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Energy Independence and Global Warming

F. James Sensenbrenner, Jr., (WI-05), Ranking Member



**The Unsettling Science
behind EPA's Endangerment Finding**

STAFF REPORT

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Glossary of Terms

CAA - Clean Air Act

CCSP - Climate Change Science Program

CRU - Climatic Research Unit

EPA - Environmental Protection Agency

FOIA - Freedom of Information Act

GHG - Greenhouse Gas

IAC - InterAcademy Council

IEG - Independent Evaluation Group

IPCC - Intergovernmental Panel on Climate Change

NASA - National Aeronautics and Space Administration

NCEE - National Center for Environmental Economics

NHTSA - National Highway Traffic Safety Administration

NOAA - National Oceanic and Atmospheric Administration

PSD - Prevention of Significant Deterioration

TSD - Technical Support Document

UEA - University of East Anglia

UN - United Nations

UNFCCC - United Nations Framework Convention on Climate Change

I. INTRODUCTION

On November 19, 2009, some 160 megabytes of data containing over 1,000 e-mails and 2,000 other documents from the Climatic Research Unit (CRU) at the University of East Anglia (UEA) in the United Kingdom were posted on the Internet. These e-mails reflect conversations by and among key members of the climate change scientific community. CRU maintains one of only three major datasets of temperature records. The National Aeronautics and Space Administration (NASA) and the National Oceanic and Atmospheric Administration (NOAA) maintain the other two. These datasets, however, overlap considerably and they are the bedrock for the assessments by the Intergovernmental Panel on Climate Change (IPCC) and the United States Climate Change Science Program (CCSP). In other words, the CRU dataset is a large foundation for our current understanding of climate change.

As such, the CRU dataset has had a critical impact on the proposed U.S. regulatory response. By its own admission, the Environmental Protection Agency (EPA) relied on IPCC and CCSP data for multiple regulatory actions. Proposed actions by EPA include the Endangerment Finding, which in turn sets up the Light Duty Vehicle Rule and the Greenhouse Gas (GHG) Tailoring Rule. Despite multiple letters of opposition to EPA from Members of Congress, including letters from the Select Committee's Ranking Member, EPA has proceeded with its regulatory agenda, largely ignoring the CRU e-mails.

The potential impact of EPA's actions on U.S. taxpayers is massive. Limiting the GHG emissions from US industries will hurt taxpayers. When the House of Representative passed its climate legislation, the National Association of Manufacturers found that this would result in a loss of 2.4 million jobs, a 50% jump in electricity rates and a 26% spike in gas prices.¹ More recently, the Heritage Foundation analyzed the stalled Senate climate change bill, S.1733, the Clean Energy Jobs and American Power Act, introduced by Senators Boxer and Kerry. If S.1733 became law, Americans could expect more than \$4.6 trillion in taxes, job losses exceeding 2.5 million, and a \$40,000 loss in net worth for a family of four.²

Last year, this committee issued a joint report that investigated concerns raised by a series of e-mails dated March 12-17, 2009, in which Dr. Al McGartland, the director of EPA's National Center for Environmental Economics (NCEE) expressly refused to include a staff member's report in the official record on the Endangerment Finding. The staff member was Dr. Alan Carlin, a 37-year EPA employee, who wrote:

“I believe my comments are valid, significant, and contain references to significant new research since the cut-off for IPCC and CCSP inputs. They are significant because they present information critical to the justification (or lack thereof) for the proposed

¹ *United States Economic Impact of the Waxman-Markey Bill, H.R. 2454 Proposed Legislation to Reduce Greenhouse Gas Emissions*, National Association of Manufacturers study, available at <http://www.acf.org/media/docs/nam/2009/National.pdf>.

² David W. Kreutzer, Ph.D., Karen A. Campbell, Ph.D., William W. Beach, Ben Lieberman, and Nicolas D. Loris, *What Boxer-Kerry Will Cost the Economy*, Heritage Foundation Backgrounder, No. 2365 (January 26, 2010), available at http://s3.amazonaws.com/thf_media/2010/pdf/bg_2365.pdf.

endangerment finding. They are valid because they explain much of the observational data that have been collected which cannot be explained by the IPCC models.”³

In response, Dr. McGartland declined to forward Dr. Carlin’s comments, stating that he could “only see one impact of [the] comments given where we are in the process, and that would be a very negative impact on our office.”⁴ Dr. McGartland did not question the scientific merit of the proposed studies, but rather explained that “[t]he administrator and administration has decided to move forward on endangerment, and your comments do not help the legal or policy case for this decision.”⁵ Thus, EPA silenced its own employee who argued that EPA’s record was out of date.

More recent evidence has demonstrated that, not only is EPA’s record out of date, but it is based on ideologically-driven and frequently flawed research. This report finds that EPA should develop a stronger independent foundation before proceeding with climate regulations.

II. BACKGROUND

EPA has falsely claimed that an affirmative endangerment finding was “inevitable given the mandate by the Supreme Court” and the “compelling and overwhelming” scientific evidence that climate change endangers human health and welfare.⁶ In *Massachusetts v. EPA*, the Supreme Court found that CO₂ from mobile sources, such as cars and trucks, were pollutants under the Clean Air Act (CAA).⁷ The outstanding question for EPA was whether CO₂ emissions endanger human health and welfare. The Court instructed EPA to adopt one of three paths:

1. Find, based on the science, that GHG emissions . . . contribute to air pollution that may reasonably be anticipated to endanger public health or welfare;
2. Find, based on the science, that GHG emissions . . . do not contribute to air pollution that may reasonably be anticipated to endanger public health or welfare; or
3. Provide some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether GHG emissions . . . endanger public health or welfare.⁸

The Supreme Court explicitly left open whether EPA should regulate CO₂ emissions, stating that it did not rule on “whether policy concerns can inform EPA’s actions in the event it makes such a finding.”⁹ While the court decision gave EPA the authority to consider the policy implications and negative economic effects of regulating GHG emissions under the CAA, it did not require EPA to make an affirmative endangerment finding.

³ E-mail, Senior Operations Research Analyst Alan Carlin (EPA NCEE) to Office Director Al McGartland (EPA NCEE), March 16, 2009.

⁴ E-mail, Al McGartland to Alan Carlin (March 17, 2009).

⁵ *Id.*

⁶ Bryan Walsh, *Lisa Jackson: The New Head of the EPA*, Time Magazine (April 23, 2009), available at <http://www.time.com/time/health/article/0,8599,1893155,00.html>.

⁷ *Massachusetts v. The Environmental Protection Agency*, 549 U.S. 497 (2007).

⁸ *Id.* at 533.

⁹ 549 U.S. at 534-35.

Following the proposed Endangerment Finding, the EPA Administrator “proposed to find that the emissions of four of these [greenhouse] gases -- carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons -- from new motor vehicles and new motor vehicle engines contribute to the atmospheric concentrations of these key greenhouse gases and hence to the threat of climate change.”¹⁰ This led to the issuance of a joint proposal by EPA and the National Highway Traffic Safety Administration (NHTSA), which established a national program to improve fuel economy by limiting the emission of GHGs from cars and light-duty trucks beginning with the 2012 model year.¹¹

While EPA claims that it has the authority to issue its Endangerment Finding under the CAA, it recognized the CAA was unsuited to regulate emissions. This led EPA to initiate its GHG Tailoring Rule. According to EPA:

EPA is proposing to tailor the major source applicability thresholds for greenhouse gas (GHG) emissions under the Prevention of Significant Deterioration (PSD) and title V programs of the Clean Air Act (CAA or Act) and to set a PSD significance level for GHG emissions. . . . *If PSD and title V requirements apply at the applicability levels provided under the CAA, State permitting authorities would be paralyzed by permit applications in numbers that are orders of magnitude greater than their current administrative resources could accommodate.*¹²

In other words, EPA recognizes that applying the CAA, as drafted by Congress, would cripple the economy. The agency has therefore attempted to reconstrue the legislative language. Without the Tailoring Rule, EPA expects that PSD permits would go from about 300 per year to about 40,000, and that applicability of Title V permits would go from covering 15,000 sources to about six million.¹³

III. DISCUSSION

EPA openly acknowledges its reliance on the IPCC’s work. On April 24, 2009, EPA wrote:

EPA has developed a technical support document (TSD) which synthesizes major findings from the best available scientific assessments that have gone through rigorous and transparent peer review. *The TSD therefore relies most heavily on the major assessment reports of both the Intergovernmental Panel on Climate Change (IPCC) and the U.S. Climate Change Science Program (CCSP). EPA took this approach rather than conducting a new assessment of the scientific literature.* The IPCC and CCSP assessments base their findings on the large body of many individual, peer-reviewed

¹⁰ EPA Regulatory Announcement, Office of Transportation and Air Quality, EPA-420-F-09-047a (September 2009) available at <http://www.epa.gov/oms/climate/regulations/420f09047a.pdf>.

¹¹ *Id.*

¹² Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 74 Federal Register 55292, 55295 (proposed October 27, 2009) (emphasis added).

¹³ *Id.*

studies in the literature, and then the IPCC and CCSP assessments themselves go through a transparent peer-review process.¹⁴

Thus, EPA freely admits that it failed to develop its own scientific foundation and, instead, accepted the conclusions of the IPCC.

Dr. Alan Carlin, with EPA's NCEE, presciently argued that EPA's failure to develop an independent review could backfire. Before EPA finalized its Endangerment Finding, Dr. Carlin argued:

I have become increasingly concerned that EPA has itself paid too little attention to the science of global warming. EPA and others have tended to accept the findings reached by outside groups, particularly the IPCC and the CCSP, as being correct without a careful and critical examination of their conclusions and documentation. If they should be found to be incorrect at a later date, however, and EPA is found not to have made a really careful independent review of them before reaching its decisions on endangerment, it appears likely that it is EPA rather than these other groups that may be blamed for any errors. *Restricting the source of inputs into the process to these two sources may make EPA's current task easier, but it may come with enormous costs later if they should result in policies that may not be scientifically supportable.*¹⁵

Rather than heed this warning, EPA ignored and attempted to marginalize Dr. Carlin.¹⁶ Since that time, the IPCC has faced mounting criticisms. E-mail exchanges between top climate scientists at East Anglia University revealed an underlying bias and distinct agenda amongst the most prominent scientific proponents of climate change. Soon after, scientists and even IPCC contributors began discovering significant errors in the IPCC's 4th Assessment Report.

As Dr. Carlin warned, legal challenges to EPA's endangerment finding are already mounting.¹⁷ Because EPA failed to develop an independent record, its regulatory finding is weakened by flaws in the IPCC report. To date, EPA has nonchalantly dismissed these concerns.¹⁸ This report finds, however, that the bias evidenced in the Climategate scandal, coupled with the now well-documented errors in the IPCC report, render the IPCC an inadequate foundation for a massive regulatory finding.

¹⁴ Proposed Endangerment and Cause and Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 Federal Register 18886, 18894 (proposed April, 24, 2009) (emphasis added).

¹⁵ Alan Carlin, *Comments on Draft Technical Support Document for Endangerment Analysis for Greenhouse Gas Emissions under the Clean Air Act*, (March 16, 2009) (emphasis added), available at http://www.carlineconomics.com/files/pdf/end_comments_7b1.pdf.

¹⁶ *The Politics of EPA's Endangerment Finding*, Joint Minority Staff Report - Committee on Oversight and Government Reform and Select Committee on Energy Independence and Global Warming (October 15, 2009) available at http://republicans.globalwarming.house.gov/Media/file/PDFs/Corr_Oversight/101509_EPA_Politics.pdf.

¹⁷ Robin Bravender, *16 'Endangerment' Lawsuits Filed Before Deadline*, Greenwire (February 17, 2010) available at <http://www.eenews.net/Greenwire/2010/02/17/archive/2?terms=epa+legal+challenges>.

¹⁸ EPA letter from Assistant Administrator Gina McCarthy, to Congressmen Sensenbrenner and Issa and Senators Barrasso and Vitter (January 22, 2010), responding to a December 2, 2009 letter to EPA Administrator Lisa Jackson.

A. Climategate E-mails - In Their Own Words

In a Press Conference last December announcing the final Endangerment Finding, EPA Administrator Lisa Jackson stated that EPA did not delay its finding to conduct an investigation into the CRU e-mails because “nothing in the emails undermines the science upon which the findings are based.”¹⁹ However, the now infamous Climategate scandal reveals a cabal of ideologically-driven scientists intent on promoting their agenda, even at the expense of scientific truth. A close look at the e-mails reveals a pattern of troubling behavior that includes:

- Systemic suppression of dissenting opinions among scientists:
From: Phil Jones, Date: Thu Jul 8 16:30:16 2004
*I can't see either of these papers being in the next IPCC report. Kevin and I will keep them out somehow - **even if we have to redefine what the peer-review literature is!***
- Intimidation of journal editors and journals that publish articles considered to challenge the so-called consensus on global warming:
From: Michael E. Mann, Date: Tue, 11 Mar 2003 08:14:49 -0500
*This was the danger of always criticising the skeptics for not publishing in the "peer-reviewed literature". Obviously, they found a solution to that--take over a journal! **So what do we do about this? I think we have to stop considering "Climate Research" as a legitimate peer-reviewed journal. Perhaps we should encourage our colleagues in the climate research community to no longer submit to, or cite papers in, this journal. We would also need to consider what we tell or request of our more reasonable colleagues who currently sit on the editorial board...***
- Manipulation of data and models:
From: Phil Jones, Date: Tue, 16 Nov 1999 13:31:15 +0000
*I've just completed **Mike's Nature trick** of adding in the real temps to each series for the last 20 years (ie from 1981 onwards) and from 1961 for **Keith's to hide the decline.***
- Evasion of legitimate requests for data and underlying computer codes filed under freedom of information acts:
From: Phil Jones, Date: Mon Feb 21 16:28:32 2005
*I'm getting hassled by a couple of people to release the CRU station temperature data. **Don't any of you three tell anybody that the UK has a Freedom of Information Act !***
- Vested interests shared by many climate scientists and proponents of climate legislation:
From: Mick Kelly, Date: Tue, 24 Jun 2003 14:17:15

¹⁹ Robin Bravender, *EPA to Publish Endangerment Finding Tomorrow*, Greenwire (Dec. 14, 2009) available at <http://www.eenews.net/Greenwire/2009/12/14/8/>.

*NOAA want to give us more money for the El Nino work with IGCN. How much do we have left from the last budget? I reckon most has been spent but **we need to show some left to cover the costs of the trip Roger didn't make** and also the fees/equipment/computer money we haven't spent **otherwise NOAA will be suspicious**. Politically this money may have to go through Simon's institute but there overhead rate is high so maybe not!*

B. IPCC Errors - Advocating an Agenda

Increasingly, evidence has mounted that the IPCC's agenda-driven process has in fact led to serious factual errors and, ultimately, an unreliable report. Problems with the 4th Assessment Report include:

- The IPCC claimed that Himalayan glaciers would disappear as soon as 2035. The United Nations didn't base this hysteria on an academic study. Instead, it relied on a news story that interviewed a single Indian glaciologist in 1999. Syed Hasnain, the glaciologist in question, says he was misquoted and provided no date to the reporter. The doomsday account was simply made up, and the UN never bothered to confirm the claim.²⁰
- The IPCC claimed that the world "suffered rapidly rising costs due to extreme weather-related events since the 1970s"²¹ because of global warming. It cited one unpublished study to prove this. When the underlying research was published in 2008, the authors backpedaled: "We find insufficient evidence to claim a statistical relationship between global temperature increase and catastrophe losses."²²
- The IPCC stated that up to 40% of the Amazon rain forest was at risk because of rising global temperatures. Again, the IPCC did not cite any academic studies to substantiate this claim, but instead referenced a World Wildlife Fund report, which was authored by two non-scientists.²³
- The IPCC claimed that 55% of the Netherlands is below sea level. In fact, only 26% is.²⁴
- The IPCC found that by 2020, agricultural production in Africa would be reduced by 50% due to influences of global warming. This fact was frequently repeated by IPCC Climate chief Dr. Rajendra Pachauri and UN Secretary General Ban Ki-moon. The new

²⁰ *A Glacier Meltdown*, The Wall Street Journal (January 23, 2010), available at <http://online.wsj.com/article/SB10001424052748703837004575013393219835692.html>.

²¹ Jonathan Leake, *UN Wrongly Linked Global Warming to Natural Disasters*, The Sunday Times (January 24, 2010), available at <http://www.timesonline.co.uk/tol/news/environment/article7000063.ece>.

²² *Id.*

²³ Jonathan Leake, *The UN Climate Panel and the Rainforest Claim*, The Sunday Times (January 31, 2010), available at <http://www.timesonline.co.uk/tol/news/environment/article7009705.ece>.

²⁴ *Netherlands Adds to UN Climate Report Controversy*, AFP (February 5, 2010), available at http://www.breitbart.com/article.php?id=CNG.8d6e5773c60565dfc6e882b0a8dcbf18.4e1&show_article=1.

lead author of the IPCC's climate impacts team, however, told *The Sunday Times* that he could find nothing in the report to support the claim.²⁵

The above errors are most troubling because of the procedural flaws that they uncover. The errors occur entirely in one direction - overstating the science of climate change - and the IPCC has been reluctant to acknowledge them. Dr. Pachauri initially dismissed critics' reports of the Himalayan glacier melt as "voodoo science." It later turned out that Pachauri knew that the prediction was wrong in advance of the climate change conference in Copenhagen, but elected not to disclose it. He only grudgingly issued a partial disclosure when Pallava Bagla, a writer for the journal *Science*, produced e-mail correspondence from last autumn showing Mr. Pachauri already knew of the fraud.²⁶

On February 3, Mr. Pachauri slandered the IPCC's critics as "people who deny the link between smoking and cancer; they are people who say that asbestos is as good as talcum powder - I hope that they apply [asbestos] to their faces every day."²⁷ He further attempted to redirect attention away from the report's failures by blaming "business interests" that "spread a lot of disinformation"²⁸ for skepticism about climate change.

Dr. Pachauri's disdain for global warming skeptics in the above mentioned interview is not an isolated incident. Just a few months prior, he disparaged the Indian Environment Minister's concerns on whether global warming was responsible for rapid melting of the Himalayan glaciers. "We have a very clear idea of what is happening," the Chairman of the IPCC told the *Guardian* newspaper. "I don't know why the minister is supporting this unsubstantiated research. It is an extremely arrogant statement."²⁹

Comments like these raise serious questions about Dr. Pachauri's competence at his current post. The falsity of the Himalayan melting data was well known among glaciologists, and in fact, one such expert, Georg Kaser brought the error to the IPCC's attention prior to the report's publication.³⁰ Coupled with evidence of bias, political motivation, and poor review processes, it is no surprise that calls for Dr. Pachauri's resignation have been mounting.

Perhaps the most stinging rebuke thus far of the IPCC and Dr. Pachauri has come from Dr. Pachauri's home country of India, which is expected to create its own panel on climate change because of its concerns about the IPCC reports. While claiming to still respect the IPCC, India's Environment Minister Jairam Ramesh said, "There is a fine line between climate science and

²⁵ Jonathan Leake, *Africagate: top British scientist says UN panel is losing credibility*, *The Sunday Times* (February 7, 2010), available at <http://www.timesonline.co.uk/tol/news/environment/article7017907.ece>.

²⁶ Ben Webster, *Climate Chief was Told of False Glacier Claims Before Copenhagen*, *The Times* (January 30, 2010), available at <http://www.timesonline.co.uk/tol/news/environment/article7009081.ece>

²⁷ Amy Kazmin, *Interview Transcript: Rajendra Pachauri*, *Financial Times* (February 3, 2010), available at http://www.ft.com/cms/s/0/260c9290-10d7-11df-975e-00144feab49a.html?nclink_check=1.

²⁸ *Id.*

²⁹ *A Glacier Meltdown*, *The Wall Street Journal* (January 23, 2010), available at <http://online.wsj.com/article/SB10001424052748703837004575013393219835692.html>.

³⁰ *Glaciers and the IPCC*, *The Economist* (January 21, 2010), available at http://www.economist.com/sciencetechnology/displaystory.cfm?story_id=15328534.

climate evangelism. I am all for climate science but not for climate evangelism. I think people misused the IPCC report.”³¹

C. The Oxburgh Panel

In response to Climategate, UEA convened a panel of seven scientific experts to review the University’s CRU. That panel, chaired by Lord Oxburgh, gushed, “We believe that CRU did a public service of great value by carrying out much time-consuming meticulous work on temperature records at a time when it was unfashionable and attracted the interest of a rather small section of the scientific community.”³²

While supporters have rushed to cite the panel’s findings, its conclusions were never in doubt. The seven scientific experts were chosen by the University itself. According to the *Times Online* of London, Lord Oxburgh even told the University he was unfit to chair the panel because of conflicts of interest, warning UEA that people might question his independence.³³

Lord Oxburgh’s warning is not surprising given that he has strong personal and financial interests in anti-global warming policy. He is a director of an international environmental organization called Globe International. He is also Chairman of a green energy firm called Falck Renewables, and President of the Carbon Capture and Storage Association.

Beyond the clear bias, the panel’s methodology left little doubt as to the result. The panel did not review the Climategate e-mails or interview a single critic of the CRU. Instead, panel members reviewed eleven articles “on the advice of the Royal Society” that they deemed ‘representative.’³⁴ They did not provide any information on how the Royal Society determined that these eleven publications were representative, nor did they mention who at the Royal Society actually made the selection. The report says that UEA agreed that the Royal Society selection was a “fair sample,” but it does not say who at the UEA made this determination or upon what criteria they relied. The eleven papers reviewed did not include a single paper on the so-called ‘hockey stick’ theory, for which the CRU has been most heavily criticized. The review therefore amounted to no more than a secondary peer review of a handful of cherry-picked documents.

³¹ *India to have own Panel on Climate Change: Jairam Ramesh*, The Times of India (February 4, 2010), available at <http://timesofindia.indiatimes.com/india/India-to-have-own-panel-on-climate-change-Jairam-Ramesh/articl> *Report of the International Panel set up by the University of East Anglia to examine the research of the Climatic Research Unit*, (April 14, 2010), available at <http://www.uea.ac.uk/mac/comm/media/press/CRUstatements/SAP.eshow/5535830.cms>.

³² *Report of the International Panel set up by the University of East Anglia to examine the research of the Climatic Research Unit*, (April 14, 2010), available at <http://www.uea.ac.uk/mac/comm/media/press/CRUstatements/SAP>.

³³ Ben Webster, *Analysis: Sceptics will not be Appeased*, TimesOnline (April 14, 2010), available at <http://www.timesonline.co.uk/tol/news/environment/article7097334.ece>.

³⁴ Steve McIntyre, *A “Fair Sample”?*, Climate Audit (April 15, 2010), available at <http://climateaudit.org/2010/04/15/a-fair-sample/>.

D. House of Commons' Science and Technology Committee

Two weeks earlier, another UK review, conducted by the House of Commons' Science and Technology Committee, came to a similar conclusion, saying they had seen "no evidence to support charges that the University of East Anglia's Climatic Research Unit or its director, Phil Jones, had tampered with data or perverted the peer review process to exaggerate the threat of global warming."³⁵

The British political committee's investigation was conducted in a short time frame so that the committee could publish a report before Britain's national election. The Committee report was written after one day's testimony and stressed that it did not cover all issues in lieu of the fact that there were (at the time) two more inquiries pending. As Phil Willis, chairman of the Committee stated, "Clearly we would have liked to spend more time on this," he said, before adding jokingly: "We had to get something out before we were sent packing."³⁶

Though the Committee did criticize the way Dr. Jones and his colleagues handled freedom of information requests and found that CRU had to be more transparent in the future, this "study" was little more than a statement of political support.

E. The Politics Within EPA

While Dr. Pachauri's *mea culpa* on the glaciers error has been much publicized, Administrator Jackson and her staff continue to evade requests by this Committee for evidence of transparency. EPA has an affirmative obligation to ensure the research it is relying on satisfies the rigorous standards of the Data Quality Act and the agency's own Peer Review Guidelines. However, the corruption associated with the IPCC process appears to be inconsistent with both. Accordingly, EPA's dismissal of evidence illustrating that the peer review process the IPCC relied on was corrupted and manipulated by influential scientists is alarming. EPA's own peer review handbook states:

The quality of science that underlies our regulations is vital to the credibility of EPA's decisions and ultimately the Agency's effectiveness in protecting human health and the environment. One important way to ensure decisions are based on defensible science is to have an open and transparent peer review process.³⁷

Further, OMB guidelines require that:

If an agency is responsible for disseminating influential scientific, financial, or statistical information, agency guidelines shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties.

³⁵ *Scientists Cleared -- After One-Day Probe*, Foxnews.com (March 31, 2010), available at <http://www.foxnews.com/scitech/2010/03/31/climate-gate-inquiry-largely-clears-scientists/>.

³⁶ *Id.*

³⁷ EPA's Peer Review handbook, available at http://www.epa.gov/peerreview/pdfs/peer_review_handbook_2006.pdf.

The fact that the use of original and supporting data and analytic results have been deemed “defensible” by peer-review procedures does not necessarily imply that the results are transparent and replicable.³⁸

The CRU e-mails include conversations between scientists discussing ways to use the law to prevent sharing of information and data to those who request it under a freedom of information act. Refusal to provide raw data and other research materials is clearly not transparent and raises serious questions about the integrity of the research. Moreover, as it turns out in the case of CRU staff, it is illegal. According to the United Kingdom government body that administers freedom of information laws, the CRU violated laws by hiding information it should have made available.³⁹

Specifically, referring to repeated requests for data made by a retired engineer and climate skeptic David Holland, deputy information commissioner Graham Smith said that, “The emails which are now public reveal that Mr Holland's requests under the Freedom of Information Act were not dealt with as they should have been under the legislation. Section 77 of the Freedom of Information Act makes it an offence for public authorities to act so as to prevent intentionally the disclosure of requested information.”⁴⁰

Such criminal behavior would not be permissible had the research been conducted in-house by EPA scientists, who would have been legally obligated to provide reviewers with “access to key studies, data and models, to perform their role as peer reviewers.”⁴¹

EPA should not rely on IPCC work if the process used to develop its reports would violate EPA’s own research standards. When Dr. Alan Carlin tried to make that argument last year by demonstrating the questionable nature of some of IPCC’s data and models, he was shut down. His superiors forbade him to continue his work on climate change and they demoted him. He was reassigned to tasks previously performed by junior staff members and contractors. Immediately following submission of his report, NCEE removed Dr. Carlin from its climate change workgroup, deleted him from the group’s e-mail distribution list, stopped inviting him to the group’s periodic meetings, and forbade him to do any work on the climate issues he had previously handled. Dr. McGartland even reprimanded Dr. Carlin for attending a general briefing on climate change.

These retaliatory actions were clearly taken in response to Dr. Carlin’s dissenting report on EPA’s then-proposed Endangerment Finding, and they dramatically changed the nature of Dr. Carlin’s long-standing role within EPA.⁴²

³⁸ OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Federal Register 303 (January 3, 2002).

³⁹ James Randerson, *University in Hacked Climate Change Emails Row Broke FOI Rules*, The Guardian (January 27, 2010), available at <http://www.guardian.co.uk/environment/2010/jan/27/uea-hacked-climate-emails-foi>.

⁴⁰ *Id.*

⁴¹ EPA’s Peer Review handbook, available at http://www.epa.gov/peerreview/pdfs/peer_review_handbook_2006.pdf.

⁴² *The Politics of EPA’s Endangerment Finding*, Joint Minority Staff Report - Committee on Oversight and Government Reform and Select Committee on Energy Independence and Global Warming (October 15, 2009)

IV. CONCLUSION

The Climategate e-mails raise legitimate questions about the veracity of the IPCC 4th Assessment Report, and other synthesis documents that rely on the work of the implicated scientists. Normally, peer review creates the presumption of objectivity. However, this presumption is overcome in this instance by an overwhelming showing that data collected and research conducted by IPCC scientists and reviewers, such as Drs. Michael Mann and Phil Jones, was not unbiased, accurate, or reliable.

In refuting the picture painted by the CRU e-mails, EPA claims that the “scientific evidence of the cause and effects of climate change include numerous independent datasets and hundreds of papers published in peer-reviewed literature that together make an overwhelming case that human activities are significantly contributing to dangerous climate change.”⁴³ But there is no evidence of EPA having actually conducted a review of the e-mails that could support such a broad based conclusion.

In fact, EPA’s specious assertion is directly contradicted by other governmental organizations and public institutions. The UN, Hadley CRU, the Met office, and The Pennsylvania State University are in various stages of investigations into these e-mails. In addition to the two reviews discussed earlier in this document, on February 3, Penn State issued a report on its internal inquiry into Dr. Michael Mann, Director of the school’s Earth System Science Center. That report concluded that further investigation was warranted because questions still exist about Dr. Mann’s conduct of his research activity.⁴⁴

The stakes on EPA’s regulations are high. The fact that the world is being asked to spend tens of trillions of dollars on global warming solutions without being able to honestly and transparently evaluate the data upon which the claims rest should alarm us all. Events of the past few months - Climategate, IPCC errors, and EPA’s disregard of them both - have gradually eroded the “science is settled” position of supporters of man-made global warming.

Polling data reflect a changing trend in people’s attitudes toward global warming. A recent Rasmussen poll shows 47% of US voters believe global warming is caused by long-term planetary trends, while 35% blame human activity. Compare this to April 2008, when the

available at

http://republicans.globalwarming.house.gov/Media/file/PDFs/Corr_Oversight/101509_EPA_Politics.pdf.

⁴³ EPA letter to Sensenbrenner, Issa, Barrasso & Vitter (January 22, 2010), in response to a December 2, 2009 letter.

⁴⁴ *RA-10 Inquiry Report: Concerning the Allegations of Research Misconduct Against Dr. Michael E. Mann, Department of Meteorology, College of Earth and Mineral Sciences, The Pennsylvania State University* (February 3, 2010), by RA-10 Inquiry Committee for the Case of Dr. Michael E. Mann: Henry C. Foley, Ph.D., Vice President for Research and Dean of the Graduate School, Alan W. Scaroni, Ph.D., Associate Dean for Graduate Education and Research, College of Earth and Mineral Sciences, and Candice A. Yekel, M.S., CIM., Director, Office for Research Protections, Research Integrity Officer, available at http://www.research.psu.edu/orp/Findings_Mann_Inquiry.pdf.

numbers were flipped with 34% blaming planetary trends for global warming and 47% human activity.⁴⁵

While it may be too strong to call the science behind climate change a hoax, there certainly is a feeling that the public and world leaders may have been sold expensive snake oil.

Fortunately, there are changes taking place that lend hope to the possibility of honest and transparent discussions in the future. It is too soon to say that we are at a turning point, but personnel changes and the use of a more contrite tone by IPCC officials in the climate change debate are steps in the right direction. The following provide encouragement that upcoming deliberations may focus more on the science behind climate change, rather than the advocacy of a global warming agenda:

- In a frank and sober BBC interview on February 13, Dr. Jones agreed that there has been “no statistically-significant global warming” from 1995 to the present.⁴⁶
- Dr. Pachauri and other IPCC officials have publicly acknowledged a problem with the Panel’s fact checking and peer review process, and promised to tackle the problem by enforcing their rules vigilantly. According to Dr. Pachauri, IPCC's reforms will aim to “ensure that even the slightest possibility of someone not adhering to procedures is eliminated completely. We just have to act like monitors at every stage.”⁴⁷ To help guide the IPCC, the InterAcademy Council (IAC), “a multinational organization of the world’s science academies, has been requested to conduct an independent review of the IPCC processes and procedures.”⁴⁸ The IAC “has been asked to establish an ad hoc Independent Evaluation Group (IEG) of experts from relevant fields to conduct the review and to present recommendations on possible revisions of IPCC practices and procedures.”⁴⁹ On May 3rd, the IAC announced that twelve people had been selected for the task, led by Harold Shapiro, an economist and former President of Princeton University as well as the University of Michigan.⁵⁰

⁴⁵ *Energy Update: 47% Blame Global Warming on Planetary Trends*, Rasmussen Reports (February 15, 2010), available at

http://www.rasmussenreports.com/public_content/politics/current_events/environment_energy/energy_update.

⁴⁶ *Q&A: Professor Phil Jones*, BBC (February 13, 2010), available at

<http://news.bbc.co.uk/2/hi/science/nature/8511670.stm>.

⁴⁷ Jeffrey Ball & Keith Johnson, *Push to Oversimplify at Climate Panel*, The Wall Street Journal (February 26, 2010), available at

<http://online.wsj.com/article/SB10001424052748704188104575083681319834978.html?KEYWORDS=global+warming>.

⁴⁸ *UN Requests IAC Review of IPCC* (March 10, 2010), available at

<http://www.interacademycouncil.net/?id=12852>.

⁴⁹ *Id.*

⁵⁰ *InterAcademy Council Names IPCC Review Committee* (May 3, 2010), available at

<http://reviewipcc.interacademycouncil.net/IACNamesIPCCReviewCommittee.html>.

- After three-and-a-half years at the helm of the United Nations Framework Convention on Climate Change (UNFCCC), Yvo de Boer announced his resignation effective July 1.⁵¹ A fresh perspective from a new leader would be welcome change for the member countries.
- At a February 2010 World Meteorological Organization meeting in Turkey, 150 officials reached an agreement that future climate change data should be made more accessible for independent scrutiny, so as to provide for a more precise world climate scenario.⁵²

⁵¹ Juliet Eilperin & Steven Mufson, *Climate Pact Appears Increasingly Fragile; U.N. Official Quits*, The Washington Post (February 19, 2010), available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/18/AR2010021801490.html>.

⁵² Nicholas Kralev, *Climate Change Data to Face Independent Scrutiny*, Washington Times (February 26, 2010), available at <http://www.washingtontimes.com/news/2010/feb/26/warming-put-to-new-grand-challenge/>.