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Subject: Comments for Docket ID No. EPA-HQ-OAR-2008-0318

**By Regular Mail and Electronic Mail to [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov)**

These comments respond to EPA's Advance Notice of Proposed Rulemaking (ANPR), "Regulating Greenhouse Gases Under the Clean Air Act (CAA)," published in the *Federal Register* on July 30, 2008,<sup>1</sup> and focus on EPA's inquiries into:

I) whether EPA should formally determine that greenhouse gas (GHG) emissions from automobiles in the United States cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, that is, to make an "endangerment" finding under the Clean Air Act (CAA) in the wake of *Massachusetts v. EPA*, and

II) the propriety of EPA relying upon recent assessments in its analyses and consideration of policy alternatives regarding GHG effects and regulation in lieu of the Agency undertaking its own research.

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<sup>1</sup> EPA, Regulating Greenhouse Gas Emissions Under the Clean Air Act, Advanced Notice of Proposed Rulemaking, *Federal Register*, Vol. 3, No. 147, July 30, 2008. Hereafter cited as ANPR.

## I. EPA should find no CAA “endangerment”

The majority in *Massachusetts v. EPA* quite clearly did not instruct EPA to regulate greenhouse gases (GHGs) but instead asserted, as EPA correctly notes, “that the Clean Air Act authorizes EPA to regulate tailpipe greenhouse gas emissions if EPA determines they cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare”. The Court plainly ruled that, given an expansive reading of the CAA definition of pollutant, “On remand, EPA must ground its reasons for action or inaction in the statute.”<sup>2</sup>

We note that even the most enthusiastic supporters of seizing this ruling to regulate CO<sub>2</sub> expressly or impliedly acknowledge that the Act’s *design* is unsuited for regulating such a ubiquitous, diffuse and non-hazardous emission. The appropriate choice for EPA is therefore to ground in the statute a determination that it cannot identify any endangerment to public health or welfare directly resulting from or contributed to by carbon dioxide from U.S. automobiles – either *in toto* or in any amount that EPA might possibly regulate. That is, EPA should elect to not make a CAA endangerment finding.

In support of this position we note that general circulation models (GCMs) relied upon by EPA also appear to conclude that carbon dioxide emissions from U.S. automobiles do not cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare including climate.<sup>3</sup> Again, the Court did not find to the contrary, but left this finding to EPA.

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<sup>2</sup> The Court concluded in pertinent part, “While the statute conditions EPA action on its formation of a ‘judgment,’ that judgment must relate to whether an air pollutant ‘cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare.’” §7601(a)(1). Under the Act’s clear terms, EPA can avoid promulgating regulations only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do... If the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment, it must say so. The statutory question is whether sufficient information exists for it to make an endangerment finding. Instead, EPA rejected the rule-making petition based on impermissible considerations. Its action was therefore “arbitrary, capricious, or otherwise not in accordance with law,” §7607(d)(9). On remand, EPA must ground its reasons for action or inaction in the statute.” *Massachusetts v. EPA* (No. 05-1120) 415 F. 3d 50 (U.S. 2007), Stevens, Maj., p. 5, <http://www.supremecourtus.gov/opinions/06pdf/05-1120.pdf>.

<sup>3</sup> We refer to the October 8, 2008 letter from Robert J. Myers, Principal Deputy Assistant Administrator, Office of Air and Radiation to Dale Hall (FWS) and James Leaky (NMFS). For these purposes we estimate *total* U.S. automobile CO<sub>2</sub> emissions at approximately 1,304,429,532 metric tons per year. Extrapolating from EPA’s use of “the well established Model for the Assessment of Greenhouse-gas Induced Climate Change (MAGICC)”, CO<sub>2</sub> emissions from U.S. automobiles *in toto* therefore have no detectable climatic impact. Instead, the warming attributable to the entire U.S. automobile contribution of CO<sub>2</sub> falls well within that which is indiscernible from background noise, at between 0.02-0.03 degrees Celsius. Viewed alternately and even assuming that EPA would seek to mandate zero carbon dioxide emissions by new vehicles, rough calculations using the assumptions and factors set forth by EPA regarding MAGICC reveal that EPA could not detectably regulate a reduction in potential anthropogenic GHG forcing.

A massive and to date technologically inconceivable 50% reduction on CO<sub>2</sub> emissions from new auto tailpipes would yield an even more miniscule impact. Again, this is using calculations, assumptions and factors relevant to MAGICC as described by EPA.

As such, no feasible regulation of CO<sub>2</sub> from automobile tailpipes – indeed, even any *hypothetical* regulation from U.S. automobile tailpipes – could under any scenario have a detectable impact on the climate. Therefore, it is also true that no resulting regulation could alleviate any “endangerment” potentially arising in whole or in part from U.S. CO<sub>2</sub> emissions.

U.S. Senate Committee on Environment and Public Works Chairman Barbara Boxer (D-CA) recently spoke to the obvious issue that, although it is possible to read the Clean Air Act’s definition of “pollutant” as broadly as the Court chose, the Act was quite plainly not designed for the task to which EPA would put it with an “endangerment” finding. In the context of a potential EPA move to regulate CO<sub>2</sub> under CAA Section 202, she stated that “regulations coming out of the EPA without an overall policy isn’t the best way to go,” but instead that “Hopefully we’re going to see legislation that’s going to lead to an economic renaissance, rather than a rulemaking that’ll lead to more litigation.”<sup>4</sup>

Other lawmakers engaged in the climate debate seem to agree. Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM), states “I think we need to sort this issue out as part of enacting a cap-and-trade system. We need to make clear where the responsibility for this regulation continues to be and which parts of it are done through which law.” Sen. Tom Carper of Delaware agreed. “That’s where you resolve those issues, is for us to legislate.”<sup>5</sup>

Environmental pressure groups insisting to EPA that it must initiate a rulemaking elsewhere acknowledge an understanding similar to that of the cited lawmakers. For example, “We need federal legislation to deal with greenhouse-gas emissions, said Vicki Arroyo, general counsel for the Pew Center on Global Climate Change in Arlington, Virginia.”<sup>6</sup>

Sen. Boxer’s points are twofold: first, if Congress wants to regulate carbon dioxide or other GHGs it should finally and for the first time say so, and set forth how it wants this done; second, given how the Act’s construction is obviously not fit for purpose, the regulations that the CAA would require should EPA make an “endangerment” finding are destined to result in no more than widespread litigation.

The inevitable statutory consequences of an “endangerment” finding, as Sens. Boxer and Bingaman clearly recognize, include what the Sierra Club’s David Bookbinder calls the “Dunkin’ Donuts problem” referring to the CAA § 169 expressly requiring the Agency to regulate sources of 250 tons per year. That is, EPA would necessarily trigger regulation down to the most isolated operators to the point of legal, policy and practical absurdity. Bookbinder has acknowledged a need to subsequently amend the Act to avoid this undesirable consequence upon EPA making its “endangerment” finding, should it do so.<sup>7</sup>

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<sup>4</sup> Quoted by E&E Daily, “Whether it’s McCain or Obama, Washington preps for ‘09 warming debate”, July 28, 2008.

<sup>5</sup> “Pronouncements of ‘glorious mess’ at EPA spark fight”, Greenwire, April 23, 2008.

<sup>6</sup> Quoted by Bloomberg News, October 16, 2008.

<sup>7</sup> See, e.g., interview on National Public Radio, April 1, 2008.

**We note therefore that groups demanding that EPA regulate with an inappropriate tool instead of requesting Congress grant them more specific tools and guidance also cite a need for and intention to seek Congressional action anyway, but to limit the consequences of the ill-advised action that they demand in the first place.** This, too, militates in favor of EPA deferring to Congress for instruction as to whether and if so how it indeed desires to regulate CO<sub>2</sub>.

It is inescapable that the more prudent course for EPA is to seek specific congressional authority and guidance on how to regulate GHGs if that is in fact Congress's intent. To do otherwise would merely and necessarily beget further regulation that even proponents of CO<sub>2</sub> regulation under the CAA implicitly acknowledge was not Congress's intent, but would nonetheless be a statutory imperative flowing directly from the "endangerment" finding.

Further, pressure groups are already preparing to seize upon a potential "endangerment" determination to prove Sen. Boxer's vision correct. Sierra Club's Bookbinder and his colleague David Doniger have indicated intentions to resuscitate a legal theory that Mr. Doniger's organization, the Natural Resources Defense Council, successfully sued to overturn, in the case of *NRDC v Train* (DC D.C. 1976). This is the theory propounded by then-EPA Administrator Russell Train that EPA can avoid initiating a NAAQS rulemaking just by not planning to do the paperwork.

For reasons that are even more obvious (and appropriate), any attempt by EPA to, e.g., avoid doing paperwork as a way to avoid apparent and foreseeable statutory consequences would also demand litigation. As such, Sierra Club's plans also implicitly acknowledge the impropriety of EPA making an "endangerment" determination absent specific guidance from Congress.

EPA does not in fact possess the discretion to somehow manipulate these clear, subsequent requirements under CAA so as to avoid the outcomes an "endangerment" finding would demand. This has been affirmed by numerous sources since *Massachusetts v. EPA*, including for example the D.C. Circuit's *North Carolina v. EPA* decision overturning EPA's Clean Air Mercury Rule and Clean Air Interstate Rule.<sup>8</sup>

All of the above informs a conclusion that EPA's best course is not to force the square peg of regulating, at the margins, what EPA's own assessment indicates is a *de minimis* overall potential greenhouse forcing from U.S. tailpipe emissions of carbon dioxide into the round hole of a CAA "endangerment" finding and what that entails. The assessment by EPW Chair Barbara Boxer cited, above, is entirely correct. Though EPA was not directed by the Court to regulate carbon dioxide, if the Agency chose to do so it would simply yield massive litigation given the unsuitability of the Clean Air Act for the purpose to which EPA would be putting it with an "endangerment" finding.

To avoid or at least minimize this disruptive outcome, consistent with Chairman Boxer's sentiments EPA should opt instead to for Congress direction as to what regime is required

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<sup>8</sup> This is the "CAIR" decision available at <http://www.epa.gov/cair/pdfs/05-1244-1127017.pdf>.

for the task. That this is the appropriate outcome is further supported by the fact that the Agency cannot in fact reasonably assert that carbon dioxide emissions from automobiles cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare including climate. Even the deeply flawed general circulation models relied upon by IPCC and USGCRP, which as noted below demonstrably overstate CO<sub>2</sub>'s greenhouse forcing as a key assumption, affirm that this is the case.

As such, we request that EPA assert it cannot identify an endangerment to public health and welfare from carbon dioxide emissions from U.S. motor vehicles.

## II. Impropriety of EPA relying upon USP or IPCC as basis for regulation

### A. Context

EPA specifically states in its July 11, 2008 Advance Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act (with emphases added):

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Section 108 also requires that once a pollutant is listed, EPA issue "air quality criteria" encompassing "all identifiable effects on public health or welfare," including interactions between the pollutant and other types of pollutants in the atmosphere. We are interested in commenters' views on whether and how developing air quality criteria

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for GHGs would differ from developing such criteria for other pollutants such as ozone and particular matter, given the long-lived nature of GHGs and the breadth of impacts and other special issues involved with global climate change. ***EPA also invites comment on the extent to which it would be appropriate to use the most recent IPCC reports, including the chapters focusing on North America, and the U.S. government Climate Change Science Program synthesis reports as scientific assessments that could serve as an important source or as the primary basis for the Agency's issuance of "air quality criteria."***

#### *Page 412*

Given the complexity of global climate change science, and the vast amount of research that would be relevant to the Agency's scientific assessment, EPA anticipates this task would be particularly time consuming in the case of GHGs, though ***relying on synthesis reports such as the Intergovernmental Panel on Climate Change's Fourth Assessment Report and various reports of the US Climate Change Science Program could help expedite the process.*** The challenge of completing a thorough scientific assessment for GHGs could result in a significant delay in listing the pollutant(s) under section 108,

since EPA would likely choose to list GHGs only when the scientific assessment had progressed sufficiently to enable the Agency to meet the statutory requirement to issue “air quality criteria” within one year of listing, and to meet the tight rulemaking timeframe, discussed below. To the extent that EPA addresses GHGs through this CAA mechanism, *EPA requests comments on the issuance of “air quality criteria” following listing, as well as the adequacy of the available scientific literature.*

We assert that EPA should not rely, and quite likely can not permissibly rely on the cited documents as premises for either a determination that carbon dioxide emissions from U.S. automobiles endanger public health or welfare, or for regulations flowing from such a determination.<sup>9</sup>

**B. Do not rely on that which EPA cannot publish: IPCC and USP violate EPA peer review requirements, and do not meet IQA requirements**

**1. Overview**

We submit these comments mindful of the requirements of the U.S. Global Change Research Act of 1990 (USGCRA, 15 U.S.C. 2921 et seq.) and the Federal Information Quality Act (IQA, enacted as Section 515(a) of the FY 2001 Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554)).

The former established the specific authority and parameters applicable to any information disseminated by covered agencies of the federal government in any way indicating adoption or acceptance of its content. The latter describes the level of scientific credibility and rigor required of any “highly influential” information disseminated by the federal government.

Both the U.S. Climate Change Science Program’s Unified Synthesis Product (USP) and the Intergovernmental Panel on Climate Change (IPCC) Assessment Reports (ARs) are based upon unsupportable projections from unverifiable computer models (described in more detail, below). Further, they do not meet relevant requirements of peer review. Given that due to extant statutory and other legal constraints EPA could not permissibly publish or seemingly endorse either the USP or IPCC ARs, EPA also must eschew premising major decisions – including an “endangerment” determination, or rules flowing from such a determination if made – on such materials, products or output. For example, IQA required the Office of Management and Budget (OMB) to issue government-wide guidelines, and each agency to issue agency-specific guidelines, “ensuring and maximizing the quality, objectivity, utility, and integrity of information

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<sup>9</sup> We particularly emphasize the utter impermissibility on its face of EPA relying on any IPCC “summary” documents, for myriad reasons including that they are political documents negotiated with pressure group activists, demonstrated on numerous occasions to not fairly represent – and often materially misrepresent – the underlying IPCC assessments.

disseminated by the agency.” Ultimately, OMB’s Guidelines govern and all agency Guidelines must conform to them.

In its Guidelines,<sup>10</sup> OMB defines “quality” as the encompassing term, of which “utility,” “objectivity,” and “integrity” are constituent elements:

“‘Utility’ refers to the usefulness of the information to the intended users.

‘Objectivity’ focuses on whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased.

‘Integrity’ refers to security—the protection of information from unauthorized access or revision...”

Information that EPA relies upon for its decision of whether to declare a CO<sub>2</sub> “endangerment”, and any regulations that would follow from that decision, should therefore at minimum be of sufficient quality that EPA could permissibly disseminate it.<sup>11</sup> Because USP and IPCC ARs fail numerous among IQA’s and EPA’s tests, EPA must look elsewhere to justify these significant undertakings.

EPA states, regarding the instant matter, “One point is clear: the potential regulation of greenhouse gases under any portion of the Clean Air Act could result in an unprecedented expansion of EPA authority that would have a profound effect on virtually every sector of the economy and touch every household in the land.” There can be no dispute that whatever science-related information EPA elects to rely upon in this matter thereby inherently meets the threshold for influential scientific information.<sup>12</sup>

**Considering this and applicable restrictions, it is inappropriate for EPA to *rely* for these purposes upon information that could not satisfy EPA’s Peer Review Standards or the IQA standards established by Congress and the Office of Management and Budget for influential scientific information.**

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<sup>10</sup> OMB 2002 (67 FR 9452), <http://www.whitehouse.gov/omb/fedreg/reproducible2.pdf>.

<sup>11</sup> EPA is a covered agency; EPA “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency”, which are governed ultimately by the statute and OMB Guidelines, are found at [http://www.epa.gov/quality/informationguidelines/documents/EPA\\_InfoQualityGuidelines.pdf](http://www.epa.gov/quality/informationguidelines/documents/EPA_InfoQualityGuidelines.pdf).

<sup>12</sup> NOAA states “This Synthesis and Assessment Product described in the U.S. Climate Change Science Program (CCSP) Strategic Plan, was prepared in accordance with Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554) and the information quality act guidelines issued by the Department of Commerce and NOAA pursuant to Section 515 (<http://www.noaa.gov/newsroom/stories/iq.htm>). The CCSP Interagency Committee relies on Department of Commerce and NOAA certifications regarding compliance with Section 515 and Department guidelines as the basis for determining that this product conforms with Section 515. For purposes of compliance with Section 515, this CCSP Synthesis and Assessment Product is an ‘interpreted product’ as that term is used in NOAA guidelines and is classified as ‘highly influential’.” Draft “Global Climate Change Impacts in the United States”, version viewed at <http://downloads.climate.gov/sap/usp/usp-prd-all.pdf>.

## 2. USP and IPCC fail relevant peer review standards

We first explore the larger reasons that IPCC ARs and the USP are impermissible for EPA regulatory reliance, then the documents' specific, relevant shortcomings.

Legitimate peer review – although badly degraded in practice by the incestuous “climate” community as the report by Wegman et al. revealed<sup>13</sup> – is required of EPA by its Peer Review Policy before relying on any such “highly influential scientific assessment”.<sup>14</sup> “EPA recognizes that influential scientific, financial, or statistical information should be subject to a higher degree of quality (for example, transparency about data and methods) than information that may not have a clear and substantial impact on important public policies or private sector decisions.”<sup>15</sup>

Neither the USP nor the IPCC meet EPA's own peer review requirements for, from the selection of reviewers all the way through the process.<sup>16</sup> The IPCC and USP are not peer reviewed, do not meet any objective requirements of a “peer review” standard, and do not credibly fall into the exception for summaries of peer reviewed work. Instead, as noted below, both are demonstrably biased in panel composition, and in execution including through subjective compilations of select, preferred work, both assessments also having been exposed as serially citing their authors' own work. IPCC has also been shown to be riddled with conflicts and is now demonstrated to have failed any attempt at credible peer review.

We note the National Academies of Science statement regarding the Agency and peer review:

When scientific and technical information is used as part of the basis for a public-policy decision, peer review can substantially enhance not only the quality but also the credibility of the scientific or technical basis for the decision. After-the-fact criticisms of the science are more difficult to sustain if it can be shown to have been properly and independently peer reviewed.<sup>17</sup>

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<sup>13</sup> See “Ad Hoc Committee Report on the ‘Hockey Stick’ Global Climate Reconstruction” for the Chairmen of the U.S. House Committee on Energy and Commerce and of the Subcommittee on Oversight and Investigations, Edward J. Wegman, David W. Scott, and Yasmin H. Said, National Academies of Sciences (Wegman Report), available at [http://www.climateaudit.org/pdf/others/07142006\\_Wegman\\_Report.pdf](http://www.climateaudit.org/pdf/others/07142006_Wegman_Report.pdf); see also Testimony of Edward Wegman, United States House of Representatives, Committee on Energy and Commerce, July 27, 2006, <http://republicans.energycommerce.house.gov/108/hearings/07272006Hearing2001/Wegman.pdf>.

<sup>14</sup> *Peer Review and Peer Involvement at the U.S. EPA*, June 7, 1994 <http://www.epa.gov/osp/spc/perevmem.htm>.

<sup>15</sup> EPA IQA Guidelines at 6.3, p. 20.

<sup>16</sup> See e.g., *EPA Science Policy Council Handbook: Peer Review*. EPA 100-B-98-001 (Office of Science Policy, Office on Research and Development, U.S. Environmental Protection Agency, Washington, DC: U.S. EPA, 1998) and EPA's Risk Characterization Handbook (*Science Policy Council Handbook: Risk Characterization*, EPA 100-B-00-002, Washington, DC: U.S. EPA, December 2000).

<sup>17</sup> “Strengthening Science at the U.S. Environmental Protection Agency: Research-Management and Peer-Review Practices”, National Academies of Science, Commission on Life Sciences (CLS)



As noted above, EPA choosing to declare an “endangerment” from CO2 in lieu of asking Congress for instruction would only invite litigation; to rely upon such improper documents as EPA seeks to rely upon as the basis for its decisions will only compound matters and dramatically for the worse.

The NAS report documents that, over the years, and uneven though they may be in practice, EPA peer review practices and capabilities have undergone great scrutiny and improvements. This cannot be said of the processes producing either the USP or IPCC. Further, the NAS and EPA’s own internal documents affirm a strong presumption in favor of peer review for major scientific and technical work products that affect agency decisions, those “work products that are intended to support the most important decisions or that have special importance in their own right”, barring extraordinary circumstances.

EPA’s own handbook specifies that peer review should be conducted on scientific and technical work products that support even a research agenda, let alone a regulatory program, policy position, or other agency position or action. EPA IQA Guidelines make clear that such information, for EPA to in any way indicate endorsement of such information, also demands heightened scrutiny, scrutiny that USP and IPCC demonstrably have avoided.

As NAS notes:

Examples of work products not to be reviewed are documents addressing procedural matters or policy statements. For work products supporting rule-making actions or site-specific regulatory decisions, [EPA’s] handbook specifies that the peer review should be performed on the scientific or technical document, not the rules, regulations, or decisions themselves. It specifies that scientific and technical work products supporting major rules, including rules determined to be “significant” by the Office of Management and Budget under Executive Order 12866, should be closely scrutinized.

The science underlying an endangerment determination and/or GHG regulation clearly does not fall into the excluded categories, but is precisely what the Agency has long contemplated as the proper subject of peer review. EPA therefore cannot permissibly rely upon USP or IPCC ARs as the basis for decisions of whether and how to regulate GHGs.

We are aware that Section 2.3 of EPA’s peer review handbook exempts certain work products from peer-review requirements including derivative summaries or compendiums of previously peer-reviewed products. As detailed below, however, the IPCC and USP demonstrably fall outside of what this exception contemplates, if only for the refusal to substantively respond to criticisms, the gross conflicts and biases exposed in both products – particularly their selective citation of work supporting their desired argument to the exclusion of the preponderance of recent literature – such that they cannot be considered credible summaries of peer-reviewed products. They purport to survey the

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Commission on Geosciences, Environment and Resources (CGER), Washington, DC (2000), p. 99. [[http://books.nap.edu/openbook.php?record\\_id=9882&page=117](http://books.nap.edu/openbook.php?record_id=9882&page=117) ]

landscape of the relevant literature but in truth have been exposed as simply selecting that which fits their narrative.

EPA's ANPR recognizes that the key extraordinary circumstance applying to the instant process is its potential significant, even unprecedented economy-wide impacts. As such, to be consistent with the obvious intent of EPA peer review policy developed over the years, in the instant case the presumption must be for more quality control, not less.

This is consistent with the Research Strategies Advisory Committee of the Science Advisory Board recommendation that EPA *expand* its peer review practices even beyond the “major scientific and technical work products”, to, e.g., international work products considered important to environmental decision-making (**including, e.g., Section 2.2.10 of the handbook specifying review of scientific and technical work products produced by organizations other than EPA when they are used in EPA decision-making**).

Surely this indicates that whatever EPA selects to support its decision regarding a possible “endangerment” finding, and other GHG regulatory decisions – particularly if a third-party product(s) – would be the most significant such work product to date and should be peer reviewed.

EPA could purport to subject USP and IPCC ARs to its own internal peer review, though as noted in the sources cited, below, it is already apparent that neither can feasibly withstand scrutiny sufficient to, e.g., satisfy IQA requirements for dissemination by EPA with any appearance of adoption or approval. It thereby stands to reason that EPA cannot premise the most significant decisions in its history on such information.

We note NAS's emphasis on certain aspects of EPA's peer review Handbook uniquely applicable to the instant matter:

For example, it emphasizes that peer review is not “peer input,” sometimes called “peer consultation” – the involvement of experts, even outside experts, in the development of a work product – because adequate impartiality and detachment cannot be assumed for experts who participated in the creation of a document, even parts of it. It states that no amount of peer input can substitute for peer review by independent, third-party experts. It further stressed that peer review is not stakeholder input or consensus building [**NB: of particular relevance to the IPCC Summaries**]; it is important to get the science correct before the values and policies are negotiated. It also distinguished peer review from public comment, such as that required by the Administrative Procedures Act or other statutes and obtained through the *Federal Register* or other means. [**NB: of particular relevance to the USP**]; It emphasized that peer review requires evaluation by individuals carefully chosen for relevant expertise and should focus on technical issues, whereas public comment is open to all individuals and all issues.<sup>18</sup>

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<sup>18</sup> “Strengthening Science at the U.S. Environmental Protection Agency: Research-Management and Peer-Review Practices”, p. 113.

In addition to USP and IPCC not having been subjected to legitimate peer review, the entirety of the USP and IPCC projections rely upon unvalidated – and arguably *invalidated* – computer models (detailed, below). This only enhances the urgency for EPA to ensure that whatever it elects to base its decisions upon satisfies EPA’s own peer review requirement.<sup>19</sup> As NAS noted, “Many EPA rule-makings rely substantially on mathematical models that attempt to predict toxic risk, exposure, emissions, or other variables. It is important that the design, assumptions, and validation of such models be carefully peer reviewed”.<sup>20</sup>

Also, while noting (if only in part) the current state of the science of climate modeling discussed in more detail, below, EPA itself asserts “EPA has developed considerable expertise in current global climate change research and has substantial experience in utilizing the available models to analyze GHG emissions.”<sup>21</sup>

Demurring that the IPCC or USP are “the best we’ve got” is of course not sufficient to evade such requirements. It is inarguable that these products do not satisfy either the requirements of peer review generally, EPA’s internal requirements specifically, or IQA.

### C. IPCC Specifically Unsuitable for EPA Regulatory Reliance

The IPCC boasts that “the reports by the three Working Groups provide a comprehensive and up-to-date assessment of the current state of knowledge on climate change.”<sup>22</sup> Yet, the IPCC actually excluded research produced later than two years prior its own February 2007 publication,<sup>23</sup> a window it selectively ignores except to include material consistent with its charter to support a future climate treaty. The two years preceding that Fourth Assessment Report (AR4) were notable for the preponderance of science emerging running strongly against the prevailing climate catastrophism, a development that was ignored although certain exceptions to that rule managed to find their way into AR4.<sup>24</sup>

We particularly note that the IPCC AR4 does not consider the discovery of important errors in NASA’s U.S. surface temperature records which, when “corrected” (even if still “adjusted” by individuals with vested interests in a certain outcome), show the 1930s to

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<sup>19</sup> See, e.g., GAO (U.S. General Accounting Office). 1996. Peer Review: EPA’s Implementation Remains Uneven. GAO/RCED-96-236. U.S. General Accounting Office, Washington, DC.

<sup>20</sup> “Strengthening Science at the U.S. Environmental Protection Agency: Research-Management and Peer-Review Practices”, National Academies of Science, p. 106.

<sup>21</sup> Letter from Robert J. Myers, Principal Deputy Assistant Administrator, Office of Air and Radiation to Dale Hall and James Leaky, October 3, 2008.

<sup>22</sup> IPCC home page, <http://www.ipcc.ch/>, viewed on October 9, 2007.

<sup>23</sup> Various caveats made it possible for research to be cited if not published or in draft form by that date, but clearly this increased the likelihood that its inclusion would be even less subject to the IPCC’s touted, and debunked, claim to stringent peer review. See, e.g., “IPCC Working Group I, Schedule for Fourth Assessment Report,” UN IPCC, [http://ipcc-wg1.ucar.edu/wg1/docs/wg1\\_timetable\\_2006-08-14.pdf](http://ipcc-wg1.ucar.edu/wg1/docs/wg1_timetable_2006-08-14.pdf).

<sup>24</sup> We direct EPA to a discussion of such developments at “Why the EPA should find against “Endangerment”, Patrick J. Michaels and Chip Knappenberger, World Climate Report, November 19, 2008, <http://www.worldclimaterreport.com/index.php/2008/11/19/why-the-epa-should-find-against-endangerment/>.

be the hottest decade in the U.S. in the last century. Given that the U.S. has the least unreliable temperature records, this is a material fact.

The IPCC summarily dismissed comments drawing attention to natural climate forces (e.g. El Nino influences, or the natural ‘blocking high’ that triggered the 2003 European heat wave).<sup>25</sup> Were the IPCC interested, and more objective, it could have also informed the public of significant if inconvenient new findings casting further doubt on its hypothesis of dangerous human-caused global warming, including apparent confirmation of climate sensitivity to a doubling of CO<sub>2</sub> at around one degree Celsius of warming.<sup>26</sup> It also could have considered recent research providing an updated and enhanced understanding of how tropical weather and clouds act as planetary cooling thermostats (Spencer et al, supporting Lindzen’s “Iris effect”<sup>27</sup>); the effect on climate of natural oscillations over decades;<sup>28</sup> mechanisms whereby solar wind and magnetic effects may significantly influence climate;<sup>29</sup> and how the impact of incoming energy from the Sun is amplified near Earth’s surface.<sup>30</sup> So the IPCC ARs may be a lot of things, but “up to date” now, let alone at the time of publication, they are not.

***Here we also incorporate by reference the comments filed in response to EPA’s ANPR by S. Fred Singer, PhD, for the Non-Governmental International Panel on Climate Change (NIPCC) which also detail IPCC and USP/CCSP bias, omission and other infirmities and lack of suitability as a basis for EPA GHG regulatory decisions.***

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<sup>25</sup> McLean, John, “Peer review? What peer review? Failures of scrutiny in the UN’s Fourth Assessment Report,” Science and Public Policy Institute, September 2007, p. 8.

<sup>26</sup> Schwartz S. E. (2007), Heat capacity, time constant, and sensitivity of Earth’s climate system, *J. Geophys. Res.*, 112, D24S05, estimating climate sensitivity as an equilibrium temperature increase for doubled carbon dioxide of  $1.1 \pm 0.5$  K, about one-third that of the most recent estimate by the IPCC. In 2008 Schwartz revised his estimate to  $1.9 \pm 1.0$  K, still substantially lower than the IPCC claim (Schwartz S. E. (2008), Reply to comments by G. Foster et al., R. Knutti et al., and N. Scafetta on “Heat capacity, time constant, and sensitivity of Earth’s climate system”, *J. Geophys. Res.*, 113, D15105).

<sup>27</sup> Roy W. Spencer, William D. Braswell, John R. Christy, Justin Hnilo, “Cloud and radiation budget changes associated with tropical intraseasonal oscillations,” *J. Geophys. Res.*, Vol. 34, L15707, doi:10.1029/2007GL029698, 2007, <http://www.agu.org/pubs/crossref/2007/2007GL029698.shtml>; it appears also that leading alarmists support this, see, e.g., Kevin Trenberth’s comments at “The mystery of global warming’s missing heat,” <http://www.npr.org/templates/story/story.php?storyId=88520025>.

<sup>28</sup> See, e.g., Anastasios A. Tsonis, Kyle Swanson, and Sergey Kravtsov: Atmospheric Sciences Group, Department of Mathematical Sciences, University of Wisconsin-Milwaukee, Milwaukee, Wisconsin, U.S.A. See August 2, 2007 Science Daily—“Synchronized Chaos: Mechanisms For Major Climate Shifts,” discussed at <http://www.sciencedaily.com/releases/2007/08/070801175711.htm>.

<sup>29</sup> See, e.g., Svensmark et al., “Reply to Lockwood and Fröhlich - The persistent role of the Sun in climate forcing,” Danish National Space Center, DNSC-Scientific report 3/2007 (PDF) at [http://www.spacecenter.dk/publications/scientific-report-series/Scient\\_No\\_3.pdf/view](http://www.spacecenter.dk/publications/scientific-report-series/Scient_No_3.pdf/view); see also other studies and scientists confirmed the solar-climate link at [http://scienceandpublicpolicy.org/sppi\\_reprint\\_series/a\\_critique\\_on\\_the\\_lockwood\\_froehlich\\_paper\\_in\\_the\\_royal\\_society\\_proceedings.html](http://scienceandpublicpolicy.org/sppi_reprint_series/a_critique_on_the_lockwood_froehlich_paper_in_the_royal_society_proceedings.html), <http://www.globalwarminghysteria.com/blog/2007/7/17/no-sun-link-study-debunked-again.html>, and [http://scienceandpublicpolicy.org/sppi\\_originals/the\\_unruly\\_sunne\\_cannot\\_be\\_ruled\\_out\\_as\\_a\\_cause\\_of\\_recent\\_climate\\_variation.html](http://scienceandpublicpolicy.org/sppi_originals/the_unruly_sunne_cannot_be_ruled_out_as_a_cause_of_recent_climate_variation.html).

<sup>30</sup> Charles D. Camp and Ka Kit Tung: Department of Applied Mathematics, University of Washington, Seattle, Washington, U.S.A. Source: *Geophysical Research Letters* (GRL) paper 10.1029/2007GL030207, 2007, discussed at <http://www.sciencedaily.com/releases/2007/08/070801174450.htm>; although one of the co-authors protests this study being cited in opposition to alarmism, in reality the paper is an important contribution affirming the solar-climate link.

Further, and as noted in the referenced NIPCC report, the IPCC is demonstrably an *advocacy* organization, not unbiased. A recent example is found in the following excerpt from a paper delivered by former IPCC author Dr. Richard S. Lindzen:

The response of the IPCC officials makes it eminently clear that the IPCC is fundamentally a political body. If further evidence were needed, one simply has to observe the fact that the IPCC Summary for Policymakers will selectively cite results to emphasize negative consequences. Thus the summary for Working Group II observes that global warming will result in “Hundreds of millions of people exposed to increased water stress.” This, however, is based on work (Arnell, 2004) which actually shows that by the 2080s the net global population at risk declines by up to 2.1 billion people (depending on which scenario one wants to emphasize)! The IPCC further ignores the capacity to build reservoirs to alleviate those areas they project as subject to drought (I am indebted to Indur Goklany for noting this example.)<sup>31</sup>

Also, as noted, the IPCC does not subject itself to anything resembling “peer review”. Pasteur Institute Professor Dr. Paul Reiter, a leading expert on malaria who had to threaten legal action against the IPCC to have his name removed from the list of “2,000 of the world’s leading scientists” who supposedly backed its summary though he most certainly does not, explains how the IPCC turns peer review “on its head.”

In professional science, the names of peer reviewers are kept confidential to encourage independent criticism, free of recrimination, while the deliberations of the authors being critiqued are made public. ...[But in the IPCC process] “The peer reviewers have to give their names to the authors, but the deliberations of the authors are strictly confidential.” In effect, the science is spun, disagreements purged, and results predetermined.<sup>32</sup>

Independent researcher John McLean has performed the only detailed analysis of the IPCC’s claim to “peer review”. His review of the 2007 AR4 WGI [“The Physical Science Basis”] found that “The IPCC’s editors could - and often did - reject the peer-reviewers’ comments, a reversal of the normal practice in scientific peer-review. Analysis of the extent of the editors’ refusal to accept criticism is difficult because the expressions of rejection come in many forms, some were partial and others were rendered otiose by the rewriting, restructuring or deletion of sections of text.”<sup>33</sup>

McLean states that even if one merely considers comments that were greeted with “rejected,” “reject” and “disagree,” an analysis of the comments still “reveals that the

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<sup>31</sup> Richard S. Lindzen, “Climate Science: Is it currently designed to answer questions?”, September 27, 2008, <http://arxiv.org/ftp/arxiv/papers/0809/0809.3762.pdf>.

<sup>32</sup> Solomon, Lawrence, “Bitten by the IPCC,” *National Post* (CA), March 23, 2007, <http://www.nationalpost.com/news/story.html?id=0ea8dc23-ad1a-440f-a8dd-1e3ff42df34f&p=1>.

<sup>33</sup> McLean, John, “Peer review? What peer review? Failures of scrutiny in the UN’s Fourth Assessment Report,” Science and Public Policy Institute, September 2007, [http://scienceandpublicpolicy.org/images/stories/papers/originals/mclean/mclean\\_IPCC\\_review\\_final\\_9-5-07.pdf](http://scienceandpublicpolicy.org/images/stories/papers/originals/mclean/mclean_IPCC_review_final_9-5-07.pdf), p. 4.

number of peer-reviewers' comments that were rejected by the IPCC averaged 25% (min. 9.5%, max 58.1%) of all comments on the Second Revision."<sup>34</sup>

McLean describes most rejections as being of "dubious nature," which is to say unsubstantiated. Some were simply absurd. "In several instances, reviewers invited the IPCC to express its conclusions with less certainty, and provided evidence in support of more caution given the uncertainties inherent in climate science. In almost every such instance, the IPCC's reviewers flatly rejected the reviewers' suggested moderations of its conclusions. *Some comments were rejected on the ground that there was not enough space.* Given the unconstrained length and supposed importance of the IPCC's assessment report, this ground of rejection is not compelling."<sup>35</sup>

It appears that the IPCC also keeps its reasons for rejecting many dissenting reviewer comments secret, or else they simply lack justification.

Reviewers would cite references in the learned journals challenging the IPCC's conclusions, but in almost every instance they were told that a greater number of references supported an alternative argument. The correct approach, at the very least, would have been to insert in the assessment report a mention of the references that challenged the IPCC's conclusion.

Reviewers who made brief proposed amendments would often be brushed off by being told of just one paper that contradicted the suggested amendment. In at least one response *the IPCC's editors made reference to a document that had not been subjected to peer review at all.*<sup>36</sup> (emphases in original)

The IPCC's summary rejection of so many expert reviewers' comments flaunts the response contemplated by "peer review," which is to make the necessary change to the document or substantively explain why the comment is wrong and the change inappropriate. While reviewers had to justify the textual amendments which they were putting forward the responding editors were under no corresponding obligation to justify their rejections of the reviewers' proposals.<sup>37</sup>

While the SPM, for example, was actually written by only 52 authors, it was not "approved" by the claimed "over two thousand", a number that was rocked by the exposure that most of the Expert Reviewers did not in fact tangibly participate in the process, by commenting for example. McLean found that of the 54 non-governmental representatives reviewing the critical chapter that attributed recent warming to human activity, nearly one-third of them made just one comment.<sup>38</sup>

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<sup>34</sup> Id.

<sup>35</sup> Id. at 7 (emphasis in original).

<sup>36</sup> Id.

<sup>37</sup> McLean, John, "An Analysis of the Review of the IPCC 4AR WG I Report," October 2007, p. 12, [http://mclean.ch/climate/IPCC\\_review\\_updated\\_analysis.pdf](http://mclean.ch/climate/IPCC_review_updated_analysis.pdf).

<sup>38</sup> McLean, John, "Peer review? What peer review? Failures of scrutiny in the UN's Fourth Assessment Report," Science and Public Policy Institute, p. 24.



The details of how many reviewers commented on how many sections and how those few comments were in great part disregarded are damning to the IPCC's supposed thoroughness and scientific clarity. They betray the widely claimed notion that the IPCC represents the input, let alone the work, of thousands of scientists, all of whom the IPCC nonetheless associates with the conclusions and even intimates substantively reviewed and/or signed off on the products.

Longtime IPCC "expert reviewer" Dr. Vincent Gray explains about the IPCC process, "Penetrating questions often ended without any answer. Comments on the IPCC drafts were rejected without explanation, and attempts to pursue the matter were frustrated indefinitely. Over the years...I have found increasing opposition by them to providing explanations, until I have been forced to the conclusion that for significant parts of the work of the IPCC, the data collection and scientific methods employed are unsound. Resistance to all efforts to try and discuss or rectify these problems has convinced me that normal scientific procedures are not only rejected by the IPCC, but that this practice is endemic, and was part of the organization from the very beginning."<sup>39</sup>

These results remind us that it was only the threat of the Freedom of Information Act applied to U.S. agencies for relevant documents that prompted the IPCC to, for the first time, make publicly available the reviewers' comments and editors' responses for the WG I report. This critical series of exchanges was now, after much criticism and frankly embarrassment, finally available for reconciliation with the product, allowing examination and refutation of the IPCC's claim to "peer review."<sup>40</sup>

Finally, the IPCC is burdened by glaring conflicts of interest among its participants. For example, McLean found that 31 of the 54 non-governmental representatives reviewing the critical chapter that attributed recent warming to human activity had a vested interest in the report as editors or having papers cited therein, leaving 23 who did not. 26 of these reviewers authored or co-authored papers cited in the final draft of the IPCC report, 10 of them even explicitly mentioned (that is at minimum relied upon with a complete lack of objectivity, and at worst simply promoted) their own papers in their review.<sup>41</sup>

So we know that only a handful of reviewers actually offered substantive comment, and among those most are conflicted out or, rather, would be in any transparent or credible process. Further, those who did comment were as a general proposition simply dismissed when their edits criticized the preordained conclusions, as detailed above. And of course

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<sup>39</sup> Solomon, Lawrence, "Bitten by the IPCC," *National Post* (CA), March 23, 2007, <http://www.nationalpost.com/news/story.html?id=0ea8dc23-ad1a-440f-a8dd-1e3ff42df34f&p=1>.

<sup>40</sup> See e.g., "Climate Science Anything but 'Clear', Mr. Baird: UN Climate Agency's implication that 2,500 scientist reviewers agree with its report is a deception," Media Release, Natural Resources Stewardship Project, November 19, 2007, <http://www.nrsp.com/releases/release-07.11.19.html>. The draft scientific reports are available at [http://www.junkscience.com/draft\\_AR4/](http://www.junkscience.com/draft_AR4/).

<sup>41</sup> McLean, John, "Peer review? What peer review? Failures of scrutiny in the UN's Fourth Assessment Report", p. 24.

a far greater number of relevant scientists than fifty-two have written to the UN specifically to protest such claims to scientific agreement.<sup>42</sup>

**Highlighting the combination of the IPCC’s self-dealing, conflicted and anti-peer-review approach, the IPCC even cited its own inadequately reviewed reports—that is, having undergone nothing such as is required for actual publication in a peer-reviewed journal—as the authority supporting its dismissal of comments.**<sup>43</sup>

As such, it is inappropriate for EPA to then rely on, or ground an “endangerment” finding or any other GHG regulatory decision in, such information. The IPCC does not represent the “the latest scientific knowledge about the effects on public health and public welfare” as the Clean Air Act requires. That it is not “peer reviewed” as the term connotes to scientific journals, regulators or in any other setting is also beyond dispute now that the IPCC has been coerced into publishing expert reviewer comments and IPCC’s response or lack thereof. Finally, it is clear that IPCC reports upon which EPA would likely rely are written by a conflict-ridden handful of experts who have been exposed as reviewing and referencing their own work as authoritative, and cherry-picking literature supporting the predetermined stance for which IPCC was expressly chartered. Therefore, its assessments are not in any sense representative studies of the state of the relevant science.

### **1. Example: IPCC’s key, unsupportable claim to certitude**

One prominent IPCC claim in AR4 illustrates the impropriety of EPA relying upon IPCC assessment reports as bases for its decisions regarding GHG regulation. The first was the IPCC now claiming a 90 percent to 95 percent probability that human emissions of carbon dioxide are having a significant effect on climate—although total human emissions constitute about 2 percent to 3 percent of the total CO<sub>2</sub> produced each year and are responsible at most for a *small fraction of one percent* of the greenhouse effect.

We recall that an October 2007 survey of U.S. scientists listed as contributing authors and reviewers of the IPCC’s “Working Group I,” “Climate Change 2007: The Physical Basis” found that only 20% of respondents claiming to believe that human activity is the principal driver of climate change.<sup>44</sup> IPCC cherry-picking, etc., does not change this.

The IPCC claim of 90% certainty is not supportable. Nothing has changed about Dr. James Hansen’s statement made one decade ago, that “The forcings that drive long-term climate change are not known with an accuracy sufficient to define future climate change.”<sup>45</sup> These forcings are the basis for computer models, which in turn are the basis of the IPCC’s claims.

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<sup>42</sup> See letter from scientists to Ban Ki-moon, Secretary General of the United Nations, at e.g., “Don’t fight, adapt,” *National Post* (CA), December 12, 2007, <http://www.nationalpost.comhtml?id=164002>.

<sup>43</sup> Id.

<sup>44</sup> See [http://www.DemandDebate.com/ipcc\\_survey.pdf](http://www.DemandDebate.com/ipcc_survey.pdf).

<sup>45</sup> Hansen, et al., “Climate forcings in the Industrial era,” *Proceedings of the National Academy of Science*, Vol. 95, 12753, 1998.



As IPCC author John Christy described the IPCC's claim, "We are not told here that [the IPCC's "90%] assertion is based on computer model output, not direct observation. The simple fact is we don't have thermometers marked with 'this much is human-caused' and 'this much is natural'. So, I would have written this conclusion as 'Our climate models are incapable of reproducing the last 50 years of surface temperatures without a push from how we think greenhouse gases influence the climate. Other processes may also account for much of this change.'"<sup>46</sup>

We address the impropriety of EPA using GCMs for the stated purpose, below, but note that statistician William M. Briggs writes how the IPCC's confidence is "*conditional* on the model that [is] chosen being *true*. Since it is rarely certain that the model used *was* true, the eventual results are stated with a certainty that is too strong. As an example, suppose your statistical model allowed you to say that a certain proposition was true 'at the 90% level.' But if you are only, say, 50% sure that the model you used is the correct one, then your proposition is only true 'at the 45% level' *not* at the 90% level, which is, of course, an entirely different conclusion. *And if you have no idea how certain your model is, then it follows that you have no idea how certain your proposition is.* To emphasize: the uncertainty in choosing the model is almost never taken into consideration."<sup>47</sup>

As climate scientist Dr. Roy Spencer asks, rhetorically, "Why are ALL of the 20+ IPCC climate models more sensitive in their total cloud feedback than published estimates of cloud feedbacks in the real climate system (Forster and Gregory, *Journal of Climate*, 2006)? If the answer is that 'there are huge error bars on our observational estimates of feedback', then doesn't that mean that it is just as likely that the real climate system is very insensitive (making manmade global warming a non-problem) as it is to be as sensitive as the IPCC models claim it is?"<sup>48</sup>

In fact, the IPCC admits that when it comes to the nine mechanisms that can force climate change or "forcings", it possesses a low to medium "level of scientific understanding" (LOSU) for seven, and a high LOSU for only two. Then it somehow excludes *water vapor altogether* from its list of greenhouse gases,<sup>49</sup> given that water vapor is responsible for somewhere above 95 percent of the greenhouse effect and is closely related to clouds—another key forcing the IPCC admits it does not understand. As Middlebury College professor Jim Peden states about the IPCC's claim of certainty despite admitting it does not understand the impact of water vapor, this is similar to concluding that the human race is all male, after eliminating females from consideration in gender demographics because "they are not well understood."

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<sup>46</sup> Christy, John, "Viewpoint," BBC, November 14, 2007, <http://news.bbc.co.uk/2/hi/science/nature/7081331.stm>.

<sup>47</sup> William M. Briggs, "Statistics' dirtiest secret," William M. Briggs, Statistician blog, February 18, 2008, <http://wmbriggs.com/blog/2008/02/18/statistics-dirtiest-secret/>, (emphases in original).

<sup>48</sup> Roy W. Spencer, "Hey, Nobel Prize winners, answer me this," Science and Public Policy Institute, March 15, 2008, [http://scienceandpublicpolicy.org/images/stories/papers/commentaries/nobel\\_winners\\_answer\\_me.pdf](http://scienceandpublicpolicy.org/images/stories/papers/commentaries/nobel_winners_answer_me.pdf).

<sup>49</sup> United Nations Intergovernmental Panel on Climate Change, Third Assessment Report, 2001b, p 37.

Given these truths and others described below it is implausible to credibly assert that authorship by a few dozen scientists and some government representatives, working in coordination with a handful of pressure group lobbyists, represents an “overwhelming consensus” or even fairly represents the preponderance of the contemporary literature.

As such, we argue that the IPCC Assessment Reports – and particularly the egregious Summaries in their various forms upon which regulators might even seek to rely – could never survive challenge under the IQA if disseminated by a covered Agency in any way constituting endorsement or acceptance as its own conclusions. We argue that these reasons make it impermissible for EPA to premise regulation of GHGs on IPCC.

Therefore, we cannot stress enough, the impropriety of relying on IPCC assessment reports for EPA’s stated purpose. It is also in poor service to the regulated community and taxpayer for EPA “to use the most recent IPCC reports, including the chapters focusing on North America, and the U.S. government Climate Change Science Program synthesis reports as scientific assessments that could serve as an important source or as the primary basis for the Agency’s issuance of “air quality criteria.” This is equally true for any other aspect of EPA’s GHG regulatory decisions.

## **2. Other sources to consult for assessment of IPCC shortcomings**

In support of this argument we also incorporate by reference the work by John McLean cited above as well as “Prejudiced authors, Prejudiced findings: Did the UN bias its attribution of “global warming” to humankind?”,<sup>50</sup> “The IPCC report: What the lead authors really think,”<sup>51</sup> and Senate testimony by MIT’s Dr. Richard Lindzen.<sup>52</sup>

For EPA’s consideration of this particular question, we also incorporate by reference and ask EPA to consider the reports further discussing problems with the analyses and processes of the IPCC and CCSP (USP’s putative author) found in the NIPCC report “Nature, Not Human Activity, Rules the Climate”,<sup>53</sup> “On The IPCC’s Case For Anthropogenic Global Warming”,<sup>54</sup> and “The IPCC: on the Run at Last”.<sup>55</sup>

Further, **we incorporate by reference and particularly direct EPA’s attention to the Report of the UK Parliament’s All Party Select Committee on Economic Affairs.**<sup>56</sup> It evaluates the subject of man-made global climate change and:

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<sup>50</sup> July 2008, [http://scienceandpublicpolicy.org/images/stories/papers/originals/McLean\\_IPCC\\_bias.pdf](http://scienceandpublicpolicy.org/images/stories/papers/originals/McLean_IPCC_bias.pdf).

<sup>51</sup> Ann Henderson-Sellers, Science and Public Policy Institute, September 2008, [http://scienceandpublicpolicy.org/images/stories/papers/reprint/sellers\\_ipcc.pdf](http://scienceandpublicpolicy.org/images/stories/papers/reprint/sellers_ipcc.pdf).

<sup>52</sup> “Testimony of Richard S. Lindzen before the Senate Environment and Public Works Committee on 2 May 2001”, available at <http://www-eaps.mit.edu/faculty/lindzen/Testimony/Senate2001.pdf>.

<sup>53</sup> Science and Environmental Policy Project / S. Fred Singer, published by The Heartland Institute (2008), available at [http://www.heartland.org/custom/semod\\_policybot/pdf/22835.pdf](http://www.heartland.org/custom/semod_policybot/pdf/22835.pdf).

<sup>54</sup> Roger W. Cohen, Science and Public Policy Institute, July 2008, [http://scienceandpublicpolicy.org/images/stories/papers/commentaries/Roger\\_Cohen-On\\_IPCCs\\_view\\_of\\_AGW.pdf](http://scienceandpublicpolicy.org/images/stories/papers/commentaries/Roger_Cohen-On_IPCCs_view_of_AGW.pdf).

<sup>55</sup> Dr. Robert M. Carter, “The IPCC: on the Run at Last”, March 2008, reprint available at [http://scienceandpublicpolicy.org/images/stories/papers/reprint/Carter-IPCC\\_on\\_the\\_run.pdf](http://scienceandpublicpolicy.org/images/stories/papers/reprint/Carter-IPCC_on_the_run.pdf).

<sup>56</sup> House of Lords Session 2005-06, Economic Affairs Committee Publications, Economic Affairs - Second Report, available at <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldeconaf/12/1202.htm>.

- (a) condemns the IPCC for its bias, and “unsound process” in which political authors misrepresent the substance of the underlying, scientific work thereby making sound science an impossible result (particularly citing the AR “summaries”, which we again urge EPA to avoid),
- (b) calls for an independent assessment of climate change (which USP is not),
- (c) recommends rejection of mitigation options (e.g. Kyoto Protocol) because they would not be cost-effective (which EPA seeks comment on instead *advancing*), and
- (d) suggests adoption of adaptation options that would be cost-effective.

We particularly draw EPA’s attention to Chapters 4 (“Forecasting greenhouse gas emissions and Temperature Change”<sup>57</sup>) and 7 (“The IPCC Process”<sup>58</sup>). Nothing to date has refuted the Select Committee’s investigation, analysis and findings.<sup>59</sup>

#### **D. USP Not Suitable for EPA Regulatory Reliance**

Having enumerated why the IPCC is unsuitable for the task to which EPA seeks to put these assessment reports, we confront the issue of EPA relying instead on relevant scientific assessments that *are* subject to IQA, such as the USP. Here, too, EPA finds no safe harbor for reliable, let alone peer reviewed assessment of the state of the science.

We refer EPA to, and incorporate in the present Comments by reference, CEI’s comments on the draft USP, submitted formally to NOAA per its Federal Register Request for Comment. Specifically, these are by Christopher C. Horner<sup>60</sup> and Marlo Lewis, PhD.<sup>61</sup>

As of this date, those comments remain the most recent critique of the most recent version of USP. We will amend the present comments with our updated USP comments if and when NOAA updates its Draft (or final) USP. In the referenced CEI comments on USP we note many reasons why that document is not permissible for dissemination by

<sup>57</sup> <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldconaf/12/1207.htm>

<sup>58</sup> <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldconaf/12/1210.htm>

<sup>59</sup> We also note that while this Select Committee Report was so embarrassing to the UK government that it commissioned Sir Nicholas Stern to assess potential total costs if all worst-case scenarios for man-made global climate change were to come true – a rather absurd charge given the improbability of worst-case scenarios coming true, particularly all of them – nothing, not the politically helpful if academically discredited Stern. Re: the latter, climate economist Dr. Richard Tol of the University of Hamburg reassessed the economic literature on the costs of global warming, finding that the likely actual lifetime cost to the world of each ton of carbon dioxide released is very small, about 6% of the amount commonly touted by the establishment. William Nordhaus of Yale University, who has been estimating the economic costs of climate change since the 1970s, explains that the establishment’s numbers are not based on any new economics, science, or modeling but on a radical new way of treating the present valuation of future costs, for this *ad hoc* situation, alone (until others decide that this new approach ought to be employed elsewhere, as well, to impede progress in other fields). Tol notes that there is little funding support for research exposing that the costs of “global warming” tax and regulatory schemes are vastly greater than their potential benefit, because the results are unpopular with climate policymakers.

<sup>60</sup> At <http://cei.org/PDFs/nationalassessment/Christopher%20Horner.pdf>, specifically detailing USP’s lack of peer review.

<sup>61</sup> At <http://cei.org/PDFs/nationalassessment/Marlo%20Lewis.pdf>.

EPA and, therefore, is not suitable to serve as the basis for its GHG regulatory decisions. We assert this aware that the USP is not yet published, to a) put EPA on notice of the infirmities in the draft product, now withdrawn and b) what this product and process teach us about the USP's reliability.

Again regarding USP we focus on though do not limit our comments to the document's lack of peer review, and its author conflicts. Although NOAA purports that its own Request for Comment is toward the end of peer review, that is not under any definition satisfied simply by asking for public comment through the Federal Register.<sup>62</sup> NOAA's Request for Comment is a useful first step, yet absent the actual characteristics of peer review as commonly accepted and as affirmed in OMB's relevant Bulletin, this process of merely seeking comment on a draft USP does not *per se* equate with the peer review announced in NOAA's Notice for Comment (nor does the fact that it was withdrawn after embarrassing exposure that it could not possibly be the "summary" it purported to be). This is important for reasons of EPA peer review requirements for scientific reports.

Further, its process did not allow for full review of its final product prior to submitting our USP Comments – the complete document purportedly underlying the "Summary" *had not in fact yet been produced when NOAA sought comment on the "Summary"*, an admission that the "Summary" is no such thing which in any reasonable construction is fatal to the prospect of using such document as the basis for an "endangerment" determination or subsequent regulations. This precise, glaring admission also haunts the IPCC Summary reports, and is apparently one reason NOAA pulled the document as of this writing. It remains illustrative and instructive of questions surrounding the USP drafting process.

Other comments detailing further specifics of why USP violates its statutory authorization and the IQA, and which we also submit to the record by incorporating them reference for EPA's consideration, are available at <http://www.globalwarming.org/nationalassessment>. These specifically include comments by S. Fred Singer, Ph.D. of the Science & Environmental Policy Project, Kenneth Haapala of the NIPCC, Dr. Madhav Khandekar, a retired meteorologist formerly with Environment Canada, Patrick J. Michaels, Senior Fellow in Environmental Studies, Cato Institute and Professor of Environmental Sciences, University of Virginia, Paul C. Knappenberger of New Hope Environmental Services, and meteorologist Joseph D'Aleo.

All of which is to say that it is not appropriate, and is arguably impermissible, for EPA to rely upon USP when making its "endangerment" finding or otherwise making regulatory decisions regarding GHGs. Instead, EPA arguably may choose peer reviewed analysis to rely upon, though this too must be performed in a non-biased fashion representing the preponderance of the applicable, contemporary scientific literature.

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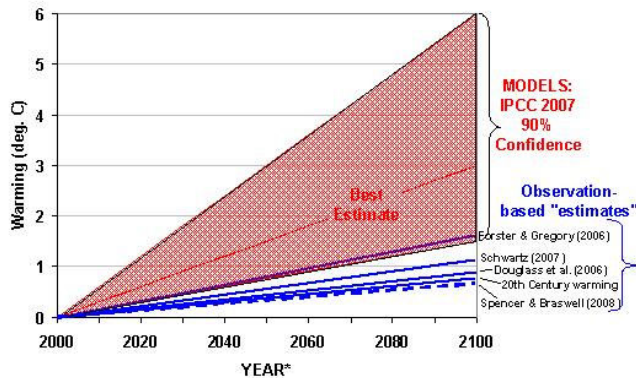
<sup>62</sup> See "Strengthening Science at the U.S. Environmental Protection Agency: Research-Management and Peer-Review Practices", p. 113, cited above in FN 15; see also "Memorandum for Heads of Departments and Agencies," re: Issuance of OMB's "Final Information Quality Bulletin for Peer Review", December 16, 2004, Executive Office of the President, Office of Management and Budget, <http://www.whitehouse.gov/omb/memoranda/fy2005/m05-03.pdf>, esp. pp. 2-5, 21-22.

For example, as with the IPCC's conflicts that John McLean exposed, CEI has detailed the bias in the USP including selection of which work to cite. USP (like IPCC) fails any assessment for objectivity in that, e.g., its authors reflect not even the slightest overture toward attaining substantive balance. Worse, these authors then proceeded to cite their own work over 100 times (See CEI Horner comments). For these reasons and those contained in the referenced comments, and those detailed below, EPA should not rely on USP for the intended purpose in making regulatory determinations regarding GHGs.

### III. Impermissibility of Relying on GCMs, Directly, or Indirectly via USP and IPCC

Both the IPCC ARs and the USP eschew historical observations as the basis for their projections upon which EPA would putatively rely. They rely instead on general circulation models (GCMs). Therefore, we specifically note this as a further reason that it is improper for EPA to premise an "endangerment" decision, or subsequent GHG regulations, on these assessment reports. To so rely would be to plainly base EPA's regulatory decisions on the output of unverifiable yet demonstrably flawed GCMs. The same logic applies as discussed above: if as a matter of statute (as well as due to problems arising from EPA's own peer review requirements) something is insufficiently credible for EPA to publish as authoritative or in any way implying endorsement, it is unsuitable to serve as the premise for critical GHG regulatory decisions.

In short, the IPCC clearly overestimates climate sensitivity through the models it uses.<sup>63</sup> The IPCC operates from a threshold assumption that the climate system is very fragile, in that it has a high sensitivity to, e.g., a doubling of carbon dioxide concentrations from levels presumed as extant during pre-industrial times. Recent observations, however, reveal that this is not true, but that the climate is far less sensitive to increased GHG concentrations (particularly the increased CO<sub>2</sub> concentrations) than assumed by any of the climate models used by the IPCC for their projections upon which EPA would rely.



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<sup>63</sup> These GCMs greatly overlap those considered by USP authors, so the same conclusions here apply to USP. The USP merely picks up and runs with that overestimation; certainly, nowhere do its authors labor to subject it to even the slightest challenge – though they do engage in the prohibited practice of citing their own work – and they also ignore the literature raising serious doubts about this threshold assumption.

<sup>64</sup> Chart courtesy of Dr. Roy W. Spencer, from "Global Warming as a Natural Response to Cloud Changes Associated with the Pacific Decadal Oscillation (PDO)" (posted October 19, 2008 in a simplified version of a paper submitted to and pending before *Geophysical Research Letters*; Spencer's discussion of the same



In truth, no GCM is capable of modeling recent observed climatic behavior, particularly temperatures which are key to EPA's analysis. This is despite that GCMs *do* in fact model El Nino, for example, so that possible excuse for GCM failure to credibly project the past decade of temperatures is no crutch. **We incorporate by reference Dr. Fred Singer's NIPCC comments, specifically the discussion of models and recent literature addressing the sensitivity issue, here.**

It is insufficient for purposes of, e.g., IQA requirements that modelers claim to have improved GCM output or that GCMs are considered by many the *least unreliable* tool for projecting future climate. That latter claim, particularly, is simply too subjective to be persuasive or a sufficient defense for these purposes. The inarguable fact, proven by recent observations though regularly admitted, *de facto*, by climate modelers, is that no GCM credibly models climate. As such, it is impermissible to ground policy in GCMs.

**Here we specifically incorporate by reference CEI's Comments on NOAA's USP (Horner), especially its discussion on the USP's impermissible reliance upon GCMs, at pages 23-34.**

The IPCC accepted, in its Third Assessment Report (2001), that the climate is "a complex, non-linear, chaotic object", and, consequently, that "long-term prediction of climate states is impossible". In its Fourth Assessment Report the IPCC rephrased but nonetheless did not disown this damning admission. Yet the IPCC proceeds to do the impossible by offering predictions, based on an assumed climate sensitivity that is already being proved an exaggeration by the failure of temperatures to rise as the computer models had predicted (or, recently, at all).

Updated research into model failure (e.g., Keenlyside 2008<sup>65</sup>) has taken into account real-world observations, and assessed that the current cooling could be one of 15-40 years. No GCM employed by IPCC or USP predicts this. It is unsupportable to attempt to smother this outcome with the tired and substantively slothful claim that this remains "consistent with" the GCM outputs which serve as the basis for IPCC and USP. **If we do not have the ability to credibly model climate then we cannot credibly base policy on models.**

Other objections, for example that models (be they GCMs or other) are simply too much a fixture in policymaking, are not only insufficient to overcome statutory requirements for data quality, but also ignore that GCMs are uniquely ill-suited for this particular purpose.

Instead of CO2 driving climate or temperatures as models assume, what is increasingly obvious is the strong correlative relationship between the Pacific Decadal Oscillation (PDO) – the PDO having experienced phase shifts coinciding with the major periods of

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title is available at [http://icecap.us/index.php/go/in-the-news/global\\_warming\\_as\\_a\\_natural\\_response\\_to\\_cloud\\_changes\\_associated\\_with\\_the\\_p/](http://icecap.us/index.php/go/in-the-news/global_warming_as_a_natural_response_to_cloud_changes_associated_with_the_p/); the full paper is pre-posted at <http://www.weatherquestions.com/Global-warming-natural-PDO.htm>.

<sup>65</sup> *Nature* 453, 84-88, May 2008, "Advancing decadal-scale climate prediction in the North Atlantic sector", available at [http://wattsupwiththat.files.wordpress.com/2008/05/keenlyside\\_nature\\_may\\_2008.pdf](http://wattsupwiththat.files.wordpress.com/2008/05/keenlyside_nature_may_2008.pdf).

warming and cooling in the 20th Century – as well as the Atlantic Multi-decadal Oscillation (AMO), which is much stronger than that between CO<sub>2</sub> and climate change<sup>66</sup> including as much as two-thirds of the warming (given the PDO's modulation of global average cloudiness, as confirmed by satellites).<sup>67</sup> Models do not capture this.

Further, siting and other errors involving surface temperature measurements appear likely to also have contributed greatly to the recent recorded warming, at least as much as anthropogenic CO<sub>2</sub> emissions (global, let alone what mere U.S. or U.S. motor vehicle emissions could ever hope to contribute).<sup>68</sup> When one considers that models continue to “show” more warming than has been observed, despite such corrupting influences, this further exposes the models' failure.

Add the correlation between solar activity and climate/temperatures – again, far greater than between, e.g., CO<sub>2</sub> emissions and/or concentrations<sup>69</sup> – and it becomes transparent folly to either rely on GCMs or pretend that regulating CO<sub>2</sub> emissions from new U.S. motor vehicles will have a climatic impact.

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<sup>66</sup> See e.g., “Implications of PDO, NAO, Glacial Fluctuations, and Sun Spot Cycles for Global Climate in the Coming Decades”, by Dr. Don Easterbrook, Professor of Geology at Western Washington University, at <http://icecap.us/images/uploads/GSA.pdf>, and “Ignoring a Natural Event to Blame Humans: By ignoring a natural event scientists blame climate changes on human activity”, by John McLean at [http://icecap.us/images/uploads/Walker\\_Circ\\_2.pdf](http://icecap.us/images/uploads/Walker_Circ_2.pdf).

<sup>67</sup> See also Spencer, “Global Warming as a Natural Response to Cloud Changes Associated with the Pacific Decadal Oscillation (PDO)”, noted above in FN 59.

<sup>68</sup> See, e.g., McKittrick, R. and Michaels, P., “Quantifying the influence of anthropogenic surface processes and inhomogeneities on gridded global climate data,” *Journal of Geophysical Research*, Vol. 112, D24S09, doi:10.1029/2007JD008465, 2007, available at <http://www.uoguelph.ca/~rmckitri/research/jgr07/M&M.JGRDec07.pdf>.

<sup>69</sup> See “Variable solar irradiance as a plausible agent for multidecadal variations in the Arctic-wide surface air temperature record of the past 130 years”, Willie W.-H. Soon, Harvard-Smithsonian Center for Astrophysics, Cambridge, Massachusetts, USA *J. Geophys. Res.* VOL. 32, L16712, doi:10.1029/2005GL023429 (2005); see also Friis-Christensen, E. and Lassen, K. 1991. Length of the solar cycle: An indicator of solar activity closely associated with climate. *Science* **254**: 698-700; Lassen, K. and Friis-Christensen, E. 2000. Reply to “Solar cycle lengths and climate: A reference revisited” by P. Laut and J. Gundermann. *Journal of Geophysical Research* **105**: 27,493-27,495; Mann, M.E., Bradley, R.S. and Hughes, M.K. 1998. Global-scale temperature patterns and climate forcing over the past six centuries. *Nature* **392**: 779-787; Mann, M.E., Bradley, R.S. and Hughes, M.K. 1999. Northern Hemisphere temperatures during the past millennium: Inferences, uncertainties, and limitations. *J. Geophys. Res.* **26**: 759-762; Svensmark, H. 1998. Influence of cosmic rays on Earth's climate. *Physical Review Letters* **22**: 5027-5030; Svensmark, H. and Friis-Christensen, E. 1997. Variation of cosmic ray flux and global cloud coverage - A missing link in solar-climate relationships. *Journal of Atmospheric and Solar-Terrestrial Physics* **59**: 1225-1232. See also, “Solar wind warming up Earth”, September 28, 2007, RIA Novosti, <http://en.rian.ru/analysis/20070928/81541029.html>; see also, Habibullo I. Abdussamatov, “About the long-term coordinated variations of the activity, radius, total irradiance of the Sun and the Earth's climate”, *Multi-Wavelength Investigations of Solar Activity, Proceedings IAU Symposium No. 223, 2004*, International Astronomical Union DOI: 10.1017/S1743921304006775, <http://journals.cambridge.org/production/action/cjoGetFulltext?fulltextid=288609>; see also, F. Boberg & H. Lundstedt, Solar Wind Variations Related to Fluctuations of the North Atlantic Oscillation, *Geophys. Res. Lett.*, VOL. 29, NO. 15, 1718, 10.1029/2002GL014903, 2002; 2) D. R. Palamara and E. A. Bryant, Geomagnetic activity forcing of the Northern Annular Mode via the stratosphere, *Annales Geophysicae* (2004) **22**: 725–731).

Models also reveal how the IPCC and USP demonstrably ignore the potential role of natural climate variability in the mild warming we saw since the end of the Little Ice Age, particularly the historically unremarkable warmings prior to World War II and for two decades beginning in the late 1970s. Further, the IPCC ignores the obviously significant role in climate change played by land use.<sup>70</sup>

This refusal to consider alternate explanations – particularly those so obviously dominant throughout history such as the sun’s influence – is unique to this particular manifestation of one discipline of science. Instead, IPCC and USP rely on models that reject such evidence. That is what is historically remarkable in this discussion: Mankind is suddenly – or, rather we should say with more historical perspective, *again* – the only permissible explanation for climate change. It is impermissible for EPA to simply adopt this fetish without inquiry.

Further still and relevant to the putative EPA reliance upon GCMs further major regulatory GHG decisions, over that period that EPA states warming has accelerated (the past 100 years, and particularly the most recent 50 years; see, e.g., Draft Technical Support Document - Endangerment Analysis for Greenhouse Gas Emissions under the Clean Air Act, p.ES-1 lines 38-45), *the opposite* of a purported “endangerment” EPA posits would occur under warming scenarios has actually occurred, almost universally: it is indisputable that wealth has drastically increased with undeniable attendant impacts on human health and the environment, crop yields have expanded on smaller footprints of land no less, disease, starvation, infant mortality, and a host of other human ills have been greatly alleviated; and finally of course temperatures are, of late, down.

It is also indisputable that misguided, poorly thought-out environmental restrictions have killed millions of people, mainly children. This is one more reason to avoid basing such significant decisions on unverifiable models, or on assessments which grounded in same.

Last, if possibly of the greatest importance among the above factors, EPA notes that “These IPCC assessments are generally global in scope but provide information at the country and regional level as well.” Yet it remains true that GCMs cannot credibly model at the continental scale let alone the regional or country levels. This is an admission against the notion of relying upon USP and IPCC assessment reports as EPA suggests. (Draft Technical Support Document - Endangerment Analysis for Greenhouse Gas Emissions under the Clean Air Act, p. 18<sup>71</sup>).

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<sup>70</sup> As Roger Pielke Sr. writes on his Climate Science blog, “This important scientific conclusion has been essentially ignored in the IPCC and CCSP assessments. An overview of this issue was reported on, for example, in Pielke Sr., R.A., 2005: Land use and climate change. *Science*, 310, 1625-1626.” <http://climate.sci.org/2008/11/03/which-is-it-trees-cool-or-heat-the-planet-studies-give-contradictory-results/>

<sup>71</sup> We note the problem posed by EPA’s subsequent assertion on the same and subsequent pages, “This document relies heavily on the North America chapter of the IPCC Working Group II report, though this chapter may not provide as much regional detail within the U.S. as did the 2000 report, *Climate Change Impacts on the United States: The Potential Consequences of Climate Variability and Change* (NAST, 2000)”, and “In some cases, this document references other reports and studies in addition to the core references of IPCC, CCSP, NRC, and, for greenhouse gas emissions, EPA. This is usually the case where IPCC, CCSP and NRC reports do not explicitly provide the regional or state-level detail for certain



#### IV. Other Problems with EPA's ANPR

We note EPA's questionable practice of turning to a conflict-ridden group of authors, contributors or reviewers to produce that support document, the Draft TSD-EA. These authors' work in the TSD-EA has led EPA to ask whether it might simply rely on USP or IPCC, despite that these individuals with a demonstrated bias and, particularly, conflict with any such enterprise include, e.g., CCSP's USP authors Anthony Janetos, Virginia Burkett, Jerry Hatfield, Thomas Karl, and Thomas Wilbanks. Much other overlap exists between these EPA TSD-EA authors and CCSP, both its hierarchy and other assessments which EPA presumably also seeks to rely upon instead of peer-reviewed work.

IPCC authors or contributors to whom EPA turned for a very small group of authors, contributors or reviewers for a document that now leads EPA to ask whether it might simply rely on, e.g., recent (2007) IPCC ARs include, at minimum, Susan Solomon, as co-chair of WGI one of the most senior IPCC figures and one of 52 authors of WGI upon which EPA now seeks to rely, as well as Gavin Schmidt, Tom Karl (both WGI), and Virginia Burkett, Anthony Janetos, Thomas Wilbanks (WGII), and Steven Rose (WGIII). Finally, EPA authors, contributors or reviewers include those who are on record touting the IPCC, despite what has been exposed by the UK House of Lords Select Committee, scientists led by Dr. Fred Singer's NIPCC, John McLean and others (e.g., Benjamin DeAngelo).

CEI has already noted how authors of both the IPCC and USP assessment reports have been exposed as citing their own work – in the USP over 100 times and the IPCC serially, most notably (but hardly exclusively) in its “hockey stick” fiasco. The inclusion within EPA's team of participants with a conflict due to having participated in producing those assessments which EPA seeks to rely upon is undeniable, and EPA should under no scenario compound such behavior.

We note here, for example, CCSP lauding IPCC ARs and taking great credit for their own involvement in same. “Many of the authors of the IPCC are from the United States and many of those authors are entirely or partly funded by the CCSP. In addition, CCSP managed the U.S. nomination process, which resulted in 38 U.S. Federal, academic, and non-governmental organization experts serving in lead author and editorial roles for the WG1 volume. A leading NOAA atmospheric scientist, Dr. Susan Solomon, co-chaired Working Group I, with the program providing funding to operate the Technical Support Unit based in Boulder, CO. The program also managed the Expert and Government Reviews. This ranged from a public call for comments, collection of comments, and assembly of expert panels to review comments for technical merit.”<sup>72</sup>

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vulnerabilities and potential impacts, or where very recent and significant studies have been published that were not included by the IPCC and CCSP synthesis reports due to publication cut-off dates”; and “Figure 4.4: Map of the United States, depicting regional U.S. temperature trends for the period 1901 to 2005”, p. 40, and related discussion on pp. 42-44; also, discussion pp. 49-53, and elsewhere where EPA relies upon regional climate modeling which is simply insufficiently credible for that purpose given IQA requirements.

<sup>72</sup> <http://www.climatechange.gov/Library/pressreleases/pressrelease16feb2007.htm> U.S. Climate Change Science Program Provides Key Contributions to IPCC Fourth Assessment. Press release (dated 16 February 2007) from the U.S. Climate Change Science Program. (posted 16 February 2007).

That EPA's "endangerment" process was not a measured one is also manifested by inclusion as a reviewer, for example Gavin Schmidt, whose posts on [www.RealClimate.org](http://www.RealClimate.org) (a public-relations advocacy project of Environmental Media Services, itself in turn a project of the advocacy group Fenton Communications), reveal an alarmism that is goes to often bombastic and *ad hominem* lengths. EPA should not compound these oversights by relying *at any level or to any extent* on work authored in whole or in part by its advisors to date on the "endangerment" question.

**We suggest that EPA should limit the documents to which it turns – as it seeks to turn to the IPCC and USP assessment reports – to independent, peer reviewed work as the term traditionally connotes. Unless and until that is the case, those sources to which we refer EPA which also are not peer reviewed should carry equal weight, if not more given they have not been exposed as lacking objectivity, balance and other necessary attributes as have USP and IPCC ARs.**

Further, EPA makes numerous statements that, upon scrutiny, raise serious questions about the ANPR's credibility. For example, consider that EPA seeks to count possible international benefits from regulating CO<sub>2</sub> or GHGs, for the obvious reason that to consider only domestic benefits would make plain the futility of seeking to alter the climate through GHG regulation. EPA purports to find support for this decision from OMB, though this claim is at best highly suspect.

Specifically, EPA in its ANPR cites an OMB guidance issued in 2003 (OMB Circular # 4 Sept. 17, 2003, issued as guidance to all agencies, Subject: Regulatory Analysis) as supporting EPA's decision to consider international effects (benefits) of domestic controls. It is one of two documents EPA cites as "the guidance used when preparing economic analyses for all EPA rulemakings" (ANPR electronic version p. 142, note 71). In the ANPR, EPA cites this OMB circular in support of its proposed approach: "OMB's guidance for economic analysis of federal regulations specifically allows for *consideration* of international effects." (emphasis added)

EPA repeats this claim in the Technical Support Document – Benefits. In both instances, EPA does not purport to quote or restate what OMB actually says, but merely provides the Circular and page reference in the footnote: "OMB's Circular A-4 specifically allows for consideration of international effects" (TSD-B, p. 11).

Yet the authority cited in support of this desired approach seems to stand for the opposite proposition, and certainly cannot credibly be invoked as EPA does. Instead, in the cited note, OMB states, under "Scope of Analysis" page 15 of the Circular:

### **General Issues**

#### **1. Scope of Analysis**

**Your analysis should focus on benefits and costs that accrue to citizens and residents of the United States.** Where you choose to evaluate a regulation that is likely to have effects beyond the borders of the United States, these effects should be reported separately. (emphases added)

This is to say that the authority EPA that cites purportedly in support of its claim does no such thing and, it seems more reasonable to conclude, actually defeats the claim.

Nowhere does OMB “specifically allow for consideration of international effects.” OMB quite plainly states that EPA’s attention is to be upon U.S. benefits. Clearly, OMB recognizes that some regulations will have potential international impacts, analysis of which may prove to be material when EPA conducts the (domestic) analysis on which OMB directs it to specifically focus. It specifically instructs EPA to segregate any such benefits from its analysis, as they are not the purpose of the analysis EPA is directed to undertake.

So, EPA is arguably correct in claiming that OMB allows – that is, *does not prohibit* EPA from engaging in – such *analysis*, which is a far different matter than the ultimate implication of EPA’s argument, that OMB specifically allows for *consideration* of international effects. That stance is simply unsupportable. To intimate, as EPA does here, that OMB sanctions *inclusion* of these analyses in the relevant assessment is a bridge too far.

Surely here EPA simply made a mistake – though it is an unusual one, given that these are in fact the only comments in the entire OMB Circular addressing international benefits. Regardless, it is one indicating that more time, consideration and review are necessary before EPA proceeds further. We suggest that EPA confine its analysis to that which OMB “specifically” directs EPA to consider, meaning domestic benefits. Should EPA choose to engage in assessment of international benefits, EPA should report its assessment separately and not premise any decisions in whole or in part on that assessment.

For these reasons, we ask that EPA dedicate greater time and thought to what is not only an enormous undertaking, but one which by EPA’s own admission has few parallels in terms of its potential significance. As such, it is of the utmost importance that inadequate research and even inaccurate legal and substantive claims inform the Agency’s decisions.

## V. Conclusion

For all of the reasons cited above, we encourage EPA to a) eschew reliance upon the impermissibly unreliable USP and IPCC ARs, and b) find some alternative pathway for satisfying applicable information quality and peer review requirements,<sup>73</sup> c) both of which analyses we are confident also will lead EPA to conclude that it should elect the option presented by the Supreme Court in *Massachusetts v. EPA*, and choose to not regulate carbon dioxide from automobiles as a “pollutant” under the Clean Air Act. Instead, as we argue above, EPA’s most responsible course is to seek specific direction from Congress as to whether and how to perform such an admittedly enormous and potentially severely disruptive task.

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<sup>73</sup> See e.g., EPA Science Policy Council Handbook: Peer Review 1998, Sec. 2.4.2. That USP is a FACA-chartered committee in no way liberates it from, vitiates or in any way defeats extant requirements for peer review.