

Carbon Dioxide Regulation Under the Clean Air Act

This is the latest in a series of Environment Alerts from Sandy Liddy Bourne, Heartland's vice president for policy and strategic development, about an issue that could profoundly affect virtually every aspect of American life.

The Environmental Protection Agency staff is proposing a rule change that if enacted would threaten an economy-wide regulation of all activity, from homeowners' garden tools to industrial factories. All forms of transportation are covered with recommendations by EPA on how to build airplanes, ships, railcars, and automobiles.

Because of the profound impact this regulatory power-grab could cause if successful, The Heartland Institute will send further updates as warranted by action in Washington, D.C.

Bloomberg News reported this week that if Sen. Barack Obama is elected president next month, he intends to classify carbon dioxide as a dangerous pollutant and order the Environmental Protection Agency to regulate it under the Clean Air Act.

The Bloomberg report, based on an interview with Obama energy advisor Jason Grumet, is the clearest sign yet that Obama is planning a massive expansion of government through EPA that will make a finding of "endangerment" related to CO₂ emissions.

The Supreme Court last year ruled that CO₂ is a pollutant, but President George W. Bush refused to regulate it because he believed setting climate policy for the nation should be the job of Congress, not a huge administrative bureaucracy.

On July 11, 2008, EPA staff released an Advance Notice of Proposed Rulemaking (ANPR) that would declare carbon dioxide a dangerous pollutant to be regulated. That draft has become the framework of the Obama plan. The draft and 800 appendices supporting it in the *Federal Register* run to 18,094 pages, and stacked up would rise 6 -1/2 feet.

According to the U.S. Chamber of Commerce, EPA currently issues permits to 15,000 businesses under the Clean Air Act. If carbon dioxide were declared a dangerous pollutant and regulated under the Clean Art Act, more than 1.2 million new permits would have to be issued. Among those needing permits to stay in business are:

- 1 million mid- to large-sized buildings, including 10 percent of all churches, 20 percent of all food service businesses, half of the buildings in the lodging industry, and 92,000 health care facilities.
- 200,000 manufacturing operations.
- 20,000 large farms.

The mind boggles at the thought of the construction delays, economic uncertainty, paperwork burdens, and engineering expenses that would surface under this regulatory plan.

The flood of permit applications would overwhelm the resources of state EPAs that administer regulations under the Clean Air Act.

Farms would be considered a stationary source of greenhouse gas emissions just like power plants. The U.S. Department of Agriculture reports the following agriculture operations would be required to secure permits:

- Dairy facilities with more than 25 cows
- Beef operations with more than 50 cattle
- Swine operations with more than 200 hogs
- Farms with more than 500 acres of corn

The Department of Agriculture concluded in its initial review of ANPR, "These operations simply could not bear the regulatory compliance costs that would be involved."

Obama and EPA staff want to act without the consent of Congress. The mere act of designating CO₂ as a dangerous pollutant may well trigger regulatory action under other provisions of the Clean Air Act--actions that would dwarf the Kyoto Protocol in their scale, scope, and cost. Onerous restrictions on energy use would likely result from EPA action on CO₂. We could end up with a program of de-industrialization without Congress ever voting on it.

At time when the financial markets are crashing and a downturn in the economy looms, this plan will end free enterprise as we know it. It is bad for American taxpayers and a blow to democracy.