

## **Senator Murkowski's Disapproval Resolution**

The Supreme Court ruled in 2007 that EPA has the authority under the Clean Air Act to regulate carbon dioxide and other greenhouse gases - provided that the agency finds that such pollution endangers human health and the environment. In December, EPA Administrator Lisa Jackson formally issued the required "endangerment finding."

Senator Murkowski recently introduced a bipartisan "resolution of disapproval" (S.J. Res. 26) that would prevent the EPA from using the Clean Air Act to impose regulations on greenhouse gases. The Senator's resolution was filed in accordance with the Congressional Review Act of 1996, which provides Congress with an opportunity to veto rules and regulations developed by federal agencies.

Senator Murkowski's resolution has drawn strong support. It is co-sponsored by 40 of her colleagues, including 3 Democratic Senators: Blanche Lincoln of Arkansas, Ben Nelson of Nebraska, and Mary Landrieu of Louisiana.

### **General Background**

The endangerment finding has set the stage for an unprecedented expansion of EPA regulation that will destroy jobs and subject Americans to expensive, bureaucratic permitting processes that they've never encountered before.

While the EPA set out to regulate only mobile sources (motor vehicles), the overlapping triggers within the Clean Air Act will immediately extend the agency's regulatory reach to stationary sources as well – giving it authority to regulate all greenhouse gas emissions. Nationwide, the EPA has estimated that some six million buildings, facilities, farms, landfills, and other establishments will ultimately be captured by these regulations. According to EPA, some 3.9 million single family homes would be regulated at the Clean Air Act's explicit statutory thresholds.

Through the "tailoring rule" EPA is seeking to raise the Clean Air Act's regulatory threshold for greenhouse gas emissions to at least 25,000 tons per year – a hundredfold increase from the statute's current triggers. As a federal agency, however, the EPA has no authority to make an arbitrary change to the plain language of the law. It is expected that the "tailoring rule" will be challenged in court.

Even if the tailoring rule survives litigation, it will still fail to provide the protection that the EPA claims. Due to state and local requirements – which require legislative amendment to change – the tailoring rule would not shield smaller emitters in some 37 states. If states do not amend their laws, their smaller emitters will never be shielded from these regulations. And even if they do act, the protection will be temporary – the EPA has made clear that smaller sources will face regulation within a matter of years.

Regulated entities would be required to acquire permits before facilities are built or modified, and, in many cases, “best available control technologies” to be purchased, installed, and operated.

Because Congress never intended the Clean Air Act to apply to greenhouse gases, it is one of the costliest and least effective tools available to achieve emission reductions.

Environmental groups, senior congressional Democrats, and administration officials (including the Administrator of the EPA and the President) have all expressed their preference for congressional legislation instead of bureaucratic regulation. Senator Murkowski’s resolution will prevent EPA from moving forward with regulations and return the debate to Congress.