

## **Revisiting the EPA Endangerment Finding: Administrative Honesty is the Best Policy**

Ross McKittrick

Environmental Protection Agency Administrator Scott Pruitt is mulling over how, or whether, to respond to demands from climate skeptics that he re-examine the science behind the so-called Endangerment Finding, a 2009 EPA ruling that created a statutory obligation to regulate carbon emissions. What he may not realize is the EPA's own Inspector General made such a demand years ago, and the agency staff got around it at the time by means of a preposterous legal fiction. It is time for Pruitt to bring some honesty into the picture. In so doing he may just prompt opposing groups to line up on what needs to happen.

The story began in April 2010, when U.S. Sen. James Inhofe (R-OK) asked the EPA Office of the Inspector General to review the adequacy of the peer review process behind the EPA's Technical Support Document on which the Endangerment Finding was based. Guidelines from the Office of Management and Budget (OMB) issued under the Information Quality Act impose varying requirements on government agencies depending on the uses to which a scientific assessment will be put. The most rigorous apply to a so-called Highly Influential Scientific Assessment (HISA), which is a report that will, among other things, be relied on for regulations with an annual economic cost exceeding \$500 million. The Inspector General issued a lengthy report in 2011 concluding that the EPA's science assessment for the Endangerment Finding was highly influential, but their peer review process fell short of the HISA standard.

The EPA argued back that their report was not an assessment at all, it was just a summary of previous findings by the UN Intergovernmental Panel on Climate Change (IPCC), the National Climate Assessment and other reports, and these documents, not theirs, underpinned the Endangerment Finding. The Inspector General rejected this argument for several reasons. First, the EPA study clearly was an assessment since it selected among lines of evidence for emphasis or exclusion, and used data not found in the underlying reports. Second, the guidelines do not allow an agency like the EPA to rely on peer reviews conducted by outside groups like the IPCC or the National Climate Assessment team. Third, the EPA repeatedly cited the Technical Support Document as the basis of its climate policy decisions.

The EPA then replied that even if it was an assessment, it was not "highly influential." At that time there were no regulations being considered so the investigation ended. Ever since, proponents of climate action have been pushing for regulations that would cost the economy much more than \$500 million annually. By declining to designate their science assessment as highly influential the EPA got around the need to conduct a full peer review, but in doing so they undermined their authority to implement any such measures.

While the courts may not demand this situation be rectified, Pruitt himself should, in the interest of administrative honesty. Specifically he needs to admit officially that the Technical Support Document was a Highly Influential Scientific Assessment. It is hard to see how climate activists could object since they have long demanded regulatory measures on the belief that this was the case. Such a move would, however, create a further obligation on Pruitt to rule that, until such time as a HISA-level review is completed, no greenhouse gas regulations can be promulgated that cost more than \$500 million annually, nor can IPCC or National Climate Assessment reports be used for such a purpose.

This would put climate activists in an interesting bind. They say they don't want the science re-opened, but due to the legal expedient the EPA relied on back in 2011, such a stance would effectively bar the EPA from passing carbon emission rules of any consequence. So the activists might demand the EPA quickly undertake a new peer review to satisfy the HISA requirements. But this is also what skeptics have been seeking.

And, in truth, it is what ought to happen. The original review was a narrow in-house operation with no paper trail and a strong reek of bias and foregone conclusions. Pruitt would be striking a blow for honest governance by designating the Endangerment Finding's Technical Support Document a Highly Influential Scientific Assessment and subjecting it to the appropriate peer review, as should have happened in the first place.

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