NEED TO KNOW

AMERICANS FOR PROSPERITY FOUNDATION

THE EPA'S GREENHOUSE GAS REGULATIONS

AN OLD STATUTE FOR A NEW POLICY

The Clean Air Act (CAA), passed in 1970 and amended several times since, regulates emissions of toxic air pollutants like sulfur dioxide (a component of acid rain), chlorofluorocarbons (CFCs, which deplete the ozone layer), and nitrogen oxides (a component of smog). The Act barely mentions climate change; a concept the bill's authors weren't addressing when they wrote the law.

Recently, Congress considered expanding the CAA to cover GHGs but explicitly rejected this approach with the failure of cap-and-trade. Yet the Environmental Protection Agency (EPA) is moving forward anyways, bending the language of this decades-old statute for aggressive GHG regulation.

The door opened in 2007 with the Supreme Court's finding in Massachusetts v. EPA. In a 5-4 decision, the court found that GHGs could constitute "air pollution" and therefore could be regulated under the CAA. Even with no new law passed by Congress, all that was needed to start regulating was for the EPA to find that GHCs presented a danger to the public health and welfare.

That "endangerment finding" came in December 2009. The EPA marshaled evidence from institutions like the United Nations Intergovernmental Panel on Climate Change to show that GHG emissions were contributing to global warming, with catastrophic results and public health impacts (2). Since then the EPA has implemented rules on three fronts to reduce GHG output from common sources:

• *Motor Vehicles*. Fuel economy and emissions standards are now in place for passenger cars and trucks under what is known as the "Tailpipe Rule." New standards are coming for medium and heavy duty trucks, and other transportation sources such as planes, trains, and boats.
• *Stationary Sources*. Currently, the country's largest GHC emitters – power plants, petroleum refineries, and cement production facilities – are subject to regulation. Under what is known as the "Tailoring Rule," new standards will slowly phase in for smaller sources as well.
• *GHG Reporting Requirements*. Over 10,000 facilities nationwide are now required to monitor their GHG emissions and submit reports to the EPA (3).

WHAT'S AT STAKE?

As an example, consider the rules for stationary sources. The EPA's requirements for power plants and refineries sound harmless: companies can reduce GHG emissions simply by investing in new, energy-efficient technologies. Since they consume so much energy in production processes, EPA officials argue, companies will reduce emissions and save money (4). A win-win situation, right?

QUICK FACTS

- CO_2 emissions in the United States have largely remained stable since 1997 according to United Nations Data (1).
- The EPA's proposed carbon regulations could cost up to $8.8 billion per year and will reduce global GHG emissions by less than 1 percent.

NOTABLE & QUOTABLE

"Uncertainty, particularly legal uncertainty, is the enemy of economic prosperity...by reining in a bureaucracy run-wild like the EPA, Congress can begin to restore the American people's confidence in the rule of law and in the future of our nation's economy."

- **Greg Abbott**, Texas Attorney General

Wrong. As Margo Thorning of the American Council for Capital Formation explains: [B]usiness officials are always looking for ways to reduce costs … in order to stay competitive. It is unlikely that government regulators will be able to provide business leaders with cost-effective energy efficiency strategies that company engineers and managers have somehow overlooked. When new energy technologies become available which lead to real reductions in production costs and/or help companies meet existing [environmental] regulations…

Far from improving businesses' bottom lines, the new rules require expensive new equipment to control GHG emissions. EPA refers to these investments collectively as "Best Available Control Technologies" (BACT), which EPA has actually refused to define for GHGs. With little information on how the regulations will impact their costs, companies looking to expand or invest in new equipment are left paralyzed by uncertainty.

The resulting harm to the economy couldn't be clearer. Companies across the country are canceling investments and shuttering production, citing the high cost of new GHG regulations. A steel company cut its plan for new facilities in Louisiana in half, depriving the state of 1,500 temporary and 350 permanent jobs. A chemical company in Green River, Wyoming that employs 2,100 people fears they will be unable to keep up with foreign competitors who aren't burdened with GHG regulations. A coal-fired power plant in Alexandria, Virginia announced that it would be closing its doors – the plant's 120 workers will be looking for work. Given these anecdotes, the findings of a recent study were not surprising: EPA's GHG rules would halt as much as $75 billion in new investment in 2014 alone, destroying between 500,000 and 1.4 million jobs (6).

Despite the proven detrimental effects these rules are having on the economy and the livelihood of thousands of Americans, in 2013 the White House began implementing President Obama's Climate Action Plan which so far has proposed two of the most overreaching regulations to date.

NEW SOURCE PERFORMANCE STANDARDS

As part of the new Climate Action Plan, the Obama Administration proposed the New Source Performance Standards (NSPS) rule in September of 2013. The NSPS seeks to regulate emissions of carbon dioxide (CO2) from new fossil fuel-fired electric generating units pursuant to the CAA. The rule would regulate the level of pollution a new stationary source may produce and could make it nearly impossible to construct any new coal-fired power plants in the U.S.

The NSPS rule would replace the EPA's 2012 NSPS power plant CO2 proposal, and would set separate standards for new coal boilers and new gas combustion units (7). While the standards would have limited effects on natural gas, the new standards for coal are essentially unachievable and would prevent construction of any new plants even with clean coal technology.

Some speculate the only reason for the NSPS rule is that Section 111(d) of the CAA precludes the EPA from "issuing a rule covering existing sources under Section 111(d) unless a 111(b) rule applies to new sources." Thus the EPA is required to issue a rule covering existing sources before it can issue a rule for new sources. The comment period for the NSPS ended in May of 2014 and the EPA is now reviewing over 10,000 submitted comments before finalization.

PROPOSED CARBON REGULATIONS

In addition to the proposed NSPSs, in June of 2014 the EPA unveiled a proposal for some of the most burdensome regulations to date that seek to reduce carbon emissions from U.S. power plants, primarily coal-fired power plants. The goal of the proposed carbon regulations is to reduce carbon dioxide emissions from existing power plants by 30 percent by 2030, based on 2005 emission levels. However, many Americans and lawmakers are concerned the proposed carbon regulations will cost thousands of jobs and increase energy rates while providing minimal benefits.

The proposal lays out emissions reduction targets for each state, which will hit some states harder than others. For example, California's emissions reduction target is 23.1 percent, while Washington is required to reduce emissions by a whopping 71.6 percent (8).

The EPA has touted that the purpose of the proposed regulations is to combat climate change and provide health benefits to Americans, however both of these claims have come under scrutiny. While reductions in greenhouse gas emissions is the primary benefit claimed by the EPA, in actuality the proposed rule will reduce global GHG emissions by less than 1 percent, and according to the EPA's own analysis could cost up to $8.8 billion per year (9). Furthermore, the EPA is claiming health benefits from reducing ozone and particulate matter, yet both of these pollutants have been regulated under the Clean Air Act for decades. Thus the EPA is "double counting" benefits from previous regulations in order to justify the proposed regulations.

If the carbon regulations go forward, the impact on the economy and the livelihood of thousands of Americans would be substantial. Under the new rules, thousands of jobs would be lost as hundreds of coal plants are forced to close. For instance, Alpha Natural Resources, a West Virginia Coal Company, recently announced it would be laying off an expected 1,100 workers at 11 West Virginia mines citing in part the EPA's proposed carbon regulations (10). The proposed rules are also states to increase electricity prices for Americans as utilities are forced to shift to more expensive, less reliable sources. The comment period for the proposed regulations runs until October 16, 2014 and will be finalized June 15, 2015.

CONCLUSION

The EPA's GHG regulations are a shining example of a hyperactive regulatory agency pushing its authority far beyond statutorily defined limits, pursuing by administrative fiat policies that were rejected by Congress and the American people. Moreover, the current and proposed rules impose incredible economic costs for nearly imperceptible results.

Endnotes:
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2. Environmental Protection Agency, Endangerment and Cause or Contribute Findings for Greenhouse Gases, 74 Federal Register No. 239 (December 15, 2009) (online at http://epa.gov/climatechange/endangerment/downloads/Federal_Register-EPA-HQ-OAR-2009-0171-Dec.15-09.pdf).
3. For more information, please visit the EPA's website at http://www.epa.gov/climatechange/initiatives/index.html.
4. See, e.g., Environmental Protection Agency, Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from the Petroleum Refining industry (October 2010) (online at http://www.epa.gov/nsr/ghgdocs/refineriespdf); Environmental Protection Agency, Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from Coal-Fired Electric Generating Units (October 2010) (online at http://www.epa.gov/nsr/ghgdocs/electricgeneration.pdf).
5. House Energy and Commerce, Subcomittee on Energy and Power, Written Testimony of Margo Thorning, senior vice president and chief economist, American Council for Capital Formation, The Impact of EPA Regulation of GHGs Under the Clean Air Act on U.S. Investment and Job Growth (February 9, 2011) (online at http://republicans.energycommerce.house.gov/Media/file/hearings/Energy/020911_Energy_Tax_Prevention_Act/House%20Energy%20Commerce%20Testimony%20292011%20FINAL.pdf).
6. Liz Essley, Alexandria Power Plant to Close Next Year, Washington Examiner (August 31, 2011) (online at http://washingtonexaminer.com/local/2011/08/alexandria-power-plant-close-next-year); Written Testimony of Jim Pearce, Steven Rowland, and Margo Thorning before the House Energy and Commerce, Subcommittee on Energy and Power on February 9, 2011 (online at http://energycommerce.house.gov/hearings/hearingdetail.aspx?NewsID=8179).
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9. U.S. EPA, Regulatory Impact Analysis for the Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants, June 2014, pages 3-22, (online at http://www2.epa.gov/sites/production/files/2014-06/documents/20140602ria-clean-power-plan.pdf) (accessed August 14, 2014).
10. Alex Guillen, EPA wraps up hearings on climate rule – Alpha Natural Resources plans to lay off 1,100 – Coal dust rule takes effect today, Politico (online at http://www.politico.com/morningenergy/0814/morningenergy14855.html) (accessed August 12, 2014).

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