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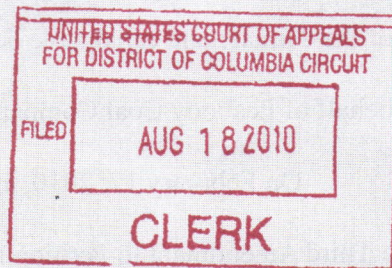
AUG 17 2010

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
District of Columbia Circuit

Southeastern Legal Foundation, Inc.,)
U.S. Representative Dana Rohrabacher (CA-46th),)
U.S. Representative John Shimkus (IL-19th),)
U.S. Representative Phil Gingrey (GA-11th),)
U.S. Representative Lynn Westmoreland (GA-3rd),)
U.S. Representative Tom Price (GA-6th),)
U.S. Representative Paul Broun (GA-10th),)
U.S. Representative Steve King (IA-5th),)
U.S. Representative Jack Kingston (GA-1st),)
U.S. Representative Michele Bachmann (MN-6th),)
U.S. Representative Kevin Brady (TX-8th),)
U.S. Representative John Shadegg (AZ-3rd),)
U.S. Representative Marsha Blackburn (TN-7th),)
The Langdale Company; Langdale Forest Products)
Company; Langdale Farms, LLC; Langdale Fuel)
Company; Langdale Chevrolet - Pontiac, Inc.;)
Langdale Ford Company; Langboard, Inc. - MDF;)
Langboard, Inc. - OSB; Georgia Motor Trucking)
Association, Inc.; Collins Industries, Inc.; Collins)
Trucking Company, Inc.; Kennesaw Transportation,)
Inc.; J&M Tank Lines, Inc.; Southeast Trailer Mart,)
Inc.; Georgia Agribusiness Council, Inc.,)

Case No. 10-1239



Petitioners,)

v.)

United States Environmental Protection)
Agency,)

Respondent)

PETITION FOR REVIEW

I. Background

The above-named Petitioners filed a Petition for Reconsideration on December 23, 2009. The grounds for the Petition for Reconsideration were that newly revealed information, in what is being referred to as "Climategate," indicates that the purportedly "scientific" information on which the Agency relied was the subject of a number of systematic manipulations, including collusion to withhold scientific information, deletion of e-mails and raw data to prevent discovery of key facts, manipulation of data and computer code to create false impressions, and concerted efforts to boycott key journals and exclude disagreement. For the reasons stated therein, Petitioners asserted that EPA is required to convene a proceeding for reconsideration because: (1) the information arose after the period for public comment on the Endangerment Finding and (2) the objection is of "central relevance to the outcome of the rule."

Similar petitions urging EPA to reconsider its Endangerment Finding in light of the goings-on of the Climategate cabal have been filed, including the comprehensive and well-reasoned filing on behalf of Peabody Coal Company.

On February 17, 2010, after several filings to add to and clarify the parties, Petitioners filed a Third Amendment to Petition for Reconsideration ("the Third Amendment"). As was shown in the Third Amendment, a series of revelations following on the heels of Climategate further called into question the scientific data that EPA had relied upon in issuing the Endangerment Finding. Specifically, post-Climategate information indicated that: (1) surface temperature records were unreliable; (2) various projections and assessments (such as projections of extreme weather events, crop failures, and glacier melts) were false and misleading; (3) at least one of the principle scientists involved admitted that the climate projections were potentially erroneous; (4) there were potential conflicts of interests that called into question the motivation of climate study leadership; and (5) recent empirical data undermined the assumptions that various greenhouse gases were "well-mixed."

Significantly, these post-Climategate revelations undermine not only the IPCC conclusions, but the analyses performed by the U.S. Global Change Research Program, including all thirteen federal departments that have relied on the underlying data, including the National Science Foundation, the Department of Health and Human Services, and the Departments of Commerce, Agriculture, Defense, Energy, and Interior. As with the information cited in Petitioner's original Petition, (1) the information arose after the period for public comment on the Endangerment Finding and (2) the objection is of "central relevance to the outcome of the rule."

The amazing string of developments that have undermined the scientific basis for the Endangerment Finding continues day-to-day. Petitioners have tried to avoid filing the "Amended Petition de Jour," and have instead asked EPA to withdraw the Endangerment Finding and let the ongoing developments run their course before reevaluating the science. (See Part V, Third Petition.) Nonetheless, as EPA is well aware, the developments are indeed occurring nearly every day. Within the past few days, for example, Dr. Edward Long¹ reported that

Comparison of the adjusted data for the rural set to that of the raw data shows a systematic treatment that causes the rural adjusted set's temperature rate of increase to be 5-fold more than that of the raw data. The adjusted urban data set's and raw urban data set's rates of temperature increase are the same. This suggests the consequence of the NCDC's protocol for adjusting the data is to cause historical data to take on the time-line characteristics of urban data. The consequence, intended or not, is to report a false rate of temperature increase for the Contiguous U.S.²

EPA has acknowledged that a number of inevitable legal consequences³ necessarily follow promulgation of the Endangerment Finding. Specifically, EPA intends to issue a greenhouse gas standard for light-duty vehicles and will begin issuing permits and phasing in other regulatory measures for stationary sources.⁴ These actions will have substantial consequences. Under the

LDV rule, the number of vehicles affected will be in excess of 14 million units. Even assuming the lawfulness of EPA's "tailoring rule," and even ignoring the six-year time limit on the duration of EPA's categorical exclusions, the number of stationary sources subject to Title V permitting would be, by EPA's own estimate, around 14,000, with 3000 of these newly regulated. The attendant cost of these regulations would easily range into the billions of dollars.

On top of these costs, there are even more substantial indirect and ancillary costs associated with regulation of carbon emissions as such would be necessitated by issuance of the Endangerment Finding. For example, the Heritage Foundation's Center for Data Analysis has found that, in just 20 years, the proposed carbon dioxide levels alone would lower gross domestic product by \$7 trillion, with single-year GDP losses exceeding \$600 billion. Job losses would exceed 800,000 annually for several years. The already-struggling manufacturing sector would be hit especially hard.⁵

In short, EPA's Endangerment Finding inevitably triggers potentially devastating costs to the American economy and is based on increasingly shaky technical assumptions, even though the credibility of the "science" on which it was based continues to be undermined by a flood of damaging revelations and analyses.

¹ Edward R. Long is a physicist who retired from NASA where he led NASA's Advanced Materials Program, was a team member for the development of several upper atmospheric research satellites, and was responsible for the non-manned portion of a study for the replacement of Shuttle. He currently provides consultant support to both government and the private sector concerning radiation in the space flight environment. He also provides technical consultant support to members of the Commonwealth of Virginia's legislative bodies.

² "CONTIGUOUS U.S. TEMPERATURE TRENDS USING NCDC RAW AND ADJUSTED DATA FOR ONE-PER-STATE RURAL AND URBAN STATION SETS," p. 13, found at: http://scienceandpublicpolicy.org/originals/temperature_trends.html (last visited 26 February 2010).

³ It appears that EPA jumped the gun on a number of the "inevitable legal consequences" resulting from the Endangerment Finding, by launching many of them before the Endangerment Finding was even finalized. As one example, EPA apparently entered into a "historic" agreement with automakers and other stakeholders relevant to emissions from LDVs, which requires an effective Endangerment Finding, before the public comment period even closed. See "President Obama Announces National Fuel Efficiency Policy," http://www.whitehouse.gov/the_press_office/President-Obama-Announces-National-Fuel-Efficiency-Policy/ (last visited Feb. 26, 2010). The EPA has already rejected the assertion that the entire process was pre-determined. See 74 FR at 66502-03. Petitioners believe that EPA's position is belied by its current and past conduct, but that point will be addressed in another forum.

⁴ EPA has not included within its identified consequences such possibilities as a similar endangerment finding under Section 108 of the Clean Air Act, which would trigger development of a NAAQS for CO₂ and, as a result, a staggering economic cost to achieve NAAQS in 5 or 10 years.

⁵ Heritage Foundation, "EPA's Greenhouse Gas Finding Endangers U.S. Economy" (April 17, 2009) (found at: <http://www.heritage.org/Press/NewsReleases/nr041709a.cfm>, last visited February 25, 2010).