



September 8, 2022

Michal Ilana Freedhoff, Assistant Administrator
Office of Chemical Safety and Pollution
Environmental Protection Agency (EPA)

Regarding: [Petition to Phase Out GHG Pollution to Restore a Stable and Healthy Environment](#).
Docket EPA-HQ-OPPT-2022-0593

Dear Assistant Administrator Freedhoff,

I would like to thank you and your colleagues for meeting yesterday with Petitioners James Hansen, Donn Viviani, John Birks, Richard Heede, Lise Van Susteren and me. We appreciated the exchange, and I wish here to encapsulate and emphasize a few of the points we offered during that meeting.¹

As to the relevant science: We emphasized that, due to the essentially unrestrained consumption of fossil fuels, as well as the virtually unrestricted disposal of their resulting products into the environment, we have overshot the safe level of atmospheric CO₂, methane and other GHG pollutants. Accordingly, to restore and protect the climate system, and the oceans, so that they will sustain our children's future, we must commence, without further delay, both the phase out of GHG pollution and fossil fuels (with exceptions for specific uses) as well as removal of a substantial share of legacy emissions.

As to policy: We focused on the authority and responsibility TSCA §6 imposes on the Agency to impose one or more of seven requirements specified by Congress until the point that the chemical substances and mixtures at issue in our Petition – GHG pollutants and fossil fuels – no longer present an unreasonable risk to health or the environment. Far more is plainly required than can be accomplished within the strictures of the recent *West Virginia* decision by forthcoming tailpipe and power plant proposals, even when they are combined with the raft of taxpayer-funded investments in the recent Infrastructure and Inflation Reduction Acts.

We discussed, as well, that pursuant to TSCA §9, the Agency is able and encouraged to utilize other existing authority to impose an across-the-board (and rising) carbon fee even during a period of forbearance during which the Agency declines to fully exercise its authority to prohibit additional GHG pollution. Leading economists other experts anticipate that a rising carbon fee would efficiently and effectively propel our nation toward a clean energy economy.

¹ We also very much appreciated the points that you made as well as the contributions from Petition-endorser E. Donald Elliott, though I do not specifically characterize them in this summary.

As to the operative ethical imperative: We observed that our nation bears the lion's share of responsibility for creating or allowing the present global crisis but, even so, our nation has not yet imposed any meaningful price on carbon. The ensuing failure to constrain emissions within reach of US law contrasts sharply with our Framework Convention and Paris Agreement commitments, and therefore our claim to international leadership.

Accordingly, in part because of the efforts of key members of the Petitioners' group, along with many of the [1,000 people across the nation and planet](#) who have now endorsed their effort herein, people are increasingly aware of our failure to-date, and of the special burden that failure imposes on the young, the poor, the disposed, and upon future generations. Particularly where the carbon majors and other large sources continue to profit by their ability to treat the atmosphere as a free and open sewer. There is a correspondingly mounting psychological toll imposed on young people who confront an increasingly degraded planet and compromised future. That toll, including on their progeny, if any, will not be relieved absent meaningful action to arrest and reverse this present race to catastrophe. The increasingly apparent and increasingly recognized impacts, as outlined in Part II of the Petition, rival those stemming from the darkest moments of recent history (the Holocaust; the specter of nuclear war). The Agency simply must not fail to grasp the opportunity presented by our Petition to forge a far more sustainable path. The risk presented by these chemicals is unreasonable by any plausible definition. Indeed, the risk is existential, as the President has emphasized. Repeatedly.

As to expertise: We observed, in increasing atmospheric concentrations of CO₂, methane, and the other GHG pollutants, and their manifold severe to lethal impacts, that the issue here is best characterized as one of chemical safety and risk. Accordingly, the climate crisis problem and, pursuant to our Petition, its straightforward solutions, are decidedly and manifestly within EPA's wheelhouse.

As to procedure: We accentuated the ample flexibility provided in the statute, which flexibility enables the Agency, subsequent to its determination of unreasonable risk, to secure the best thinking of interested parties – including vulnerable sectors and highly impacted communities,² your most critical relevant constituency. Impacted industrial representatives on all sides also should be allowed to participate in the public rulemaking process.

² As noted in the Petition at Part I, p. 37, "the Agency must take special care to ensure the full participation of highly impacted persons and traditionally under-represented communities, as these are among the most likely groups to be at unreasonable risk from present and anticipated climate impacts. As Petitioners discussed. . . these include, but are not limited to, children and future generations, individuals at increased personal risk such as the elderly and persons with disabilities, populations at increased risk due to their socioeconomic status or homelessness, and Indigenous and Native communities as well as communities of color."

The statute and the Petition provide as well for Agency flexibility sufficient to allow it to phase in requirements to steer clear of national security impacts and the imposition of undue burdens upon essential industries that are difficult at present to decarbonize. One among the group also urged you, if necessary, to consider an advanced notice of proposed rulemaking to gather essential information prior to your potential issuance of a draft rule.³

As to the law: We stressed the signal features of TSCA to provide an overarching structure for a deep decarbonization program within reach of US law, one that would be far more resistant to nullification by litigation than related efforts proceeding under less clear provisions of other statutes. Some of TSCA's particularly strong features derive from 2016 amendments that you helped forge for a bi-partisan coalition in Congress during your years of work on the Hill.

The need to establish a firm legal foundation for a comprehensive US decarbonization effort, one that stands a reasonable chance at matching in practice our international pronouncements, was amplified by the Supreme Court's June 30 decision in *West Virginia*. The Agency's 44-year pedigree in first utilizing TSCA to address CFCs, a chemical that EPA determined in 1978 to be a potent climate-forcing agent, is helpful in this regard, as is the DC Circuit's recent discussion specifying that TSCA is available to the Agency to control non-ozone depleting substances that nonetheless impact climate – even where the Clean Air Act provides no similar authority.

Further, due to the long-lived nature of certain GHGs in the environment, including CO₂, we are forced to confront a continuing disposal problem. Only TSCA, among present authorities, squarely authorizes the Agency to impose a measure of responsibility upon major GHG polluters to clean up their mess by directly removing, or paying into a fund, such as Petitioners suggest, that will be used to remove legacy emissions.

In sum as to the law, invocation of the authorities that inhere in TSCA – such as my clients have outlined in their Petition – is critically necessary both to ensure a timely and orderly phase out of additional GHG pollution within reach of US law, as well as to ensure commencement of a program of legacy emissions removal.

³ As may be warranted, I am available to discuss with your legal team procedural options that may make sense for the Agency, while preserving Petitioners' rights under the law including with respect to relevant statutes of limitation.

I remain at your service to discuss, through your September 14 response deadline and beyond.

Sincerely yours,



Dan Galpern,
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Richard Heede, Climate Science, Awareness and Solutions, and
Climate Protection and Restoration Initiative.