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Submitted to the
Subcommittee on Energy and Power,
Committee on Energy and Commerce
U.S. House of Representatives

Hearing On

Draft Legislation Repealing US EPA's Finding that
Greenhouse Gases Endanger Public Health and Welfare and
Repealing Clean Air Act and Certain State Authorities
Relating to Greenhouse Gases

February 9, 2011

On behalf of the Natural Resources Defense Council (NRDC) I request that this statement be included in the record for the February 9, 2011 hearing on draft legislation on greenhouse gas pollution, authored by Committee Chairman Upton and Subcommittee Chairman Whitfield.

My name is David Hawkins. I am Director of Climate Programs at the Natural Resources Defense Council (NRDC). NRDC is a nonprofit organization of scientists, lawyers and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has more than 1.2 million members and online activists nationwide, served from offices in New York, Washington, Los Angeles and San Francisco, Chicago and Beijing. During the presidency of Jimmy Carter I had the privilege of serving as Assistant Administrator for Air and Radiation at the US Environmental Protection Agency where I was responsible for developing pollution standards under the Clean Air Act authorities that would be affected by the draft legislation.

Last week Chairmen Upton and Whitfield released draft legislation that would, among other things—

- overturn the Supreme Court landmark 2007 decision in *Massachusetts v. EPA*,
- declare that greenhouse gases are *not* air pollutants, and
- repeal the US EPA's finding that greenhouse gases endanger human health and welfare.

The bill would bar EPA from using any part of the Clean Air Act to limit emissions of these pollutants from power plants or other industrial sources for the purpose of addressing climate change. The bill would also bar EPA and California, and all other states, from any role in setting standards to reduce these emissions from motor vehicles starting with the 2017 model year.

I have just two points to make regarding this draft bill. The first is that the bill is, with respect, extreme. The second is that the harm to the economy and jobs that is claimed as justifying this legislation has no basis in fact. The facts are that the very provisions of the Clean Air Act that this bill attacks have a forty-year track record of delivering cleaner air and improved health, along with the benefits of enormous growth in the economy.

Why do I say the bill is extreme? The bill would repeal the December 2009 finding by the Administrator of EPA that greenhouse gas pollution endangers the public health and welfare of current and future generations. I submit that it is extreme for this Committee to vote to repeal a formal scientific finding of a threat to health and welfare, made by a duly constituted expert agency on the basis of a voluminous scientific record. If Congress has ever done this before, I am not aware of any example.

Mr. Chairman and members of the Subcommittee, as you know, the US Environmental Protection Agency (EPA) was created by President Nixon in 1970 to integrate the federal government's programs for controlling environmental pollution. Also in 1970, Congress enacted the modern Clean Air Act and required the Administrator of EPA to make science-based decisions about the threats to health and welfare presented by air pollution. Congress directed that such decisions be based on evidence that is made available to the public for comment. EPA is required to respond to comments and anyone aggrieved can seek review of the agency's findings and decisions in the federal courts.

That is the process that EPA followed in concluding that carbon pollution and other greenhouse gases threaten public health and welfare. The Supreme Court ruled in April 2007 that greenhouse gases plainly meet the definition of "air pollutants" in the law enacted by Congress. That is plain on the face of the statute, which defines "air pollutant" to include "any any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters ambient air."

Greenhouse gases are emitted into the air from man-made pollution sources.

EPA's determination that greenhouse gases endanger public health and welfare was not made whimsically. It followed a process that enabled all views to be considered. Indeed that process took more than three years. It began in May 2007, one month after the Supreme Court's decision, when President George W. Bush directed EPA to determine whether greenhouse gases endanger public health or welfare. In December 2007 EPA provided a draft proposed finding on this matter to the White House Office of Management and Budget. While that draft finding was never published, in July 2008, EPA published a broad Advanced Notice of Proposed Rulemaking (ANPR) that included among other things, a summary of scientific findings on the demonstrated and anticipated impacts of greenhouse gases. EPA received and considered voluminous public comments on this document. In April 2009, EPA published a proposed endangerment finding, accompanied by a lengthy technical support document, that greenhouse gases presented a threat to public health and welfare. EPA took public comment on this proposal, including two public hearings, and published a final determination in December 2009. In July 2010, EPA published a detailed response to each objection raised by a range of petitions for reconsideration. Those formal determinations are currently the subject of petitions for judicial review. Many industrial petitioners, along with some State governments, sought a stay of EPA's scientific finding and related actions, making many of the same claims of economic harm that the authors of this draft bill are

making. The court reviewed these claims and found that the case simply had not been made that any such harm would occur.

In sum, EPA is acting under a law enacted by Congress, in a manner consistent with the ruling of the US Supreme Court, based on an enormous scientific record, with its actions now subject to additional scrutiny by an independent judiciary. That is the rule of law that this draft bill would ignore.

In 1967 then Governor Ronald Reagan noted approvingly that "ours is a government of laws, not of men." These words may mean different things to different people but to me they mean that Congress has a responsibility to show the public that the laws it enacts are the product of adequate consideration of the relevant facts and consistent with principles of democratic government. Before the Committee decides whether it should repeal the science-based determination by EPA that greenhouse gases present a threat to public health and welfare, does it not make sense to consider the basis for that determination, in open public hearings, with a full opportunity for scientists with expertise in climate science and the impacts of greenhouse gases to provide you with their views?

The new leadership of the Committee has been duly elected and has every right to promote legislation that it believes represents good policy. But I am certain that the new Committee majority is interested in creating a record that demonstrates it has considered the pertinent facts before voting on legislation like that before you today. Few, if any of the witnesses who are scheduled to appear in today's hearing can speak as trained scientists on the strengths and weaknesses of EPA's scientific conclusions. When will the Committee receive information that bears on the validity of the scientific determination this bill would repeal?

There is a lot of cynicism that many congressional hearings and debates are not about serious inquiry but are just an exercise in justifying a pre-determined outcome. You have it in your power either to confirm this cynicism or to show by example that you are genuinely interested in understanding and assessing the basis for EPA's decision. Before you proceed to markup this draft bill (if you do mark it up) I urge you to give the science underlying EPA's determination the serious consideration it deserves by scheduling a set of hearings to listen to the views of independent scientists on the merits of EPA's finding.

In releasing this draft bill Chairmen Upton and Whitfield said "[w]ith this draft proposal, we are initiating a deliberative, transparent process." No process that would overturn a scientific finding supported by such a

voluminous record as EPA has assembled, and based on as little information as you have received, can be called deliberative. To vote out this bill would be a lasting stain on the work of this Committee.

Now, I want to turn to the claims that setting standards for greenhouse gases under the Clean Air Act will “cost jobs and undermine the competitiveness of America’s manufacturers.” The fact is that these claims are based on a fiction – the fiction that the Clean Air Act gives EPA the authority to adopt rules that could plausibly have these impacts.

The truth is that the Clean Air Act does not give EPA sweeping powers to revamp energy policy or impose requirements that would have serious economic impacts. To the contrary, the words of the law Congress wrote, the standards EPA has issued under that law, and the decisions of courts reviewing those standards, all make it clear that EPA’s power is limited to setting practical, commonsense standards that are technically achievable and economically reasonable. And this truth is not simply my opinion. It is proven by a forty-year track record of publicly available information that anyone can review and judge for him or herself.

As with EPA’s scientific determination, I submit this Committee should examine the facts of what the Clean Air Act authorizes and how EPA has exercised that authority before it votes on a bill to repeal those

authorities for carbon pollution and other greenhouse gases. EPA has stated it believes three Clean Air Act authorities are suited to standard setting for these pollutants. First, it has set tailpipe emission standards for new motor vehicles. These standards were developed in a cooperative effort with vehicle manufacturers and harmonized with government fuel economy rules. Indeed, these standards are now being cited as helping position automakers to produce a more competitive product line in the event that gasoline prices continue to rise. EPA's standards can produce these positive results because the law requires they be technically achievable, affordable, and implemented on a schedule that provides adequate lead time.

Second, the law requires that new large industrial sources must meet standards reflecting the ability of modern, available technical approaches to reduce pollution. Refurbished large industrial sources are subject to these standards only if the sources' emissions increase significantly. This "new source review" program, first adopted by rule in President Gerald Ford's administration and modified by Congress in the 1977 Clean Air Act amendments, again does not give EPA sweeping authorities. Rather, the Act expressly requires that any standards adopted under this provision must be determined, on a case-by-case basis, to be "achievable," "taking into account energy, environmental, and economic impacts and other costs." (Sec. 169) The Act provides for a case-by-case assessment of

what is workable for specific new projects, not a one-size-fits-all mandate.

EPA has issued rules to phase in these assessments to enable a smooth transition for considering carbon pollution and other greenhouse gases. At this point in the phase-in program, only the largest sources, *which are already carrying out new source review assessments for other pollutants*, are required to analyze options to reduce greenhouse gas pollutants as well. The Act does not authorize EPA to impose requirements that would disrupt our economy and EPA has made it clear that it will exercise its authorities consistent with the law. Contrary to claims made by some, the Act expressly provides for the exemption of nonprofit health or education institutions from these requirements.

When there are changes in Clean Air Act programs as there are now, there are inevitable claims of potential economic disruption. But history demonstrates that much larger changes have been implemented in the past without any such results. In 1977, when Congress greatly expanded the Act's new source review program, many sources were required to carry out the enhanced technology assessments for the first time. There were some instances where a few additional months were required for some sources to complete their reviews; but the system quickly adjusted and project planners simply incorporated any additional time required for

these analyses into the lead-time for their projects. The benefits of these reviews have been large. For example, the large Colstrip coal power plant in Montana was one of the first sources to undergo this review after the 1977 Act and its permit application was initially rejected due to a poorly done analysis. But the assessment was redone, better technology was found to be feasible, and the now decades-old plant has been hailed as the cleanest coal plant of its vintage in the world as a result of this sensible program. The steady improvement of technology prompted by these sensible reviews has allowed economic growth to flourish while cutting traditional pollutants dramatically.

Those who would repeal the Act's greenhouse gas pollution standard authority for large new industrial sources, in the name of making it easier to construct those projects, need to think about the consequences of such repeal. Large new fossil-fueled projects are controversial today in the United States. They are not controversial because of EPA or the Clean Air Act. They are controversial because many citizens and organizations believe the projects, as designed, do not represent safe or wise investments due, in significant part, to the large amounts of carbon pollution that such projects would add to the atmosphere. Repealing the Clean Air Act requirement to set reasonable standards for such projects will not make these projects less controversial; it would make them more controversial.

If permitting agencies are required to put on blinders and ignore the carbon pollution from these projects when they are reviewed the entire permitting process will be more easily attacked as a sham. And the social charter that firms need to be accepted in communities where they operate will be that much more difficult to secure. If the projects do get built, those who invest in them will be exposed to economic risk due to the failure of the project to incorporate reasonable carbon-reducing approaches into the project design when it is first built. These risks will not be borne just by Wall Street fat cats. Municipalities, whose citizens will be asked to pay for long-term commitments like power purchase agreements, may find themselves saddled just a few years down the road with higher bills if high carbon-polluting power plants are built without consideration of options to reduce their pollution.

A second Clean Air Act standard-setting authority EPA intends to implement for greenhouse gas pollution is the New Source Performance Standards (NSPS) provision of section 111. This authority was proposed by the Nixon administration and was adopted in the 1970 Clean Air Act. It too limits EPA's authority by requiring the agency to demonstrate (and defend in court if challenged) that any emission standards it adopts are not only technically achievable but are "adequately demonstrated," "taking into consideration the cost of achieving such emission reduction,

any nonair quality health and environmental impact and energy requirements.” (Section 111)

EPA set the first such NSPS pollution standards in 1971 and scores of such standards have been adopted since, reviewed in court, and occasionally overturned when the courts found EPA had failed to justify the standards under congressionally-established criteria. When this statutory provision is applied to greenhouse gas pollution, the same limits on EPA’s authority apply. There is no basis for anyone to claim that somehow EPA now has broader authority that could result in adverse economic impacts. Yet this is the justification put forward for congressional repeal of this important clean air provision.

Some argue that “carbon dioxide is different” from traditional pollutants, arguing that there are fewer demonstrated, affordable technologies that can be used to reduce carbon dioxide pollution from industrial sources. But this argument ignores a fundamental point. To the extent that available technology is limited for some class of sources, that fact limits EPA’s authority for the standard it is permitted to adopt under the NSPS provision! In short, as I have quoted above, the Clean Air Act already contains language that addresses the concerns of those who argue that setting Clean Air Act standards for greenhouse gas pollution would cause economic harm. The current law simply does not allow EPA to set

emission standards that are technically infeasible or economically disruptive.

This fact points up another way in which the draft bill is extreme. In its forty-year history the Clean Air Act has been amended a number of times, often to address concerns about the economic impact of certain provisions or deadlines for action. But in all those previous instances this Committee and the Congress as a whole have taken the time to hear fully from all who have a stake in how our clean air laws are designed and implemented. And this Committee and the Congress have taken the time and made the effort to tailor changes that are actually responsive to the concerns that have been documented as a result of those thorough inquiries.

Not so with this draft bill. Rather than seeking a full and objective assessment of the potential impacts of setting standards for greenhouse gas pollution, the authors have simply accepted at face value the claims of those who oppose any such standards. And rather than using such an inquiry to develop any additional conditions or modifications to the Act's standard-setting that might be justified, the authors simply propose the blunt tool of a total repeal of authority to set standards for this pollution, no matter how reasonable such standards might be and no matter how strong a basis for setting such standards might be demonstrated.

I am certain that Chairmen Upton and Whitfield want to create a record that under their leadership this Committee will base legislation on facts and policies aired in a thorough process that examines competing views. Voting this draft bill out of the Committee would be a terrible mistake, both respecting the broad public policy issues at stake and for the damage it would do to the desires of the new leadership to be acknowledged as responsible legislators.

I offer a closing comment about the enormous success story that the Clean Air Act represents. Over four decades, the Clean Air Act tools that this draft bill would repeal for greenhouse gas pollution have produced benefits for the American people that have swamped the costs incurred to cut pollution. Pursuant to the 1990 Clean Air Act, EPA has published two peer-reviewed assessments of the benefits and costs of Clean Air Act programs from 1970 to 1990 and from 1990 to 2010. The findings of the first two studies are remarkable. The study covering the Act's first two decades from 1970-1990 found that estimated benefits in better health, environmental quality, and reduced material damages over the twenty-year period, ranged from \$6 trillion to \$50 trillion, with an average estimate of \$22 trillion. To be sure, these benefits were not secured for free. The actual compliance costs over the twenty year period amounted to approximately \$525 billion. The \$22 trillion in estimated benefits

represents a 40-to-1 return on the investments made to deliver cleaner air. (<http://www.epa.gov/air/sect812/design.html>) The second study, covering projected benefits and costs from 1990-2010, concluded that benefits would total about \$110 billion; while compliance costs would amount to about \$27 billion.

(<http://www.epa.gov/air/sect812/r-140.html>)

Greenhouse gas pollution is a global problem (as are some traditional pollutants like mercury) so the engagement of all large polluting countries will be needed to secure the benefits of protecting the one climate our civilization depends on. But "all" large polluting countries includes the United States, which is still number one on a cumulative emission basis and second only to China on an annual basis. The United States has a great deal to gain by proceeding to develop reasonable standards under our Clean Air Act. It can stimulate the development of better and better technology that we will use to run the engines of our economy while wasting less energy and producing less pollution. These first steps not only will help cut our contribution to climate disruption, they will demonstrate leadership that will prompt other countries to follow suit and they will position our industries to be more competitive in a world that will be increasingly focused on the need to protect our climate.

A vote to repeal the commonsense Clean Air Act provisions that can cut global warming pollution is a bet that our citizens and the world at large will ignore the problem of climate disruption. That is a profoundly bad bet. I urge the members of this Committee to vote against the Upton/Whitfield bill if it proceeds to a mark-up.

Thank you for considering these comments.