



ITSSD Embarks on Public “Education Campaign”

To Ensure Federal Agency Peer Review Science *Processes* Used to Vet Climate Assessments Supporting EPA’s 2009 Greenhouse Gas Endangerment Findings Met Information Quality Act Requirements

Princeton, New Jersey, USA – May 22, 2014 In December 2009, the U.S. Environmental Protection Agency (“EPA”) had found that six naturally occurring greenhouse gases (“GHG”) identified as air pollutants under the Clean Air Act (“CAA”) endangered public health and welfare and should be drastically curtailed. EPA has since used these findings to enact mobile and stationary source GHG emissions control regulations and energy-generation performance standards pursuant to its CAA authority which have already begun to raise the cost of living for millions of Americans.

During March–May 2014, the nonprofit Institute for Trade, Standards and Sustainable Development (“ITSSD”) filed Freedom of Information Act (“FOIA”) requests (and request clarifications) with EPA and the Department of Commerce’s National Oceanic and Atmospheric Organization (“DOC-NOAA”), the U.S. government’s lead climate science agency. The objective of these FOIA requests has been to secure disclosure of government records substantiating each agency’s compliance with the provisions of the U.S. Information Quality Act (“IQA” – codified at 44 U.S.C. §3516 note). The IQA is an obscure but potentially powerful statute that very few persons, save for its opponents in Washington, know very much about.

The IQA, as interpreted in Office of Management and Budget (“OMB”) guidelines, establishes a national legal benchmark for use of scientific information publicly disseminated by federal agencies and agency-funded private entities. The IQA-implementing OMB guidelines mandate federal agencies to ensure that publicly disseminated “influential scientific information” (“ISI”) and “highly influential scientific assessments” (“HISAs”), especially if used as the basis for regulations, have first undergone robust and rigorous scientific peer review. The IQA also directs federal agencies to provide adequate administrative mechanisms to permit stakeholders to review the failure of agencies to respond to their requests for correction (RFCs) or reconsideration (RFRs) of such scientific information.

The IQA had required EPA to ensure that each of the twenty-eight highly influential climate science assessments primarily supporting its GHG endangerment findings had been properly peer reviewed – not an insignificant undertaking. Only four of these assessments had been developed by EPA, while sixteen had been developed by five other federal agencies. Significantly, DOC-NOAA had served as the federal government’s lead agency responsible for the development of seven of these sixteen assessments. The remaining eight assessments had been prepared by three non-U.S. government entities: the Intergovernmental Panel on Climate Change (“IPCC”), the private nonprofit National Research Council of the National Academies of Science (“NRC/NAS”) and the regional Arctic Council.

EPA’s prior representations, notwithstanding, ITSSD research reveals that the peer review science processes EPA had employed to validate these twenty-eight assessments, particularly, those that DOC-NOAA had developed, had arguably failed to satisfy the IQA and OMB guidelines scientific peer review *process* requirements. Significantly, the administrative record reflects that numerous DOC-NOAA scientists and university-affiliated scientists participating in DOC-NOAA-funded climate research grant programs had been instrumental in contributing not only to the development of these USGCRP/CCSP assessments, but also to the Working Group I portion of the IPCC’s Fourth

Assessment Report (“AR4”). ITSSD research also reveals that, on six separate occasions, university-affiliated scientists had also played a key role in NRC/NAS peer reviews of the same climate assessments that such DOC-NOAA-employed and -funded scientists had developed. And, on several occasions, without explanation, NRC/NAS had repeatedly used the same reviewer(s) in multiple assessments.

It is true that the OMB guidelines interpreting the IQA presume that NRC/NAS’ scientific peer review processes usually fully satisfy IQA requirements. However, this presumption is rebuttable, as where the facts show such peer review science processes had likely been compromised on conflict-of-interest, independence/bias, peer review panel balance, and transparency grounds. At the very least, these OMB guidelines had required NRC/NAS and DOC-NOAA to publicly disclose and resolve apparent conflicts-of-interest (at both the personal and institutional levels), bias and panel imbalance issues. And, this was to have occurred *before* NRC/NAS proceeded to peer review the DOC-NOAA-developed assessments, in order to avoid the *perception of impropriety*.

ITSSD research, furthermore, reveals that DOC-NOAA has yet to publicly disclose how it had responded to substantive NRC/NAS peer reviewer comments. Some such comments had criticized author statements in various assessment chapters that had been unsupported by the statistical, modeling and other data provided. Still, other comments had highlighted how the authors had inadequately addressed scientific uncertainties concerning reported observations of climate readings and future climate projections based on those observations. Few, if any, DOC-NOAA or NRC/NAS documents revealing agency responses to these important peer reviewer comments have been made publicly available or otherwise accessible on agency websites, contrary to IQA OMB guideline requirements.

According to ITSSD president Lawrence Kogan, “the IQA and related OMB guidelines provide the public with a powerful tool to ensure regulatory transparency and government accountability, which helps to maintain regulatory predictability and to reduce market uncertainty. Government transparency and accountability and regulatory predictability are indispensable in the current postmodern era where the administrative state is rapidly expanding at the national and international levels, and the pursuit of international regulatory cooperation/harmonization has been highlighted as a key administration trade and foreign policy objective.”

Ultimately, only EPA’s and DOC-NOAA’s comprehensive responses to ITSSD’s FOIA requests and clarifications are capable of substantiating these agencies’ IQA compliance. Anything less is likely to prompt the general public to call for a reexamination of EPA’s 2009 GHG endangerment findings.

*The Institute for Trade, Standards and Sustainable Development is a nonpartisan nonprofit organization with the mission to educate the public, inter alia, about the legal and economic consequences of environmental, health and safety rules premised on the postmodern concept of sustainable development. Additional information about ITSSD’s IQA-focused FOIA education campaign is available on the ITSSD website under Theme #4 - “International Regulatory Transparency”, at: <http://www.itssd.org/programs---itssd-theme--4.html>. **Stage 1** of this campaign commenced during May 2013 with the filing of an amicus curiae brief at the petition stage with the Supreme Court of the United States in the case of *Coalition for Responsible Regulation v. EPA*. The ITSSD brief is accessible online at: <http://www.itssd.org/itssd-programs---theme-4--2006-2013-.html>. It successfully raised the Court’s awareness of the IQA and EPA’s IQA peer review compliance obligations with respect to the HISAs that had supported the Administrator’s endangerment findings. **Stage 2** of this campaign commenced during March-May 2014, with the filing of 159 pages of FOIA requests and clarifications with EPA and DOC-NOAA. ITSSD’s FOIA requests and clarifications, and EPA’s and DOC-NOAA’s responses thereto, are accessible online at: <http://www.itssd.org/itssd-programs---theme-4--2014-.html>. **Stage 3** of this campaign will commence on May 23, 2014, with the filing of ITSSD’s first administrative appeal with EPA. Said appeal will contest the grounds for EPA’s denials of ITSSD’s initial and clarified requests for fee waiver and designation as an ‘educational institute’.*

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