

# **Global Climate & Energy Report No. 198**

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- Environmental groups have been lodging lawsuits against the US government for decades, trying to force various actions through the courts. In the latest episode, two different suits have been filed claiming the US approach to climate change is illegal and one of the actions seeks to force limits on CO<sub>2</sub> emissions under existing US law.
- Past GCERs have noted the frequently inaccurate and/or biased statements in the media that further contribute to public confusion on climate issues and a debate driven more by politics than facts. The examples of such media treatment have continued to pile up and if anything have increased in recent months.

## **Green Groups Sue US on Climate Policy**

Environmental groups have been lodging lawsuits against the US government for decades, trying to force various actions through the courts. In the latest episode, two different suits have been filed claiming the US approach to climate change is illegal and one of the actions seeks to force limits on CO<sub>2</sub> emissions under existing US law.

### ***EPA Charged With Ignoring Petition Under US Clean Air Act***

The most recent suit was filed by three environmental groups against the US Environmental Protection Agency (EPA) for failing to act to prevent climate change. The groups are the International Center for Technology Assessment (ICTA), Sierra Club and Greenpeace. They claim that since EPA is required under the Clean Air Act to limit all air pollution that endangers public health or welfare, it must control CO<sub>2</sub> emissions.

The groups submitted a formal petition in October 1999, calling on EPA to follow their interpretation of the Clean Air Act. More than 50,000 comments were received during a public comment period that ended in May 2001. The environmental groups say the vast majority strongly agreed that climate change should be addressed under the Act. EPA, however, has taken no action on the petition thus far.

The groups are seeking action in particular on auto fuel efficiency standards, which EPA administers under the Clean Air Act. This issue has long been contentious, and attempts to increase existing efficiency standards failed to gain approval in the last Congressional session.

Noting the increased rate of emissions between 1999 and 2000, which was attributed to strong economic growth, the environmental groups say action now is urgent. One of their lawyers commented, "It's time for the Bush Administration to get its head out of the sand," and accused EPA of "stalling tactics" that are causing serious damage to the environment.

EPA officials declined to comment on the lawsuit. The agency has 60 days to respond to the suit.

### ***Suit Against EPA Raises Both Legal & Scientific Issues***

One question raised by the suit is whether the EPA, or any other government agency, should be required to act if a large number of public comments support such action, as was implied by the

environmentalist statement that the majority of comments favored controlling CO<sub>2</sub>. Since green groups are quite effective in getting people to endorse their positions, based on their own choice and presentation of information, it can appear that the larger public seems to support these views, even though most of the public is generally uninformed (or misinformed) on many issues.

The government has taken the position that whether to take action against GHG emissions under current legislation should be decided on the basis of the legislative history and the scientific facts. The fact that the environmentalists have been able generate a large number of comments supporting their views does not mean these views are correct.

But some environmentalists believe the science and the legal history are on their side. One commented, "it is pretty clear from both the science on this issue and the law that the secretary has to act." Apparently "the secretary" refers to the administrator of EPA, who does not have cabinet rank or the title of "secretary." Their understanding of the science and the law may not be much better than their understanding of the US government.

The science, as set out by the IPCC, suggests that the earth is warming and that humans are at least partly responsible. However, as noted in earlier GCERs, projections of the impacts of climate change are all based on computer models and assumptions about future emission levels. This is not "science" in the sense of empirical evidence but only a projection based on certain assumptions.

If the courts begin to hear both sides of the scientific debate, it will become quite evident that:

- it is still not clear how much of the climate change that seems to be occurring is due to humans
- even if humans are the primary cause (and this is not proven), eliminating human emissions may not avoid climate change because of positive natural feedbacks that are probably already underway
- even if eliminating US emissions might have some impact on climate change, action by the US alone, especially in the absence of any commitments by developing countries, would be quite insufficient to have any significant impact

Studies have shown that full implementation of the Kyoto Protocol by all Annex B countries, including the US with its 7% reduction target, would reduce the global average temperature by

only 0.02°C by 2050. This would have almost no detectable impact on climate change. What action would the court then call on the government to take, and what would be the scientific justification for mandating this action?

On the legal side, there is little evidence that the Congress intended the relevant provisions of the Clean Air Act to include greenhouse gases that are not "pollutants" with regard to local and regional air quality. In fact, various attempts to pass legislation that would clarify the situation and mandate EPA to act against GHGs have failed to gain approval of the Congress.

The specific issue of vehicle fuel efficiency standards, which the lawsuit seeks to strengthen, was considered and rejected by the last Congress. This clearly suggests that it did not necessarily intend to include GHGs in the 1990 legislation.

In other words, environmentalists are relying on a literal reading of the language of the Clean Air Act that fails to take into account the legislative history, and on an interpretation of the science that is not supported by a close reading of the full IPCC science report issued in 2001. Perhaps the court case might bring a welcome reality check, if the government is effective in bringing out these facts.

### ***Funding Agencies Also Sued on Energy Projects***

The latest case is the second brought by green groups in recent months on climate change. In August, Greenpeace and Friends of the Earth sued two government funding agencies for facilitating activities that cause climate change. The suit, filed in San Francisco, says the two agencies have refused to review the fossil-fuel projects they are involved in for their effects on climate change and that such reviews are required by federal law.

The two federal agencies, the Export-Import Bank (Ex-Im Bank) and the Overseas Private Investment Corporation (OPIC), provide financing for US corporations for projects that commercial banks often consider too risky. Under the National Environmental Policy Act (NEPA), which has been in effect since the early 1970s, all government agencies are required to assess the impacts of their decisions on the environment.

According to the lawsuit, the two agencies have provided \$32 billion in financing and insurance over the last 10 years for fossil-fuel related projects overseas, such as oil field development, pipelines and coal-fired power plants, without assessing the contribution those projects make to global warming. The suit seeks to have the agencies conduct climate-oriented environmental reviews on

their future energy projects so that their claims of no significant impact can be examined.

The agencies would not comment on the specifics of the lawsuit because they were in litigation. However, both said they followed good environmental practices. An Ex-Im Bank spokesman said the bank had followed all necessary procedures in its projects and "is very confident that we apply all rules, laws and regulations, including NEPA, whenever we do a transaction." OPIC said all projects it supports must meet the "strictest environmental standards."

In an interesting twist that illustrates the often political nature of such lawsuits, the City Councils of Oakland (California) and Boulder (Colorado) have joined the lawsuit. Mayor Jerry Brown of Oakland, a former Democratic governor of California and former presidential candidate, said that the suit was necessary because "there's been such an abject failure on the part of the Bush administration to protect the people of this country from the seriously deleterious effects of climate disruption."

Oakland claims sea level rise could cause saltwater contamination of the city's groundwater aquifers and flood the airport and sewer systems. Boulder is concerned that global warming would bring more rain and less snow, which would reduce water supply that relies on gradual melting of the annual snowpack. An even more speculative concern is that predictions of severe drought could require water restrictions and might mean an increased risk of wildfires, which could affect not only human life but also the city budget.

The two cities are well known for their left-leaning politics. A lawyer for the environmental groups and the cities is from Vermont, which is also known for similar political inclinations. He said the two relatively obscure agencies were chosen because the projects they finance account for significant CO<sub>2</sub> emissions, and (perhaps more significantly) both were identified as playing a major role in the Bush/Cheney energy plan.

If the science is shaky regarding the impact of EPA not controlling CO<sub>2</sub>, it is even less persuasive regarding the impact of individual projects on the global climate. A well-informed judge might be inclined to dismiss the suit as frivolous, but given the obvious political implications, nothing is certain.

### ***Tuvalu May Bring Case in International Court***

The growing trend of suing the US government on climate change isn't limited to the litigation-

inclined US system. The island nation of Tuvalu is apparently preparing to sue the US and Australia in the International Court of Justice for their contributions to global warming, as well as going after US companies in domestic courts.

The issue is very complex. Tuvalu will presumably argue that it is harmed by sea-level rise. But part of the sea-level rise being experienced by Tuvalu is caused by the sinking of the tectonic plate on which it is located. Humans can do little about geology. And of the sea-level rise that may be caused by global warming, scientists can't say at this stage how much of that may be due to human emissions rather than natural causes.

Even with regard to human-related climate change, how much is due to historical as opposed to current emissions, and how is the historical liability to be allocated among countries? It is virtually impossible to single out one or two countries or a half a dozen companies and establish that they and not others are to blame for Tuvalu's problems with sea-level rise.

The US and Australia were obviously chosen because they rejected the Kyoto Protocol. But as noted above, the Protocol as it now is written would not prevent climate change in any case, even with the US and Australia. And which companies to target? Many companies have significant emissions but have also undertaken voluntary measures to limit those emissions. Is a court supposed to decide which companies are "good global citizens" and which are not, even though no individual company can prevent climate change?

Does Tuvalu have any chance of success with such a long-shot action? Some environmental lawyers think so. They argue that, because the US government has acknowledged that GHGs can cause climate change and because the US emits more than 20% of global GHG emissions, the US can be sued successfully. One even characterized Tuvalu's case as "pretty unassailable." The courts may soon have to decide whether such arguments in fact have any scientific or legal merit.

### ***Legal Actions Illustrate Polarized Nature of US Environment Debate***

The recent US lawsuits are further evidence of an increasingly polarized debate on climate and other environmental issues in the US. This debate often has a distinctly partisan character. The two cities that joined one lawsuit are overwhelmingly Democratic. GCER-185 discussed the highly partisan nature of the California debate on auto fuel efficiency and also noted a letter by 11 state attorneys-general (all Democrats) demanding president George W. Bush take action on climate change.

Nine of same attorneys-general filed a lawsuit in late December trying to block new EPA rules on local emissions by power plants. What is clear from these trends is that Democratic politicians in the rather liberal states of the northeast and west coast states are trying to use environmental issues as a way to attack the national Republican administration.

The New York Times, long known for its support of the Democratic Party, ran an editorial on 4 January commenting in connection with two other court cases: "The courts may be the last best hope for stopping the administration's assault on the environment. Mr. Bush's pro-development policies have virtually no dissenters within the administration, and the environmentalists in Congress, including many moderate Republicans, appear to be outnumbered."

The disturbing aspect of much of this debate is the slight attention given to facts and objective analysis that takes into account the full range of factors involved. All too often, assertions are made by environmental groups and are then repeated by the media (as discussed in the following item) and by politicians seeking partisan advantage, with few or no questions raised about the objective basis for these assertions.

The frequent repetition of an assertion by a large number of people may turn that assertion into a belief but it will not turn it into a fact. But perhaps that is what the environmentalists and their friends in the media wish to do: to set public policy on the basis of a widely held belief system or ideology rather than on the basis of scientific facts and objective analysis.

### **Media Still Unhelpful in Informing Climate Debate**

Past GCERs have noted the frequently inaccurate and/or biased statements in the media that further contribute to public confusion on climate issues and a debate driven more by politics than facts. The examples of such media treatment have continued to pile up and if anything have increased in recent months.

### **Reports on US Workshop Illustrate Media Preference for Green Quotes**

The media reports of the US workshop in early December provide yet another confirmation of part of the basic problem with public perceptions and politics regarding climate change. Almost all of the reports began already in the first sentence or two with criticism of the US administration and repetition of the environmentalists' positions. The overwhelming majority of the quotations in the

articles were from green group representatives.

If one were to take these reports on face value, the clear impression would be that the science was settled long ago, the whole world except the US is in agreement on this and committed to the Kyoto Protocol. Only the US is denying the "facts" and resisting doing what absolutely must be done, as soon as possible. This is largely because there is hardly any other message in the articles except a few quotes from administration officials trying to respond to these claims, and looking defensive in the process.

In one sense, reporters may be partly excused for using so many environmentalist quotes. Government officials are generally far less willing to be quoted on the record, and far more careful with their words. A careless slip could even cost them their job. As a result, their statements tend to be careful, predictable and, frankly, boring.

In contrast, environmental advocates, especially those from the more radical groups, tend to make very colorful and sometimes outrageous statements. These tend to make newspaper and other articles much more interesting to read. The fact that they may not be accurate, and that the speakers have no accountability for their statements, is usually not taken into account by the media.

### ***Accuracy in Media Continues to Be a Problem***

The general sloppiness of many in the media in presenting the facts has been noted in several earlier GCERs. A few recent examples illustrate the continuing nature of this problem.

According to one article, "IPCC studies have found human activities are becoming the dominant influence on climate change." The IPCC does not do studies itself. It is an intergovernmental body that surveys and assesses the existing peer-reviewed scientific literature to try to determine what is understood by scientists at present. Scientists may assist the IPCC at the technical level, but the basic statements and judgments of the IPCC are made by government-appointed representatives.

Another article stated that "80 percent of the world's population lives in the Southern Hemisphere, in developing nations." Perhaps the writer did not understand that "The South" in political terms, meaning developing countries, does not refer to the Southern Hemisphere, where probably actually only about 10 to 15% of the world's population lives.

The reference to the head of the US EPA as "the secretary" was noted in the item above on lawsuits



against the US government. While the speaker may have been confused about the administrator's title, the reporter should have noted the correct title in the article.

In the same article, we are told: "US greenhouse gas emissions increased at a faster rate during 1999-2000 than the average annual rate throughout the whole of the rest of the 1990s, the United Nations Framework Convention on Climate Change (UNFCCC) revealed in May." The emission data is not collected by the UNFCCC secretariat but by individual governments, and was public long before the secretariat "revealed" it in its compilation of emission inventory data last May.

A couple of months ago one reporter commented on Russian ratification: "Earlier this year Russia's President Vladimir Putin told a United Nations summit on sustainable development that he intended to ratify the protocol, and observers are expecting an announcement by the end of the year." Any "observers" that expected Russia to ratify by the end of 2002 were clearly out of touch with other statements and indications from Russia that it would still be a long process, and any reporter who took such observations on face value was no better informed, and not doing their job.

The Sydney Morning Herald wins the prize for the most glaring inaccuracies. In a single paragraph it included the following three sentences:

- "New Zealand produces about 90 million tonnes of CARBON DIOXIDE a year, more than half of that from livestock emissions." (Emphasis added; the largest source of New Zealand emissions is methane from livestock, not CO<sub>2</sub>, as discussed in earlier GCERs.)
- "Under that agreement [the Kyoto Protocol], participating DEVELOPING COUNTRIES aim to cut greenhouse gas emissions to 5.2 per cent below 1990 levels by 2012." (Emphasis added...)
- "An audit of Australia's greenhouse gases earlier this year predicted emissions in 2010 would be 111 per cent ABOVE 1990 levels - three percentage points higher than the Kyoto negotiated level of 108 per cent." (Emphasis added; the Australian Kyoto target is 108% of, not above, 1990 levels; 108% above 1990 would be 208% of 1990 levels.)

### ***Is Glass Half Empty or Half Full?***

Another problem with the media is the way in which issues and situations are characterized in headlines. Often the headlines may be written by someone other than the writer of the article, and

may be modified in order to fit into a specific space on a page. But the basic message of the headline may be quite misleading relative to the actual substance of an article.

As an example, the following four headlines were each used to describe the same basic news story:

“Official Says EU Can Meet Kyoto Target”

“Prospects Improve for EU Kyoto compliance”

“EU Will Miss Kyoto Goals Without More Effort”

“EU Will Fail Kyoto Targets With Existing Policies”

How can these quite different statements all describe the same facts? The four articles each described the latest emission projections from the European Environment Agency, which show that existing climate policies of EU Member States will result in EU emissions being only 4.7% below 1990 levels by 2010, significantly short of the EU's 8% Kyoto target.

One article said these projections suggest the EU “is more likely than previously thought to meet or even exceed” its Kyoto target. This counter-intuitive conclusion was based on the statement by EU environment commissioner Margot Wallström that additional measures were available and, if taken by countries, would result in the EU meeting (or exceeding) its target. This may or may not be so, but the projections themselves do not suggest this.

### ***Media Bias May Be Detected in Some Coverage***

A more serious problem is the tendency of some in the media to present issues and situations in a way that clearly prejudices the reader's understanding of the facts. This may manifest in many ways, such as omission of certain information, use of words that color the meaning in some way or presenting views and opinions as if they were facts.

One example of this was the description of the lawsuit against EPA described above, which said EPA was being sued for “its refusal to act on a petition that demanded the agency abide by the Clean Air Act.” The implication of this language is that EPA is simply breaking the law, rather than interpreting the law in a different way from that sought by the petitioners.

Another example, cited in an earlier GCER, was a reference to CO<sub>2</sub> as “a noxious pollutant spewed out by power plants and auto exhaust pipes.” The characterization “noxious” hardly applies to the gas that provides the basic material for tree and plant growth and that puts the bubbles in all soft

drinks, beer, sparkling wines and bubbly water we drink. The choice of "spew" over "emit" or "release" also gives a quite different, negative, feeling to this description, which the writer apparently intended.

Scientific information is often presented in a way that favors or supports the views of environmental advocates. One article referred to an environmentalist who claimed the recent number of warmer years "provides evidence that humans are largely to blame for changing the climate" and said this "drumbeat of evidence" must be listened to. Warmer weather does not in fact prove that humans are changing the climate. The temperature record (which itself is partly challenged by satellite data) and the issue of causality are two distinct scientific issues, which the article fails to note.

Another article quoted a green researcher as saying "Australia is experiencing the severe effects of climate change," a statement which confuses weather with climate (a common confusion) and further implies that all weather events are the result of human activity rather than natural factors. One might think floods, droughts and storms never occurred prior to the industrial era.

Still another article noted a study claiming that a recent increase in malaria in East Africa "may be related" to global warming rather than to drug resistance and population growth, as earlier research had suggested. The authors of the scientific research admitted they did not have "convincing and conclusive proof that climate change is causing malaria" but said they wanted "to keep the door open that climate change might be causing the malaria increase." They concluded the data used in previous research is not precise enough to rule out a link.

While the mere possibility of a link with climate change is enough to gain headlines and add to the public impression that the "drumbeat of evidence" is increasing, research that suggests the opposite rarely is noted or highlighted in the media. One exception is the media attention to recent cold weather in many parts of the world, although most articles are quick to point out that a spell of cold weather is not proof that global warming is not occurring.