

ISSUE BRIEF

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Congress Should Stop Regulations of Greenhouse Gases

Nicolas D. Loris

The Environmental Protection Agency (EPA) proposed its new rule for regulating greenhouse gas (GHG) emissions for newly constructed power plants. Originally proposed in March 2012 with a standard threshold of 1,000 pounds of carbon dioxide (CO₂) equivalent per megawatt hour, the new source performance standards set a limit for new coal-fired power plants of 1,100 pounds of CO₂ equivalent per megawatt hour (or 1,000–1,050 pounds over a seven-year period), 1,000 pounds of CO₂ per megawatt hour for larger gas-fired plants, and 1,100 for smaller ones.

If Congress is serious about job creation and economic growth, it should drive back the regulation of GHGs. The massive regulatory costs will either be passed on to American families and businesses or offset by cuts in operations and investment—or both. Whatever the result, it will be economically injurious with futile results in impacting climate change. Congress can contain the damage by limiting either the EPA's authority or its budget to implement the regulations.

Background. The EPA has no explicit statutory authority to regulate CO₂ as a pollutant. But environmental activists, in conjunction with several

states and cities, convinced the U.S. Supreme Court in *Massachusetts v. EPA* that CO₂ and five other GHGs may be regulated under the Clean Air Act. The majority made no recommendation as to whether the EPA *should* regulate CO₂; it simply ruled that it *could*.

The underpinning of the agency's GHG regulations is an "endangerment finding": the formal determination by the agency in 2009 that GHGs "cause or contribute to air pollution which may be reasonably anticipated to endanger public health or welfare." Of course, CO₂ emissions have no direct impact on human health. But the EPA concluded that manmade CO₂ emissions' warming effect would create more floods, hurricanes, droughts, and other natural disasters.

In preparing its finding, the EPA failed to follow federal data quality standards,¹ and its conclusions about health effects are unsupported by clinical studies or toxicological data that regulators typically rely upon to discern risk. The agency's own inspector general concluded that "it is clear that EPA did not follow all required steps for a highly influential scientific assessment. We also noted that documentation of events and analyses could be improved."²

Climate Change Realities. Although there is a near unanimous consensus that the earth has warmed, no consensus exists regarding climate sensitivity, the role CO₂ plays with respect to climate change, whether global warming is a problem or a benefit, or how current temperatures fit into the broader climate context.

Climate models failed to predict the 16-year plateau in global temperatures, and droughts, floods, and hurricanes have not increased with increasing

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The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

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global CO₂ emissions. Understanding climate sensitivity and the immediate effects of how a doubling of CO₂ would affect world temperatures is far from complete, but new research indicates that the estimates were too high and need downward revision.³

Higher Costs for Families. America has 497 billion tons of recoverable coal, which is enough to provide electricity for 500 years at current consumption rates. The EPA's new rule will effectively ban the construction of new coal-fired power plants, because the average coal-fired power plant emits nearly 1,800 pounds of carbon emissions per megawatt hour. Even the newest, most efficient, super-critical power plant in West Virginia emits 1,700 pounds per megawatt hour.⁴

The only way for new coal-fired plants to meet the regulation is with carbon capture and sequestration (CCS) technology, which has challenges in terms of scalability, liquid CO₂ storage, and cost. The fact that the Clean Air Act stipulates that new source performance standards must reflect "the best system of emission reduction" as adequately demonstrated by the EPA administrator⁵ raises questions as to whether CCS meets this standard. Even if CCS were affordable, it does not justify the EPA's regulation, since regulation is intended to address a non-problem. CCS should be built only if companies believe it is in their economic interest to do so, such as for aid in oil extraction.

Taking away such a vital energy source will drive up energy prices for families and businesses. As energy prices increase, the cost of making products

rises. Higher operating costs for businesses will be reflected in higher prices for consumers. The combination of higher prices and less disposable income for families will reduce employment and economic growth.

No Impact on Climate. To make matters worse, the GHG regulations promulgated by the EPA will have no effect on climate change, a fact acknowledged by former EPA administrator Lisa Jackson⁶ and most recently by current administrator Gina McCarthy.⁷

In a recent House Energy and Commerce Committee hearing, McCarthy said that EPA actions would not solve any climate problems but stressed that the U.S. needs to be a leader to attract international commitment. But if the U.S. leads on this issue, the countries that would make a difference in reducing global emissions are highly unlikely to follow. GHG emissions in China, India, and the rest of the developing world are rapidly increasing as economic growth expands, and those governments have no intention of curtailing that growth to mitigate a hypothetical risk. There are proposals for 1,200 coal-fired power plants worldwide, and China and India account for 818 of them.⁸

Urging developing countries to curb their economic growth to reduce carbon emissions is immoral, as these countries are attempting to lift their citizens out of poverty and have more pressing environmental issues, such as obtaining breathable air and clean drinking water, neither of which CO₂ reduction will address.

1. News release, U.S. Environmental Protection Agency, Office of Inspector General, September 28, 2011, http://www.epa.gov/oig/reports/2011/IG_Statement_Greenhouse_Gases_Endangerment_Report.pdf (accessed September 20, 2013).
2. U.S. Environmental Protection Agency, Office of Inspector General, "Procedural Review of EPA's Greenhouse Gases Endangerment Finding Data Quality Processes," September 26, 2011, <http://www.epa.gov/oig/reports/2011/20110926-11-P-0702.pdf> (accessed September 19, 2013).
3. Chip Knappenberger, "Lower Climate Sensitivity Estimates: New Good News," MasterResource, March 19, 2012, <http://www.masterresource.org/2012/03/lower-climate-sensitivity-estimates/> (accessed September 19, 2013).
4. Jim Ross, "EPA to Release CO₂ Rules for New Power Plants," *State Journal*, September 19, 2013, <http://www.statejournal.com/story/23474197/epa-to-release-co2-rules-for-new-power-plants> (accessed September 19, 2013).
5. The Clean Air Act, 42 U.S. Code § 7411(a).
6. Press release, "Jackson Confirms EPA Chart Showing No Effect on Climate Without China, India," U.S. Senate Committee on Environment and Public Works, July 7, 2009, http://epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord_id=564ed42f-802a-23ad-4570-3399477b1393 (accessed September 19, 2013).
7. Hearing, "The Obama Administration's Climate Change Policies and Activities," Committee on Energy and Commerce, U.S. House of Representatives, September 19, 2013, http://www.youtube.com/watch?v=z1_O5jOCR6s&feature=youtu.be&t=2h16m1s (accessed September 19, 2013).
8. Ailun Yang and Yiyun Cui, "Global Coal Risk Assessment: Data Analysis and Market Research," World Resources Institute, November 2012, <http://www.wri.org/publication/global-coal-risk-assessment> (accessed September 19, 2013).

Rein in the EPA. The most effective approach to such harmful, bureaucratic regulatory undertakings would be to permanently prohibit any federal regulators from using GHG emissions as a reason to regulate economic activity. Congress should reform federal policies and regulations to prevent unelected officials from implementing GHG regulations. Recommended actions include:

- Retracting the endangerment finding and establishing standards of scientific review for reconsideration by the agency,
- Prohibiting the EPA and other agencies from regulating GHG emissions unless expressly authorized to do so by Congress, and

- Prohibiting the EPA and other agencies from using any funds to promulgate or enforce any regulation intended to reduce GHGs.

Congress Should Act Now. As the EPA finalizes regulations for new power plants, the agency will move on to regulating GHG emissions from *existing* plants, which will further exacerbate the economic pain.

Lawmakers should exercise leadership and reclaim their authority from the unelected bureaucrats whose regulatory ambitions threaten economic growth and individual prosperity.

—*Nicolas D. Loris is Herbert and Joyce Morgan Fellow in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation.*