

Comments of the Commonwealth of Massachusetts and the States of Arizona,  
California, Connecticut, Illinois, Iowa, Maine, Maryland, New Jersey, New  
Mexico, New York, Oregon, Rhode Island, Washington, and New York City on  
Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases  
Under Section 202(a) of the Clean Air Act

Docket ID No. EPA-HQ-OAR-2009-0171

U.S. Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
Mailcode 6102T  
Attention: Docket ID No. EPA-HQ-OAR-2009-0171  
1200 Pennsylvania Ave., N.W.  
Washington, DC 02460

To the Docket:

As government petitioners in *Massachusetts v. EPA*, 549 U.S. 497 (2007), we submit the following comments in response to EPA's Proposed Endangerment and Cause and Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act. 74 Fed. Reg. 18886 (Apr. 24, 2009). EPA expressly characterizes its proposed findings as a response to the petition for rulemaking underlying *Massachusetts v. EPA* and limits it to the context of CAA § 202(a). 74 Fed. Reg. 18888/2 ("EPA is not proposing or taking action under any other provision of the Clean Air Act").<sup>1</sup> Therefore, we similarly confine our comments herein to the same context and refer the Agency to our previously submitted comments regarding regulation of greenhouse gas emissions under other provisions of the Clean Air Act.<sup>2</sup>

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<sup>1</sup> The case of *New York v. EPA*, D.C. Cir. No. 06-1322, similarly asks the Agency to establish emission standards for power plants under CAA § 111. That case was remanded to the Agency after the Supreme Court's decision in *Massachusetts*. Given the Agency's proposed action here, we urge EPA to move forward as soon as possible with the issuance of an endangerment determination and emission standards for power plants.

<sup>2</sup> See Comments of Massachusetts Attorney General Martha Coakley on Advanced Notice of Proposed Rulemaking Regulating Greenhouse Gases under the Clean Air Act, EPA-HQ-OAR-2008-0318; FRL-8694-2, RIN 2060-AP12 (Nov. 25, 2008); Comments of California Attorney General Edmund G. Brown Jr. and Connecticut Attorney General Richard Blumenthal, Advanced Notice of Proposed Rulemaking Regulating Greenhouse Gases under the Clean Air Act (Nov. 26, 2008); Comments of New Jersey Department of Environmental Protection (Nov. 5, 2008); Comments of the New York Attorney General's Office on Advanced Notice of Proposed Rulemaking Regulating Greenhouse Gases Under the Clean Air Act (Nov. 26, 2008);

### ***Schedule for Action***

First and foremost, we commend EPA for issuing this historic proposal. As you know, the underlying petition for rulemaking seeking regulation of greenhouse gases under CAA § 202(a) was submitted to EPA in 1999, and our judicial challenge of EPA's refusal to regulate greenhouse gases from motor vehicles commenced in 2003. In the face of the compelling body of scientific evidence in support of a positive endangerment finding as to public health and welfare (*see* 74 Fed. Reg. at 18888/1), this long-overdue proposal constitutes a significant and meaningful first step towards regulation of greenhouse gases under the CAA. As the Technical Support Document makes clear, due to the long life span and cumulative effect of greenhouse gases in the atmosphere, reductions of anthropogenic emissions are needed swiftly. For these reasons, we urge you to proceed with due speed with this action and other ensuing actions to address global warming.

EPA's expectation that it will propose standards "several months from now" (74 Fed. Reg. 18890/1) is realistic and achievable. We take this to mean that standards will be proposed by August 2009, and finalized by March 2010, in accordance with the announcements made at the White House on May 19, 2009, regarding coordinated greenhouse gas emission standards and fuel economy standards. We encourage adherence to this time frame as a firm and necessary goal.

### ***Endangerment to Public Health***

We concur with EPA's approach to its proposed finding as to public health. We strongly agree that even though the projected risks and impacts to public health are indirect, as opposed to resulting from direct exposure to greenhouse gas emissions, they constitute reasonably anticipated endangerment within the meaning of the statute. For example, climate change is expected to result in increased regional ozone pollution due to higher average temperatures and weaker air circulation. Increased regional ozone pollution will produce associated risks in respiratory infection, aggravation of asthma, and premature death. That these serious health effects are and will be consequences of climate change is undeniable. The fact that they are not due to exposure to greenhouse gases, but are indirect consequences matters not.

In addition, as EPA notes, more frequent occurrences of unusually hot days and nights and heat waves as a result of global warming will likely result in harm to public health, especially in urban areas. *See* 74 Fed. Reg. at 18901; TSD at 69-71 (discussing expected adverse

effects in Los Angeles and Chicago). As further evidence, scientists working for New York State recently completed a study examining respiratory and cardiovascular illnesses (morbidity) in New York City attributable to exposure to extreme heat. The resulting paper by Lin, et al., entitled "Extreme High Temperatures and Hospital Admissions for Respiratory and Cardiovascular Diseases" (attached hereto), has been accepted for publication in the Journal of Epidemiology this July. This study found that for each degree increase in temperature above a threshold (28.9 °C), there was a significant increase in hospitalizations due to respiratory diseases on the same day (immediate effects). Similarly, for each degree increase above a threshold (29.4 °C), there was a significant increase several days after exposure in hospitalizations due to cardiovascular diseases (likely due to the fact that it can take several days for cardiovascular effects to manifest). The diseases most associated with rises in temperature were: asthma, chronic pulmonary obstructive disease, ischemic heart disease (heart attacks) and abnormal heart rhythms. For respiratory diseases, the increased risks for Hispanics were higher compared with non-Hispanics, and people living in low income neighborhoods were at higher risk compared with those in high income neighborhoods. Elderly people also had higher increased hospitalization risks for both disease types.

Based on the results of the Lin, et al. study, it is reasonable to conclude that the number of hospitalizations can be expected to significantly increase in the future due to a warming climate. Thus, the results of this study further confirm EPA's conclusion that greenhouse gas emissions endanger public health.

### ***Definition of "Pollutant"***

EPA's proposed determination would define the "pollutant" of concern as the collective class of six greenhouse gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. 74 Fed. Reg. at 18904-05. While EPA believes it has sufficient flexibility under this approach to set either separate or group standards under § 202, it declines to discuss the implications of this choice under other provisions of the Clean Air Act. *Id.* at 18905 & n.29.<sup>3</sup>

While we agree fully that EPA has authority to define the pollutant of concern either collectively (as greenhouse gases) or individually, and further agree that EPA has discretion under § 202 to set separate standards for the individual pollutants comprised in the collective definition, we urge EPA to consider the implications of this decision under other programs, or

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<sup>3</sup> With respect to the Johnson Memorandum referenced by EPA in footnote 29, the States urge EPA to move forward expeditiously with reconsideration of the Memorandum, which concerns whether carbon dioxide and other greenhouse gases are "subject to regulation" under the Clean Air Act for purposes of triggering the Best Available Control Technology requirement in the Act's Prevention of Significant Deterioration (PSD) program. *See* 42 U.S.C. 7475.

explain why it is not bound to make the same choice in defining the pollutant of concern under other programs.

We are not advocating in these comments that EPA should take action under other programs, nor commenting on what form such action should take. However, even understanding that EPA is only proposing action under § 202, it makes sense for the Agency to take action mindfully of the implications its choices may have for other programs, in case it should decide in the future to take action under those programs.

Thus, for example, we also urge EPA to consider how a collective definition of pollutant would work in the context of a cap and trade approach for multiple sources or sectors rather than a standards based approach, particularly where the cap is determined by reference to the total quantity of GHG emissions reductions needed to meaningfully reduce the risk of climate change. Under such an approach, a collective definition could have unpredictable and untoward effects on different regions of the country depending on the mix of sources and greenhouse gas emissions in an area. EPA should consider whether adoption of a collective pollutant definition will deprive it of needed flexibility in these circumstances and others under other CAA programs before committing itself here to such a definition.

We recognize that a collective definition may provide desirable flexibility in some circumstances, in that it may facilitate treating GHG controls as fungible. However, we note that this will not necessarily be true with respect to individual pollutants not included in the collective definition, such as black carbon particulates or CFCs. If EPA determines in the future to regulate these pollutants as GHGs, it may be forced to regulate them individually because the proposed collective definition would be established and may not be subject to practicable revision after EPA has proposed performance or emissions standards.

For this reason as well as those stated previously, we suggest EPA give further attention to the possibility of a hybrid definition of "pollutant," incorporating both a collective definition of the pollutant of concern -- by reference to the heat-trapping characteristics of individual pollutants, and leaving the class of such pollutants open-ended -- and a list of the six individual pollutants with those characteristics with respect to which EPA is now making an endangerment determination. It may be possible for example to make such a determination with respect to individual GHGs to the extent GHGs collectively endanger public health and welfare, and the individual GHG remains a significant component of the collective pollutant. By such an approach it may be possible for EPA to treat individual GHGs as interchangeable for some purposes, yet with individual standards and regulatory approaches for other purposes. Alternatively, we encourage EPA to finalize its proposal, as it includes an endangerment determination individually for four of the constituent greenhouse gases, and collectively. This will ensure solid footing for the Administrator's decision.

It is impossible to read the TSD and not appreciate that addressing climate change in a meaningful and timely way is vital to national, state, and individual interests. Impacts are

already occurring and will only intensify in magnitude, frequency and duration, often affecting those with limited resources the most (i.e., poor, elderly, disabled, and uninsured). This proposed finding is a valuable first step. Over the years, states have developed significant expertise on regulatory approaches to address global warming. We appreciate the opportunity to work cooperatively on these issues as regulation of GHGs under the CAA moves forward.

Sincerely,

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