

Green Report

USEPA ISSUES DECISION THAT GREENHOUSE GAS EMISSIONS ENDANGER PUBLIC HEALTH AND WELFARE THEREBY TRIGGERING THEIR REGULATION UNDER THE CLEAN AIR ACT

As reported earlier in the *Tressler Green Report*, on April 2, 2007, the United States Supreme Court issued its decision in *Massachusetts v. EPA*, 127 S.Ct. 1438 (2007), deciding that greenhouse gases (GHGs) are “air pollutants” as that term is defined in the Clean Air Act. It was also decided that, because of this, USEPA has the authority to regulate

emissions of GHGs from the sources that were the subject of the case, new motor vehicles. The Court also held that USEPA could defer regulation of emissions of GHGs only if it determines that they do not contribute to climate change or if USEPA provides a reasonable explanation for not making this determination one way or the other.

On April 17, 2009, USEPA issued a proposal to find that GHGs in the atmosphere, the presence of which is in large part the result of human activity, endanger public health and welfare of current and future generations in light of observed and anticipated effects caused by climate change. On December 7, 2009, USEPA issued its determination that: (1) six GHGs, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride, taken in combination endanger both public

health and public welfare of current and future generations; and (2) the combined emissions of these GHGs from new motor vehicles and motor vehicle engines contribute to GHG air pollution that endangers public health and welfare under Section 202(a) of the Clean Air Act.

As was the case in making its proposal in April, USEPA explains that it is required under the law to protect public health and welfare and, in doing this, it need not wait until harm has occurred. Instead, it must act to prevent harm.

USEPA recognizes uncertainties and limitations of scientific knowledge but concludes that there is compelling scientific support for this endangerment determination. Assessments by the U.S. Global Climate Research Program (USGCRP), the Intergovernmental Panel on Climate Change (IPCC) and the National Research Council (NRC) serve as the primary scientific basis supporting USEPA’s endangerment finding. These assessments synthesize thousands of individual studies and provide consensus conclusions regarding the scientific literature.

USEPA’s assessment focused on public health and public welfare impacts within the United States. However, it also examined information regarding other world regions, which strengthened the case for endangerment since impacts in other world regions can in turn adversely affect the United States.

USEPA considered how GHGs and associated climate change affects public health by evaluating the risks associated with changes in air quality, increases in temperature, changes in extreme weather events, increases in food and water borne pathogens and changes in aeroallergens. The evaluation regarding public welfare included evaluation of risks to food production and agriculture, forestry, water resources, sea levels, coastal areas, energy, infrastructure, ecosystems and wildlife.

Even in light of this required regulatory process, many think that it would be preferable that issues associated with GHGs and their regulation should instead be addressed in new comprehensive federal legislation, thereby avoiding potentially complex and cumbersome multiple sets of regulation under the Clean Air Act.



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