December 17, 2007

The Honorable George W. Bush
President of the United States
The White House
Washington, D. C., 20500

Dear President Bush:

We write to urge you to halt the Environmental Protection Agency's (EPA) proceeding to establish carbon dioxide (CO2) emission standards for new motor vehicles under Section 202 of the Clean Air Act (CAA). We do so because such EPA action will likely have grave consequences that extend far beyond motor vehicles. The end result may well be an unimaginably broad and devastating energy-suppression program, with massive job losses and skyrocketing increases in consumer prices.

Although Section 202 instructs the EPA to consider cost and technical feasibility when setting emission standards for motor vehicles, the mere act of designating CO2 as a

regulated pollutant may well trigger regulatory action under other CAA provisions—actions that would dwarf the Kyoto Protocol in their scale, scope, and cost.

Ten years have passed since Kyoto was negotiated, and for very valid reasons both you and your predecessor decided not to submit the treaty to the Senate for ratification. Nor would the Senate have voted to ratify Kyoto if it had been submitted. However, far more onerous restrictions on energy use would likely result from EPA action on CO2. We could end up with a program of de-industrialization without Congress ever voting on it. This would make a mockery of our system of democratic self-government.

Once EPA issues a finding that CO2 emissions endanger public health and welfare—the prerequisite for regulation under Section 202—it would very likely have to regulate CO2 under other parts of the CAA as well, notably the Prevention of Significant Deterioration (PSD) and National Ambient Air Quality Standards (NAAQS) programs.

Under the PSD program, a manufacturing plant in any of 28 listed categories that emits 100 tons of a regulated pollutant per year, or any other establishment that emits 250 tons, is classified as a "major stationary source" (Section 169). For perspective, 250 tons of CO2 is roughly the amount produced by a mere two dozen average U.S. households in a year. Major stationary sources are subject to complex and costly permitting and emission control requirements. Because even small entities can emit 100 to 250 tons of CO2 annually, a CO2 endangerment finding could extend PSD regulations to more than 300,000 factories, 400,000 buildings, and 150,000 farms.

The construction delays, economic uncertainty, paperwork burdens, and engineering expenses this could impose on hundreds of thousands of small establishments for no measurable environmental benefit boggle the mind. The flood of permit applications would also overwhelm the resources of the state level agencies that administer PSD regulations. Clearly, when Congress enacted Section 202 (a provision dealing solely with mobile source emissions) in 1970 (years before global warming was a public concern), it did not intend to regulate CO2 emissions from stationary sources.

A CO2 endangerment finding under Section 202 could also compel EPA, under Section 108, to establish NAAQS for CO2. Under the NAAQS program, EPA must adopt regulations that reduce atmospheric concentrations of the targeted pollutant to a level that protects public health and welfare with "an adequate margin of safety." The successful plaintiffs in the Supreme Court global warming case (*Massachusetts v. EPA,* April 2, 2007) claimed that current CO2 levels already harm public health and welfare. What would it take to lower CO2 concentrations below current levels? The Kyoto Protocol would barely slow the increase in atmospheric levels. Even the total de-industrialization of the United States might not be enough to actually reduce CO2 levels. Thus, regulating CO2 under the NAAQS program would give anti-growth litigation groups a bottomless well of excuses for demanding ever more onerous restrictions on energy production and use.

Congress could not possibly have intended for Section 202—a provision requiring EPA to consider compliance costs—to trigger economically suicidal regulation under the NAAQS program.

So what is to be done? In *Mass. v. EPA*, the Court majority stated, "We need not and do not reach the question whether on remand EPA must make an endangerment finding, or whether policy concerns can inform EPA's actions in the event that it makes such a finding….We hold only that EPA must ground its reasons for action or inaction in the statute."

The solution, we think, is clear: EPA should decline to make an endangerment finding, and ground its reasons in the statute.

EPA should stress the following points:

- An endangerment finding would likely compel EPA to regulate in ways that Congress could not have intended when it enacted Section 202. Indeed, an endangerment finding could compel EPA to undertake carbon suppression measures under the PSD and NAAQS programs that are far more aggressive than anything proposed by the non-ratified Kyoto Protocol.
- If Congress does indeed want EPA to regulate stationary sources of CO2 under the PSD program, or administer economy-wide CO2 controls under the NAAQS program, then Congress must give EPA the requisite guidance via new and specific statutory language. Setting climate policy for the nation is the job of Congress, not of an administrative agency.
- Congress has debated climate policy for almost two decades, but to date has not seen fit to enact a single regulatory climate bill. Until Congress amends the Clean Air Act to specify how it wants EPA to regulate CO2, EPA must decline to make an endangerment finding.

We recognize that this proposal may involve complex legal issues. In considering the arguments we have made, you may wish to consult with the Justice Department on this very important matter.

Sincerely,

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