NATIONAL REVIEW

Revisiting the EPA Endangerment Finding

Obama's EPA used semantic tricks to avoid rigorous scientific evaluation. Is Trump's EPA more honest?

By Ross McKitrick — December 15, 2017

Environmental Protection Agency administrator Scott Pruitt is mulling over how, or whether, to respond to demands from climate skeptics that he reexamine the science that obligates the EPA to issue costly carbon-emission regulations. While he has recently acknowledged that agency staff short-circuited the science review early in the regulatory process, he may not realize that the EPA inspector general's office flagged this problem years ago, and the agency staff blew him off by means of a preposterous legal fiction that has long been in need of correction.

In 2009 the EPA issued the Endangerment Finding, which created a statutory obligation to regulate carbon emissions. In the lead-up to this decision the EPA had published its Technical Support Document. Numerous petitions for reconsideration were subsequently filed with the administrator citing evidence of bias and cherry-picking in this report, but all of them fell on deaf ears.

In April 2010, Senator James Inhofe (R., Okla.) asked the EPA's Office of the Inspector General to review the adequacy of the peer-review process behind the Technical Support Document. The EPA was not happy with what he unearthed.

It turns out that the federal government has rules in place governing how the scientific basis for regulations should be reviewed. Guidelines from the Office of Management and Budget issued under the Information Quality Act impose varying requirements depending on the uses to which a scientific assessment will be put. The most rigorous process is for so-called Highly Influential Scientific Assessments (HISA). These are scientific assessments that will, among other things, lead to rules that have an annual economic impact exceeding $500 million.

The inspector general issued a lengthy report in 2011 concluding (pp. 15–22) that the EPA's science assessment for the Endangerment Finding was highly influential, but the peer-review process fell short of the required standard. It even violated internal EPA guidelines, by failing to

publicly report the review results and cutting corners in ways that potentially hindered the work of reviewers.

The EPA argued back, rather brazenly, that their report was not an assessment at all, merely a summary of previous findings by the U.N. Intergovernmental Panel on Climate Change, the National Climate Assessment, and other reports, and these documents — not any original research by the EPA — underpinned the Endangerment Finding.

The inspector general rejected this argument for several reasons. First, the EPA study clearly was an assessment, since it selected certain lines of evidence for emphasis or exclusion and used data not found in the underlying reports. Second, the guidelines do not allow an agency such as the EPA to rely on peer reviews conducted by outside groups such as the IPCC or the National Climate Assessment team. Third, the inspector general noted (p. 53) numerous occasions when the EPA cited the Technical Support Document as the basis of its Endangerment Finding.

The EPA then argued that even if it was an assessment, it was not "highly influential." Since the Endangerment Finding was being issued on a "stand-alone" basis with no specific regulations attached, the investigation ended without resolution.

Thereafter the EPA proceeded to issue rules like the Clean Power Plan with impacts far exceeding $500 million annually. By declining to designate its science assessment as highly influential, the EPA skirted the need to conduct the required peer review, but in so doing it thwarted the intent of the statutory guidelines and undermined the ethical basis of its actions.

While the courts may not demand that this situation be rectified, Pruitt himself should. Administrative honesty demands it, especially since the determination has large potential economic ramifications. Specifically Pruitt needs to declare that the Technical Support Document was a Highly Influential Scientific Assessment that should have been reviewed as such in the first place, and he should see to it that such a review now takes place.

While climate activists may object, they have also spent years insisting that the science is settled, so if they are right, they have no reason to worry about the outcome. And if they are unhappy that this might delay the next round of rule-making, they should direct their ire at Pruitt's predecessor, who ought to have undertaken the review back in 2011 rather than playing semantic games to justify evading statutory peer-review requirements.

Regardless of Pruitt's views on climate science, he should agree that the regulatory process needs to be honest and procedurally sound. This alone gives him sufficient grounds to initiate the review that was supposed to have been done years ago.

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