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A Second Look At EPA Findings

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As with the reassurances audience members received from the fictional Pinocchio character portrayed as a motivational speaker in a well-recognized insurance commercial, one is compelled to question the sincerity of that portion of President Obama's State of the Union Address and subsequently released National Security Strategy which declare that climate change is more of "an urgent and growing threat to our national security" than is foreign terrorism.

Such skepticism resonates within a recently released Washington Legal Foundation working paper detailing how the Environmental Protection Agency and the National Oceanic and Atmospheric Administration had violated federal law and effectively 'cooked the books' with non-empirical 'science' which EPA then used as the basis for its 2009 Clean Air Act Endangerment Findings. The paper and recent news reports indicate that this was not an isolated occurrence.

The working paper describes how EPA and NOAA violations of strict Information Quality Act ("IQA") peer review standards enabled the administration to lower the scientific evidentiary thresholds upon which these and other federal agencies relied in developing unsound climate 'science' to support the very costly greenhouse gas emissions control regulations EPA later enacted and proposed.

This working paper reveals the apparent contempt these agencies had for IQA and accompanying Office of Management and Budget peer reviewer conflict of interest and independence standards, and for the corollary administrative review procedures EPA had been required to provide stakeholders seeking correction of flawed science. Disrespect for due process and the rule of law permitted the National Academy of Sciences, NOAA and EPA to 'stack' peer review panels with selected participants institutionally affiliated with the agencies, university recipients of agency climate research grant monies, and/or with university colleagues who performed the research under review. In addition, it allowed the agency to disregard the economic costs of their proposed regulations – e.g., EPA's social cost of carbon – in favor of indeterminate public benefits.

The WLF working paper also challenges those who believe that the IQA does not provide for judicial review. Its exhaustive analysis of the statute and the Paperwork Reduction Act ("PRA") which it implements, along with the relevant jurisprudence, unequivocally demonstrates that Congress intended that courts determine the reviewability of agency denials of IQA stakeholder requests for correction of improperly peer reviewed scientific data supporting major regulations, on a case-by-case factual basis.

To further support this conclusion, and as Inside EPA has written, it presents an alternative approach to judicial enforcement of the IQA that rests upon the statute's objective of protecting the *negative* right of a protected class of regulated businesses, state governments and individuals not to be burdened, financially or otherwise, by poor quality science underlying significant agency regulations.

This working paper, in sum, lays bare the popular perception that EPA's GHG endangerment findings were grounded in solid reproducible scientific evidence derived and disseminated in conformance with federal law. It gives us all pause to consider whether the president's representations concerning climate change more closely resemble "lies that have short legs" than "lies that have long noses."

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