



---

## HOUSE OF REPRESENTATIVES I

### Pollution and the EPA

By Richa Shah

#### Introduction

As numerous countries around the world continue to rapidly develop in an age of advancing technology and mass consumption, the issue of pollution is a top priority now more than ever. Air, land, and water pollution continue to adversely affect the lives of billions of people and cause many deaths, health disorders, and other negative **externalities**. The severity of the world's pollution problem depends not only on its magnitude but also on the potential irreversibility of its destructive effects. Various countries have set legislative standards restricting permissible pollution emissions to concentration levels that are believed to be low enough to protect public health. In the United States, however, the nature of this problem causes controversy in regards to the role of the Environmental Protection Agency (EPA) in regulating pollution in the United States and establishing effective emissions standards. The Environmental Protection Agency has proposed and promulgated numerous regulations implementing pollution control statutes enacted by Congress. Conservation organizations, community leaders, and other interest groups have supported these stringent regulations, but critics of the EPA have often reacted strongly to the agency's efforts as well. Many politicians and policymakers, both within and outside of Congress, have accused the agency of reaching beyond its congressionally mandated jurisdiction and ignoring or underestimating the costs and economic impact of the rules and regulations that it enforces. The EPA itself, on the other hand, states that critics' focus on the cost of pollution controls overlooks the benefits of new regulations, which, it estimates, far exceed the costs. The EPA also maintains that pollution control is an important source of economic development, exports, and domestic jobs.

*externality—a side effect of an industrial or commercial activity that affects other parties without this being reflected in the cost of the goods or services involved*

As Congress faces the very real challenges of cutting federal spending and putting the country on the path to a balanced budget, it faces predictable pushback every time it identifies a program to cut or defund. The magnitude of the political issues that legislators deal with on a daily basis requires a thoughtful approach to lawmaking that separates short-term political and ideological cuts from larger, more impactful ones. The debate over the future of the Environmental Protection Agency is one of those debates where an ideological agenda, disguised as budget cutting, could potentially result in a short-term political statement at a long-term cost in terms of both dollars and public health.

The [last-minute congressional budget deal](#) between Democrats and Republicans that averted a government shutdown in the spring of



2011 included a \$1.6 billion cut in funding for the Environmental Protection Agency (EPA), the largest budget cut of any federal agency on a percentage basis. Furthermore, Congress is debating legislation that would, to varying degrees, limit or undermine the Environmental Protection Agency's **greenhouse gas** (GHG) emissions regulations. Despite these challenges to its authority, the EPA is moving forward with more regulations on greenhouse gas emissions, most notably carbon dioxide (CO<sub>2</sub>). The EPA [will also start regulating emissions from new power plants and major expansions](#) of large greenhouse gas emitters. The lingering question on everyone's mind then is whether or not the EPA should be allowed to implement these more extensive regulations and pollution controls, especially if they conflict with other economic and legislative priorities.

**greenhouse gas**—a naturally-occurring gas emitted through natural processes and human activities that traps heat in the atmosphere

## Explanation of the Problem

### *History of the Problem*

#### *The Creation of the EPA*

The EPA was created in 1970 by Reorganization Plan No. 3, an executive order submitted to Congress for approval by President Richard Nixon. The avowed purpose of forming the EPA was to integrate environmental management activities involving pollution control into a coordinated and comprehensive program. Previously, regulatory authorities dealing with environmental pollutants were widely scattered across various departments and agencies within the federal government. Since the creation of the EPA, developments in environmental regulations have progressed rapidly, partly because of changes in statutes, partly because of newfound pollution hazards, and partly because of actions initiated by the EPA itself. Supporters of the newly created EPA claimed that the agency would be able to deal with pollution problems more efficiently and effectively than the previously fragmented group of environmental protection programs. It was also assumed that industries and government officials at the state and local level would find it advantageous to deal with one lead agency concerning pollution matters. Not all pollution control activities were transferred to the EPA, but it was argued that the EPA would be a real improvement, which could be built on and expanded in the future. During the mid-1970s, the EPA began to assume a more assertive regulatory stance. What defined the EPA in its earliest days was less of a need to define a regulatory agenda than a need to convey a mission and a sense of purpose to the public, the states, and the regulatory community. The agency set out to create a federal presence in the field of environmental protection, to set a uniform level of standards and expectations that would end state shopping by businesses and industries, and essentially to ensure that people knew that the

EPA was serious about its regulatory role. The achievement of these goals set the stage for the more sophisticated regulatory posture that the agency has assumed today. While the EPA may not have been originally created to establish extensive regulations, the agency has nonetheless evolved and expanded over time and is now in charge of most pollution-based regulations.

#### *The Montreal Protocol on Substances That Deplete the Ozone Layer*

[The Montreal Protocol on Substances That Deplete the Ozone Layer](#) is a landmark international agreement designed to protect the stratospheric **ozone layer**. The treaty was originally signed in 1987 and substantially amended in 1990 and 1992. The Montreal Protocol originally stipulated that the production and consumption of compounds that deplete ozone in the stratosphere were to be phased out by 2000. Scientific theory and evidence suggest that, once emitted to the atmosphere, these compounds can significantly deplete the stratospheric ozone layer that shields the planet from damaging UV-B radiation. Thus, the Montreal Protocol's ultimate success will be based on whether or not it was able to create an enduring global commitment to stop the production and consumption of substances that deplete the ozone layer.

**ozone layer**—a layer in the earth's stratosphere at an altitude of about 10 km containing a high concentration of ozone, which absorbs most of the ultraviolet radiation reaching the earth from the sun

The Environmental Protection Agency is a partner in the broad coalition that developed and implemented flexible, innovative, and effective approaches to ensure stratospheric ozone layer protection. These partnerships have fundamentally changed the way the EPA does business, spurring on the development of new technologies that save energy and reduce greenhouse gas emissions. The EPA has issued regulations under various sections of the Clean Air Act to implement the Montreal Protocol and phase out the production of several ozone-depleting substances. The Montreal Protocol brought the depletion of the ozone layer to the forefront of environmental policy and urged the EPA to take a more active approach to regulating hazardous air pollutants and greenhouse gas emissions.

#### *Increased Regulation and Recent Controversy*

In the three years since President Obama was sworn in as President of the United States, the EPA has proposed and promulgated numerous regulations. Although the agency's supporters say that the EPA is just doing its job, the agency's recent regulatory actions have drawn attention for several reasons. In some cases, such as the regulation of greenhouse gas emissions, the agency's actions represent a departure from previous regulatory policies. Based on a 2007 Supreme Court ruling, *Massachusetts vs. EPA*, in which the court determined that greenhouse gas emissions in particular can be classified as air pollutants under the Clean Air Act's definition of the term, the agency has undertaken numerous regulatory actions setting emission standards and laying

the framework for a future regulatory structure. In other cases, the agency is revisiting emissions, **effluent**, and waste management regulatory decisions made during earlier administrations and proposing more stringent standards to address pollution that has persisted for decades since Congress initially directed the agency to take action.

**effluent**—liquid waste or sewage discharged into a river or the sea

As a direct result of the EPA's promulgation of an "endangerment finding" for greenhouse gas emissions in December 2009 and its subsequent issuing of GHG emission standards for new motor vehicles on April 1, 2010, the agency is now proceeding to control GHG emissions from new and modified stationary sources as well, including power plants and manufacturing facilities. The EPA's actions, both individually and in conjunction with other federal agencies, have generated controversy. Various members of Congress have expressed concerns that the current scale of the EPA's actions is unprecedented and that the agency is overreaching its regulatory mandate. The EPA shares congressional concerns about the potential scope of these regulations, primarily because a literal reading of the endangerment finding would have required as many as six million stationary sources to obtain emissions permits. To avoid this result, on May 13, 2010, the agency finalized a "Tailoring Rule" that focuses its resources on the largest emitters while deciding over a six-year period what to do about smaller sources of greenhouse gas emissions. Many in Congress have suggested that the EPA should delay implementing these new regulations on any stationary sources or that the agency should be prevented from taking any further action at all. There have been at least ten bills introduced in the 112th Congress that, if passed, would delay or prevent EPA actions on greenhouse gas emissions.

### ***Recent Developments***

#### *Regulation of Stationary Source GHG's*

Stationary sources are the major source of the country's GHG emissions. Overall, 69% of US emissions of greenhouse gases come from stationary sources (the remainder comes from mobile sources such as vehicles). Relatively large sources of fossil-fuel combustion and other industrial processes are responsible for about one-half the country's total emissions. If the EPA (or Congress) is to embark on a serious effort to reduce greenhouse gas emissions, stationary sources, and in particular large stationary sources, will likely have to be addressed. The substantial amount of greenhouse gas emissions emanating from stationary source categories is even more important from a policy standpoint: reductions in greenhouse gas emissions from these sources are likely to be more timely and cost-effective than attempts to reduce emissions from the transport sector.

On April 1, 2010, EPA Administrator Lisa Jackson signed final

regulations that will require auto manufacturers to limit emissions of greenhouse gases (GHGs) from new cars and light trucks. These regulations will also trigger at least two other Clean Air Act provisions affecting stationary sources of air pollution such as electric power plants. The EPA's potential regulation of GHG emissions, particularly from stationary sources, has led some in Congress to suggest that the agency delay taking action or be stopped from proceeding with its implementation of these new regulations. Legislation has been introduced in both the House and Senate to achieve such results. Four resolutions of disapproval under the Congressional Review Act are aimed at the EPA's decision that GHGs are air pollutants that endanger public health and welfare while five other bills would either urge the EPA to reevaluate its endangerment finding, amend the Clean Air Act to provide that greenhouse gases are not subject to the act, limit the EPA's GHG authority in regards to motor vehicle emissions, or suspend EPA actions regulating stationary source emissions of GHGs for two years.

#### *Greenhouse Gas Reporting Program*

The EPA is advocating a regulation to require reporting of greenhouse gas emissions from all sectors of the economy. The final rule applies to fossil fuel suppliers and industrial gas suppliers, direct greenhouse gas emitters, and manufacturers of heavy-duty and off-road vehicles and engines. The rule does not require increased control of greenhouse gas emissions. Rather, the new rule requires only that sources that release emissions above certain threshold levels monitor and report these emissions. On April 10, 2009, the EPA published in the ***Federal Register*** a proposed rule to establish annual reporting obligations for large emitters of GHGs as well as for a number of suppliers and importers of fossil fuels. Work on the proposed rule was initiated under the Bush administration as the result of an appropriations act passed by Congress in late 2007, which required "mandatory reporting of GHG emissions above appropriate thresholds in all sectors of the economy." The reported data is also expected to be used to inform GHG policy development, improve the EPA's understanding of the factors that affect GHG emissions at the facility level, improve the quality of GHG emissions data for sources that are not currently well understood, track GHG emissions over time, and raise awareness of GHG emissions among the entities that will have to report their emissions.

The proposed rule requires reporting by direct emitters of GHGs, generally at emission levels above 25,000 metric tons of CO<sub>2</sub> equivalent per year, and certain suppliers and importers of fossil fuels, producers of industrial gases, and vehicle manufacturers. The EPA estimates that about 13,000 facilities or entities will ultimately be required to report their emissions levels under the rule, and the reported emissions will comprise about 85-90% of the country's GHG emissions. The EPA ulti-

***Federal Register***—a daily publication of the US federal government that issues proposed and final administrative regulations of federal agencies

mately issued the Mandatory Reporting of Greenhouse Gases Rule, which requires reporting of greenhouse gas data and other relevant information from large sources of GHG emissions in the United States. The EPA also amended the regulations that govern the handling procedures for data collected under the Clean Air Act.

*Prevention of Significant Deterioration / New Source Review (PSD-NSR)*

A new development to the **New Source Review (NSR)** process, effective January 2, 2011, states that new or modified major stationary sources of greenhouse gas emissions must undergo New Source Review (NSR) with respect to their GHG emissions in addition to any other pollutants subject to regulation under the Clean Air Act that are emitted by the source. This review requires affected sources to install Best Available Control Technology (BACT) to address their GHG emissions. Second, major sources of GHGs will have to obtain permits under the Clean Air Act. Beyond these permit requirements, because stationary sources are the largest sources of greenhouse gas emissions, it is likely that the EPA will also be compelled to issue endangerment findings and establish more extensive emission control standards for GHG emissions under other parts of the Clean Air Act. Prevention of Significant Deterioration/New Source Review (PSD-NSR) is required for any pollutant “subject to regulation” under the Clean Air Act. Much attention, including the EPA’s, has been directed to this provision. Section 111 of the Clean Air Act is used to give the EPA authority to set standards for emissions of “air pollutants,” a term that now has been determined to include greenhouse gases, thus broadening the agency’s authority to implement plans addressing existing sources of air pollutants. Again, the EPA insists that greenhouse gases fit within the boundaries of the term “air pollutant.” Concerns regarding certain aspects of the New Source Review provision have been raised, however. For one, PSD-NSR has specified thresholds for triggering its provisions; according to the provision’s language, a “major emitting facility” is defined as emitting or having the potential to emit either 100 tons or 250 tons annually of a regulated pollutant. Consequently, the EPA concludes that if this lower threshold of 100 tons per year is to be used, even large residential and commercial structures could potentially be required to obtain emission permits. In response to this concern, EPA Administrator Lisa Jackson signed the Greenhouse Gas Tailoring Rule on May 13, 2010, which phases in the PSD-NSR requirements so that fewer facilities will be required to obtain these permits, thus easing the agency’s transition to GHG control. The EPA estimates that over the next few years, 1,600

**New Source Review**—*a permitting process created in 1977 requiring industries to undergo an EPA pre-construction review for environmental controls if an industry proposes the construction of new facilities or any modifications to existing facilities that would create a ‘significant increase’ of a regulated*

new or modified sources annually will be required to obtain NSR permits for their GHG emissions.

## Congressional Action

### *Clean Air Act of 1955*

The principal statute addressing air quality concerns, the Clean Air Act was first enacted in 1955, with major revisions in 1970, 1977, and 1990. The Act requires the EPA to set health-based standards for **ambient air** quality, sets deadlines for the achievement of those standards by state and local governments, and requires the EPA to set national emission standards for large or ubiquitous sources of air pollution, including motor vehicles, power plants, and other industrial sources. In addition, the Act mandates emission controls for sources of 188 hazardous air pollutants, requires the prevention of significant deterioration of air quality in areas with clean air, requires a program to restore visibility impaired by regional haze in national parks and wilderness areas, and implements the Montreal Protocol to phase out most ozone-depleting chemicals. The 1970 amendments established the procedures under which the EPA sets national standards for air quality, required a 90% reduction in emissions from new automobiles by 1975, established a program to require the best available control technology at major new sources of air pollution, established a program to regulate air toxins, and greatly strengthened federal enforcement authority. The 1977 amendments adjusted the auto emission standards, extended deadlines for the attainment of air quality standards, and added a program to protect air that was cleaner than national standards. The 1990 amendments strengthened federal authority to issue agency and court orders requiring compliance and to impose penalties for violations of requirements included in the Act. The EPA is now proceeding to regulate emissions of GHGs under the Clean Air Act, as it maintains it must, while trying to focus those efforts on the largest emitters within a feasible timeframe. Opponents of this effort in Congress are considering various approaches to alter the agency's course.

**ambient air**—  
*breathable air in the  
immediate surroundings  
of the general public*

### *New Source Review*

Congress established the New Source Review (NSR) permit program as part of the 1977 Clean Air Act Amendments. NSR is a preconstruction permit program that serves two important purposes. First, it ensures that air quality is not significantly degraded from the addition of new and modified factories. In areas with unhealthy air, NSR assures that new emissions do not slow progress toward cleaner air. In areas with clean air, NSR assures that new emissions do not significantly worsen air quality. Second, the NSR program assures people that any

large new or modified industrial source in their neighborhoods will be as clean as possible, and that advances in pollution control occur concurrently with industrial expansion. NSR permits are legal documents that the facility owners and operators must abide by. The permit specifies what type of facility construction is allowed, what emission limits must be met, and, in certain cases, how the emissions source must be operated. New Source Review (NSR) now requires stationary sources of air pollution to get permits before they start construction. NSR is also referred to as construction permitting or preconstruction permitting.

### *Potential GHG Emission Standards Under Section 111*

Section 111, New Source Performance Standards (NSPS) is the most likely provision of the Clean Air Act to be invoked by the EPA to justify further regulation of stationary sources and GHGs. NSPS are emission limitations imposed on designated categories of major new or modified stationary sources of air pollution, and Section 111 provides the EPA with the authority to impose performance standards on these sources. The authority to impose performance standards on new and modified sources refers to any category of sources that the EPA Administrator judges “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” In establishing these standards, Section 111 gives the EPA considerable flexibility with respect to the types and size of sources that can be regulated, the particular gases that can be regulated, and the timing and phasing in of certain regulations. This flexibility also extends to the stringency of the regulations with respect to costs as well as to secondary effects, such as non-air-quality, health and environmental impacts, and energy requirements.

Beginning in 1970, and reaffirmed by amendments in 1977 and 1990, Congress gave the agency broad authority to identify certain air pollutants and to proceed with subsequent regulation. Congress did not itself identify the pollutants to be covered by the Clean Air Act’s **National Ambient Air Quality Standards (NAAQS)** provision. Rather, it told the agency to identify pollutants that are emitted by numerous and diverse sources, and the presence of which in ambient air endangers public health and welfare. The EPA has used this authority to regulate six pollutants or groups of pollutants, which are called “criteria pollutants.” The EPA also has authority under other sections of the act— notably Sections 111 (New Source Performance Standards), 112 (Hazardous Air Pollutants), and 202 (Motor Vehicle Emission Standards) to identify pollutants on its own initiative and promulgate emission standards for them. The EPA’s focus on Section 111 as the most likely vehicle for controlling GHGs from stationary sources may reflect concerns both about potential economic effects and about implementation difficulties with respect to controlling such pervasive pollutants.

**National Ambient Air Quality Standards—***standards for pollutants considered harmful to public health and the environment that are included in the Clean Air Act*

The section does provide the EPA with substantial flexibility to address economic and implementation issues in tailoring its regulations of GHGs to the various realities surrounding stationary source controls.

## Focus of the Debate

### *Conservative View*

Anti-regulation conservatives object to EPA rules that certain facilities must adopt the new GHG regulations to control carbon dioxide and other greenhouse gases. Critics say the rules could hurt businesses like oil refineries and power utilities and that the science is not definitive on the subject of greenhouse gas emissions. Conservatives believe that a push to control the EPA is overdue. Some conservatives argue that EPA regulations on industry emissions have made it difficult for corporations to grow and create jobs. Conservative revisions to the legislation that the EPA has proposed would prevent the EPA from using funds to limit state greenhouse gas emissions. The new Republican majority in the House is making moves in its legislative plan to hamstring EPA regulations, particularly of greenhouse gases. Republicans plan to pursue multiple lines of attack in their attempt to stall EPA action such as defunding the implementation of new regulations, conducting aggressive oversight, and overturning rules through the Congressional Review Act. Conservatives have also voiced their disapproval of recent EPA regulations by evaluating the possible harm to companies that generate electricity. Republicans have also pointed out the possible economic damage many of the EPA's regulations may cause, such as lower employment, higher [gas prices](#), and lower **revenues**. Conservatives' chief concern is the EPA's authority, as affirmed by the Supreme Court in 2007, to regulate emissions of greenhouse gases. But more broadly, they worry that the EPA is constantly tightening restrictions on pollution at even higher cost to business, but with diminishing returns in terms of public health. In essence, conservatives want to block the EPA's ability to use the Clean Air Act to regulate greenhouse gas emissions. Conservatives believe that the Clean Air Act [was never meant](#) to deal with greenhouse gases, just traditional air pollutants like soot and sulfur dioxide.

**revenue**—*income derived from either the sale of goods and services (private companies) or tax collection (government)*

### *Liberal View*

Liberals generally support both the EPA and environmental regulations. Blocking the EPA's ability to tackle greenhouse gases would be "flat-out dangerous," said one liberal lawmaker, while another called it a "backhanded way of achieving a policy objective." The basis for the EPA's legal authority to regulate emissions is a finding that global warming endangers public health and welfare and thus falls under the authority of the Clean Air Act. Liberals and environmentalists are

presenting the conservatives' effort to rein in the EPA as an assault on the 40-year-old Clean Air Act and a direct threat to public health, a theme that has served them well in past fights over clean air and clean water.

Most liberals believe that since GHGs are such pervasive pollutants and since they arise from so many sources, reducing these emissions may have broader effects on the economy than most of the EPA's previous regulations. Daniel Weiss, a climate expert at the liberal **Center for American Progress** Action Fund, says that this message reinforces the stereotype that conservatives put business interests ahead of the interests of the general public. "It makes them seem like they're caloused to concerns about public health in order to make profits for companies that then turn around and give them lots of money." According to a number of liberals, because the US produces 25% of the world's carbon dioxide, thus making it a major contributor to global warming, proposed laws to reduce carbon emissions in the US in particular are urgently needed and should be enacted immediately to save the planet. Liberals also maintain that an overwhelming bipartisan majority of American voters supports the efforts of the EPA to strengthen rules on pollution controls. They believe that the EPA, not Congress, should set these pollution standards. Most liberals want to make sure that the EPA continues to receive adequate funding in addition to retaining its authority to regulate GHGs and other forms of pollution.

**Center for American Progress**—a progressive public policy research and advocacy organization headquartered in Washington, DC

### *Presidential View*

The EPA would suffer a \$1.3 billion loss under President Barack Obama's proposed 2012 budget, a modest reduction compared to the \$3 billion Republicans hope to cut from the agency's funding. President Obama's budget would increase funding for clean energy research. The President is working with Congress to pass comprehensive energy and climate legislation to protect our nation from the serious economic and strategic risks associated with the country's reliance on foreign oil, to create jobs, and to cut down on the carbon pollution that contributes to the destabilizing effects of climate change. Although the administration has not taken a clear stance on the EPA's recent regulations due to the presidential elections coming up, the Obama administration nonetheless is usually supportive of broad environmental protections and reducing air pollution. Obama's environmental policy moves have generally paved the way for states to eventually impose much stricter fuel emissions standards and for the federal government to require that U.S. automakers produce far more fuel-efficient cars and trucks at a quicker pace in comparison to requirements implemented by the Bush administration. The president has reiterated that energy and environment issues will be a top priority in his administration, and his actions affirm he will invest

some of his time and political capital into this issue. The Obama Administration has made the reduction of GHG emissions one of its major goals; as a result, many have concluded that legislation restricting the EPA's authority to act, if passed by Congress, would encounter a presidential veto.

## Interest Group Perspectives

### *The Heritage Foundation*

The Heritage Foundation, a conservative think tank, believes that the EPA's attempt to regulate carbon dioxide and GHGs, in addition to being the most expensive and expansive environmental regulation in history, would bypass the legislative process completely. According to the think-tank, Congress should amend the Clean Air Act in order to prevent unelected government bureaucrats from bankrupting the nation. Much like a **cap-and-trade** system, the goal of the EPA's regulatory scheme is to reduce carbon dioxide emissions. And also much like cap and trade, the EPA's plan would have similar economic costs. The Heritage Foundation insists that regulating carbon dioxide emissions under the CAA would burden the economy with higher energy costs, higher administrative compliance costs for businesses, higher bureaucratic costs for enforcing the regulations, and higher legal costs resulting from inevitable litigation. Even without these regulations in place, the EPA's actions are still causing harm by creating an unpredictable environment for investors. Even with the tailoring rule in place, more than 1,200 small businesses may still feel the effects of the EPA's broader GHG emission standards. Although smaller business may be protected from stricter regulations (but for only six years, according to the tailoring rule), most would still be indirectly hit by these regulations through higher energy costs. Every American will pay for the burden of the EPA regulations, states the Heritage Foundation. The regulations would have the same impact on **GDP** and employment as would a major new energy tax as passed through cap and trade, but these regulations would nonetheless be worse, since they would entail more compliance, administrative, and legal costs. All in all, the Heritage Foundation thinks that the EPA regulations would be a bad deal for American consumers and wants to amend the CAA to prevent broader regulatory authority from being given to the EPA.

**Cap-and-trade**—*proposed legislative policy to limit carbon emissions by creating emission thresholds and charging companies and corporations for emissions beyond these thresholds*

**GDP**—*gross domestic product; the market value of all final goods and services produced in a country in a given period*

### *Greenpeace International*

Greenpeace, a non-governmental environmental organization, usually supports most of the regulations and goals of the EPA. Greenpeace believes that the [EPA](#) was set up in 1970 with a mandate to protect public health and the best way to do so, according to the agency, is

to protect the environment. The global climate disaster calls for broader regulation and legislation on the part of the EPA. Greenpeace advocates that even though the United States may be in an economic recession, the EPA has a vital purpose in the government and nothing should take away from that. In accordance with this belief, Greenpeace does not support the continuing resolution in Congress that would [cut \\$3 billion from EPA funding](#), eliminate its top positions, and block its ability to require that wealthy companies reduce carbon pollution. The organization claims that, with no one to run the EPA, no money to run it with, and with few tools to do anything, the EPA would barely be more than a ceremonial body. With no one to protect Americans from pollution-creating industries, the latter will continue to profit by taking [unnecessary health, financial, and emotional risks](#). According to the organization, the potential harms of increased pollution are endless, including increased rates of asthma, cancer, tuberculosis, and infant mortality. The organization thinks that the issues that result from pollution are much more real than most Americans anticipate. Furthermore, since the EPA has the great responsibility of ensuring a health economy and environment for every American, Greenpeace insists that the agency should be able to implement broad GHG regulations.

#### *The Cato Institute*

The Cato Institute, a libertarian think tank, was not a fan of the climate change legislation that the Obama administration attempted to pass through Congress. "Pass climate-change legislation, or the Environmental Protection Agency will use its authority under the Clean Air Act to curb carbon emissions without [congressional] input", was how the think tank interpreted the Obama administration's strategy. The regulations that may be brought upon the public by the EPA in the future are of concern to the members of the Cato Institute, who believe that there may be some constitutional implications that could result from them. The Cato Institute maintains that the EPA oversteps its bounds because it does not consider congressional input as much as it should and makes many of its decisions itself. The think tank believes that Congress should make important policy choices, not independent agencies like the EPA. Like clockwork, a handful of major utility CEOs defended the EPA because its rulemaking would "yield important economic benefits." Yet the Cato Institute points out that these presumed benefits would flow directly to the CEOs' companies, serving as yet another example of short-sighted corporate **rent seekers** with little appreciation for the long-term consequences of increased regulation. The Cato Institute believes that the EPA is a bureaucratic body that is not as efficient as many of its supporters presume, and that its regulations have more economic harms than benefits. Thus, according to the think tank, the responsibility of environmental legislation should be passed on to

**rent seeker**—a company attempting to derive excess economic gains by manipulating the social or political environment in which economic activities occur, rather than by producing new, more innovative products

Congress instead.

## Possible Solutions

### *Accept the EPA's Regulatory Authority*

Some lawmakers may be compelled to accept or even broaden the EPA's regulatory authority, particularly in regard to the agency's authority to regulate GHG emission. According to this viewpoint, the EPA should require that major greenhouse gas sources be regulated because these standards could give the United States a head start in achieving its global warming goals once Congress manages to pass comprehensive climate change legislation. Regulations aimed at new sources of GHG emissions may spur pollution-reducing innovation amongst a wider array of facilities than a carbon-trading regime alone, which is the leading legislative proposal. Regulating large new polluting sources and new cars adds little complexity because these sources already must comply with federal air pollution standards. According to supporters of this strategy, the EPA should lead the way by using its existing authority to reduce the threat of global warming.

The EPA's continued enforcement of clean air laws, the agency's supporters claim, will reduce pollution, help stabilize the global climate, and protect the health and welfare of the American people. To those who support the EPA's regulatory authority, preventing the agency from doing this work is flat-out dangerous and goes against the letter of the law. Enforcement of clean air laws is necessary to protect Americans from the impact of climate change. Furthermore, many claim that the agency is clearly taking a cautious and common sense approach that values the public's input and takes the effects of regulation on businesses and energy suppliers into consideration. The EPA is required under the Clean Air Act to take action to reduce the pollution contributing to climate change. Thus, the EPA's actions to reduce pollution from the biggest power plants, industrial facilities, and other sources are the latest in a series of steps the agency is taking as part of its legal obligations under the Clean Air Act to regulate greenhouse gases as an air pollutant. To supporters of this strategy, the EPA's consistent and **transparent** use of its regulatory authority will protect public health and welfare, provide certainty for consumers and business, and ensure strong economic growth now and in the future.

**transparent**—open to public scrutiny

### *Amend the Clean Air Act*

The most comprehensive approach that Congress might take to alter the EPA's course would be to amend the Clean Air Act in order to modify the EPA's current regulatory authority as it pertains to GHGs. These amendments could enact more moderate policies instead such as establishing an economy-wide cap-and-trade program for GHGs, pre-

servicing the EPA's authority to regulate GHG emissions from mobile sources while setting deadlines for regulating specific mobile source categories, and requiring the setting of New Source Performance Standards for uncapped major sources of GHGs. The bills should contain provisions to limit the EPA's authority to set GHG standards or regulate GHG emissions which, because of the climate effects of these pollutants, is currently authorized under Sections 108 (National Ambient Air Quality Standards), 112 (Hazardous Air Pollutants), 115 (International Air Pollution), 165 (PSD-NSR), and **Title V** (Permits). The bills could prevent new or modified stationary sources from coming under the PSD-NSR program solely because they emit GHGs. These bills could also simply raise the threshold for regulation under PSD from the current 100 or 250-ton emission levels with respect to any one GHG or a combination of GHGs. Another amendment could prevent any source from having to obtain a state permit solely because they emit GHGs. Amending the Clean Air Act to revoke some existing regulatory authority as it pertains to GHGs while establishing new authority designed specifically to address GHG emissions is the approach advocated by the Obama administration and, indeed, by many participants in the climate change debate regardless of their position on the EPA's regulatory initiatives. However, the specifics of a bill acceptable to a majority of lawmakers would likely be difficult to craft.

**Title V**—a provision of the Clean Air Act requiring all new and existing facilities that have the potential to emit more than 100 tons per year of a GHG pollutant to obtain permits

#### *Apply the Congressional Review Act to EPA Regulations*

As noted earlier, if policymakers would like to see a different approach to GHG controls than the one taken by the EPA, there are a few options to change course. Among the most widely discussed has been the Congressional Review Act. [Defunding the EPA](#) using the Congressional Review Act could prevent the EPA from regulating GHGs and carbon dioxide. The Congressional Review Act, enacted in 1996, establishes special congressional procedures for disapproving a broad range of regulatory rules issued by federal agencies. Before any rule covered by the act can take effect, the federal agency that promulgates the rule must submit it to Congress. If Congress passes a **joint resolution** disapproving the rule under procedures provided by the act, and the resolution then becomes law, the rule cannot take effect or continue in effect. Also, the agency may not reissue either that rule or any substantially similar one, except under the authority of a subsequently enacted law. Nevertheless, the path to enactment of such a resolution is a steep one. The Congressional Review Act is designed primarily to specify the procedures under which a resolution of disapproval is to be considered in the Senate. To obtain floor consideration, the bill's supporters would have to follow the Senate's normal procedures. Basically, by using the Congressional Review Act, Congress could disprove the findings promulgated by the EPA, with the result that the findings would have "no

**joint resolution**—a legislative measure that requires approval by both the Senate and the House of Representatives

force or effect” and thereby excluding GHG’s from the Clean Air Act. Yet the Congressional Review Act establishes no expedited procedure for further congressional action on a disapproval resolution if the President vetoes it. In such a case, Congress would need to attempt an override of a veto using its normal procedures for considering vetoed bills.

### **Questions a Bill Should Address**

The decisions to be made regarding the EPA’s degree of influence in the legislative process, specifically concerning the regulation of GHG’s under the Clean Air Act, are numerous and complicated. This decision involves a possible tradeoff between the health of the economy and the future health of the citizens. Should Congress hereby enact climate change legislation in any form, leaving the EPA to regulate pollution? Is the EPA crossing its boundary under the Clean Air Act by regulating all GHG’s and trying to put into place additional stringent rules? At a time where our economy is faltering, should Congress prevent the EPA from creating more regulations that may serve as detriments to small businesses, jobs, and factories? Will the consequences of not regulating GHG’s and decreasing the EPA’s authority take a toll on workplace safety, public health, and the environment? Is it Congress’ responsibility to create environmental legislation and, if so, how much authority should be given to the EPA in the future? Should greater funds than anticipated be taken away from the EPA using the Congressional Review Act so that the EPA would be unable to regulate pollution as closely as it currently does? Should the Clean Air Act be amended to not include GHG’s at all? Delegates should think about all of these questions and other specifics of the debate when trying to come up with a feasible solution. Delegates should not focus too much on the specifics of each of the provisions and sections of the acts but rather should focus instead on the general debate of the power extended to the EPA and on the debate concerning whether regulating GHG’s will help or harm the country more.

### **Summary & Conclusion**

In some respects, the EPA’s decision to regulate greenhouse gases is similar to actions it has taken previously for other pollutants. However, the problem with regulating GHG’s is one of scale and of degree. The EPA granted itself the authority, in a sense, to regulate greenhouse gases because these gases can be classified as pollutants. Greenhouse gases are global pollutants that are much more pervasive than most of the pollutants that have been previously regulated by the agency. Re-

ductions in US emissions without simultaneous reductions by other countries may somewhat diminish but may not solve the problems caused by these emissions. However, GHGs are such pervasive pollutants, and arise from so many sources, that reducing the emissions may have broader effects on the economy than most previous EPA regulations. One has to consider the extent of the damage that GHG's create and how much of a future impact increased regulations will have on the health of the American public and the economy. Nevertheless, the Obama administration's position has been that a new market-based program authorized by new legislation is the preferred option for controlling GHGs. Other types of new legislation are the preferred options of some in Congress, in conjunction with budget cuts for the agency, regardless of whether these lawmakers agree or disagree with the EPA's regulatory initiatives. Others adamantly uphold the EPA's dedication to protecting the lives of citizens from dangerous emissions or negative future outcomes resulting from pollution. Until the issue is resolved through legislative negotiations or through other legal or regulatory venues, the EPA will likely proceed with its plan to regulate GHG emission using the authority granted to it by the Clean Air Act, and the complex interplay of legal, regulatory, and legislative events surrounding this debate will likely continue to be a major topic in the field of environmental policy.

## Bibliography

- Amandes, Christopher. "Environmental Initiatives - Recent Developments." *Vinson&Elkins*. 10 Sept. 2010. Web. 26 June 2011. <[http://www.velaw.com/uploadedFiles/VEsite/Resources/WP\\_EnvironmentalInitiatives\\_Presentation\\_Whitepaper.pdf](http://www.velaw.com/uploadedFiles/VEsite/Resources/WP_EnvironmentalInitiatives_Presentation_Whitepaper.pdf)>.
- Bonus, Alex. "EPA Budget Cuts Stir Controversy." *Flagler College Gargoyle*. 25 Feb. 2011. Web. 26 June 2011. <<http://gargoyle.flagler.edu/2011/02/epa-budget-cuts-stir-controversy/>>.
- Caldwell, Jake. "EPA and Greenhouse Gases 101." *Center for American Progress*. 2 Feb. 2011. Web. 26 June 2011. <[http://www.americanprogress.org/issues/2011/02/greenhouse\\_gases\\_101.html](http://www.americanprogress.org/issues/2011/02/greenhouse_gases_101.html)>.
- Lee, Martin E. "Summaries of Environmental Laws Administered by the Environmental Protection Agency." *CRS Report for Congress*. 3 Jan. 1995. Web. <<http://www.smallbiz-enviroweb.org/Resources/sbopubs/adocs/a04.pdf>>.

- Loris, Nicolas. "The EPA's Global Warming Regulation Plans." *Conservative Policy Research and Analysis | The Heritage Foundation*. The Heritage Foundation, 10 Jan. 2010. Web. 26 June 2011. <<http://www.heritage.org/research/reports/2010/01/the-epas-global-warming-regulation-plans>>.
- Maron, Dina F., and Saqib Rahim. "Democrats Mount Rear-Guard Action Against Republican Assault on EPA Climate Rules - NY Times.com." *The New York Times*. 17 Feb. 2011. Web. 26 June 2011. <<http://www.nytimes.com/cwire/2011/02/17/17climate-wire-democrats-mount-rear-guard-action-against-re-29952.html?pagewanted=2>>.
- McCarthy, James E. "Clean Air Act: A Summary of the Act and Its Major Requirements." *CRS Report for Congress*. 9 May 2005. Web. 26 June 2011. <<http://fpc.state.gov/documents/organization/47810.pdf>>.
- McCarthy, James E., and Claudia Copeland. "EPA Regulations: Too Much, Too Little, or On Track?" *CRS Reports*. LexisNexis Congressional Research Digital Collection, 2 May 2011. Web. <[http://web.lexis-nexis.com.ezp.prod1.hul.harvard.edu/congcomp/document\\_m=0869669900509012ffa753c7afd18a21&\\_docnum=1&wchp=dGLbVzk-zSkSA&\\_md5=0c7ca98d2df4ca1cf8468be3917a116d](http://web.lexis-nexis.com.ezp.prod1.hul.harvard.edu/congcomp/document_m=0869669900509012ffa753c7afd18a21&_docnum=1&wchp=dGLbVzk-zSkSA&_md5=0c7ca98d2df4ca1cf8468be3917a116d)>.
- McCarthy, James, and Larry Parker. "EPA Regulation of Greenhouse Gases: Congressional Responses and Options." *Congressional Research Service*. 11 Apr. 2011. Web. 26 June 2011. <[http://www.henrywaxman.house.gov/UploadedFilesEPA\\_Regulation\\_of\\_Greenhouse\\_Gases\\_Congressional\\_Responses\\_and\\_Options.pdf](http://www.henrywaxman.house.gov/UploadedFilesEPA_Regulation_of_Greenhouse_Gases_Congressional_Responses_and_Options.pdf)>.
- Obama, President. "Energy & Environment." *The White House*. 15 June 2010. Web. 26 June 2011. <<http://www.whitehouse.gov/issues/energy-and-environment/>>.
- Rowlands. "The Montreal Protocol on Substances That Deplete the Ozone Layer." *Center for International Earth Science Information Network*. 1993. Web. 26 June 2011. <<http://www.ciesin.org/TG/PI/POLICY/montpro.html>>.
- Taylor, Pamela. "US Environment Czar Lisa Jackson's Uphill Battle." *The Global Journal*. 11 Apr. 2011. Web. 26 June 2011. <<http://www.theglobaljournal.net/article/view/76/>>.

Tuss, Taryn. "Obama Administration Affirms Comprehensive Commitment to Clean Water." *Environmental Protection Agency*. 27 Apr. 2010. Web. 26 June 2011. <<http://yosemite.epa.gov/opa/admpress.nsf/3881d73f4d4aaa0b85257359003f5348/2ab54d0018c3478a8525787f005b91fd!OpenDocument>>.

U.S. Department of Homeland Security. "National Environmental Policy Act (NEPA)." *FEMA | Federal Emergency Management Agency*. 11 Aug. 2010. Web. 26 June 2011. <<http://www.fema.gov/plan/ehp/ehplaws/nepa.shtm>>.

U.S. Environmental Protection Agency. "Laws | Agriculture | US EPA." *US Environmental Protection Agency*. Ag Center, 25 Aug. 2010. Web. 26 June 2011. <<http://www.epa.gov/agriculture/llaw.html>>.

Washington D.C. "Environmentalism under Fire: Soaring Emissions." *The Economist*. 2 June 2011. Web. 26 June 2011. <[http://www.economist.com/node/18775131?story\\_id=18775131](http://www.economist.com/node/18775131?story_id=18775131)>.

Whitman, Christine T. "OPINION: Attacks on EPA Are Shortsighted." *The Hill*. 13 May 2011. Web. 26 June 2011. <<http://thehill.com/homenews/administration/161009-opinion-attacks-on-epa-are-shortsighted>>.