

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CLEAN AIR COUNCIL,
et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,
et al.,

Defendants.

Case No. 2:17-cv-04977-PD

**PLAINTIFFS' SUPPLEMENTAL RESPONSE TO
DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY**

In the short time since Plaintiffs responded to Defendants' Notice of Supplemental Authority, the United Nations and Defendants themselves have acknowledged the scope of global warming and its threats to life and property. At the same time, despite these acknowledgments, Defendants have proposed numerous additional Rollbacks to existing climate change protections, thereby increasing the risks and consequences of the clear and present dangers posed by climate change to United States citizens and residents.

In an environmental impact statement for its rule rolling back anti-pollution and fuel-efficiency standards for automobiles, the National Highway Traffic and Safety Administration (NHTSA), the EPA, and the DOE acknowledged that the

planet is on course to warm seven degrees Fahrenheit by the year 2100 if the world does not decrease its carbon output.¹ Ironically, Defendants cited this forecast not to support existing regulations but to erroneously justify yet another rollback: the freezing of federal fuel-efficiency standards for cars and light trucks. The impact statement recognizes that this policy will increase greenhouse gas emissions but considers that increase to be acceptable compared to the overall level of emissions anticipated by 2100 under the “No Action Alternative,” which assumes no additional regulatory action by Defendants.² Critically, the impact statement notes that “[a]lthough these effects [from the rollback] are small, they occur on a global scale and are long-lasting. The combined impact of these emissions increases with emissions increases from other sources could have health, societal, and environmental impacts.”³ Defendants thus acknowledge the harm that will result from their actions, but they take the absurd position that such harm should be allowed because it is relatively small compared to the other harm resulting from their Rollbacks and other global emissions.

¹ See NHTSA, Draft Environmental Impact Statement for the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Year 2021-2026, at S-15, 5-30 to 5-31, 5-34 (July 2018), available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/ld_cafe_my2021-26_deis_0.pdf; see also Julie Eilperin, Brady Dennis, and Chris Mooney, *Trump administration sees a 7-degree rise in global temperatures by 2100*, Wash. Post, Sept. 28, 2018, https://www.washingtonpost.com/national/health-science/trump-administration-sees-a-7-degree-rise-in-global-temperatures-by-2100/2018/09/27/b9c6fada-bb45-11e8-bdc0-90f81cc58c5d_story.html.

² NHTSA Environment Impact Statement at 5-30.

³ *Id.*

A recent report from the United Nations Intergovernmental Panel on Climate Change describes far more dire and quickly approaching consequences. The report's authors, a group of scientists from forty countries, concluded that if greenhouse gas emissions continue at their current rate, the atmosphere's temperature will increase as much as 2.7 degrees Fahrenheit (1.5 degrees Celsius) above pre-industrial levels by as early as 2040.⁴ Global warming of that extent would significantly increase risks of extreme rainfall, heat waves, sea level rise, severe drought, and other "climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth."⁵ Concluding that the atmospheric temperature has already warmed about one degree Celsius above pre-industrial levels, the UN report calls for immediate and aggressive action to reduce greenhouse gas emissions.⁶

⁴ See United Nations Intergovernmental Panel on Climate Change, *The Special Report on Global Warming of 1.5°*, Oct. 8, 2018, <http://www.ipcc.ch/report/sr15/>; see also Coral Davenport, *Major Climate Report Describes a Strong Risk of Crisis as Early as 2040*, N.Y. Times, Oct. 7, 2018, <https://www.nytimes.com/2018/10/07/climate/ipcc-climate-report-2040.html>; Chris Mooney and Brady Dennis, *The world has just over a decade to get climate change under control*, U.N. scientists say, Wash. Post, Oct. 7, 2018, <https://www.washingtonpost.com/energy-environment/2018/10/08/world-has-only-years-get-climate-change-under-control-un-scientists-say>; Brandon Miller, *Planet has only until 2030 to stem catastrophic climate change, experts warn*, CNN, Oct. 8, 2018, <https://www.cnn.com/2018/10/07/world/climate-change-new-ipcc-report-wxc/index.html>.

⁵ IPCC, *Special Report: Headline Statements* (Oct. 8, 2018), available at http://report.ipcc.ch/sr15/pdf/sr15_headline_statements.pdf.

⁶ See United Nations Intergovernmental Panel on Climate Change, *The Special Report on Global Warming of 1.5°*, Oct. 8, 2018, <http://www.ipcc.ch/report/sr15/>.

The mounting effects of climate change continue to be evidenced through extreme weather events that endanger the lives of United States citizens and cause billions of dollars in property damage.⁷ The devastation caused by recent hurricanes Florence and Michael has underscored the impact of climate change on the frequency, intensity, and cost of weather events. Climate scientists have long predicted that increasing temperatures of water and air, along with rising sea levels, would lead to more extreme precipitation events.⁸ Hurricane Florence's 33 inches of rainfall, storm surge, and flooding caused at least 37 deaths, thousands of evacuations, and billions of dollars of property damage.⁹ Though rescue efforts are ongoing, Hurricane Michael—the first Category 4 hurricane to *ever* hit the Florida

⁷ Kevin Sack and John Schwartz, *As Storms Keep Coming, FEMA Spends Billions in 'Cycle' of Damage and Repair*, N.Y. Times, Oct. 8, 2018, <https://www.nytimes.com/2018/10/08/us/fema-disaster-recovery-climate-change.html>.

⁸ See Henry Fountain, *The Hurricanes, and Climate-Change Questions, Keep Coming. Yes, They're Linked.*, N.Y. Times, Oct. 10, 2018, <https://www.nytimes.com/2018/10/10/climate/hurricane-michael-climate-change.html>; see also John D. Sutter, *How to talk about hurricanes now*, CNN, Oct. 11, 2018, <https://www.cnn.com/2018/10/10/health/sutter-natural-disaster-hurricane-michael/index.html>; Pete Vernon, *Yes, Hurricane Michael is a climate change story*, Columbia Journalism Rev., Oct. 12, 2018, https://www.cjr.org/the_media_today/hurricane-michael-climate-change.php.

⁹ Kevin Loria, *Before-and-after satellite photos show the staggering amount of water Hurricane Florence dumped on North Carolina*, Business Insider, Sept. 21, 2018, <https://www.businessinsider.com/hurricane-florence-damage-in-satellite-images-2018-9>.

panhandle¹⁰—has claimed at least 16 lives and caused an estimated \$4.5 billion in property damage.¹¹

Defendants are not simply meeting these new, urgent warnings with inaction—they are continuing to take steps backwards. Defendants regularly roll back previous protections despite more than fifty years of institutional knowledge that the serious threats posed by climate change demand the opposite. Since the time Plaintiffs filed their Response to Defendants’ Notice of Supplemental Authority (ECF. No. 38), Defendants proposed rolling back rules to prevent the leaking and venting of hydrofluorocarbons (HFCs) from refrigerating and air-conditioning units¹² and issued a final rule for their Rollback of methane emission limitations.¹³ Defendants also announced plans to dissolve two science-based entities tasked with advising the federal government on environmental policy: the

¹⁰ Emily Shapiro et al., *Hurricane Michael updates: Death toll rises to 17 as 'tremendous number' unaccounted for in hard-hit Florida*, Oct. 13, 2018, <https://abcnews.go.com/US/hurricane-tracker-florida-officials-warn-michael-destructive-storm/story?id=58377692> (last visited Oct. 16, 2018).

¹¹ Richard Fausset, Alan Blinder, and Matthew Haag, *Hurricane Michael Live Updates: Rescue Teams Scour Ruins as Hurricane Death Toll Rises*, Oct. 12, 2018, <https://www.nytimes.com/2018/10/12/us/hurricane-michael-live-updates-florida.html> (last visited Oct. 16, 2018).

¹² Dino Gradoni, *The Energy 202: Trump’s EPA is targeting rules for yet another greenhouse gas*, Wash. Post, Sept. 21, 2018, https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2018/09/21/the-energy-202-trump-s-epa-is-targeting-rules-for-yet-another-greenhouse-gas/5ba3eda31b326b7c8a8d158e/?utm_term=.d3dc2aaa1aea.

¹³ Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements, 83 Fed. Reg. 49184 (Sept. 28, 2018) (codified at 43 C.F.R. Pts. 3160, 3170).

EPA's Office of the Science Advisor,¹⁴ a senior position created to ensure that the highest quality science is integrated into EPA policies and decisions, and the EPA's Particulate Matter Review Panel, a group of scientific experts on airborne pollutants whose work informs the development of air quality standards.¹⁵

Elsewhere in the world, other countries continue to increase their commitment to addressing and responding to climate change. Recently, for example, based on a right of claim not dissimilar to that pled herein, a Dutch appeals court ruled that the Dutch government failed to uphold its duty of care to its citizens by not adequately planning to reduce emissions of greenhouse gases.¹⁶ Here, Defendants' similar dereliction in clear defiance of science and a virtually unanimous global consensus gravely endanger the U.S. populace.

For the reasons stated above and in Plaintiffs' other filings, Plaintiffs respectfully request that the Court deny Defendants' Motion to Dismiss.

Dated: October 16, 2018

Respectfully submitted,

/s/ Michael D. Hausfeld

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¹⁴ Coral Davenport, *E.P.A. to Eliminate Office That Advises Agency Chief on Science*, N.Y. Times, Sept. 27, 2018, <https://www.nytimes.com/2018/09/27/climate/epa-science-adviser.html>.

¹⁵ Lisa Friedman, *E.P.A. to Disband a Key Scientific Review Panel on Air Pollution*, N.Y. Times, Oct. 11, 2018, <https://www.nytimes.com/2018/10/11/climate/epa-disbands-pollution-science-panel.html>.

¹⁶ Mike Corder, *Dutch appeals court upholds landmark climate case ruling*, AP News, Oct. 9, 2018, <https://apnews.com/70ad792be8a84ab1a325f7429b4db601>.

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CERTIFICATE OF SERVICE

I, Michael D. Hausfeld, hereby certify that I caused a true and correct copy of the foregoing Plaintiffs' Supplemental Response to Defendants' Notice of Supplemental Authority to be served on all counsel of record via CM/ECF on October 16, 2018.

/s/ Michael D. Hausfeld
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