

RSC Backgrounder: Behind the Environmental Protection Agency's Rule by Fiat *December 9, 2009*

On Monday, December 7, 2009, the U.S. Environmental Protection Agency (EPA) issued a ruling that will allow it to regulate greenhouse gas (GHG) emissions through any provision under the Clean Air Act (CAA). It is widely believed this will result in the creation of an expansive regulatory program that will subject hundreds of thousands of “major” sources of emissions to the EPA's costly, burdensome, and onerous review process.

The EPA declared that six naturally occurring gases contained in Earth's atmosphere, including carbon dioxide and methane, pose a danger to the environment and the health of Americans. This final “endangerment finding” allows the EPA to draft regulations to impose the first-ever federal tailpipe standards for greenhouse gases and to require the largest industrial sources (facilities emitting more than 25,000 tons a year of carbon dioxide) to install the “best available control technology” for limiting greenhouse-gas emissions, while “taking into account costs.” In October, the EPA said there were 13,661 facilities that would qualify for regulations. They estimated that 128 new facilities and 273 existing facilities seeking modifications would require new permits *every year*.

Despite claiming this decision was “tailored” to limit regulation to large source emitters, this new authority will still allow EPA Administrator Lisa Jackson to impose regulations to govern greenhouse-gas emissions from a wide array of industries including coal-fired power plants, petroleum refineries, chemical plants, cement firms, vehicle manufactures and any other emitting sectors. Some conservatives have expressed the following concerns with the implementation of this policy:

- ***Outdated:*** Since the efforts of the Obama Administration to impose a national energy tax through Congress have stalled, they now intend to impose it through regulation written under clean-air laws that were originally drafted over thirty years ago. Additionally, these laws were never meant to apply to carbon dioxide and other naturally occurring ozone gasses like methane.
- ***Playing the Odds:*** By implementing regulations through the EPA, the Obama Administration is hedging its bets it can hold industry captive and force them back to the negotiating table to reluctantly “support” some form of command-and-

control proposals from Congress. The EPA regulations are seen by many in industry as less flexible than a market-based approach that could come from Congress..

- ***Allows the EPA to Arbitrarily Define What “Toxic” Is:*** A 2007 Supreme Court [ruling](#) arbitrarily declared that carbon dioxide and other greenhouse gases could be regulated under the Clean Air Act. However, the court’s ruling made the EPA determine whether these gasses posed a danger to public health before it could regulate them. If the EPA thinks naturally occurring greenhouse gasses like carbon dioxide and methane threaten our health, we can only assume that water vapor is next - since that also is a greenhouse gas.
- ***Impossible to Implement:*** While the regulation requires affected facilities to implement “best available” technology, it is impossible to determine what exactly that is because Administrator Jackson has not defined that term. According to the former head of the EPA’s air pollution programs, “There’s nothing” in current technology to effectively reduce carbon emissions.
- ***Little Environmental Impact:*** Only a small amount of carbon dioxide - the gas that is most commonly blamed for global warming - is contained in Earth’s atmosphere as shown in this [chart](#). Ultimately, world wide emission reductions are negligible without full participation from all countries. This bill asks American families to bear a cost of trillions of dollars to remove what amounts to a very small amount of the “danger” that may or may not cause global warming.

Democrat Inconsistency Alerts!

- ***Constitutional Authority? Refer to the Section Explaining the Czars:*** Senator John Kerry (D-MA) issued a statement after the controversial ruling saying, “The message to Congress is crystal clear: Get moving.” Obviously, Senator Kerry is confused over the constitutionality of this rulemaking. *According to the Constitution, it is the responsibility of Congress to issue specific policy; not the other way around.*

Nowhere in the Constitution did the Founders explain the specific powers of a so-called “Czar” appointed by the President. Agencies can only make rules they are authorized to make by statute. If the rules violate the purpose or wording of the statute or exceed the authority granted to it by statute, the rules can be challenged in court and overturned.

- ***Energy Independence? The Bill Restricts Americans From Using Our Most Bountiful Energy Supply:*** The regulation will create onerous regulations and place undefined mandates on technologies related to coal-fired power plants that are not currently feasible. Placing these regulations on coal-fired power plants

will reduce electricity generation across the country and increase rolling blackouts, energy shortages, energy prices, and unemployment.

- ***Define Carbon Dioxide As Toxic? Isn't It Crucial To Foster Life On Earth:***
While scientists continue to debate to what extent carbon dioxide emissions may or may not affect global warming, labeling this gas as “toxic” is absurd considering it is essential to allow plant life to flourish. Less CO2 means fewer trees, less plant life to create bio-fuels, and less of a global food supply.

RSC Action Item:

In anticipation of this EPA action, Rep. Marsha Blackburn (R-TN) introduced legislation (H.R. 391) to prohibit the EPA from regulating carbon dioxide and other such gasses under the Clean Air Act and harming the economy without congressional approval. In addition, Rep. Blackburn has filed discharge petition number 5 to consider H.R. 391. The RSC urges all members to cosponsor H.R. 391 and sign the petition on the House Floor.

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