Being Reasonable While Regulating Greenhouse Gas Emissions Under the CAA

Jonathan A. Lesser

Regular readers of this column know that, when it comes to human-induced clean change, I am a skeptic. When I think of the many "quality of life" challenges we face, I have to concur with the Copenhagen Consensus, which ranked expenditures to mitigate the effects of global climate change dead last among 30 alternatives designed to address disease, poverty, hunger, and the environment.[1]

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Nevertheless, under the Obama administration, carbon regulation we shall have. Thus, the more pertinent question is how the Environmental Protection Agency and the country's new climate "czar," former EPA Administrator Carol Browner, will deliver unto us their tender mercies. Will it be carbon regulation unto itself or, something far more economically damaging—greenhouse gas regulation administered under the auspices of the Clean Air Act (CAA)?

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Czar Browner has been vague about when the EPA will issue its Final Notice of Proposed Rulemaking (NOPR) on greenhouse gas regulation, but the consensus is that this will probably happen on April 2, 2009. That date is the second anniversary of the U.S. Supreme Court's ruling in *Massachusetts* v. *EPA*.[2] This was the case in which the Court concluded, based on a finding that "the harms associated with climate change are serious and well recognized,"[3] that the EPA could—and presumably should—regulate greenhouse gas emissions under the CAA.

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Although *Massachusetts* v. *EPA* focused on whether the EPA could regulate greenhouse gas

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emissions from automobiles, the economic implications of regulating greenhouse gases under the CAA are magnitudes more far-reaching. First, with respect to the automakers, what is the sense of building them up (i.e., bailing them out) if we are just going to hit them with new regulations that will, at a critical stage, make their recovery even more difficult? Broadening our scope, we see that the CAA's "endangerment" provisions provide the means for the EPA to regulate greenhouse gas emissions from potentially *all* sources.[4] Thus, not only would the "usual suspects"—coal-fired power plants, cement manufacturers, chemical plants, mining operations, oil refineries, and, of course, automobiles—be affected, but so too would other innumerable stationary and mobile sources. Indeed, it is difficult to fathom how any industry would escape the long arm of the EPA.

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This new effort at environmental regulation is different in an important way from some of those that have come before: it does not include any market-based programs. In the past, such programs have been crucial to the successful regulation of sulfur dioxide (SO_2) and oxides of nitrogen (NO_x). The drafters of the CAA, however, either by oversight or by ignorance, include no requirements that market-based mechanisms be used in securing reductions in greenhouse gas emissions.[5] This inconsistency begs the question: Why not? And it provokes many others:

- How could the EPA possibly administer cap-and-trade programs among so many different sectors of the economy?
- How would emissions permits be allocated? Would permits be "grandfathered" and, if so, to what extent?
- Would the EPA allow trading between holders of different greenhouse gas permits, such as carbon dioxide and methane, and, if so, would such trades be based on the differences in the gases' respective "climate forcing" (i.e., heating ability) values?[6] (From an economic standpoint, such trades should be encouraged so as to increase efficiency and reduce compliance costs.)

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- Would coal-fired power plants not be subjected to New Source Performance Standards (NSPSs) that regulated carbon emissions and, if so, how?
- Would the EPA determine that certain regions are "nonattainment" areas with respect to greenhouse gas emissions and enforce regulations that require "prevention of significant deterioration" (PSD), including applying its infamous New Source Performance Standards rules?[7] Although the concept seems ludicrous (after all, greenhouse gases are, by definition, affecting global climate), under the CAA, the EPA may do just that.

BENEFITS TO WHOM?

Although the EPA touts in the ANOPR findings that "many of EPA's mobile source emissions standards typically have projected benefit-to-cost ratios of 5:1 to 10:1 or more,"[8] cost-benefit tests applied to greenhouse gas emissions are unlikely to even "pass," much less provide benefit-cost ratios of 5:1 or higher. First, unlike other air pollutants, greenhouse gases have no direct health impacts.[9] Thus, the entire cost-benefit premise steps back into the realm of indirect benefits, which are far more difficult to estimate.

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The benefits, if there are any, will not accrue for decades, but the costs will accrue immedi-

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ately. Moreover, because of the global nature of the spread of greenhouse gases, the benefits from regulating greenhouse gases under the CAA will depend on what other countries do. This is a classic environmental "externality," but not the kind usually pointed out by environmentalists.

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Given the precarious state of the U.S. economy, the imposition of draconian costs on business, industry, and consumers seems ill timed and ill advised. Regulating greenhouse gases under the CAA will absolutely, positively increase the cost of not only energy but also of every product and service that uses energy: in other words, everything. Of course, two sectors of the economy—renewable energy providers and government bureaucracy—will benefit, at least in the short run. No doubt, that is one of the motivating factors for greenhouse gas regulation. At least one can argue that renewable energy provides broader benefits than just the avoidance of greenhouse gases. In spite of this, in the long run, sputtering economic growth (if there is growth at all) will harm the renewable energy sector, too.

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Who is listening to reason on these issues? Apparently not the EPA or the Obama administration. Neither the lack of discernible benefits nor the potential for significant economic disruption and hardship seems to matter. Neither does the international consensus that, of the world's many problems, money spent on combating global climate change ranks at the bottom of priorities; *regulation we shall have*. And, unfortunately, unless the criticisms are heard, we will have it under the CAA, where it can do the most damage. The EPA is going to beat climate change, all right, even if it kills us.

NOTES

1. The rankings for the 2008 Copenhagen Consensus can be found at http://www.copenhagenconsensus.com/Default.aspx?ID=953.
2. *Massachusetts* v. *EPA*, 549 U.S. 497 (2007). The EPA issued an Advanced Notice of Proposed Rulemaking (ANOPR) on July 11, 2008, Regulating Greenhouse Gas Emissions Under the Clean Air Act, 73 Fed. Reg. 44353 (proposed July 11, 2008) (to be codified at 40 C.F.R. ch. 1), http://www.epa.gov/fedrgstr/EPA-AIR/2008/July/Day-30/a16432a.pdf [hereinafter ANOPR].
3. 549 U.S. 497, 499.
4. There are numerous "endangerment" provisions in the CAA. For example, Section 202(a)(1) refers to motor vehicle emissions. Generally, "endangerment" refer to air pollutants that are "anticipated to endanger public health or welfare." One section of the CAA that may be heavily pointed to is Section 115, which contains language on international air pollution: "Whenever the Administrator, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any air pollutant or pollutants emitted in the United States cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the Governor of the State in which such emissions originate."
5. In a previous column, I discussed why a carbon "cap-and-trade" program, unlike the cap-and-trade programs in place for SO_2 and NO_x, would be inefficient, if not ineffective. See (2007). Control of greenhouse gases difficult with cap-and-trade or tax-and-spend. *Natural Gas & Electricity*, 24(5), 29–32.
6. Curiously, one of the most potent greenhouse gases is water vapor. The ANOPR recognizes that water vapor is a greenhouse gas but is silent on how it is to be regulated. Regulating Greenhouse Gas Emissions Under the Clean Air Act, 73 Fed. Reg. 44353, 44458, fn. 164 (proposed July 11, 2008) (to be codified at 40 C.F.R. ch. 1), http://www.epa.gov/fedrgstr/EPA-AIR/2008/July/Day-30/a16432c.pdf. For example, catalytic converters, which greatly reduce hydrocarbon emissions from automobiles, produce both carbon dioxide and water vapor as by-products. When they were first introduced, catalytic converters were hailed as a breakthrough because they converted harmful pollutants into harmless by-products.
7. For a discussion of NSPSs, see my previous column, (2008). New source review is still anything but routine. *Natural Gas & Electricity*, 25(1), 31–32.
8. Regulating Greenhouse Gas Emissions Under the Clean Air Act, 73 Fed. Reg. 44353, 44434 (proposed July 11, 2008) (to be codified at 40 C.F.R. ch. 1), http://www.epa.gov/fedrgstr/EPA-AIR/2008/July/Day-30/a16432b.pdf.
9. Health benefits of reduced emissions can be determined based on statistical "value of life" estimates and calculations of reductions in mortality and morbidity. Fewer deaths and less sickness are seen as benefits.

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