



# HEALTH & CLEAN AIR

## newsletter

Fall-Winter 2009

## A Package For Copenhagen:

### *Existing Authorities in the United States for Responding to Global Warming*

#### **Introduction And Summary**

This review is largely illustrative of the manner in which existing authorities could be used to attack global warming, not an exhaustive review. Huge areas of law are unaddressed by this document, ranging from fish and wildlife protection, restrictions on the use of federal lands, use of agriculture statutes (e.g., crop and milk subsidy programs), mandated purchases by armed services and other federal entities, and many, many others. (The full analysis, which is roughly 130 pages in length, is posted at the newsletter website, <http://healthandcleanair.org/>, where it can be downloaded in pdf.)

The most important points to be drawn from these illustrative materials are:

- There is vast potential in the use of existing authorities to attack global warming. There is no need to delay action until Congress passes new laws.
- This is especially true if efforts focus on so-called “forcers,” which are causes of global warming such as black carbon, or diesel soot; tropospheric ozone; or smog; and, methane, or gases from oil and gas operations, landfills, animal feedlots and sewage treatment plants.
- Forcers are not nearly as well known as carbon dioxide, but collectively they cause as much current warming as it does, and even more in the Arctic, Antarctic and other snowy and icy regions. More importantly, while carbon dioxide has a lifetime of 50 to 3,000 years the forcings last only a few minutes, weeks or months. The longest lived of them is methane, which stays around for about 12 years. All of the forcings are already regulated in many different laws, albeit not for climate purposes.
- The use of existing laws and authorities would avoid the potential for needless weakening amendments to the Clean Air Act and other statutes.
- An Administration-wide focus on identifying and exploiting such authorities could develop a robust and complete policy for international meetings on global warming, including the Copenhagen Conference of the Parties.

- The number of authorities is so vast and comprehensive, that some would question the commitment of an Administration that chooses to ignore these opportunities, when they represent a speedy and effective way forward domestically and internationally.
- The single most urgent item of business is to assure that the “endangerment finding” now pending is amended to address non-Kyoto causes of global warming.

### Obstacle as Opportunity

The Obama Administration is on the horns of a global warming dilemma: to establish a global warming cap-and-trade program requires a new law. Even though the House has passed legislation, and the Senate Committee on Environment and Public Works has reported a climate bill, it is next to impossible to expect a new law dealing with climate change in the near future. This leaves the President with nothing to “take to Copenhagen,” which is the next international meeting on global warming, unless....

### Solution

Through administrative action, the President could establish a series of coordinated, parallel initiatives to deal with causes of global warming that are already regulated by several U.S. agencies, especially EPA—methane from landfills and coal mines, for example, as well tropospheric ozone, or smog, black carbon, or soot, and a variety of other pollutants. Using existing laws to address short-lived causes of global warming, the so-called “forcers,” has a wide variety of unique advantages.

- **Not candidates for cap-and-trade.** Because they cause death and illness, these pollutants would never

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be candidates for a well designed carbon cap-and-trade program. And, because their lifetimes are measured in weeks, months and a few years—compared to 50 to 3,000 years for carbon dioxide—reducing them would curb warming when it matters most: now. The most difficult and intractable decisions that must be made in new legislation are linked to the details of trading. Those could be left for Congressional resolution, while an aggressive program to slow global warming is launched to deliver virtually immediate benefits.

- **Now regulated under many laws.** Although now regulated because they injure human health, these pollutants are subject to not only the Clean Air Act, but a variety of other environmental laws as well. These range from the Resource Conservation and Recovery Act and the Clean Water Act to the Diesel Emissions Reduction Act of 2005. Because these pollutants are already regulated, the task is not the heavy one of justifying a new program to address them, but instead the relatively simpler job of modifying existing authorities and approaches.
- **Executive action is all that’s required.** President Obama could essentially order the Administrator of

EPA to coordinate these laws to focus on climate benefits of reducing short-lived causes of warming, and produce a complete and robust package for Copenhagen that would not only curb global warming, but do so quickly. As a bonus, if crafted properly, the program would save millions of lives and avoid billions of illnesses, because these pollutants cause both.

- **Millions die, billions sick.** In developing nations, these pollutants exact a horrific toll. By one estimate, indoor exposures to black carbon, or soot, from the burning of wood, dung and other fuels for cooking and heat, kills 5 million children a year under the age of five. In studies of children in Leicester, England, those most exposed to black carbon suffered a lifelong, irreversible loss of lung capacity of roughly 30 percent. California studies show that smog causes asthma. Throughout the world, rising levels of smog reduce crop productivity and forest growth. Together, the short-lived pollutants cause as much current global warming as carbon dioxide and two of them, smog and soot, are major causes of warming and melting in the Arctic.
- **Unique opportunity.** The case for using reductions in these short-lived pollutants as the opening wedge in dealing with global warming is compelling. This opportunity may not be presented again; it requires no Congressional action; and it should appeal to all nations, developing and developed alike.
- **Conformity.** Provisions of the Federal Clean Air and Road Construction Programs.

# The Critical Need:

## *Focus Both on Short-Lived “Forcers” and Carbon Dioxide*

**C**ongress and the Obama Administration are beginning a likely long, slow march toward confronting global warming. As is so often the case with legislation, the result could well be not a safer future, but instead one that is vastly more dangerous.

- **Virtually all proposals, whether inside or outside Congress, focus on compelling cuts in emissions of carbon dioxide (CO<sub>2</sub>),** an invisible and odorless gas created when carbon rich fuels like coal, oil and even wood are burned. It is widely, but wrongly, considered the principal cause of global warming. If an exclusive focus of legislation, or even the principal goal, is CO<sub>2</sub> cuts, a U.S. global warming law could prove to be a death warrant for the world’s inhabitants.
- **CO<sub>2</sub> has a lifetime of 50 to 3,000 years,** so slashing emissions would have no near-term benefit. As Dr. Susan Solomon, one of America’s most able atmospheric scientists explained recently, “We have to think about it much more like nuclear waste than, like say, smog or acid rain.” Solomon, a senior scientist for the National Oceanographic and Atmospheric Administration, added, “What we’re doing with carbon dioxide is forever.”
- **There are other causes of global warming with lifetimes of a few minutes to a few**

**years.** Black carbon, or soot, emitted in vast quantities by diesels and coal-fired power plants, lasts one or two weeks. Ozone, or smog, lasts two to three weeks and carbon monoxide, which indirectly causes warming, a few minutes. Other causes of warming last longer. Methane, or natural gas, emitted by refineries, landfills, and sewage plants lasts eight to nine years. HFC-134a, used in the air conditioners of cars and trucks, lasts for about 14 years (its use in new vehicles is banned in Europe starting in 2011).

- **Short-lived pollutants are, in the aggregate, the cause of most warming currently being experienced, though CO<sub>2</sub> will be the dominant cause in the future.** What is required is not a strategy that targets a single cause of global warming or, even six, as the Kyoto Protocol does, but all of them.
- **Reducing BC, ozone and other non-CO<sub>2</sub> causes of global warming will bring faster cooling, reduce human death and illness, and increase crop yields and forest productivity.** Black carbon and ozone kill people, so reducing them will save lives and reduce illness. Globally, indoor exposures to black carbon from cooking and other fires, kill an estimated 5 million infants and children a year. Ozone is extremely toxic to plants, so cutting concentrations will increase

crop yields and forest productivity. Chlorofluorocarbons (CFCs), the family of industrial chemicals better known by their DuPont trade name of Freons, destroy stratospheric ozone and cause heart attacks, in addition to causing global warming.

- **Because the planet is racing toward so-called “tipping points,” the need for immediate and substantial cuts in short-lived causes of global warming is urgent.** The Arctic, Antarctic, glaciers and snow packs are warming and melting, tundra and permafrost is thawing, oceans are acidifying, coral and plankton—tiny organisms at the base of the global food chain—are dying, deserts are spreading, droughts, storms and floods are increasing.
- **The gravest threat, certainly in the near term, is not gradual warming, but, figuratively, falling over a cliff.** Change in nature is rarely gradual. Snow crashes down a mountainside in an avalanche, lightning thunders through the air at the speed of light and the Twin Towers stand, stand, stand... then collapse on themselves as a small unknown tipping point is passed. Only reducing short-lived causes of global warming can avoid this cataclysmic threat.

Existing laws and other authorities that could be used to attack global warming include the following:

■ **The Clean Air Act:** at least 7 different approaches could be used, ranging from adoption of new ambient standards to issuing guidelines to define control technologies.

■ **“Conformity” and other provisions of the Federal clean air and road construction programs:** by making the retrofit of diesel engines with devices that trap and destroy soot an “eligible project cost” of highway and transit construction programs—programs that are already being funded on an ad hoc basis—emissions could be reduced sharply and quickly. As matters now stand, flowers planted on roadsides and in medians qualify for 90 percent federal funding, but measures like traps that would save lives are not.

■ **The “Superfund”:** among the most flexible of federal laws, this could be used to, for example, designate elements and compounds that cause global warming as hazardous substances, triggering requirements for the reporting of and responses to releases, as well as liability for damages.

■ **The Resource Conservation and Recovery Act:** expansive definitions in RCRA enable the law to extend into activities that generate wastes of all sorts—air and water pollution, for example. In addition, RCRA contains a little known requirement that generation of wastes—again, of all sorts, not just that destined for dumps or incinerators—be “minimized.”

■ **The Clean Water Act:** a variety of regulatory and non-regulatory tools are made available that could be used to virtually eliminate emissions of methane, a powerful greenhouse gas in its own right, but also one that cre-

ates other “forcers,” such as ozone, or smog.

■ **Public Resource Laws and Inherent Powers of the President:** following the examples of both Roosevelts, Carter, Clinton and George Bush, President Obama could designate the U.S. territory that lies within

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the Arctic as a protected area under the Antiquities Act—just one of the many different statutes and inherent powers available to the Executive Branch—thus setting the stage for domestic and international actions to curb global warming. Without some action, it is likely that the Arctic will be free of ice, perhaps within a decade.

■ **Common Law:** using the tobacco lawsuits of the 1990s as a model, money damages or equitable relief can be sought against corporations under nuisance, negligence and a wide variety of other theories, including personal liability for corporate officers and directors, either criminally or civilly or both, for actions of the business. Indeed, the patterns of spending, conduct and public statements are consistent with the theory that just as tobacco firms established

a program to sow confusion and discredit science, so, too, did some other corporations intentionally seek those same scientists, so-called “skeptics” were sought out for the express purpose of misrepresenting and distorting global warming science, using corporate front groups. (See next page.)

■ **Knowing or Reckless Endangerment:** virtually all of the media-specific laws now include provisions for bring corporations and, under certain circumstances their officers and directors, to the bar for knowing or reckless endangerment.

■ **The Racketeer Influenced and Corrupt Organizations Act (RICO):** starting in the 1980s, lawyers began exploiting the RICO Act, which allows civil claims to be brought by any person injured in business or property because of a RICO violation, which, if established, automatically triggers judgment in the amount of three times actual damages, as well as an award for costs and attorneys’ fees.

There undoubtedly are many other laws under which global warming can be attacked without need for further statutory enactments. While many of these require an initiative on the part of the U.S. government, many others can be pursued by state attorneys general, district attorneys or even private individuals. What is lacking, then, are not legal authorities to address global warming, but people willing to invoke them to possibly stave off the gravest threat ever posed to human survival.

# Genuine Skeptics or Pay-For-Hire Skeptics?

## PASSIVE SMOKING

### Steve Milloy

*“Anti-smoker propaganda may be killing more smokers than smoking does”<sup>1</sup>*

*“Secondhand smoke is annoying to many nonsmokers. That is the essence of the controversy and where the debate should lie—the rights of smokers to smoke in public places versus the rights of nonsmokers to be free of tobacco smoke.”<sup>2</sup>*

### Richard Lindzen

*The evidence linking passive smoking to cancer is “weak, inconsistent and ambiguous.”<sup>3</sup>*

### S. Fred Singer

*Tobacco smoke when exhaled as secondhand smoke is so diluted that the harmful substances inhaled in the workplace are nearly zero.<sup>4</sup>*

*“In their anti-smoking zeal the U.S. Environmental Protection Agency had cooked the data on second-hand tobacco smoke claiming 3,000 lung cancer deaths a year.”<sup>5</sup>*

### Michael Crichton

*Studies showing 3,000 deaths annual from passive smoking “was openly fraudulent science” (so) “we now have a social policy supported by the grossest of superstitions.”<sup>6</sup>*

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1. “Kite flying of the day:”and “Ban fails to stop smoking ads,” <http://junkscience.com/jan01.htm>, accessed July 26, 2007.

2. “Second-Hand Smokescreens,” Fox News, June 04, 2001.

3. Richard Lindzen, “Passive Smoking: How Great a Hazard,” Consumers’ Research, July, 1991, <http://tobaccodocuments.org/pm/2046323437-3484.html>, accessed July 25, 2007.

4. S. Fred Singer; The Week That Was, July 22, 2006, <http://www.sepp.org/Archive/weekwas/2006/July%2022.htm>

5. Public misled, National Post/November 22, 2006, <http://www.canada.com/nationalpost/financialpost/story.html?id=78f870f0-60ac-460e-860c-33644aae26f2>

6. Michael Crichton; “Aliens Cause Global Warming,” California Institute of Technology, Pasadena, CA, January 17, 2003 <http://www.michaelcrichton.net/speech-alienscauseglobalwarming.html>

## GLOBAL WARMING

### Steve Milloy

*“Hell—we don’t even know if the planet has actually recorded a genuine increase in mean temperature over the last half century.”*

*“It will take all our strength in the coming years to combat global warming alarmism and to keep America from falling into the totalitarian green abyss.”<sup>7</sup>*

### Richard Lindzen

*“I think it’s [concern about global warming] mainly just like little kids locking themselves in dark closets to see how much they can scare each other and themselves.”<sup>8</sup>*

*ExxonMobil is “the only principled oil and gas company I know in the US” and that “they have a CEO who is not going to be bamboozled by nonsense.”<sup>9</sup>*

### S. Fred Singer

*“Are human activities, including the burning of fossil fuel, the primary or even significant cause of the current warming trend? The scientifically appropriate answer—cautious and conforming to the facts—is probably not.”<sup>10</sup>*

*“Contrary to the conventional wisdom and the predictions of computer models, the Earth’s climate has not warmed appreciably in the past two decades, and probably not since about 1940.”<sup>11</sup>*

### Michael Crichton

*“Nobody believes a weather prediction twelve hours ahead. Now we’re asked to believe a prediction that goes out 100 years into the future? And make financial investments based on that prediction? Has everybody lost their minds?”<sup>12</sup>*

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7. Climate Confusion FrontPageMagazine.com, January 21, 2009, <http://97.74.65.51/readArticle.aspx?ARTID=33775>

8. “Could Global Warming Kill Us?,” Larry King Live, January 31, 2007.

9. Lesley Curwen, “Science climate conflict warms up,” BBC World Service, April 26, 2007.

10. 11/16/2006, Warming Caused by Natural Cycle, Not Humans, <http://environment.ncpa.org/news/warming-caused-by-natural-cycle-not-humans>

11. Hearing before the Senate Committee on Commerce, Science, and Transportation, Testimony of Prof. S. Fred Singer, July 18, 2000, <http://www.nationalcenter.org/KyotoSingerTestimony2000.html>

12. “Aliens Cause Global Warming,” California Institute of Technology, Pasadena, CA, January 17, 2003 <http://www.michaelcrichton.net/speech-alienscauseglobalwarming.html>