12 million everyday Americans who are concerned about America's future and working to keep America beautiful, strong and prosperous submits these comments in response to the Advance Notice of Proposed Rulemaking (ANPR) on Regulating Greenhouse Gases Under the Clean Air Act (CAA) issued by the Environmental Protection Agency (EPA) and published in the *Federal Register* on July 30, 2008.

The Clean Air Act ("CAA") is ill-suited for regulating greenhouse gas emissions, and we urge the EPA to not move forward with a proposed rule or any other type of regulation of greenhouse gas emissions under the CAA. More specifically, we urge the EPA not to make an endangerment finding with respect to greenhouse gas (GHG) emissions. Simply stated, regulation of greenhouse gas emissions under the CAA will result in unintended regulatory consequences that could wreak economic havoc on all sectors of business and will impose heavy burdens on every citizen in the United States while providing no certain benefit.

AEC would like to focus its comments on several important points:

(1) The prohibitive costs of using the CAA to regulate greenhouse gas emissions for no measurable benefit;

(2) The Clean Air Act is **not** a workable vehicle to regulate greenhouse gases;

(3) EPA should find **against** endangerment; and

(4) EPA should exercise its authority **not** to regulate greenhouse gases under the Clean Air Act.

I. The costs of using the CAA to regulate greenhouse gas emissions will be prohibitive.

Public policy is always an exercise of weighing costs and benefits. There have been numerous proposals to regulate greenhouse gas emissions -- ranging from cap-and-trade mechanisms to attempting to use the CAA to impose an ill-fitting regulatory regime on almost every sector and facet of the economy. However, whatever regulatory or taxing mechanism is employed, its purpose and effect will be to dramatically increase the cost of energy in hopes of reducing CO_2 emissions or to dramatically reduce the efficient use of energy which will have staggering economic costs for America's families and the businesses that employ them.

Despite all the rosy promises of new "green" profits and happy times, any scheme that regulates greenhouse gas emissions under the CAA will: (1) heavily burden America's families and businesses with higher energy costs; and (2) kill jobs and harm the economy. Simply stated, such a regulatory scheme would be a huge and unbearable tax on Americans and the economy. And the real kicker is that we would enjoy no detectable climate benefit.

The truth is the benefits of any greenhouse gas emission regulatory schemes are fuzzy at best. Many experts have said that even if the United States did everything the U.N. suggests, it would only alter the climate by tenths of a degree. This "model" impact is in the background noise of natural variability. Many other experts conclude that warming and cooling are simply a function of natural variability and that man's actions are not a major contributor to climate change. Dr. Richard S. Lindzen (a Harvard trained atmospheric physicist and a professor of meteorology at MIT) concludes that there has been no warming since 1997 and no statistically significant warming since 1995. As EPA knows, not one model being used by the United Nations IPCC or the U.S. CCSP predicted the current COOLING trend. How can EPA use fatally flawed models to justify "endangerment" and CAA regulation of greenhouse gases?

Now a recent peer-reviewed climate study concludes that there will not likely be warming for another decade – meaning that there will have been more than 20 years with no warming.

But regardless of who you believe (or which model you believe), the promised "benefits" of regulating greenhouse gas emissions are diminishingly small. No matter how we regulate emissions, the Chinese and Indians will more than offset any reductions by the U.S.

In contrast, the costs of these regulatory proposals are shockingly high. A recent study found that if a cap-and-trade mechanism were imposed, the costs would be staggering. The study was performed by EIA's consultant using EIA's model. It is worth noting that using the CAA to regulate greenhouse gas emissions would be exponentially more expensive than even the staggering costs of a cap and trade (which is a carbon tax scheme) system. CAA regulation would require steeper reductions (greater than 80%) in a shorter time frame (within 10 years) and would be applied across the entire economy.

So when studies show that by 2020, the *average* American family would lose up to $3,400 in disposable income due to higher energy prices and the ripple effects on prices throughout the

economy, we can know with confidence that a CAA regulatory regime will cost substantially more. When studies find that by 2030, that annual stealth tax would cost the *average* American family up to $6,000 *each* year – not a one-time tax, but a perpetual annual tax – we know that an EPA decision to use the CAA to regulate greenhouse gas emissions will cost *even more*. When studies find that in 2020, America would lose up to 1.8 million jobs (this is greater than the current forecast for job loss as a result of the recession), an EPA imposed CAA regulatory regime would kill more jobs. The job loss by 2030 is projected to be at depression levels of 3 to 4 million! The impacts beyond 2030 grow even worse.

Simply stated, it would be hard to conceive of a methodology that would impose greater costs on the American family and the American economy than trying to use the CAA to do something it was clearly never intended to do – regulate CO_2. It is worth noting that CO_2 is a natural occurring gas that humans and animals naturally and safely inhale and exhale with every breath and that plants must have to complete the life-giving process of photosynthesis. The CAA was designed and intended to regulate noxious pollution, not a safe and naturally occurring gas – like CO_2 – that is required for life.

Let me explain on a very personal and practical level what that means for Virginians. The impact on Virginia is higher than the average for American families because of our dependence on coal and natural gas for electric power generation. I have children in college, high school, middle school, and elementary school. If EPA imposes a $8,200 stealth tax on my family, I will have less money to help my children go to college, less for paying the ever rising costs of health care, less for tutoring for a young son who has learning disabilities, less to provide for my children's future.

And what if I am one of those Americans who lose their job as a result of such policies? Then that $8,200 stealth tax is only the start of even bigger problems me and my family. That is not merely my story – that is the story of the vast majority of Americans.

The costs would be catastrophic to America's families and children. Very few families are so well off that they can afford the sort of economic costs that would be imposed by using the CAA to regulate CO_2 emissions. The impact on seniors living on fixed incomes would be even more staggering.

On Capitol Hill, earlier this year, it was widely believed that a one-time check for $600 or perhaps $1,200 would provide an economic stimulus. The stimulus didn't have the expected result. With that in mind, imagine what an annual stealth tax of $6,000 will do to the economy and to America's families? Even if you believe that the actual cost will be less than the ACCF study finds, the question still remains – what will an *annual* stealth tax of even $4,000 do to the economy and America's families?

II. The Clean Air Act is not a workable vehicle to regulate greenhouse gases.

The Clean Air Act is not an appropriate vehicle to regulate greenhouse gases. The ANPR, both intentionally and unintentionally, makes this fact abundantly clear.

A. EPA vastly oversteps its authority and communicates a belief that it can control the economy through CAA regulation.

The scope of the endangerment finding required by *Massachusetts* is relatively limited, and pertains only to the precise issue of whether greenhouse gas emissions from any class or classes of new motor vehicles or new motor vehicle engines cause, in EPA's judgment, endangerment. However, as described further in part C of this section, an endangerment finding limited to motor vehicles could lead to an inevitable regulatory cascade, triggering obligations to promulgate National Ambient Air Quality Standards (NAAQS), New Source Performance Standards (NSPS) and other requirements such as Prevention of Significant Deterioration (PSD) and Title V operating permits. Finding endangerment for vehicles, therefore, could easily lead to vast regulation of buildings and other stationary sources. Perhaps for this reason, EPA went far beyond motor vehicle regulations in the ANPR and set forth regulations for *all* sources of greenhouse gas emissions—in other words, the entire economy.

By "all sources of greenhouse gas emissions," EPA means everything: cars, trucks, planes, trains, boats, office buildings, refineries, manufacturing plants, tractors, lawnmowers, motorcycles, schools, hospitals, data centers, breweries, bakeries, farms, and countless other sources. EPA details in the ANPR the methods it could use not only to regulate the specific emissions from those sources, but also to set radical new standards for the *design and operation* of those sources. Virtually the only greenhouse gas emissions the ANPR does not cover are the CO_2 emissions exhaled in our collective breath.

From a legal standpoint, EPA believes the CAA gives it full authority to take such invasive action. In fact, EPA begins its discussion of relevant legal authorities with the statement, "[t]he CAA provides broad authority to combat air pollution. Cars, trucks, construction equipment, airplanes, and ships, as well as a broad range of electric generation, industrial, commercial and other facilities, are subject to various CAA programs." 73 Fed. Reg. at 44417. EPA ultimately concludes that, because regulation of motor vehicles under Title II would lead to regulation under other CAA provisions, it should use the ANPR to outline in great detail the wide range of CAA programs it believes it can invoke and even tangentially apply to greenhouse gas emissions.

Many of EPA's suggested regulatory options would reshape business models and long-term planning for manufacturers, parts suppliers and vendors. EPA routinely suggests radical options such as engine redesign, fuel switching, new infrastructure, equipment and work practice standards, product redesign and aerodynamics, early retirement of equipment, and even sector-specific cap-and-trade programs. EPA makes these suggestions with little or no concern for the fate of businesses engaged in these particular sectors. For instance, EPA nonchalantly

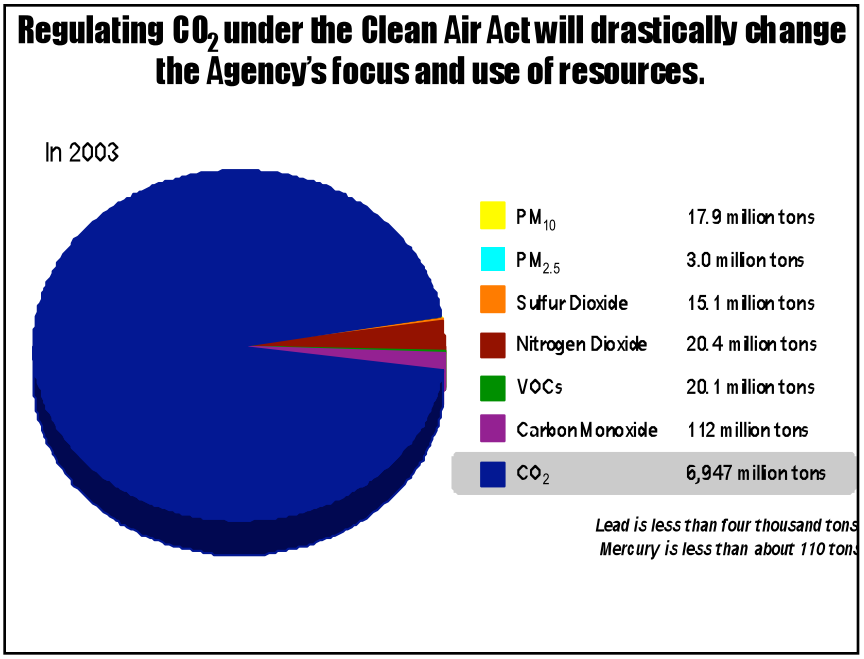
suggests replacing two-stroke gasoline engines in all handheld lawn care applications and recreational vehicles with four-stroke engines. If carried out, such a regulation would literally eliminate an entire line of business for lawn care equipment and recreational vehicle manufacturers.

Some technical and operational changes presented in the ANPR border on the absurd. For instance, a common solution EPA suggests for most mobile sources (cars, trucks, planes, trains and motorcycles) is a regulatory limit on speed. In other words, force Americans to drive (or fly, cruise or float) slower.

EPA truly believes it can control the economy through the programs embedded within the CAA. This is far too much economic control by an agency that was created by an Executive Order without an overarching mission set forth by Congress.

B. Greenhouse gases are not suited for regulation under the Clean Air Act.

The fundamental problem with using the CAA to control greenhouse gas emissions is that CO_2 is a much different gas than any other gas typically covered by the Act. For one thing, it is emitted in much greater quantities. As of 2003, there was roughly 19 times more CO_2 emitted than the six existing CAA criteria pollutants combined:



Because CO_2 is emitted in far greater quantities by a much wider range of sources, the thresholds for regulation built into various CAA sections (for instance, those dealing with PSD, Title V and Hazardous Air Pollutants) are so low that they will "catch" a much broader segment of the population than Congress could have intended when it wrote the CAA.

CO_2 also differs from other CAA-covered gases in that it has a long atmospheric lifetime and is capable of long-range transport. CO_2 emissions from the U.S. transport to other nations, and CO_2 emissions from other nations (such as China and India) transport to the U.S. Put another way, even if the U.S. were to eliminate all of its greenhouse gas emissions today, our CO_2 levels would not be zero, and CO_2 concentration in the atmosphere would still increase. For this reason, any action to address greenhouse gas emissions must be international in scope. The programs in the ANPR would be domestic-only, and ultimately will do very little to curb global greenhouse gas concentrations.

C. An endangerment finding could lead to an unmanageable regulatory cascade.

The most troubling aspect of CAA regulation of greenhouse gases is that, despite the assertions of EPA and others, EPA simply cannot regulate "a little." A finding of endangerment for motor vehicles under Section 202(a)(1), on its own, could trigger a regulatory cascade and force EPA to begin regulating through various other major CAA programs. According to EPA, "[w]hile no two endangerment tests are precisely the same," 73 Fed. Reg. at 44419, they generally call for similar elements: whether the emissions cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. EPA notes that "similar" endangerment language is found in sections 108 (NAAQS), 111 (NSPS), 112 (HAPs), 115 (international air pollution), 211 (fuels), 213 (nonroad engines and vehicles), 231 (aircraft) and 615 (ozone protection). *Id.*

It is therefore highly likely—maybe even inescapable—that an endangerment finding for mobile sources will lead to mandatory NAAQS and NSPS for CO_2, as well as the trigger of PSD and Title V permit obligations for hundreds of thousands of previously-unregulated businesses. Each of these are discussed in greater detail below.

1. National Ambient Air Quality Standards (NAAQS)

If EPA finds endangerment for mobile sources, NAAQS may be unavoidable. NAAQS are predicated on a finding of endangerment under Section 108, but once that finding is made, EPA has no choice but to begin the NAAQS process.

As Peter Glaser of Troutman Sanders LLP described to the House Select Committee on Global Warming on September 4, 2008, the process of establishing a NAAQS begins under Section 108 with EPA's publication of a "Criteria Document" describing the public health and welfare effects of the pollutant at issue. Section 108(a) obligates the EPA Administrator to issue such a document for pollutants (a) which may reasonably be anticipated to cause or contribute to air pollution that endangers public health or welfare; (b) which are emitted by "numerous or diverse mobile or stationary sources;" and (c) for which air quality criteria had not been issued prior to the date of enactment of the 1970 CAA, but for which EPA plans to issue air quality criteria.

Prongs (b) and (c) of Section 108 are easily satisfied for CO_2. Therefore, if EPA makes an endangerment finding for CO_2, a Criteria Document is inescapable. Section 108 is not optional;

it states that EPA *shall* issue the list of criteria pollutants. Similarly, once CO_2 is listed as a criteria pollutant, NAAQS are inescapable. Section 109 states that EPA *shall* publish regulations prescribing NAAQS for every criteria pollutant, and Section 110 states that each state *shall* adopt and submit to EPA a plan for implementation, maintenance and enforcement of every NAAQS (called State Implementation Plans or SIPs).

EPA itself says that NAAQS for CO_2 will be extremely difficult. In the ANPR, EPA admits it would likely have to assess air quality assessment on a national scale, meaning the entire U.S. would either be designated attainment or non-attainment. Whether the entire U.S. is (literally) in non-attainment will depend where the Administrator sets the NAAQS.

If the entire country were designated nonattainment, every state would have to develop and submit a SIP that includes: Reasonably Available Control Measures (RACT); areas for interim progress toward attainment; an emissions inventory; NSR/PSD permits; and contingency measures to be implemented if the area does not meet the NAAQS by the attainment deadline. In addition, the federal government may only provide financial assistance, issue a permit or approve an activity in a nonattainment area to the extent it conforms with an approved SIP, and all transportation plans, programs and projects must conform to an approved SIP.

The purpose of a SIP for CO_2 is to reduce CO_2 and ensure that levels of the gas in the state's ambient air satisfy the NAAQS. If a state fails to submit or implement a SIP, or if it submits a SIP that is unacceptable to EPA, EPA has the power to impose sanctions or other penalties on that state. Typical sanctions include cutting off federal highway funds and setting more stringent pollution offsets for certain emitters. For CO_2, this means a state in nonattainment will be able to build as many bicycle paths as it wishes, but will have a difficult time financing and constructing highway improvements.

If, on the other hand, EPA sets the NAAQS above existing CO_2 levels, it would in essence be finding that no endangerment exists. Therefore, if EPA makes an endangerment finding, then EPA must set the NAAQS below existing CO_2 levels (and place the entire U.S. in nonattainment) in order to pass legal muster.

NAAQS for CO_2 could therefore easily result in a revolving door of punishment for state governments and their SIPs, for federal appropriators who cannot give money to states due to nonattainment constraints, for localities that have been redlined to new business, and for the millions of businesses forced to deal with abnormally stringent control measures. Foreign emissions will continue to waft over to the United States from nations such as China and India, keeping the nation in nonattainment. Businesses could eventually choose to move to other, more environmentally-lenient nations, harming our international competitiveness. To add insult to injury, the leakage of these emissions will only exacerbate our own domestic nonattainment problems. In short, NAAQS for CO_2 means nonattainment, possibly forever.

2. New Source Performance Standards (NSPS)

Much like NAAQS, NSPS are triggered by a finding of endangerment. Section 111 states that EPA *shall* include a category of sources in the NSPS list if it endangers public health or welfare.

One year after the source category is listed, EPA *shall* publish regulations establishing federal standards of performance for new sources within such category. Current NSPS categories include boilers, landfills, petroleum refineries and turbines; there are 70 categories and sub-categories in all. A "standard of performance" is defined in pertinent part as "a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction." This standard is better known as "best demonstrated technology."

Once EPA has established NSPS, states are required to submit to the agency a procedure for implementing and enforcing such standards for new or modified sources located in the state. In addition, EPA must promulgate regulations setting forth procedures for state establishment of standards for *existing* sources. This process is similar to the SIP process for NAAQS.

EPA theorizes in the ANPR that it could use a cap-and-trade program in lieu of plant-by-plant standards of performance. However, the D.C. Circuit's decision vacating the Clean Air Interstate Rule (CAIR) had not been issued prior to drafting of the ANPR. The CAIR decision calls into serious question, if not completely invalidates, EPA's authority to create a cap-and-trade program on its own.

Therefore, it seems inevitable that an endangerment finding will force EPA to issue plant-by-plant standards of performance for CO_2, and businesses will have to install best demonstrated technologies pursuant to NSPS. If greenhouse gases were regulated, the categories would be limitless. The federal government and states may be forced to create a new NSPS "police force" to handle all the new categories.

3. Prevention of Significant Deterioration (PSD)

PSD is triggered the moment CO_2 becomes a "regulated pollutant" under the CAA. It happens instantaneously—sooner, even, than a NAAQS or NSPS. And it may have the greatest impact.

Under the CAA, should CO_2 be deemed regulated under the Act—even if the regulation is for vehicles or fuels and is specifically not directed at stationary sources—no new or existing "major" stationary source of CO_2 can be built or modified (if the modification increases net emissions) without first obtaining a PSD permit. Major sources are defined as either a source in one of 28 listed categories (mostly industrial manufacturers and energy producers) that emits at least 100 tons per year (tpy) of an air pollutant, or *any other source* with the potential to emit 250 tpy of an air pollutant.

According to a report released by the U.S. Chamber of Commerce entitled "A Regulatory Burden: The Compliance Dimension of Regulating CO_2 as a Pollutant," over one million businesses will be exposed to PSD for CO_2. Many of these are previously-unregulated establishments, such as:

a. 260,000 office buildings;
b. 150,000 warehouses;
c. 92,000 health care facilities;

d. 71,000 hotels and motels;
e. 51,000 food service facilities;
f. 37,000 churches and other places of worship; and
g. 17,000 farms.

The PSD process is far from easy. Often it requires a determination of best available control technologies (BACT), performed on a case-by-case basis and with considerable cost and burden placed on the applicant. For sources covered for other pollutants, PSD can take months or even years, and can cost hundreds of thousands or even millions of dollars. State agencies will be crippled by the weight of these many new permit applications.

PSD is a preconstruction requirement, and applies to new construction or modifications. EPA estimates that it currently issues two to three hundred PSD permits annually. EPA does not process a large number of PSD permits because, at present, few facilities emit enough of a regulated pollutant to cross the 100/250 tpy threshold. *See*, *e.g.*, chart entitled "Regulating CO_2 under the Clean Air Act will drastically change the Agency's focus and use of resources," page 4, *supra*. If this number were to balloon to just thirty or fifty thousand new PSD permits, EPA and state agencies would literally crumble under their own weight. And businesses forced to comply with PSD will be barred from construction for potentially long periods of time, immediately placing our economic development at risk. If the PSD burden is too great, many businesses will simply not undertake new construction projects or modifications.

Moreover, once a source is classified as a major source for one pollutant, it is considered a major source for all other regulated pollutants under the CAA. As a result, the tens of thousands of actual PSD sufferers may now have to install BACT not only for CO_2, but also potentially for nitrous oxide, particulate matter, lead, mercury, sulfur dioxide, and other pollutants prior to any new construction. The regulatory burden is so enormous, and the number of required PSD permits so staggering, that construction in cities throughout the nation will literally stop the minute CO_2 is regulated under the CAA.

4. Title V

Title V (operating permits) poses a similar problem to PSD, although the permit process itself is not nearly as onerous as PSD. However, Title V reaches an even broader segment of society, because it applies to all sources that emit over 100 tons per year of an air pollutant, regardless of source categories. And Title V includes a citizen suit provision that, if exploited, could have severe consequences because each permit application could be challenged by any citizen.

When a source becomes subject to Title V, it must apply for a permit within one year of the date it became subject. The permitting authority then uses this information to issue the source a permit to operate, as appropriate. A Title V source generally may not operate without a permit.

EPA estimates there are 15,000 to 16,000 Title V sources in the U.S. Because the threshold for Title V is 100-tpy across the board, well over 1.2 million new sources will be subject to Title V permitting. EPA estimates in the ANPR that 550,000 new permits will be required under Title V,

but gives no support for this calculation. EPA admits that "[t]he sheer volume of new permits would heavily strain the resources of state and local Title V programs."

The Title V permitting authority must take final action on permit applications within 18 months of receipt. EPA has 45 days from receipt of a proposed permit to object to its issuance, and *citizens have 60 days to petition EPA to object*. It is therefore conceivable—likely, even—that activist groups could challenge every single Title V permit and bring nationwide operations to a screeching halt. Again, like PSD, Title V is triggered the moment CO_2 becomes a regulated pollutant under the CAA.

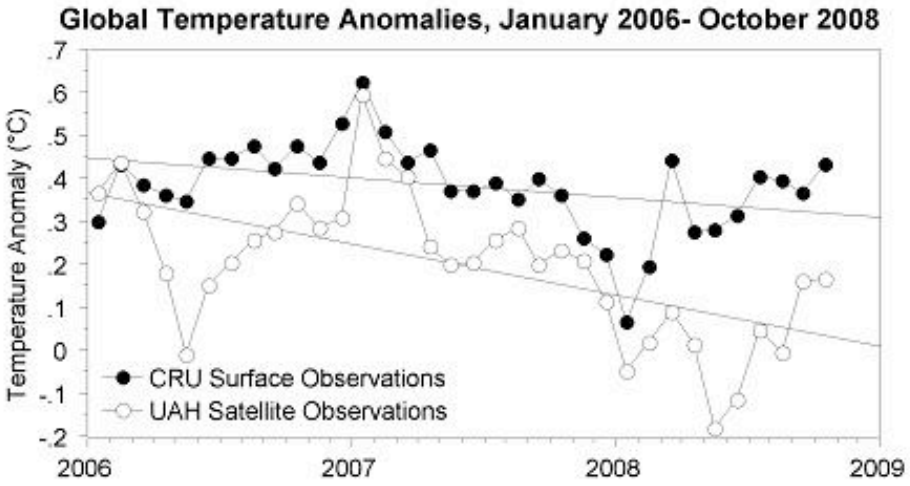
III. EPA should find against endangerment

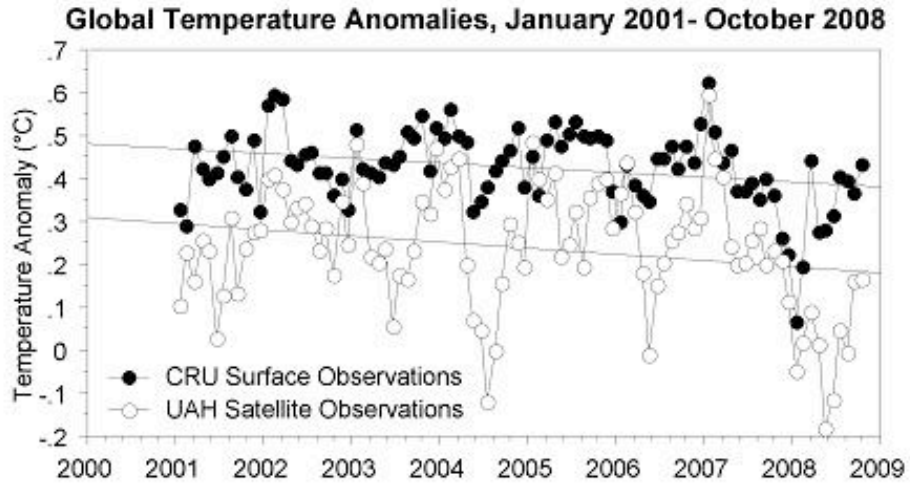
Aside from the massive bureaucracy that would be involved in trying to regulate greenhouse gas emissions under the Clean Air Act, the EPA primarily needs to determine whether or not greenhouse gas emissions from human activities are endangering the public health or welfare. The underlying analysis to support/deny an endangerment finding is provided in the EPA's Technical Support Document for Endangerment Analysis for Greenhouse Emissions under the Clean Air Act(Endangerment TSD) which attempts to serve as review of the state to the science concerning the "vulnerabilities, risks and impacts" of climate change, primarily within the United States.

However, the Endangerment TSD is largely a dated document which relies heavily on the Fourth Assessment Report (AR4) of the U.N.'s Intergovernmental Panel on Climate Change (IPCC). The IPCC'sAR4 was published in the spring of 2007, but to meet the deadline for inclusion in the AR4, scientific papers had to be published by late 2005/early 2006. So, in the rapidly evolving field of climate change, by grounding its TSD in the IPCC AR4 the EPA is largely relying on scientific findings that are, by late 2008, nearly 3 years out of date.

And a lot has happened in those intervening three years.

- Global temperatures have declined (Figure 1a)—extending the current run of time with a statistically robust lack of global temperature rise to eight years (Figure 1b), with some people arguing that it can be traced back for 12 years (Figure 1c).





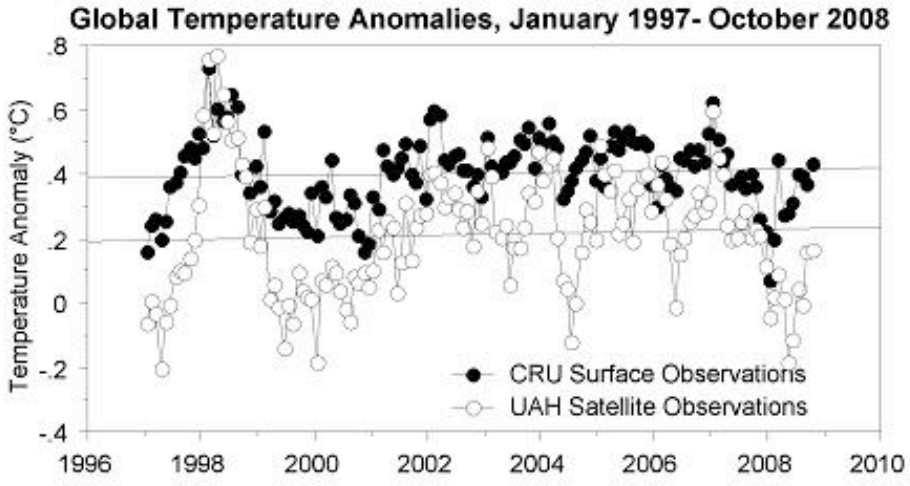


Figure 1. Monthly global temperature anomalies (ºC) as measured at the surface (filled circles) and in the lower atmosphere by satellites (open circles). Top (a), Last three years, January 2006-October 2008; Middle (b) Last eight years, January 2001-October 2008; Bottom (c), last 12 years, January 1997-October 2008. (sources: Hadley Center; University of Alabama-Huntsville).

- The consensus on past, present and future Atlantic hurricane behavior has changed. Initially, it tilted towards the idea that anthropogenic global warming is leading to (and will lead to) to more frequent and intense storms. Now the consensus is much more neutral, arguing that future Atlantic tropical cyclones will be little different that those of the past (e.g. Knutson et al., 2008; Vecchi et al., 2008).

- The alarmist notion that warming temperatures will cause Greenland to rapidly shed its ice has been silenced by new results indicating little evidence for the operation of such processes (e.g., van de Wal et al., 2008; Joughin et al., 2008).

These three developments should greatly influence any assessment of "vulnerability, risk, and impacts" of climate change within the U.S. Therefore, the extensive portions of the EPA's Endangerment TSD which are based upon the old science are no longer appropriate and need to be revised.

In other portions of the Endangerment TSD, the logic is faulty and leads to unsupportable and ill-informed conclusions. Such is the case with the "Human Health" and "Food Production and Agriculture" sections. The TSD authors do not adequately factor in changing populations and changing technologies in projecting harm to health and agriculture from a shifting climate.

But perhaps the most glaring problem of all with the EPA's Endangerment TSD is the nearly complete disregard of observed trends in a wide array of measures which by and large show that despite decades of increasing anthropogenic greenhouse gas emissions (as detailed by the EPA) the U.S. population has triumphed over any changes in "vulnerabilities, risks, and impacts" that may have arisen (to the extent that any at all have actually occurred as the result of any human-induced climate changes).

For instance, despite the overall rise in U.S. and global average temperatures for the past 30 years, U.S. crop yields have increased (Figure 2), the population's sensitivity to extreme heat has decreased (Figure 3), and our general air quality has improved (Figure 4). Further, there has been no long-term increase in weather-related property damage once changes in inflation, population size, and population wealth are accounted for (an essential step in any temporal comparison). All of these trends are in the opposite sense from those described in the EPA's Endangerment TSD.

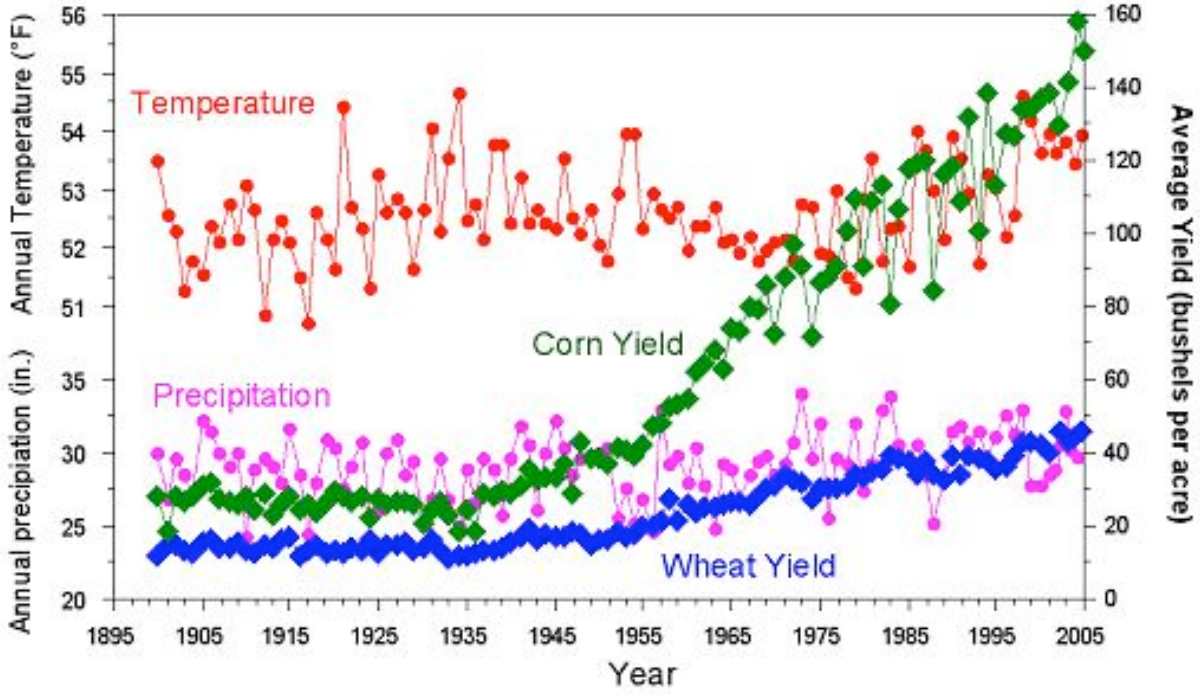


Figure 2. Yields of major cash crops such as corn and wheat show annual fluctuations as a result of weather conditions, but overall, they exhibit an upwards trend (data sources: NCDC, USDA).

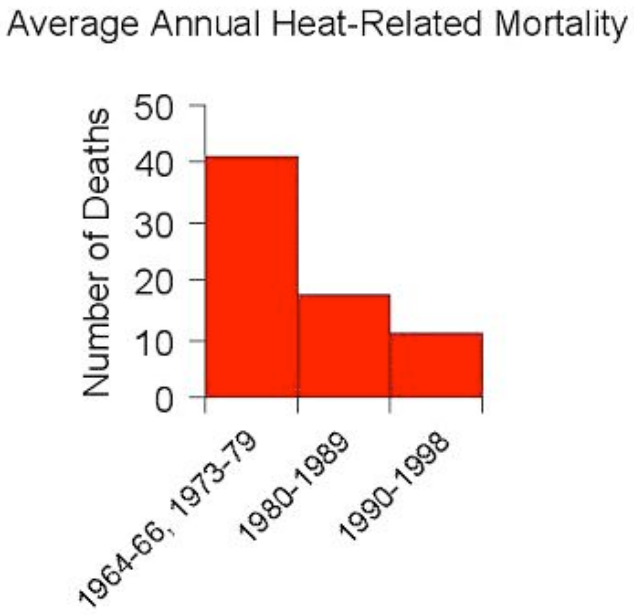


Figure 3. Average annual heat-related mortality per standardized million people in the U.S. (source: Davis et al., 2003).

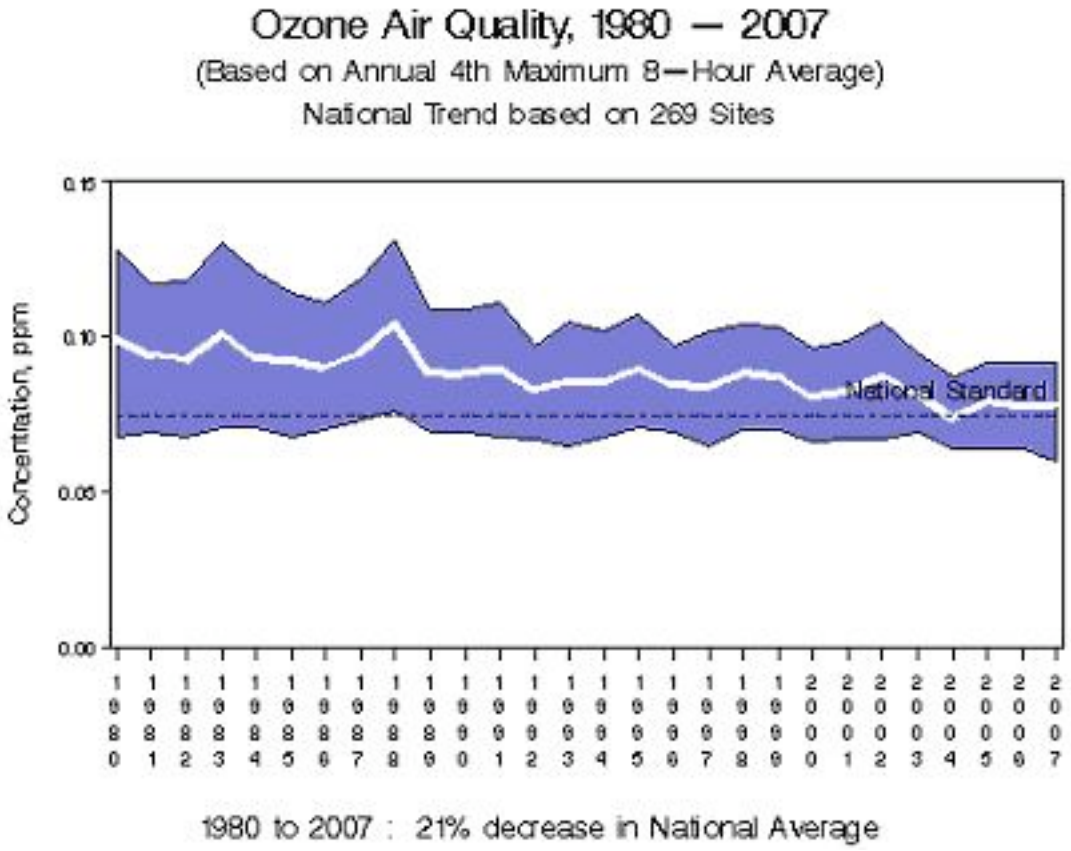


Figure 4. Trends in ozone air quality (source: US EPA)

Perhaps, most significant of all, the average lifespan of Americans has increased (Figure 5).

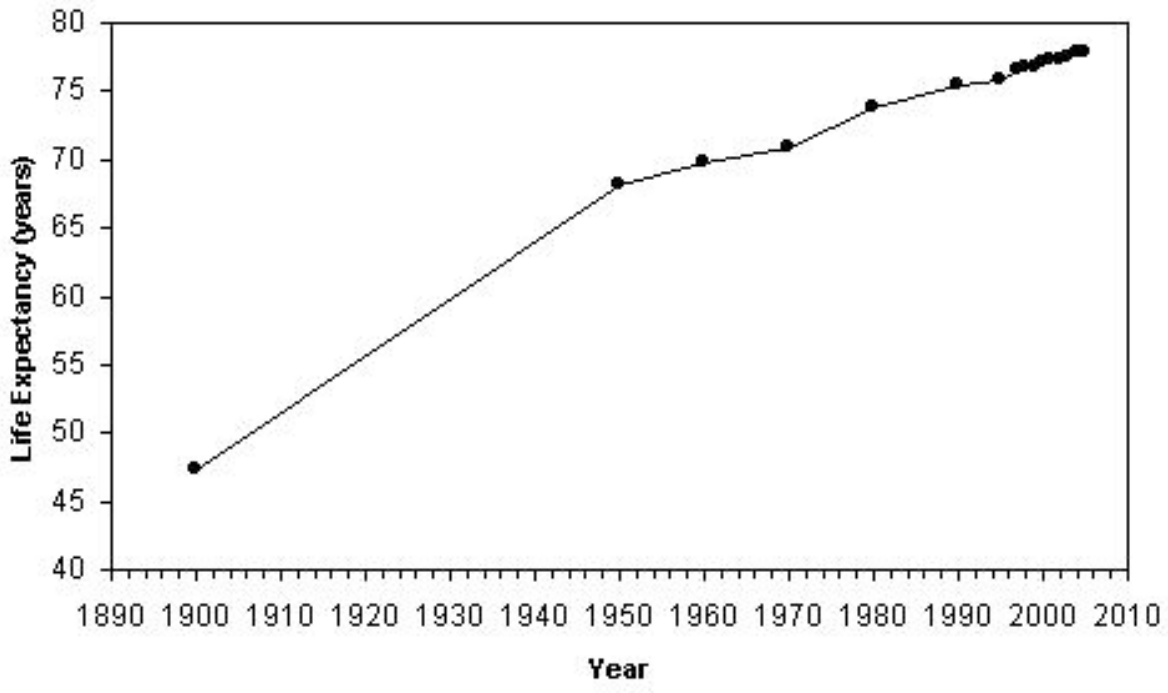


Figure 5. Life expectancy at birth in the U.S. (source: Centers for Disease Control)

What better measures of human health and welfare are there?

In fact, there is no better way to obtain a good picture of how human health and welfare may trend in the future under increases in greenhouse gas emissions than to assess how we have fared in the past during a period of increasing greenhouse gas emissions. As we used to say in group weather forecasting discussions when the forecast models projected an uncertain future "Let's just look out the window" because what is happening now provides a strong clue as to what will happen at least in the near future.

A look out of the window today shows an America that has greatly reduced its vulnerability to climate, much less climate change (which accounts for only a small portion of our overall climate).

True, hurricanes will strike again in the future and cause a great deal of damage and suffering. But that will largely occur because our climate is one which includes hurricanes. The same is true for tornadoes, droughts, floods, heat-waves, cold outbreaks, strong thunderstorms, heavy rains, hail, lightning, snowstorms, blizzards, freezing rain, etc. Those are all aspects of our climate.

Climate change may alter the strength, path, or frequency of these events—lessening some and increasing others. But to the large part, our nation's climate in the future will be made up of the same characteristics as it is today.

As America moves forward, we develop technologies that help us better respond and adapt to the prevailing climate and better protect ourselves from climate extremes. Thus, climate has become, and will undoubtedly continue to become, less and less of an "endangerment" to our general health and welfare. It would be foolish of the EPA to ignore history in reaching its ultimate conclusion.

References for this section -- see http://www.worldclimatereport.com/index.php/2008/11/19/why-the-epa-should-find-against-endangerment -- and the following:

Davis, R.E., et al., 2003b. Changing heat-related mortality in the United States. Environmental Health Perspectives, 111, 1712-1718.

Joughin, I., et al., 2008. Seasonal speedup along the western flank of the Greenland Ice Sheet. Science, 320, 781-783.

Knutson, T.R., et al., 2008. Simulated reduction in Atlantic hurricane frequency under twenty-first-century warming conditions. Nature Geosciences, doi:10.1038/ngeo202

Vecchi, G. A. et al., 2008. Whither Hurricane Activity? Science, 322, 687-689.

van de Wal, R. S. W., et al., 2008. Large and rapid melt-induced velocity changes in the ablation zone of the Greenland ice sheet. Science, 321, 111-113.

IV. EPA Must Exercise its Authority Not to Regulate Greenhouse Gases Under the Clean Air Act.

In the introduction to the ANPR, EPA states:

> [T]he ANPR illustrates the complexity and interconnections inherent in CAA regulation of GHGs. These complexities reflect that the CAA was not specifically designed to address GHGs and illustrate the opportunity for new legislation to reduce regulatory complexity. *However, unless and until Congress acts, the existing CAA will be applied in its current form*.

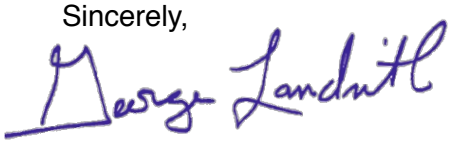
73 Fed. Reg. at 44,397 (emphasis added). EPA makes clear that, despite its own reservations about applying the CAA to greenhouse gases, it intends to proceed with actual regulations unless Congress steps in.

However, the rest of the Executive Branch does not believe the CAA is the appropriate vehicle to regulate greenhouse gases. Presently, nine federal agencies have expressed their strong

disapproval. Even EPA Administrator Stephen Johnson shares this view in his preamble to the ANPR.

The American Environmental Coalition ("AEC") firmly believes that the Clean Air Act is not the appropriate vehicle for regulation of greenhouse gases, and urges EPA not to regulate greenhouse gases from any source under the CAA.

Sincerely,



George C. Landrith