BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Endangerment and Cause or Contribute Finding For Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66496 (December 15, 2009)	)	**Docket No. EPA-HQ-OAR 2009-0171**

PETITION FOR RECONSIDERATION OF ENDANGERMENT AND CAUSE OR CONTRIBUTE FINDING FOR GREENHOUSE GASES UNDER SECTION 202(A) OF THE CLEAN AIR ACT BY THE COMMONWEALTH OF VIRGINIA, EX REL. KENNETH T. CUCCINELLI, II, ATTORNEY GENERAL OF VIRGINIA

Pursuant to Section 307(d) of the Clean Air Act, 42 U.S.C. § 7607(d), and based upon new information of central relevance not available during the public comment period, the Commonwealth of Virginia ex rel. Kenneth T. Cuccinelli, II, hereby petitions the United States Environmental Protection Agency (EPA) to convene a proceeding for the reconsideration of the "Endangerment and Cause or Contribute Finding for Greenhouse Gases Under Section 202(a) of the Clean Air Act" (Endangerment Finding) published by EPA on December 15, 2009, 74 Fed. Reg. 66,496 (Dec. 15, 2009). The new information raises questions with respect to the validity and integrity of a substantial segment of the data upon which the Endangerment Finding rests, a matter which is of central relevance to the Endangerment Finding. Consequently, in response to this petition under 307(d), EPA must: (1) reconvene the regulatory proceeding, (2) provide the public with the opportunity to comment on the newly available information, and (3)

provide such information to the Science Advisory Board (SAB) for its review and comment.

Bases of this Petition

On November 17, 2009, well after the close of the public comment period on the proposed Endangerment Finding, internal e-mails and documents from the Climate Research Unit (CRU) at the University of East Anglia were released to the public. The e-mails and documents, many of which were apparently authored by the CRU scientists working at CRU on the project (CRU scientists), discuss the manner in which CRU's global warming data (CRU Data) were developed, analyzed, and handled. Specifically, the e-mails and documents suggest that the CRU scientists questioned the reliability of their own data, the methodologies used in developing and analyzing such data, and the conclusions based thereon.

CRU and other organizations studying global climate change and its causes all use the same raw data, and scientists from the National Oceanic and Atmospheric Administration (NOAA) have acknowledged that the three surface temperature data sets from NOAA, the National Aeronautics and Space Administration (NASA), and CRU are not independent but are based on a common set of underlying raw data.

If NASA and NOAA used the same raw data as CRU, and if they have reached conclusions similar to those of CRU, then a finding of data unreliability with regard to the CRU Data may indicate systemic problems with all three of the data sets upon which EPA relied in promulgating its Endangerment Finding. Because these issues are of central relevance to the Endangerment Finding, they must be addressed by EPA, the public, and SAB in a proceeding for the reconsideration of the finding.

In addition to the probable invalidity of the underlying data, EPA failed to properly exercise its judgment as required by the Clean Air Act ("CAA") and acted in an arbitrary and capricious fashion by relying almost exclusively on reports of the IPCC in attributing climate change to anthropogenic greenhouse gas ("GHG") emissions. Contrary to the CAA and the Information Quality Act ("IQA")[1], EPA substantially ceded its obligation to make a judgment whether GHGs may endanger public health and welfare to the IPCC, an international body that is not subject to U.S. data quality and transparency standards and whose reports were prepared in total disregard to those standards. Therefore, EPA is about to begin regulating GHG emissions based on a scientific process that was conducted without those procedural safeguards contained in American law. These safeguards are what ensure the reliability and accuracy of the scientific conclusions underlying the Agency's Endangerment Finding. As an agency of the United States, however, whose regulatory actions will have far-reaching consequences for the citizens of Virginia and the nation, EPA must abide by U.S. standards and not the standards of international bodies whose actions are governed by different standards and requirements.

Finally, EPA's remote findings of endangerment of health and welfare fail to consider and properly weigh the offsetting harms to health and welfare necessarily flowing from economically destructive regulation.

Standard for Granting the Petition

The CAA provides that EPA's Administrator shall convene a proceeding for reconsideration of the Endangerment Finding where a person: (1) objects, (2) within the

[1] The IQA was enacted as the Treasury and General Government Appropriations Act for Fiscal Year 2001 § 515, 44 U.S.C. 3504(d)(1) and 3516 (2000).

time specified for judicial review, (3) based upon a matter of central relevance to the outcome of the Endangerment Finding proceedings, (4) on grounds arising after the comment period has expired. 42 U.S.C. § 7607(d)(7)(B).

Reasons for Granting the Petition

Virginia is a person within the meaning of the Clean Air Act, 42 U.S.C. § 7602(e), and its Petition is timely as falling within the sixty day period for judicial review. EPA's improper delegation, its failure to follow American law regarding the method and quality of analysis, its reliance upon invalid data of now widely questioned integrity, and its failure to properly weigh remote and speculative harm from GHGs against the virtual certainty of damage to health and welfare from the Endangerment Finding itself are of central relevance. Furthermore, the massive and disturbing evidence giving rise to the Petition became known only after the time for public comment had expired. Because that evidence is in the public domain and has been exhaustively discussed in other Petitions, including those of the Pacific Legal Foundation and Peabody Energy Company, it is not set forth here again in detail. Instead, it should be the subject of further evidentiary proceedings. The methodological and substantive errors of EPA became apparent only on December 15, 2009 with the promulgation of the Endangerment Finding.

Conclusion

Wherefore, the EPA should reconvene regulatory proceedings, provide for public notice and comment, conduct evidentiary proceedings, and provide all information to the SAB for review and comment.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA
EX REL. KENNETH T. CUCCINELLI, II
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