

Energy and the Environment



Regulating Greenhouse Gases: EPA Gets DOWN

Jonathan A. Lesser

In my April column,¹ I discussed some of the ramifications of regulating greenhouse gases under the U.S. Clean Air Act (CAA), especially using its pernicious “endangerment” provisions, which prohibit any form of cost-benefit analysis in determining how, if at all, to restrict emissions. On April 17, the Environmental Protection Agency (EPA) did just that, reciting the long list of “man-caused disasters” stemming from higher concentrations of greenhouse gases, and issuing its long-anticipated ruling that six types of greenhouse gases—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride—posed a direct threat to human health.² And so, to save us from ourselves, the EPA has now granted itself the power to impose any regulations it sees fit with no regard for the potential costs, and likewise no regard for the deleterious effects on health and welfare brought on by a crippled economy.³

The perniciousness of the EPA’s ruling is, pun intended, breathtaking, because it is potentially limitless in its scope. If the EPA so chooses, it can regulate virtually every economic activity undertaken. Thus, while we are busy tossing billions of dollars at General Motors and Chrysler to keep them from bankruptcy, an outcome looking more likely by the day, the EPA will be able to mandate

whatever fuel standards it wishes, forcing the automakers to build the cars consumers do not want to buy, and hastening bankruptcy, thus requiring more government bailouts. Nothing like efficient government policy!

CONGRESS TO THE RESCUE?

An editorial in the *Wall Street Journal* aptly characterized Congress’s use of the EPA’s finding: “This ‘Dirty Harry’ theory of governance—Do you feel lucky?—is as cynical as it is destructive.”⁴ Congressional greenhouse zealots like Representative Ed Markey (D-MA) are saying, openly, that we the people can either embrace greenhouse gas legislation or face the EPA’s own peculiar form of zealotry, which is rather like asking the condemned man whether he prefers death by hanging or death by the electric chair.

The so-called Waxman-Markey greenhouse gas bill seeks to reduce greenhouse gas emissions 20 percent below 2005 levels by 2020 and an absurd 80 percent (heck, why not 100 percent?) below 2005 levels by 2050. The bill may offer a sop to electric utilities, allowing them “free” emissions allowances for as long as ten years, as long as the utilities invest billions in higher-cost renewable generation and do not pass along the increased costs to ratepayers. Moreover, the bill may exempt certain politically well-connected industries from regulation. Who knows? The result is likely to be a bill that resembles Swiss cheese, much like President Clinton’s ill-fated “Btu tax” in the early 1990s.⁵

The most humorous aspect of this congressional greenhouse gas dance may be the vow of House Speaker Nancy Pelosi (D-CA): for any proposed

Jonathan A. Lesser, PhD, is president of Continental Economics, Inc., an economic and litigation consulting firm, with offices in Washington, DC, and Albuquerque, New Mexico. He can be reached at (202) 446-6062 or via e-mail at jlesser@continentalecon.com.

legislation, “There should be no cost to the consumer.” The Speaker’s vow reveals either profound cynicism or total ignorance of basic economics. Perhaps it reveals both.

First, because an endangerment finding applies to all emissions sources of 250 tons a year or more, how will Congress circumvent issues of “selective prosecution” of emitters? Why, for example, exempt cement plants but not fossil-fuel power plants? Because every industry, except apparently the utility industry, which has replaced the auto industry as Congress’s favorite whipping boy, has “strategic importance,” how will greenhouse gas legislation ever achieve the mandated emissions reductions? If the health and welfare of we humans is endangered, why exempt any industries or activities?

Second, of course there will be costs to consumers. Sure, *some* consumers may receive rebate checks from the government, but that money must come from somewhere. That somewhere will come in the form of higher prices for all goods and services paid for by all other consumers. There is no carbon-free lunch.

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HOW MANY SWORDS MUST WE FALL ON?

The original purpose of the “endangerment” provision of the CAA was to protect vulnerable populations, especially children, from exposure to dangerous pollutants like lead.⁶ The EPA, and subsequently the courts, agreed that it was not reasonable to determine the health and well-being of children based on cost-benefit tests. That is fine. Protecting a vulnerable population always can be based on basic concerns for equity and fairness. But with its latest pronouncement, the EPA has gone far beyond the intent of the original endangerment provision. Now, if the climate models are to be believed, we are all endangered, or just plain doomed. (This despite global temperatures having cooled over the last decade and sea levels not having risen.⁷)

When the EPA ordered lead removed from gasoline, the endangered population (children) benefited because the damages were highly focused. Not so with greenhouse gases, which are by definition “global” in nature. How, then, will the EPA

determine appropriate emissions reductions? How will it measure “success” in improving our overall health and welfare? The impacts of marginal reductions in emissions on the global climate, if any, will be immeasurably small over the next few decades.

Finally, what if other countries, especially developing countries like India and China, whose combined greenhouse gas emissions already far exceed U.S. emissions, fail to follow similar policies? U.S. citizens will have been forced to fall on their collective sword.

Ultimately, the EPA’s endangerment finding seems more directed toward protecting everything but human welfare, at least of U.S. citizens. The immediate costs to the U.S. economy will be further contraction, fewer jobs, and a lower standard of living. Self-proclaimed eco-warriors may like those outcomes, at least until they lose their jobs or find their trust funds depleted, but for the rest of us, the costs to our well-being are sure to far exceed any future benefits.

Who, then, is the EPA protecting, and how exactly is this rational environmental policy? 

NOTES

1. Lesser, J. A. (2009). Being reasonable while regulating greenhouse gas emissions under the CAA. *Natural Gas & Electricity*, 25(9), 30–32.
2. A copy of the endangerment finding, which was published in the *Federal Register* on April 24, and the accompanying “technical support” can be found at: <http://epa.gov/climatechange/endangerment.html>.
3. The California Air Resources Board has also delivered a new blow to that state’s crumbling economy. On April 24, it adopted new regulations requiring more low-carbon fuels. This will be accomplished using various forms of ethanol, including corn-based methanol that has already proven to be an environmental and economic disaster; and plug-in hybrid vehicles. Of course, those vehicles will most likely be recharged in nighttime hours, when electricity demand is low and low-cost baseload generators in the West (i.e., coal) are humming away.
4. (2009, April 24). Reckless ‘endangerment’: The Obama EPA plays ‘Dirty Harry’ on cap and trade. *Wall Street Journal*, p. A14.
5. There is also the issue of specific industry exemptions being interpreted as government subsidies, which has already been the source of bitter disputes among World Trade Organization participants, including the United States.
6. See, for example, *Lead Industries Association, Inc. v. EPA* (647 F.2d 1130, 10 ELR 20643; D.C. Circuit, 1980, cert. denied 101 S.Ct. 621).
7. One amusing example has been concerns in the news that melting Arctic ice will cause sea levels to rise. Because the Arctic ice cap is floating in an ocean, the effect of its melting on sea levels would be extremely small. There would be a slight increase, perhaps a millimeter or two, because seawater is slightly denser than freshwater ice.