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OpEd Contributor

White and Loyola: Doing environmentalists' dirty work

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By: Kathleen Hartnett White and Mario Loyola
Op-Ed Contributors
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Part three of a three-part series.

Top honors for reckless bureaucratic overreach go to the Environmental Protection Agency, for its ruling that carbon dioxide, a primary component of the air we breathe, is a pollutant under the Clean Air Act.

In making its so-called "endangerment ruling," the agency freely admits that regulating carbon dioxide under the literal terms of the CAA would be "absurd," "infeasible," and "adversely affect national economic development."

By its own estimate, the number of Title V operating permit holders would increase from the current 14,000 to more than 6 million, at a cost to permit holders of \$49 billion over three years, just in the costs of securing the permits, on top of the \$23 billion administrative cost for the agencies issuing the permits.

To avoid this havoc, EPA simply rewrote the law in rule, changing the black-letter regulatory triggers in the CAA and substituting its own vastly higher thresholds in order to narrow the number of entities affected in the initial phase of implementing the new regulation.

In this "Tailoring Rule," EPA changed the statutory thresholds that trigger Title V and Preventions of Significant Deterioration permits from 100 tpy and 250 tpy, respectively, to 100,000 and 75,000 tpy.

Most proponents and opponents of carbon limits agree that the CAA is wholly unsuited to regulating CO2. But again, EPA is nonplussed.

Through an unlawful change to federal law, comically strained interpretation of existing rules, and a 600-word new definition of what "subject to regulation" now means under state law, EPA declares regulation of CO2 effective Jan. 2, 2011 -- allowing states just six months instead of the usual three years to comply, as provided by law.

If states are unwilling or legally unable to meet this date, EPA will immediately take over with Federal Implementation Plans.

In a now famous Aug. 2, 2010, letter to EPA, Texas Attorney General Greg Abbot and Texan Commission on Environmental Quality Chairman Bryan Shaw communicated the state's categorical refusal to comply.

"The State of Texas," they wrote, "does not believe that EPA's 'suggested' approach comports with the rule of law. The United States and Texas Constitutions, United States and Texas statutes, and EPA and TCEQ rules all preclude TCEQ from declaring itself ready to require permits for greenhouse gases from stationary sources as you request."

Texas and at least 15 other states have challenged EPA's greenhouse gas rules in federal court. On Oct. 7 Texas filed a request for emergency stay because of the economic harm already occurring in Texas: 167 job-creating projects in Texas frozen by EPA's threat of a construction moratorium on facilities exceeding its arbitrary and illegal Tailoring Rule thresholds on Jan. 2, 2011.

The Endangerment Finding and Tailoring Rule -- and the new EPA's other regulatory actions -- are a double whammy for our nation's economy: First, in the direct costs on businesses that don't shut down; and second, in the effect on business confidence. Facing the increased risk of operating in an increasingly uncertain regulatory environment, wary businesses will shelve expansion plans and defer hiring.

Businesses depend on a predictable legal system in which to operate. When regulations no longer secure clear rights, legal uncertainty freezes business decisions.

Regulatory risk has an adverse effect on investment valuation. "Regulatory uncertainty is the enemy of economic development," says one Valero executive. "If you can't estimate the value of a project, you don't make the investment."

The new EPA rules do not merely impose added marginal costs on production; they threaten entire sectors of the economy. If the administration's real goal is "to end the era of fossil fuels in our generation," as President Obama has repeatedly declared, EPA is blazing the path.

There's just one problem: No alternative to fossil fuels yet exists that can replace 85 percent of our energy with remotely comparable supply, efficiency and affordability.

As Gov. Rick Perry, R, said recently, to accept EPA's lawless greenhouse gas initiative would be "following flawed science down a road that will lead to the loss of hundreds of thousands of Texas jobs, while doing nothing more to protect human health."

As the EPA avalanche continues to increase in size and momentum, the danger is increasingly grave, not just for the economic future of all the states, but indeed for the very balance of shared sovereignty that is essential to our federal democracy.

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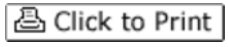
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