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UNITED STATES OF AMERICA

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TO THE MEMBERS OF THE UNITED STATES SENATE:

The U.S. Chamber of Commerce strongly supports S.J. Res. 26, crucial legislation sponsored by Sens. Murkowski and Lincoln, which would prevent the U.S. Environmental Protection Agency (EPA) from moving forward with its scheme to regulate greenhouse gas emissions, because of the enormous permitting and compliance costs EPA regulation would force upon businesses large and small.

Support for S.J. Res. 26 should not be misrepresented as a vote against greenhouse gas emissions legislation. The Chamber supports efforts to address energy security and climate change, and believes that any legislation must be comprehensive and bipartisan, and take into account a wide spectrum of issues including American jobs and our economy. However, there is significant consensus that the Clean Air Act is an imprecise, impractical, and unworkable process to regulate greenhouse gas emissions.

When EPA issued its “endangerment finding” to implement greenhouse gas regulation, it set in motion an irrevocable process that expands the regulatory universe under the Clean Air Act from a few thousand businesses to almost six million. Many of these newly-regulated entities will have their costs of doing business escalate due to rigid new rules and requirements, and their projects stalled or stopped while they apply and wait for complicated new permits that require strict and expensive control technologies. Entities affected are not just power plants and refineries, but also potentially office buildings, small businesses, private schools, nursing homes, churches and other small emitters.

Understanding EPA rulemaking and the technicalities of the Congressional Review Act procedures is a challenge. The attached collection of information analyzes and demystifies:

- [What is endangerment?](#)
- [Who will endangerment affect?](#)
- [How much for a permit?](#)
- [EPA’s questionable conduct.](#)
- [Why the Congressional Review Act makes sense.](#)

The U.S. Chamber of Commerce, the world’s largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region urges you to approve S.J. Res. 26, the bipartisan Congressional Review Act Resolution of Disapproval to prevent EPA from moving forward with its plan to use the Clean Air Act to regulate greenhouse gas emissions.

Sincerely,



R. Bruce Josten



Endangerment 101

Lesson One: What is Endangerment?

- On December 7, 2009, EPA formally declared that U.S. emissions of greenhouse gases from new motor vehicles endanger U.S. public health or welfare.
- This “endangerment finding,” as it is called, is a legal prerequisite for EPA to regulate motor vehicle greenhouse gas emissions under the Act.
- EPA argues that it is required by the Supreme Court case *Massachusetts v. EPA* to find endangerment. This is not true. The Court gave EPA three options: (1) “yes” on endangerment, (2) “no” on endangerment, or (3) “some reasonable explanation as to why it cannot or will not exercise its discretion” to determine whether endangerment exists.
- Although EPA’s endangerment finding is made for motor vehicles, the same or similar language is also found in other sections of the Act, including those that apply to stationary emitters (i.e. buildings). The endangerment finding will, as a matter of law, ultimately result in EPA regulation beyond motor vehicles to these other programs.

Next: Who Will Endangerment Affect?





Endangerment 101

Lesson Two: Who Will Endangerment Affect?

- The endangerment finding for greenhouse gases is not easily limited to a single sector.
- In fact, EPA has admitted that its application could expand the regulated universe from 15,000 to over six million American businesses, small and large. The “Prevention of Significant Deterioration” permit program could balloon from 300 annual permits to 30,000 or more, most of which must be administered by woefully understaffed state permitting agencies.
- In addition, the same or similar language contained in the motor vehicle “endangerment finding” is also found in many other sections of the Clean Air Act, such as National Ambient Air Quality Standards, New Source Performance Standards, Hazardous Air Pollutants, fuels, aircraft and nonroad engines.
- In most of these provisions, once endangerment is found, regulation is not optional.
- Why is this important? Because it would take little more than a lawsuit to force EPA to regulate under many of those other provisions now that it has made a positive endangerment finding for motor vehicles—a lawsuit that some environmental groups have already begun laying the groundwork for.

Next: How Much for a Permit?





Endangerment 101

Lesson Three: How Much for a Permit?

- As written in the Clean Air Act, EPA admits that over six million stationary sources will be subject to Prevention of Significant Deterioration (PSD) or Title V permits. Many are previously-unregulated establishments like office buildings, warehouses, hotels, churches, and large farms.
- According to EPA, PSD permits cost an average of \$125,120 and impose a burden of 866 hours on the applicant.¹ If only 40,000 of the millions of buildings exposed to PSD for greenhouse gases opt for new construction or modifications in a given year, PSD compliance alone would cost over \$5 billion and would require the devotion of 17,320 full-time employees!
- Title V permits require a fee to be paid by covered entities. Also, every Title V permit may be challenged in court via citizen suits, which could put all permits at risk.
- EPA has proposed a “Tailoring Rule” to delay the application of these permitting rules to small emitters. However, this rule rests on shaky legal ground, does not provide permanent relief to emitters of any size, and may still ensnare many small businesses.

Next: EPA’s Questionable Conduct

¹ Information Collection Request for Prevention of Significant Deterioration and Nonattainment New Source Review (40 CFR Part 51 and 52), Carrie Wheeler, Operating Permits Group, Air Quality Policy Division. Available at Docket No. EPA-HQ-OAR-2004-0081.





Endangerment 101

Lesson Four: EPA's Questionable Conduct

Faced with one of the most significant rulemakings in the history of environmental law, EPA failed to consider the impacts of the rule on American jobs and the economy:

- EPA did not conduct a Clean Air Act Section 321 analysis of the potential for losses or shifts of employment;
- EPA did not conduct a Clean Air Act Section 317 economic impact analysis;
- EPA did not convene statutorily-required Small Business Advocacy Review Panels;
- EPA split endangerment from the substantive regulations, a game of regulatory “Three-Card Monte” that deprived the public of an opportunity to comment on the economic effects of greenhouse gas regulation on the whole;
- EPA refused to extend the comment period for any of its greenhouse gas rules, despite requests from Members of Congress and even when it was discovered that a broken E-mail address for public comments was printed in the Federal Register; and
- EPA effectively prejudged the endangerment finding's outcome, announcing new rules based on the endangerment finding before it even had a chance to read the public comments on endangerment.

Next: Why the Congressional Review Act Makes Sense





Endangerment 101

Lesson Five: Why the Congressional Review Act Makes Sense

- On his first full day of office, President Obama issued an Executive Memorandum requiring agencies to ensure public trust by establishing a system of transparency, public participation, and collaboration.
- Yet, in the case of endangerment, the regulatory process has clearly broken down.
- The reason Congress enacted the Congressional Review Act was to install a system of checks and balances to prevent agencies from acting contrary to the will of the American people.
- Senators Lisa Murkowski and Blanche Lincoln, and 39 other Senators have filed a Congressional Review Act resolution of disapproval of the endangerment finding.
- Climate change is not an issue that should be addressed by unelected bureaucrats who have distorted the Clean Air Act to ends never contemplated by its drafters, and who have left the American public out of the debate.
- If enacted, this resolution will put a stop to EPA's regulatory overreach and return authority of our nation's climate policy where it rightfully belongs: with the Congress.

Please vote in favor of S. J. Res. 26, the Congressional Review Act Joint Resolution of Disapproval sponsored by Senators Murkowski and Lincoln.

