

# UNITED STATES SENATE REPORT

## EPA'S ANTI-INDUSTRIAL POLICY: "THREATENING JOBS AND AMERICA'S MANUFACTURING BASE"



### United States Senate Committee on Environment and Public Works

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## Executive Summary:

In this report, we examined the impacts on jobs and the economy from EPA's greenhouse gas proposals, as well as three other significant EPA rules. The evidence is clear: these rules threaten the economic viability of America's manufacturing base and hundreds of thousands of well-paying jobs. Moreover, these rules will bring little, if any, public health or environmental benefits. As Americans suffer through a jobless recovery, EPA is pursuing policies that exacerbate our economic problems and do not improve the environment.

We reviewed the following proposals:

- New standards for commercial and industrial boilers: **up to 798,250 jobs at risk;**
- The revised National Ambient Air Quality Standard for ozone: **severe restrictions on job creation and business expansion in hundreds of counties nationwide;**
- New standards for Portland Cement plants: **up to 18 cement plants at risk of shutting down, threatening nearly 1,800 direct jobs and 9,000 indirect jobs;**  
and
- The Endangerment Finding/Tailoring Rules for Greenhouse Gas Emissions: **higher energy costs; jobs moving overseas; severe economic impacts on the poor, the elderly, minorities, and those on fixed incomes; 6.1 million sources subject to EPA control and regulation.**

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## I. Introduction

*"I don't think the unemployment rate will be coming down significantly anytime in the near future."* – **Austan Goolsbee, Chairman, President Obama's Council of Economic Advisers, Sept. 12, 2009**<sup>1</sup>

President Obama continues to search (in vain) for policies to create jobs. On Labor Day in Milwaukee, he vowed to "keep fighting every single day, every single hour, every single minute, to turn this economy around and put people back to work and renew the American Dream..." He called for spending \$50 billion for "infrastructure," a proposal immediately and widely panned, even by members of his own party.<sup>2</sup>

Despite the President's rhetoric, the economy is not turning around and people are not getting back to work. When President Obama took office, the unemployment rate was 7.6 percent; it's now 9.6 percent.<sup>3</sup> President Obama's central economic policy—namely, the \$814 billion stimulus package passed in 2009—has manifestly failed to lower unemployment.<sup>4</sup> "The Obama team has blown it," said David Resler of Nomura Securities.<sup>5</sup>

### **The Obama Administration's Regulatory Uncertainty**

Meanwhile, prospects for a robust economic recovery are bleak. There are many reasons for this: one stems from the regulatory uncertainty created by the Obama Administration. Anti-business rules and regulations across federal agencies and departments have left employers wary of hiring or expanding. According to economist Mark Zandi,

businesses "are just nervous about a great deal of the policy uncertainty coming out of Washington."<sup>6</sup>

In June, Ivan Seidenberg, the chairman of the Business Roundtable, an organization representing more than 12 million employees, said the Obama Administration is responsible for creating "an increasingly hostile environment for investment and job creation." He said further that policy changes and regulatory actions "harm our ability...to grow private-sector jobs in the U.S."<sup>7</sup>

### **Obama EPA Creating Uncertainty, Threatening Jobs**

Perhaps the agency contributing most to the uncertainty is the Obama Administration's Environmental Protection Agency (EPA). With few exceptions, EPA's regulations are unrivaled in the harm they pose to America's economy. At risk are hundreds of thousands of jobs and the numerous small and large businesses that make up America's manufacturing base (see more below).

Consider, for example, EPA's decision to regulate greenhouse gases under the Clean Air Act (CAA). The US Chamber of Commerce estimates over 1 million businesses could be subject to EPA regulation.<sup>8</sup> And as the Business Roundtable and the Business Council wrote in a recent joint report, "As the U.S. manufacturing sector continues to struggle and is shedding jobs overall, the EPA's actions will impose additional expenses, create uncertainty and place U.S. companies at a competitive disadvantage compared with foreign firms."<sup>9</sup>

Similarly, James Pethokoukis, a financial columnist for Thomson-Reuters, noted that, “the only thing certain about the EPA [greenhouse gas] ruling is more regulatory uncertainty leading to less economic growth and fewer jobs.”<sup>10</sup>

### **Cumulative impacts of EPA’s rules**

In the coming months, EPA is expected to propose (and, in some cases, finalize), among many others, standards for cooling water intake structures at power plants; national ambient air quality standards for dust and particulate matter; maximum achievable control technology standards for coal-fired power plants; new source performance standards for coal-fired power plants and refineries; and rules governing disposal of coal combustion waste.

The American Forest and Paper Association estimates that, “about two dozen new regulations being considered by the Administration under the Clean Air Act, if all are promulgated, potentially could impose on the order of \$17 billion in new capital costs on papermakers and wood products manufacturers in the next five to eight years alone.”<sup>11</sup> And this is just for one industry. Many others will be similarly affected.<sup>12</sup>

In short, the cumulative effect of EPA’s air rules will negatively affect growth, energy prices, jobs, innovation, and domestic manufacturing competitiveness.

The burden of EPA’s regulations will fall disproportionately on small businesses, according to a new study released by

the Office of Advocacy in Obama’s Small Business Administration. The study, titled “The Impact of Regulatory Costs on Small Firms,” small businesses, defined as firms employing fewer than 20 employees, “bear the largest burden of federal regulations.” Specifically, the report found that “as of 2008, small businesses face an annual regulatory cost of \$10,585 per employee, which is 36 percent higher than the regulatory cost facing large firms (defined as firms with 500 or more employees).”<sup>13</sup>

## **II. A Note on the Clean Air Act**

Over the last four decades, the Clean Air Act (CAA) has spurred major reductions in pollution from cars, factories, and power plants. Such success deserves high praise. This success has come with a cost, but one Americans have been willing to pay. And for good reason: many of the gains in reducing pollution have been cost-effective—that is, they have largely been achieved by balancing environmental improvement with job creation and economic growth.<sup>14</sup>

That balance has traditionally engendered bipartisan support for the CAA. Many supporters now believe, however, that the CAA should be modernized to manage the more complex and intractable air pollution problems of the 21<sup>st</sup> Century. As David Schoenbrod, a former attorney with the Natural Resources Defense Council, has argued, “It is appropriate to celebrate past successes, but in truth the Clean Air Act cannot handle today’s pollution problems.”<sup>15</sup>

Unfortunately, the Obama EPA favors bureaucracy and heavy-handed intervention more than jobs and growth. In many cases, outmoded provisions of the CAA are no longer tools to achieve clean air, but blunt instruments for EPA to enact anti-industrial policies. If America wants to compete economically with China, India, and other developing economies, this cannot continue. In short, *the CAA should be updated to ensure further progress cleaning the air without undercutting America's global competitiveness or destroying jobs.*

### III. Findings

#### Commercial/Industrial Boiler MACT

*“As our nation struggles to recover from the current recession, we are deeply concerned that the pending Clean Air Act boiler MACT regulations could impose onerous burdens on U.S. manufacturers, leading to the loss of potentially thousands of high-paying jobs this sector provides. As the national unemployment rate hovers around 10 percent, and federal, state, and municipal finances continue to be in dire straits, our country should not jeopardize thousands of manufacturing jobs.”*

Sept. 27, 2010 bipartisan letter sent to EPA Administrator Lisa Jackson on the agency’s Boiler MACT proposal, signed by Senators **Collins, Landrieu, Wyden, Alexander, Bayh, Voinovich, Murray, Snowe, Lincoln, Bond, Casey, Corker, Klobuchar, Shelby, Pryor, Wicker, Begich, Chambliss, McCaskill, Risch, Warner, Burr, Mikulski, Crapo, Inouye, Coburn, Webb, Sessions, Nelson, Inhofe, Merkley, Cochran, Graham, Isakson, Kohl, Cornyn, Vitter, Hutchinson, LeMieux, Brown, and Hagan.**

*“Tens of thousands of these jobs will be imperiled. In addition, many more tens of thousands of jobs in the supply chains and in the communities where these plants are located also will be at risk.” – United Steel Workers Union<sup>16</sup>*

**What:** On June 4, EPA proposed “National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters.” This proposal is referred to as the “Boiler MACT.”

**Jobs/Economic Impact:** A recent study by Global Insight estimates that, depending on the policy EPA chooses, the Boiler MACT could put up to **798,250 jobs at risk.** The study found

that every \$1 billion spent on upgrade and compliance costs will put **16,000 jobs at risk** and **reduce US GDP by as much as \$1.2 billion.**<sup>17</sup>

**Background:** The Boiler MACT (maximum achievable control technology) proposal would impose stringent emission limits and monitoring requirements for eleven subcategories of boilers and process heaters. This proposed rule covers industrial boilers used in, among other industries, manufacturing, processing, mining, refining, as well as commercial boilers used in malls, laundries, apartments, restaurants, and hotels/motels.

EPA’s authority to issue the Boiler MACT stems from Section 112 of the

Clean Air Act. As EPA explained, “Section 112(d) of the Clean Air Act (CAA) requires EPA to establish National Emissions Standards for Hazardous Air Pollutants (NESHAP) for both major and area sources of hazardous air pollutants (HAP) that are listed for regulation under CAA section 112(c).”<sup>18</sup>

### **How the rule is flawed**

Reducing emissions of mercury, hydrogen chloride and other HAPs from commercial and industrial boilers is good policy. But the manner in which EPA set standards to reduce those emissions is impracticable and costly.

That is the view of the Industrial Energy Consumers of America (IECA), which represents companies with 750,000 employees and \$800 billion in sales. IECA “supports clean air regulations that are designed to provide real net benefits to environmental quality and public health,” and “opposes emission regulation that unnecessarily create adverse economic and social impacts and that are not in compliance with applicable existing law.”<sup>19</sup>

The proposed Boiler MACT, IECA concluded, “falls into the second category.” The reason: EPA’s proposed standards are so stringent that not even the best performing sources can meet them. As IECA explained:

IECA members have 6 units that were part of the best performing units and none can comply with the standards based on the best performing units. Based on the analysis of the data EPA used to develop these standards, it

appears that none of the coal-fired boilers in the source category can meet the proposed standards.<sup>20</sup>

Because of this practical reality, IECA is “enormously concerned that the high costs of this proposed rule will leave companies no recourse but to shut down the entire facility, not just the boiler.”

### **Factories will close, jobs will be lost**

As companies shut down facilities, jobs will be lost. This is what the econometrics firm IHS-Global Insight found in its analysis of EPA’s proposal. IHS-Global Insight concluded that the proposal could destroy 338,000 jobs. Moreover, every \$1 billion spent on upgrade and compliance costs will put 16,000 jobs at risk and reduce US GDP by as much as \$1.2 billion.<sup>21</sup>

The proposal’s high costs have incurred emphatic opposition from the United Steel Workers Union (USW). The USW believes the proposal “will be sufficient to imperil the operating status of many industrial plants.” The USW represents hundreds of thousands of workers, “in the most heavily-impacted industries, among them pulp & paper, steel, and rubber.” In the union’s view:

“Tens of thousands of these jobs will be imperiled. In addition, many more tens of thousands of jobs in the supply chains and in the communities where these plants are located also will be at risk.”<sup>22</sup>

Comments on EPA’s proposal were filed by companies and trade associations

from every region of the country—and all agree: it will be disastrous. The Pennsylvania Forest Products Association summed up the proposal this way:

At a time when all government agencies should be focused on job creation and economic recovery, EPA's currently proposed regulation will have the opposite effect, further depressing business conditions, resulting in more business closings and job losses.<sup>23</sup>

That view is shared by Thilmany Papers, a company that employs 850 people in two specialty paper mills in Wisconsin. "Our business, like many others, the company wrote, "encounters many challenges. ***However, none threaten the continued existence of our business like the proposed Boiler MACT***" rule.<sup>24</sup> [Emphasis added]

Similarly, the Association of Washington Business, Washington State's chamber of commerce, representing over 7,000 businesses, said:

The proposed standards are far more stringent than required to protect air quality and will impose unnecessary and burdensome costs on employers, at a time when our economy is struggling to recover. And because companies located outside of the United States will not have to comply with the proposed regulations, US companies will be at an even greater competitive disadvantage than they already are.<sup>25</sup>

## **Time to scrap it and start over**

In explaining the economic harm from the Boiler MACT, IECA wrote, "We cannot emphasize more forcefully the need to the EPA to completely rethink this rule." IECA is right: EPA should go back to the drawing board. As 41 Senators (18 Democrats and 23 Republicans) wrote in a letter to EPA Administrator Lisa Jackson on September 24, 2010, EPA should propose Boiler MACT standards that balance protection for public health with preserving jobs and keeping domestic manufacturing globally competitive. "While we support efforts to address serious health threats from air emissions," the Senators wrote, "we also believe that regulations can be crafted in a balanced way that sustains both the environment jobs."<sup>26</sup>

## Revised Ozone Standard

*“While we believe we can and should continue to improve our environment, we have become increasingly concerned that the Agency’s environmental policies are being advanced to the detriment of the people they are intended to protect. That is, these policies are impacting our standard of living by drastically increasing energy costs and decreasing the ability of our states to create jobs, foster entrepreneurship, and give manufacturers the ability to compete in the global marketplace.”*

Aug. 6, 2010 bipartisan letter to EPA Administrator Lisa Jackson on the agency’s ozone reconsideration, signed by Senators **Voinovich, Bayh, Lugar, Landrieu, Vitter, McCaskill, and Bond**

*EPA’s proposal “would lead to significant job losses across the country during a period of high unemployment, due to the significant increase in the number of counties classified as nonattainment and the inability of states to attain a revised standard within this range “as expeditiously as practicable.”*  
-- Unions for Jobs and the Environment<sup>27</sup>

**What:** EPA proposed revision to the level of the primary 8-hour ozone standard to within the range of 60 to 70 parts per billion (ppb)

**Jobs/Economic Impact:** Severe restrictions on job creation and business expansion in hundreds of counties nationwide.

**Background:** On January 6, 2010, for the second time in less than two years, EPA proposed to tighten the national ambient air quality standards (NAAQS) for ground-level ozone, which is formed when emissions of nitrogen oxides and volatile organic compounds from cars,

trucks, power plants, and other sources react with sunlight. Specifically, EPA is proposing to strengthen the 8-hour “primary” ozone standard to a level within the range of 60 to 70 parts ppb. EPA estimates that setting the primary standard within this range will cost \$19 to \$90 billion.<sup>28</sup> Put another way, the ozone revision could be *the most expensive EPA regulation ever proposed.*

### **EPA Acts Rashly, With No New Scientific Evidence**

This proposal comes on the heels of the revised 2008 ozone standard, which was lowered significantly from 84 parts per billion (ppb) to 75 ppb. The CAA only requires a NAAQS revision “at least” every five years, so EPA is not

required to revise the status quo. Meanwhile, states are in the midst of planning to meet the 2008 ozone standard, while some communities are not yet in compliance with the 1997 standard.

EPA justifies the proposed revision partly on grounds that the Clean Air Scientific Advisory Committee (CASAC), created by the CAA, supports it. But the CAA is very clear that EPA is not bound by CASAC's recommendations.<sup>29</sup>

Making changes at this stage exacerbates uncertainty, as states and businesses grapple with existing standards and prepare for even more stringent standards in the very near future.

There is no good reason for this, as EPA's proposal is based on the same scientific and technical record used in the March 2008 ozone review. EPA itself concedes it is *not relying on any new ozone studies* published since the science assessment supporting the 2008 review was completed in 2006.<sup>30</sup> In other words, EPA is using scientific studies that are at least *four years old*. Thus EPA is, by definition, not relying on the "latest scientific knowledge," as the Clean Air Act requires.<sup>31</sup>

### **More Non-Attainment Areas**

Whatever number in the 60 to 70 ppb range EPA ultimately picks, it will dramatically increase the number of so-called "non-attainment" areas nationwide. Based on 2008 air quality data, a standard of 65 ppb would create 608 new non-attainment areas, while a standard of 70 ppb would create 515 such areas. These areas would be highly concentrated in manufacturing regions and states relying on coal for electricity.<sup>32</sup>

Consider the case of Ohio. Many areas of the state are still trying to meet the

1997 standard. A further revision now would greatly complicate state efforts to achieve attainment. Bob Hodanbosi, Ohio EPA's Air Pollution Division Chief, estimates that if the ozone standard is set at 70 ppb, 47 of 49 monitors in Ohio would exceed it; if it were set at 65 ppb, all 49 monitors would exceed it.

### **Non-Attainment = "Closed for Business"**

The costs to Ohio workers and consumers could be severe. For example, in the Cincinnati-Dayton region, assuming an ozone standard of 70 ppb, production would decline by \$14.8 billion, killing 91,700 jobs in 2030. If EPA chooses 65 ppb, the costs in 2030 would nearly double, and 165,000 workers would lose their jobs.<sup>33</sup>

These costs stem from the CAA's non-attainment designation, which is akin to posting a "closed for business" sign on a local community. Non-attainment can mean loss of industry and economic development, including plant closures; loss of federal highway and transit funding; increased EPA regulation and control over permitting decisions; increased costs for industrial facilities to implement more stringent controls; and increased fuel and energy costs.

Walker County (Ga.) Commissioner Bebe Heiskell testified in 2006 before the Senate Committee on Environment and Public Works about the real-world impacts of non-attainment status. As Heiskell explained:

Walker County has more than four million square feet of vacant manufacturing space, in large measure because of the

uncertainty our non-attainment designation creates for business prospects. We have had some of our largest employers express frustration at incurring additional costs in order to comply with more stringent air quality standards even as foreign competition continues to squeeze their profit margins. Others have been reluctant to expand, and one business, a major automotive manufacturer facility decided not to locate a plant in the Chattanooga area, in part because of concerns over our attainment status. That plant was eventually located elsewhere, in an attainment area.<sup>34</sup>

### **Non-attainment Means Fewer Jobs**

Non-attainment has negative impacts on jobs. For example, Unions for Jobs and the Environment (UJAE), an organization of twelve national and international labor unions, including the United Mine Workers, the Teamsters, and the Sheet Metal Workers, is “particularly concerned” that the proposed ozone revision:

would lead to significant job losses across the country during a period of high unemployment, due to the significant increase in the number of counties classified as nonattainment and the inability of states to attain a revised standard within this range “as expeditiously as practicable.”<sup>35</sup>

These “substantial job losses,” according to UJAE, would occur “at electric power and manufacturing

facilities within the numerous areas that would be classified as nonattainment.”<sup>36</sup>

Many industries would be affected by the new standard, including home building, an industry that suffered severe contraction during the recession, and is struggling to recover. The National Association of Home Builders, many of whose members are small businesses, believes EPA’s ozone revision “would have significant impacts” on homebuilding:

If adopted, more and more builders and developers would be forced to comply with a dizzying array of new and/or expanded regulations that limit, or effectively dictate, both where and how construction can occur.

Similarly, the Associated General Contractors of America (AGC), which represents 7,500 of America’s leading general contractors, nearly 12,500 specialty contractors, and more than 13,000 service providers and suppliers, foresees dire consequences for its members. As AGC points out, compliance with a NAAQS can entail restrictions on the use and operation of diesel fuel, affecting how and when off-road equipment can be used. This can introduce delays that, in some cases, amount to de facto “construction bans.”

Construction bans will bring, AGC points out, “a massive layoff of construction workers and of workers who supply a multitude of materials, equipment and services to construction.” They also mean slower progress in “renovation and improvement of public infrastructure, including highway and transit construction projects, bridge

construction and repairs, dam repairs and school renovation.”<sup>37</sup>

### **EPA Should Throw Out Revised Standard**

EPA has no new compelling science to justify tightening the ozone NAAQS, and EPA has already concluded that the 2008 ozone standard is sufficiently protective of public health. Further tightening in the range EPA has proposed will not, despite EPA’s assertion, create meaningful additional public health benefits. In fact, if EPA sets the ozone standard between 60 and 70 ppb, it would put ozone levels at or above natural background levels in some parts of the country.<sup>38</sup> In other words, ozone will remain in the ambient air no matter what states or EPA do to reduce emissions from cars, trucks, and power plants, and any potential health benefits from doing so.

It’s important to note that, in the case of setting NAAQS, EPA is not required to reduce all risk associated with pollution. As Supreme Court Justice Stephen Breyer wrote in *Whitman v. American Trucking Association*:

The statute, by its express terms, does not compel the elimination of all risk; and it grants the Administrator sufficient flexibility to avoid setting ambient air quality standards ruinous to industry.<sup>39</sup>

To avoid further deterioration in the job market and adding greater uncertainty to local communities struggling to climb out of recession, EPA should maintain the 2008 ozone standard and withdraw its proposed revision.

## Portland Cement Standards

*“In a very real sense, if a reasonable standard is not adopted in this matter, we anticipate that substantial cement capacity may move overseas to the detriment of industrial employment, environmental protection, and infrastructure needs in the United States.”*

Feb. 17, 2010 bipartisan letter to EPA Administrator Lisa Jackson on the agency’s Portland Cement MACT, signed by Senators **Voinovich and Lincoln**

*“So rather than importing 20 million tons of cement per year, the proposed [rule] will lead to cement imports of more than 48 million tons per year. In other words, by tightening the regulations on U.S. cement kilns, there will be a risk transfer of some 28 million tons of cement offshore, mostly to China.”* – **Professor Ragnar Lofstedt, Kings College (London)**<sup>40</sup>

**What:** National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants.

**Jobs/Economic Impact:** EPA’s standards could force 18 cement plants to shut down; could send 28 million tons of cement production overseas, mostly to China.

**Background:** According to EPA, “A projected 181 Portland cement kilns will be operating at approximately 100 facilities in the United States in the year 2013.” EPA’s new emissions standards under Section 112 of the CAA will apply to 158 of those kilns. About seven kilns will be subject to EPA’s new source performance standards under Section 111 of the CAA.<sup>41</sup>

The cement industry is essential to America’s economy. According to a study by the Maguire Energy Institute at Southern Methodist University (SMU), the cement manufacturing industry in 2008:

- Produced \$27.5 billion in GDP;
- \$931 million in indirect tax revenue for state and local governments; and
- Sustained 15,000 high-paying jobs.

In addition to those 15,000 direct jobs, the industry has an “induced employment” effect, which helps create and sustain an additional 153,000 jobs. “Importantly,” the Cox Maguire Energy Institute noted, “these are primarily high-wage jobs generating about \$7.5 billion annually in wages and benefits.”<sup>42</sup>

Cement manufacturing, which occurs at 113 plants in 36 states, is an energy-intensive process that “grinds and heats a mixture of raw materials such as limestone, clay, sand and iron ore in a rotary kiln.” That product, called clinker, “is cooled, ground and then mixed with a

small amount of gypsum to produce concrete.”<sup>43</sup>

The industry is also highly capital-intensive, as the capital investment per worker is the highest of any industry.<sup>44</sup> Thus, any increases in domestic energy prices and additional regulatory burdens give foreign manufacturers (China and India, the world’s leading cement makers) significant competitive advantage over U.S. cement manufacturers. On September 9, 2010, EPA finalized new emissions standards for domestic cement kilns<sup>45</sup>, which will no doubt boost China’s and India’s growing predominance in global cement manufacturing.

### **EPA’s rule could force plant closures**

Under its Section 112 cement kiln proposal, EPA set so-called “maximum achievable control technology,” or MACT, standards on a pollutant-by-pollutant basis—a controversial approach that some argue violates the CAA.<sup>46</sup> The CAA requires that MACT standards be “achieved in practice” by the best performing sources. However, in this proposal, as with the Boiler MACT, many in industry argue that no single source has “achieved in practice” the level of controls required under the proposed rules.<sup>47</sup>

As a result, cements plants could close; the Portland Cement Association estimates that as many as *18 plants are at risk* if EPA’s proposal goes into effect.<sup>48</sup> Congress intended to avoid this outcome when it passed the MACT standards in the CAA amendments of 1990. As the House Report for the 1990 amendments states, “MACT is not intended to require unsafe control

measures, or to drive sources to the brink of shutdown.”<sup>49</sup>

### **Plants move to China, Costing Jobs, Harming the Environment**

Not only are the standards impossible to meet, they impose enormous costs with no meaningful environmental benefits. According to a study by Professor Ragnar Lofstedt of Kings College (London), the benefits of the EPA proposal “will be negligible.” Moreover, Professor Lofstedt concludes, “if looked at from a global environment perspective, the proposed NESHAP will arguably make the global environmental situation worse.”<sup>50</sup>

That’s because, as Lofstedt also points out, cement production will shut down in the U.S. and relocate to China, which has comparatively lax environmental standards. Notably, 50 percent of China’s cement manufacturing comes from shaft kilns, which, Lofstedt explained, are generally small and easy to assemble cement plants, “but in turn are inefficient and highly polluting and unless they have been upgraded, produce low quality cement.” Shaft kilns have been completely phased out in Europe and North America for environmental and efficiency reasons.<sup>51</sup>

Lofstedt estimated that EPA’s proposal “will further reduce domestic cement production capacity,” ranging from 8 percent (EPA’s estimate) to more than 15 percent (industry’s estimate), ensuring that domestic capacity by the year 2020 is, at most, 100 million tons. As Lofstedt notes:

So rather than importing 20 million tons of cement per year, the proposed [rule] will lead to

cement imports of more than 48 million tons per year. In other words, by tightening the regulations on U.S. cement kilns, there will be a risk transfer of some 28 million tons of cement offshore, mostly to China.<sup>52</sup>

The U.S. cement industry employs tens of thousands of Americans and produces a product that is absolutely essential to the nation's economic recovery and security. Without affordable cement it will be impossible to pursue many of the construction projects essential to the nation's economic recovery. Adoption of this rule will, by the EPA's own admission, reduce the number of U.S. jobs in the industry, increase our reliance on foreign producers of cement, and increase costs for all consumers of cement.

### **EPA Should Fix the Proposal, Help Keep Cement Industry Viable**

EPA must revamp its proposal to prevent plants from moving to China and preserve jobs here at home. These important cost considerations are required by the CAA. Under the law, EPA must consider “the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements...”<sup>53</sup> EPA's proposed pollutant-by-pollutant approach fails to fulfill this requirement, as no plant can meet the proposed pollution standards. The result is a proposal with enormous costs—and one that actually could produce environmental harm.

## Regulating GHGs

*“We write with serious economic and energy security concerns relating to the potential regulation of greenhouse gases (GHGs) from stationary sources under the Clean Air Act...[W]e remain concerned about the possible impacts on American workers and businesses in a number of industrial sectors, along with the farmers, miners, and small business owners, who could be affected as your agency moves beyond regulations for vehicle greenhouse gas emissions...”*

*Feb. 19, 2010 letter to EPA Administrator Lisa Jackson on EPA’s pending stationary source GHG regulations, signed by Senators **Rockefeller, Begich, Levin, Brown (Ohio), Casey, Byrd, Baucus, and McCaskill***

*“CO2 restrictions implied in the EPA regulations would have serious economic, employment, and energy market impacts at the national level and that the impacts on low-income groups, the elderly, Blacks, and Hispanics would be especially severe.” – Dr. Roger Bezdek, Former Director, Bureau of Economic Analysis, U.S. Department of Commerce<sup>54</sup>*

**What:** Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the CAA; Tailoring rule.

**Jobs/Economic Impact:** EPA has called the consequences of regulating greenhouse gases under the CAA “absurd,” affecting 6.1 million sources, introducing \$78 billion in annual costs, causing “at least a decade or longer” of permit delays, “slow[ing] construction nationwide for years,” introducing burdens that are administratively “infeasible,” “overwhelming,” that will “adversely affect national economic development,” while impacting sources “not appropriate at this point to even consider regulating.”<sup>55</sup>

**Background:** On December 15, 2009, EPA promulgated its endangerment finding for greenhouse gases (GHG) under Section 202(a) of the CAA, which covers GHGs from “new motor vehicles and new motor vehicle engines.” This scientifically flawed finding legally compels EPA to regulate GHGs from mobile sources, such as cars and trucks.<sup>56</sup> In EPA’s view, because of the interlocking nature of the CAA, regulating GHG emissions from mobile sources means those emissions are “subject to regulation” under the CAA—a fact that triggers costly, time-consuming permitting requirements for new and modified *stationary* sources of GHGs, such as power plants, factories, and refineries.

But those are not the only sources potentially covered by EPA’s regulatory net: schools, hospitals, churches, restaurants, farms, and many others may need to obtain permits under the CAA’s Prevention of Significant Deterioration (PSD) and Title V programs. These sources are considered “major” under the CAA—that

is, they emit more than 100 or 250 tons per year of GHGs annually. The 100-250 ton threshold, however, was designed for conventional pollutants, such as sulfur dioxide and nitrogen oxides, and the large sources—such as power plants and manufacturing facilities—that emit them.

In short, the CAA was not intended to regulate GHGs. Attempting to do so leads to, as EPA itself has conceded, “absurd results.” “PSD permit issuance,” EPA believes, “would be unable to keep up with the flood of incoming applications, resulting in delays, at the outset, that would be at least a decade or longer.” During this time, “tens of thousands of sources a year would be prevented from constructing or modifying.” This administrative nightmare, EPA concludes, would “slow construction nationwide for years, with all of the adverse effects that this would have on economic development.”<sup>57</sup>

A recent study by the U.S. Chamber of Commerce gives a glimpse of what EPA’s “absurd results” would like. EPA could be forced to regulate:

- 260,000 office buildings;
- 150,000 warehouses;
- 92,000 health care facilities;
- 71,000 hotels and motels;
- 51,000 food service facilities;
- 37,000 churches and other places of worship;
- 17,000 farms.

The potential for a massive expansion of the EPA’s authority over these sources led the Obama Administration’s own Office of Management and Budget (OMB) to warn last year that, “Making

the decision to regulate CO2 under the [Clean Air Act] for the first time is likely to have serious economic consequences for regulated entities throughout the U.S. economy, including small businesses and small communities.”

### **GHG Mandates Harm Elderly, Minorities the Most**

Not only would small businesses and their employees incur higher costs under GHG regulation, but consumers too, especially minorities, the poor, and the elderly. This was confirmed in a recent study by Dr. Roger Bezdek, former director of the Bureau of Economic Analysis at the U.S. Department of Commerce, now President of Management Information Services:

The study’s major finding is that the CO2 restrictions implied in the EPA regulations would have serious economic, employment, and energy market impacts at the national level and that the impacts on low-income groups, the elderly, Blacks, and Hispanics would be especially severe.”<sup>58</sup>

The reason for this is straightforward, as Bezdek explained. EPA’s regulations:

will impact low income groups, the elderly, and minorities disproportionately, both because they have lower incomes to begin with, but also because they have to spend proportionately more of their incomes on energy, and rising energy costs inflict great harm on these groups.

In Bezdek's view, the greatest burdens of the increased energy costs resulting from EPA GHG regulations "will fall on households of elderly Social Security recipients – more than 20 percent of all households – who depend mainly on fixed incomes, with limited opportunity to increase earnings from employment."

Minorities will face serious reductions in their standard of living. Bezdek calculates that in 2015, black median household income will decrease about \$550 compared to the reference case (which assumes that the EPA regulations are not implemented). The cumulative loss in black median household income over the period 2012 – 2035 will exceed \$13,000.

These findings are supported by Harry Alford, President and CEO of the National Black Chamber of Commerce. "Based on my review of this study," he wrote, "along with other studies on greenhouse gas control schemes, and my knowledge of the field, I believe that it presents an accurate estimate of the impact of EPA's regulations on African American communities."

### **EPA Rewrites CAA, Provides Illusory Relief**

In an attempt to stem the impending economic harm facing thousands of small businesses, EPA has developed the so-called "tailoring rule." The tailoring rule phases in stationary source permitting requirements, covering the largest sources (those already subject to PSD for non-GHGs that emit more than 75,000 tons per year of CO2 equivalent) starting on January 2, 2011, eventually leading to a regulatory regime in 2016 for smaller sources (those that emit

more than 100 or 250 tons per year of CO2 equivalent).

But the tailoring rule violates the plain language of the CAA. The Act defines "major sources" as those that emit more than 100-250 tons per year of a regulated pollutant. In the tailoring rule, however, EPA arbitrarily changes those thresholds—to 75,000 and 100,000 tons. For this reason, the rule likely won't survive judicial scrutiny.<sup>59</sup>

If the courts overturn the rule, the purported regulatory relief implied in it won't be realized. For now and the foreseeable future, the dubious legal basis of the rule is creating uncertainty for businesses. It now imposes a:

terrible uncertainty tax on our struggling economy, as no business is able to make plans or investments in reliance on a regulatory scheme so clearly at odds with the plain language of the Act.<sup>60</sup>

If the tailoring rule is struck down, tens of thousands of small businesses will come directly into EPA's regulatory crosshairs.

Indeed, reliance on the tailoring rule may not be a "safe harbor" if the rule is overturned. Facilities not obtaining PSD permits per the tailoring rule may therefore be in violation of the CAA. The effect of the Court invalidating the rule would be that the explicit 100-250 ton per year language of the CAA will remain and be enforceable by EPA and through citizen suits. At the very least, these additional facilities will have to get PSD permits and may face penalties for a violation.<sup>61</sup>

While EPA claims in the Tailoring Rule that *only* 900 businesses would be newly subject to PSD review and 550 businesses for Title V permits,<sup>62</sup> these assumptions are only valid if EPA's proposal is upheld. Even these figures conflict with those from EPA's greenhouse gas reporting rule, in which the agency identified at least 2,853 facilities that emit more than 100,000 tons per year of CO<sub>2</sub> equivalent that could be subject to EPA's harmful GHG mandates.<sup>63</sup>

In addition to power plants, EPA notes that aluminum production, ammonia production, cement, iron, steel, lime, petrochemical, phosphoric acid production, and pulp and paper manufacturing would all be covered. EPA predicts that regulation would extend to:

- 99% of cement production facilities (106 facilities);
- 87% of iron and steel facilities (113 facilities);
- 96.5% of pulp and paper manufacturing facilities (410 actual facilities); and
- Other, smaller industries, such as silicon carbide production, soda ash production, titanium dioxide production, and waste treatment.<sup>64</sup>

### **EPA Rules Have No Direct Environmental Benefit**

One might expect that these costs would at least be offset with meaningful environmental benefits. Yet EPA's own analysis shows that's not the case. In

estimating the impacts on global temperatures of the agency's mobile source rule, EPA concluded:

"Based on the reanalysis the results for projected atmospheric CO<sub>2</sub> concentrations are estimated to be reduced by an average of 2.9 ppm (previously 3.0 ppm), global mean temperature is estimated to be reduced by 0.006 to 0.0015 °C by 2100."<sup>65</sup>

This amount is so miniscule it can't even be measured by a ground-based thermometer. What's more, EPA says that sea level rise is "projected to be reduced by approximately 0.06-0.14 cm by 2100."<sup>66</sup>

So EPA will make energy less affordable, less secure, destroy thousands of jobs, restrict and slow down construction of schools, hospitals, commercial buildings and much else, with rules that achieve environmental benefits that are barely discernible. EPA should rescind the endangerment finding and dismantle its greenhouse gas regulatory regime.

## **Conclusion**

As the foregoing shows, EPA's anti-industrial policies threaten the economic competitiveness of America's manufacturing base. They also stand to destroy hundreds of thousands of jobs, many of them concentrated in the industrial heartland.

We emphasize that opposition to EPA's proposals should not be equated with opposition to environmental protection

generally. Of course, this is precisely how some, particularly those from activist groups, will (mistakenly) characterize this report. Notably, many of those same critics also enthusiastically support using antiquated federal regulations to do away with industries they find objectionable.

One of the motivations behind this report was to show how the wrongheaded application of the CAA—backed by those selfsame groups—has undermined the economy and the

environment, as well as highlight areas where the CAA could be improved. Our task ahead is to bring balance back to federal clean air policy, so that economic growth, job creation, and environmental progress can coexist, rather than be in conflict with each other.

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- <sup>1</sup> Fox News Sunday, "Austan Goolsbee Talks Economy and Elections," 12 September 2010 (<http://www.foxnews.com/on-air/fox-news-sunday/transcript/austan-gooolsbee-talks-economy-and-elections>).
- <sup>2</sup> Remarks by the President at Laborfest in Milwaukee, Wisconsin, 6 September 2010 (<http://www.whitehouse.gov/the-press-office/2010/09/06/remarks-president-laborfest-milwaukee-wisconsin>).
- <sup>3</sup> Bureau of Labor Statistics, Employment Situation Summary, 3 September 2010 (<http://www.bls.gov/news.release/empsit.nr0.htm>); Bureau of Labor Statistics, The Editor's Desk, 10 February 2009 (<http://www.bls.gov/opub/ted/2009/feb/wk2/art02.htm>).
- <sup>4</sup> The \$814 billion price tag comes from the Congressional Budget Office, "Estimated Impact of the American Recovery and Reinvestment Act on Employment and Economic Output from April 2010 through June 2010." (<http://www.cbo.gov/doc.cfm?index=11706>).
- <sup>5</sup> "Obama, Geithner Receive Failing Grades from Economists in Survey," *Wall Street Journal*, 11 March 2009 (<http://www.foxnews.com/politics/2009/03/11/obama-geithner-receive-failing-grades-economists-survey/>).
- <sup>6</sup> David Kerley and Christina Capatides, "Economic Uncertainty Despite Obama Cheer," ABC News, 31 July 2010 (<http://abcnews.go.com/GMA/president-obama-touts-auto-industry-amid-economic-uncertainty/story?id=11293236&page=1>).
- <sup>7</sup> Lori Montgomery, "Business leaders say Obama's economic policies stifle economic growth," *Washington Post*, 23 June 2010 (<http://www.washingtonpost.com/wp-dyn/content/article/2010/06/22/AR2010062205279.html>).
- <sup>8</sup> US Chamber of Commerce, "A Regulatory Burden: The Compliance Dimension of Regulating CO2 as a Pollutant," September 2008 (<http://www.uschamber.com/reports/regulatory-burden-compliance-dimension-regulating-co2-pollutant>).
- <sup>9</sup> "Policy Burdens Inhibiting Economic Growth," a joint report by the Business Roundtable and the Business Council, 21 June 2010 (<http://www.businessroundtable.org/sites/default/files/2010.06.21%20Letter%20to%20OMB%20Director%20Orszag%20from%20BRT%20and%20BC%20with%20Attachments.pdf>).
- <sup>10</sup> James Pethokoukis, "The EPA and Obama's Uncertainty Tax," *Thomson Reuters*, 9 December 2009 (<http://blogs.reuters.com/james-pethokoukis/2009/12/08/the-epa-and-obamas-uncertainty-tax/>).
- <sup>11</sup> American Forest and Paper Association, "Reconciling the Cumulative Impact of Upcoming Air Regulations with a Sustainable Forest Products Industry," February 2010.
- <sup>12</sup> "Economic Impact of Pending Air Regulations on the U.S. Pulp and Paper Industry," prepared by Fisher International for the American Forest and Paper Association, August 2010.
- <sup>13</sup> Nicole V. Crain and W. Mark Crain, Lafayette College, "The Impact of Regulatory Costs on Small Firms," for the Small Business Administration's Office of Advocacy, September 2010 (<http://www.sba.gov/advo/research/rs371tot.pdf>).
- <sup>14</sup> See "Jackson Outlines EPA Principles to Avoid 'Doomsday' Air Rule Scenario," *Inside EPA*, 14 September 2010.

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<sup>15</sup> David Schoenbrod, “The Clean Air Act Is in No Shape to be Celebrated,” *Huffington Post*, 3 September 2010 ([http://www.huffingtonpost.com/david-schoenbrod/the-clean-air-act-is-in-n\\_b\\_704631.html](http://www.huffingtonpost.com/david-schoenbrod/the-clean-air-act-is-in-n_b_704631.html)).

<sup>16</sup> United Steel Workers Union, “Comment: Proposed rule, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters,” Document ID:EPA-HQ-OAR-2002-0058-2964.1 (<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480b3b688>).

<sup>17</sup> IHS/Global Insight (for the Council of Industrial Boiler Owners), “The Economic Impact of Proposed EPA Boiler/Process Heater MACT Rule on Industrial, Commercial, and Institutional Boiler and Process Heater Operations,” August 2010.

<sup>18</sup> EPA Fact Sheet: “Proposed Air Toxics for Industrial, Commercial, and Institutional Boilers at Area Source Facilities,” 4 June 2010 (<http://www.epa.gov/airquality/combustion/docs/fsboilersarea20100429.pdf>).

<sup>19</sup> Industrial Energy Consumers of America, “Comments on National Emissions Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers, and Process Heaters, proposed rule,” Docket ID Nos. EPAHQOAR20020058, EPAHQOAR20060790; and EPAHQOAR20030119 (<http://www.iecea-us.com/documents/082310.pdf>).

<sup>20</sup> Id. at 19.

<sup>21</sup> Id. at 17.

<sup>22</sup> Id. at 16.

<sup>23</sup> Pennsylvania Wood Products Association, Comment on Proposed Rule: “National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters,” Docket ID:[EPA-HQ-OAR-2002-0058](#) (<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480b3b8c6>).

<sup>24</sup> Thilmany Papers, Comment on the Boiler MACT (<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480b3bd85>).

<sup>25</sup> Comments by the Association of Washington Business on the Boiler MACT (<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480b3bd85>).

<sup>26</sup> Senators Boiler MACT letter to EPA Administrator Lisa Jackson, 24 September 2010.

<sup>27</sup> Unions for Jobs and the Environment, Comments on Proposed National Ambient Air Quality Standards for Ozone, 22 March 2010 (Docket ID No. EPA-HQ-OAR-2005-0172; FRL-9102-1).

<sup>28</sup> EPA Fact Sheet: “Supplement to the Regulatory Impact Analysis for Ozone,” 7 January 2010 (<http://www.epa.gov/glo/pdfs/fs20100106ria.pdf>).

<sup>29</sup> See CAA § 307(d)(3), 42 U.S.C. § 7607(d)(3) (requiring “an explanation of the reasons for [any important] differences” between a proposed NAAQS and CASAC’s “pertinent findings, recommendations, and comments”).

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<sup>30</sup> EPA Fact Sheet: “Proposal to Revise the National Ambient Air Quality Standards for Ozone” (<http://www.epa.gov/glo/pdfs/fs20100106std.pdf>).

<sup>31</sup> See sections 108 and 109 of the Clean Air Act.

<sup>32</sup> *Id.* at 27.

<sup>33</sup> NERA Economic Consulting/Sierra Research, “Estimated Attainment Costs and Economic Impacts in Selected Regions of Proposed Revisions to the 8-Hour Ozone NAAQS,” January 2008.

<sup>34</sup> Testimony of Bebe Heiskell, Commissioner, Walker County, Georgia, before the Senate Committee on Environment and Public Works, 13 July 2006 ([http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=bc45c914-d95a-4aa7-83b0-bfd1c9a83840](http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=bc45c914-d95a-4aa7-83b0-bfd1c9a83840)).

<sup>35</sup> *Id.* at 27.

<sup>36</sup> *Id.* at 27.

<sup>37</sup> Associated General Contractors of America, Comments on Reconsideration of Primary and Secondary National Ambient Air Quality Standards for Ozone, Docket ID No. EPA-HQ-OAR-2005-0172, 22 March 2010 (<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480ac96d5>).

<sup>38</sup> Roxanne Vingarzan, *A Review of Surface Background Levels and Trends*, 38 Atmospheric Environment, 2004

Location	Period of record	Range of annual maximum
Denali National Park, AK	1998 - 2001	0.049 - 0.068 ppm
Glacier National Park, MT	1989 - 2001	0.057 - 0.077 ppm
Voyageurs National Park, MT	1997 - 2001	0.074 - 0.083 ppm
Olympic National Park, WA	1998 - 2001	0.050 - 0.063 ppm
North Cascades, Nat'l Park, WA	1996 - 2001	0.048 0.069 ppm
Mt. Rainer National Park, WA	1995 - 2001	0.054 - 0.098 ppm
Virgin Islands National Park, USVI	1998 - 2001	0.050 - 0.064 ppm

<sup>39</sup> Breyer, J., concurring in part and concurring in judgment, *Whitman et al. v. American Trucking Associations, Inc.*, et al., 531 U.S. 457, 473, 475-76 (2001) (<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=531&page=457>).

<sup>40</sup> Professor Ragnar Lofstedt, PhD, “EPA’s Proposed NESHAP for Portland Cement: Ignoring the Risk-Risk Tradeoff,” 30 March 2010 ([http://www.cement.org/newsroom/Kings\\_College/Kings\\_College\\_Study.pdf](http://www.cement.org/newsroom/Kings_College/Kings_College_Study.pdf)).

<sup>41</sup> EPA Fact Sheet: “Final Amendments to National Air Toxics Emissions Standards and New Source Performance Standards for Portland Cement Manufacturing,” ([http://www.epa.gov/ttn/atw/pcem/pcem\\_fs\\_080910.pdf](http://www.epa.gov/ttn/atw/pcem/pcem_fs_080910.pdf)).

<sup>42</sup> Bernard L. Weinstein, PhD, “Economic Impacts of Cement Industry Regulations: The Proposed Portland Cement NESHAP Rule,” Maguire Energy Institute, Cox School of Business, Southern Methodist University, February 2010 ([http://www.cox.smu.edu/c/document\\_library/get\\_file?p\\_l\\_id=68463&folderId=229433&name=DLEF-3104.pdf](http://www.cox.smu.edu/c/document_library/get_file?p_l_id=68463&folderId=229433&name=DLEF-3104.pdf)).

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<sup>43</sup> Id at 41.

<sup>44</sup> “Energy and Emission Reduction Opportunities in the Cement Industry,” Department of Energy, Office of Energy Efficiency and Renewable Energy, 29 December 2003 ([http://www1.eere.energy.gov/industry/imf/pdfs/eeroci\\_dec03a.pdf](http://www1.eere.energy.gov/industry/imf/pdfs/eeroci_dec03a.pdf)).

<sup>45</sup> EPA, “National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants,” EPA–HQ–OAR–2002–0051; EPA–HQ–OAR–2007–0877; FRL–9189–2 (<http://www.epa.gov/ttn/atw/pcem/fr09se10.pdf>).

<sup>46</sup> EPA, industry and environmental groups have filed their final briefs in a lawsuit over the agency's strict air toxics rule for medical waste incinerators, a case that could decide key issues for EPA's air toxics program including whether its pollutant by pollutant approach for setting the standards is lawful. See “The Inside Story- Medical MACT Final Briefs” *Inside EPA*, 20 September 20 2010.

<sup>47</sup> Comments by the Portland Cement Association on the NESHAP from the Portland Cement Manufacturing Industry; Proposed Rule (Docket Number: EPA-HQ-OAR-2002-0051).

<sup>48</sup> August 5, 2010 letter to EPA Administrator Lisa Jackson from John Spitaleri Shaw, Senior Vice President, Government Affairs, Portland Cement Association (<http://www.cement.org/newsroom/epa%20-%20neshap%20letter.pdf>).

<sup>49</sup> House Rep. No. 101-490, at 328(1990).

<sup>50</sup> Id. at 40.

<sup>51</sup> Id. at 40.

<sup>52</sup> Id. at 40.

<sup>53</sup> See the Clean Air Act, Section 112(d)(2).

<sup>54</sup> Declaration by Dr. Roger Bezdek, President of Management Information Services, accompanying the Petitioners’ Motion for Partial Stay of EPA’s Greenhouse Gas Regulations, 15 September 2010 ([http://www.uschamber.com/sites/default/files/issues/environment/files/Ex%2013\\_Declaration%20of%20Roger%20Bezdek.pdf](http://www.uschamber.com/sites/default/files/issues/environment/files/Ex%2013_Declaration%20of%20Roger%20Bezdek.pdf)).

<sup>55</sup> Petitioners’ Motion for Partial Stay of EPA’s Greenhouse Gas Regulations, 15 September, 2010 ([http://www.uschamber.com/sites/default/files/about/\\_Stay%20Motion%20FINAL%209-15-10.pdf](http://www.uschamber.com/sites/default/files/about/_Stay%20Motion%20FINAL%209-15-10.pdf)).

<sup>56</sup> For more on the Endangerment Finding and EPA’s Reliance on IPCC science, see United States Senate Committee on Environment and Public Works Minority Report, “Consensus Exposed: The CRU Controversy” ([http://epw.senate.gov/public/index.cfm?FuseAction=Issues.View&Issue\\_id=0f038c02-802a-23ad-4fec-b8bc71f1a6f8](http://epw.senate.gov/public/index.cfm?FuseAction=Issues.View&Issue_id=0f038c02-802a-23ad-4fec-b8bc71f1a6f8)). Also, see comments submitted by Dr. John Christy, University of Alabama (Huntsville), on the proposed endangerment finding, Docket ID No. EPA-HQ-OAR-2009-0171 ([http://icecap.us/images/uploads/EPA\\_ChristyJR\\_Response\\_2.pdf](http://icecap.us/images/uploads/EPA_ChristyJR_Response_2.pdf)).

<sup>57</sup> 75 Fed. Reg. at 31,557.

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<sup>58</sup> Declaration of Harry C. Alford, President and CEO of the National Black Chamber of Commerce, on behalf of the National Black Chamber of Commerce  
([http://www.uschamber.com/sites/default/files/issues/environment/files/Ex%2030\\_Declaration%20of%20Harold%20Alford.pdf](http://www.uschamber.com/sites/default/files/issues/environment/files/Ex%2030_Declaration%20of%20Harold%20Alford.pdf)).

<sup>59</sup> Consider comments filed by Clean Air Act attorney Peter Glaser for Peabody Energy: “Prevention Significant Deterioration and Title V Greenhouse Gas Tailoring Rule,” Docket No. EPA-HQ-OAR-2009-0517  
(<http://www.troutmansanders.com/files/Uploads/Documents/Document.pdf>).

<sup>60</sup> Id. at 55.

<sup>61</sup> There is precedent for this scenario. EPA retroactively applied the CAA Section 112(g) case-by-case permit requirements for hazardous air pollutants. An EPA regulation had removed coal- and oil-fired power plants from the list of facilities subject to 112(g). A result of a Court overturning the regulation was that the plants were again subject to 112(g). EPA in a policy memorandum stated:

Although these [power plants] may have relied in good faith on rules that EPA issued and that were subsequently vacated, the Agency believes that these [power plants] are legally obligated to come into compliance with the requirements of 112(g).Memorandum to Regional Administrators.

Application of CAA Section 112(g) to Coal- and Oil-Fired Electric Utility Steam Generating Units that Began Actual Construction or Reconstruction Between March 29, 2005 and March 14, 2008,” 7 January 2009, from Robert J. Myers, Principal Deputy Assistant Administrator.

<sup>62</sup> EPA Fact Sheet: “Summary of Clean Air Act Permitting Burdens With and Without the Tailoring Rule”.

<sup>63</sup> Greenhouse Gas Emissions (GHG) Data for Permitting Threshold Rule Development - CO<sub>2</sub>e,” Technical support document for greenhouse gas emissions thresholds evaluation, pgs. 19 to 24, 7 July 2009  
(<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a2a5f0>).

<sup>64</sup> Id.

<sup>65</sup> “Light-Duty Vehicle Greenhouse Gas Emissions Standards and Corporate Average Fuel Economy Standards,” EPA Response to Comments Document for Joint Rulemaking, April 2010  
(<http://www.epa.gov/oms/climate/regulations/420r10012a.pdf>).

<sup>66</sup> Id. at 45.