June 23, 2009

Environmental Protection Agency
EPA Docket Center (EPA/DC)
Mailcode 6102T
Attention Docket ID No. EPA-HQ-OAR-2009-0171
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

By electronic delivery to: GHG-Endangerment-Docket@epa.gov

Re: Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, Docket ID No. EPA-HQ-OAR-2009-0171

Contact Information

Name: Sam Kazman, General Counsel
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The Competitive Enterprise Institute (CEI), a non-profit, free-market public policy organization, hereby submits these comments on EPA's *Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act.*[1]

[1] EPA, Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 18,886, (April 24, 2009).

CEI is submitting a set of four EPA emails, dated March 12-17, 2009, which indicate that a significant internal critique of EPA's position on Endangerment was essentially put under wraps and concealed. The study was barred from being circulated within EPA, it was never disclosed to the public, and it was not placed in the docket of this proceeding. The emails further show that the study was treated in this manner not because of any problem with its quality, but for political reasons.

CEI hereby requests that EPA make this study public, place it into the docket, and either extend or reopen the comment period to allow public response to this new study. We also request that EPA publicly declare that it will engage in no reprisals against the author of the study, who has worked at EPA for over 35 years.

The emails, attached hereto, consist of the following:

1) a March 12 email from Al McGartland, Office Director of EPA's National Center for Environmental Economics (NCEE), to Alan Carlin, Senior Operations Research Analyst at NCEE, forbidding him from speaking to anyone outside NCEE on endangerment issues;

2) a March 16 email from Mr. Carlin to another NCEE economist, with a cc to Mr. McGartland and two other NCEE staffers, requesting that his study be forwarded to EPA's Office of Air and Radiation, which directs EPA's climate change program. The email notes the quantity of peer-reviewed references in the study, and defends its inclusion of new research as well. It states Mr. Carlin's view that *"the critical attribute of good science is its correspondence to observable data rather than where it appears in the technical literature."* It goes on to point out that the new studies *"explain much of the observational data that have been collected which cannot be explained by the IPCC models."* (Emphases added);

3) a March 17 email from Mr. McGartland to Mr. Carlin, stating that he will not forward Mr. Carlin's study. *"The time for such discussion of fundamental issues has passed for this round. The administrator and the administration has decided to move forward on endangerment, and your comments do not help the legal or policy case for this decision. …. I can only see one impact of your comments given where we are in the process, and that would be a very negative impact on our office."* (Emphasis added);

4) a second March 17 email from Mr. McGartland to Mr. Carlin, dated eight minutes later, stating " I don't want you to spend any additional EPA time on climate change."

Mr. McGartland's emails demonstrate that he was rejecting Mr. Carlin's study because its conclusions ran counter to EPA's proposed position. This raises several major issues.

A. Incompleteness of the Rulemaking Record: The end result of withholding Mr. Carlin's study was to taint the Endangerment Proceeding by denying the public access to important agency information. Court rulings have made it abundantly clear that a

rulemaking record should include both "the evidence relied upon [by the agency] and the evidence discarded." *Ethyl Corp. v. EPA*, 541 F.2d 1, 36 (D.C. Cir. 1976), *cert. denied*, 426 U.S. 941 (1976).

B. Prejudgment of the Outcome of the Endangerment Proceeding: The emails also suggest that EPA has prejudged the outcome of this proceeding, to the point where it arguably cannot be trusted to fairly evaluate the record before it. Courts have recognized "the danger that an agency, having reached a particular result, may become so committed to that result as to resist engaging in any genuine reconsideration of the issues." *Food Marketing Institute v. ICC*, 587 F.2d 1285, 1290 (D.C. Cir. 1978).

C. Violations of EPA's Commitment to Transparency and Scientific Honesty: Finally, the emails suggest that EPA's extensive pronouncements about transparency and scientific honesty may just be rhetoric. Shortly before assuming office, EPA Administrator Lisa Jackson declared: "As Administrator, I will ensure EPA's efforts to address the environmental crises of today are rooted in three fundamental values: science-based policies and programs, adherence to the rule of law, and overwhelming transparency." Jan. 23, 2009, http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/2297c12a9f4773d285257547006497d4!OpenDocument. See also Administrator Jackson's April 23 Memo to EPA Employees, "Transparency in EPA's Operations". These follow the President's own January 21 memo to agency heads on "Transparency and Open Government". And in an April 27 speech to the National Academy of Sciences, the President declared that, "under my administration, the days of science taking a back seat to ideology are over."

Because of ideology, however, it was this back seat to which Mr. Carlin's study was relegated; more precisely, it was booted out of the car entirely.

For these reasons, we submit that EPA should immediately make Mr. Carlin's study public by entering it into the Endangerment docket, and that it should either extend or reopen the comment period in this proceeding to allow public responses to that study. It should do so, moreover, while publicly pledging that Mr. Carlin will suffer no adverse repercussions from agency personnel. Mr. Carlin is guilty of no wrongdoing, but the tenor of the emails described above suggests he may well have reason to fear reprisals.

Respectfully submitted,

Sam Kazman, General Counsel
Competitive Enterprise Institute

Re: endangerment
Alan Carlin to: Al McGartland
Cc: John Davidson

03/12/2009 04:08 PM

Agreed.
Alan

Al McGartland	In light of the tight schedule and the turn of events, please do not have any dire...	03/12/2009 02:40:31 PM

From: Al McGartland/DC/USEPA/US
To: Alan Carlin/DC/USEPA/US@EPA, John Davidson/DC/USEPA/US@EPA
Cc: Chris Dockins/DC/USEPA/US@EPA, Steve Newbold/DC/USEPA/US@EPA
Date: 03/12/2009 02:40 PM
Subject: endangerment

In light of the tight schedule and the turn of events, please do not have any direct communication with anyone outside of NCEE on endangerment. There should be no meetings, emails, written statements, phone calls etc. All communication needs to go through Steve and me and then to Paul, and then to OAR.

Al McGartland, PhD.
Director, National Center for Environmental Economics
US EPA
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20460

202.566.2244

Fw: Comments on the Endangerment TSD
Alan Carlin to: Steve Newbold
Cc: Al McGartland, John Davidson, Chris Dockins
03/16/2009 03:55 PM

Steve,

I have not heard from Al as of now so presumably the decision is yours as we approach the COB deadline today.

Since Friday I have endeavored to respond to your concerns about the extent of the material in my comments that have not so far appeared in the peer-reviewed scientific literature and about the title page in the hope that you will change your decision as to forwarding my comments to Paul and

then hopefully onto OAR. I am attaching a revised copy Endangerment comments v7b.doc with some improvements in the list of references and the title page changes you requested. I have not had time to improve the formatting, however. I would like to note, however, that by my rough count roughly two-thirds of my references are to peer-reviewed publications. It is also my view that the critical attribute of good science is its correspondence to observable data rather than where it appears in the technical literature. I believe my comments are valid, significant, and contain references to significant new research since the cut-off for IPCC and CCSP inputs. They are significant because they present information critical to the justification (or lack thereof) for the proposed endangerment finding. They are valid because they explain much of the observational data that have been collected which cannot be explained by the IPCC models.

There is still time to submit my comments to Paul and I urge you to do so.

Alan

---- Forwarded by Alan Carlin/DC/USEPA/US on 03/16/2009 03:04 PM ----

From:	Alan Carlin/DC/USEPA/US
To:	Steve Newbold/DC/USEPA/US@EPA
Cc:	John Davidson/DC/USEPA/US@EPA
Date:	03/13/2009 10:49 AM
Subject:	Re: Fw: Comments on the Endangerment TSD

Hi Steve,
The authorship is clearly indicated on the last page. Actually, much of the non-observational material (ie, statements that do not involve direct interpretation of existing data) is actually in peer-reviewed literature somewhere and I have tried to reference everything. If it is not going anywhere, I will postpone changing the cover, although this is easily done.
Alan

Steve Newbold — Alan, At the moment I am working on combining John's and my comments into... — 03/13/2009 10:28:46 AM

Re: endangerment comments???

Al McGartland to: Alan Carlin
Cc: John Davidson, Steve Newbold

03/17/2009 08:12 AM

Alan, I decided not to forward your comments. The time for such discussion of fundamental issues has passed for this round. The administrator and the administration has decided to move forward on endangerment, and your comments do not help the legal or policy case for this decision. I have stressed in previous emails that this is not a criteria document for climate change and greenhouse gases. If such a document is ever drafted, then perhaps your comments might be considered.

I can only see one impact of your comments given where we are in the process, and that would be a very negative impact on our office.

Al McGartland, PhD.
Director, National Center for Environmental Economics
US EPA
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20460

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climate change work
Al McGartland to: Alan Carlin 03/17/2009 08:20 AM

History: This message has been forwarded.

With the endangerment finding nearly final, you need to move on to other issues and subjects. I don't want you to spend any additional EPA time on climate change. No papers, no research etc, at least until we see what EPA is going to do with Climate.

I would like you to work with Marrietta to get that grants data base in place. I am not sure what the problem is there. Maybe its further along than I realize.

Also, I'd like you to update part of the market incentives report -- inventorying the market incentive programs undertaken by the states (updating part of the market incentives report).

Let me know if you have even more time for other endeavors.

You may have heard that our budget was cut by 66%. This work will have to be done inhouse.

Al McGartland, PhD.
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