The misguided Affordable Clean Energy rule

Why is the US EPA still determined to control plant food and drive up electricity prices?

Dr. Tim Ball and Tom Harris

On August 29, 2018, the U.S. Environmental Protection Agency (EPA) issued a press release "EPA Acting Administrator tours Ohio to promote ACE rule," his proposed Affordable Clean Energy rule.

According to the release, the Trump Administration's proposed rule will "replace the Clean Power Plan [CPP] and establish emission guidelines for [U.S.] states to develop plans to reduce greenhouse gas emissions."

But the new rule is still misguided. Like the CPP, it is based on the mistaken idea that human activities, and particularly our industries and electricity generators, are causing dangerous global warming.

In reality, increasing atmospheric levels of carbon dioxide (CO_2), the only gas restricted by both the ACE and the CPP, is bringing huge benefits across the terrestrial biosphere. CO_2 is an essential ingredient in photosynthesis. The last thing we should be doing is trying to reduce this "plant food."

So why is it that, even under President Trump, the EPA still finds it necessary to restrict CO_2 emissions? Let's review a bit of history.

To increase government control over the economy, the Obama White House strongly supported the climate scare: the unfounded crusade to restrict CO_2 emissions. The impact was and would be profoundly harmful. As MIT atmospheric meteorologist Richard Lindzen has said, "Controlling carbon is a bureaucrat's dream. If you control carbon, you control life."

Obama achieved his goals using the "deep state" – influential, unelected, decision-making, unaccountable government bureaucrats, whose policies and long-term goals are mostly unaffected by changes in elected officials. In particular, the Environmental Protection Agency (EPA) was central to his administration's control of carbon in the form of CO_2.

Obama knew he could not get the Paris Agreement on climate change through the Senate because – just before the rest of the world adopted the UN's 1997 Kyoto Protocol in Japan – the Senate unanimously passed the Byrd/Hagel Resolution. This resolution stated that the United States should not be a signatory to any agreement that did not hold developing countries to similar targets as developed nations. In particular, the document said in part:

> Resolved, that it is the sense of the Senate that –
>
> (1) the United States should not be a signatory to any protocol to, or other agreement regarding, the United Nations Framework Convention on Climate Change of 1992, at negotiations in Kyoto in December 1997, or thereafter, which would –
>
> (A) mandate new commitments to limit or reduce greenhouse gas emissions for the Annex I Parties, unless the protocol or other agreement also mandates new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period

The Paris Agreement does indeed have very different targets for developing and developed countries. So Obama asserted that Paris should not be considered a "treaty," and so would not require Senate approval.

To get "rulings" that seemed to legitimize the EPA's control over CO_2 without going through Congress, Obama exploited a growing problem with the Constitutional balance of powers: the increasing tendency of the Judicial Branch to rule from the bench and make decisions that were properly Legislative Branch responsibilities. The EPA website explains how it was able to bypass Congress and control CO_2:

> On April 2, 2007, in *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Supreme Court found that greenhouse gases [including CO_2] are air pollutants covered by the Clean Air Act. The Court held that the [EPA] Administrator must determine whether or not emissions of greenhouse gases from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision.

Predictably, on December 7, 2009, the EPA issued its "Endangerment Finding" that GHG emissions did indeed threaten health, asserting:

> The Administrator finds that the current and projected concentrations of the six key well-mixed greenhouse gases – carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6) – in the atmosphere threaten the public health and welfare of current and future generations.

and:

> The Administrator finds that the combined emissions of these well-mixed greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas pollution which threatens public health and welfare.

This is the flawed driver, the faulty reasoning, that underlies both the CPP and the ACE. Ironically, under the EPA definition of "air pollutant," EPA could even include oxygen because it causes rust.

It is likely that the EPA colluded with the State of Massachusetts to get it to sue the EPA in support of designating GHGs as pollutants. In effect, the state claimed that the EPA was endangering the lives of its citizens by failing to control "harmful" CO_2.

The trial transcript strongly suggests that EPA deliberately lost the final Supreme Court case. If it had properly defended itself, the case would have exposed all the lies and misinformation already pedaled to convince the public that dangerous human-caused global warming is a proven scientific fact.

The trouble is, most people think about this case in the context of criminal or civil law. In fact, and this is central to the problems created by unaccountable bureaucrats, it was adjudicated under Administrative Law (AL), a third component of the U.S. legal system.

Created just after World War II, AL allows groups and individuals to bypass the Constitution and Congress. It gives direct, unaccountable power to technocrats, subject matter experts who are members of highly skilled elite groups. The creation of AL speaks to the failure of the political class, but also to the manipulative power of technocrats and technocracy.

It was created because too many politicians cannot understand science and technology. They are afraid of making a mistake and exposing their ignorance, which would jeopardize their political careers. Instead of creating legislation that enables them to get information in ways they can understand, they give nearly complete control of issues involving science and technology to scientists, specialists and technologists. Here is what the Administrative Law does,

> The executive, legislative, and judicial branches of the US federal government cannot always directly perform their constitutional responsibilities. Specialized powers are therefore delegated to an agency, board, or commission. These administrative governmental bodies oversee and monitor activities in complex areas, such as commercial aviation, medical device manufacturing and securities markets.

Simply put, if legislators can't decide these matters in the first place, they won't know if what the experts are telling them is the truth, or an exaggeration, manipulation or fabrication.

Justice Scalia summarized the situation when the case came before the Supreme Court in 2007:

> The Court's alarm over global warming may or may not be justified, but it ought not distort the outcome of this litigation. This is a straightforward administrative-law case, in which Congress has

> passed a malleable statute giving broad discretion, not to us but to an executive agency. No matter how important the underlying policy issues at stake, this Court has no business substituting its own desired outcome for the reasoned judgment of the responsible agency.

As forceful and persuasive as Justice Scalia's comments were (here is his dissent in full), there is one massive hole in them that illustrates what is wrong with AL, not only in this case, but in almost every case where it is the basis for judgment.

It was the EPA that determined that CO_2 was a harmful substance. The Supreme Court is in the foolish position of effectively ruling that the EPA must control a harmful substance that the EPA decided, with little evidence, was a harmful substance.

No wonder so many bureaucrats take positions with technocrat groups after they leave government. They can guide the groups on how to get what they want without having to bribe politicians.

The EPA was the central agency for creating, perpetuating and applying the myth that that CO_2 is a harmful substance that is causing runaway global warming. Its bureaucrats wrote and promoted the biggest deep state fake news story of all time. President Trump must continue to rein them in.

Dr. Tim Ball is an environmental consultant and former climatology professor at the University of Winnipeg. Tom Harris is executive director of the Ottawa, Canada-based *International Climate Science Coalition*.