

**Daniel Galpern, General Counsel and Executive Director  
Climate Protection & Restoration Initiative**

September 29, 2023

Hearing Officers Taylor-Wolfe and Witthans, and my esteemed colleague Professor Richard Wallsgrove:

I am Dan Galpern, Founder, Executive Director, and General Counsel of Climate Protection and Restoration Initiative. I am also the long-time legal and policy adviser to the eminent dean of climate scientists, Dr. James E. Hansen, from whom you will hear shortly.

Let me say this, on behalf not only of Dr. Hansen but also Dr. Donn Viviani, a Kailua resident and President of the Board of Directors of CPR Initiative:

**We greatly appreciate this partnership** with the University of Hawai'i School of Law and its Environmental Law Program, with the Sierra Club of Hawai'i, and with each one of you here today. We simply cannot turn the tide without your critical, ongoing engagement.

This is **CPR Initiative's 2d in a series** of hearings that aim to answer the fundamental question: What More Should the United States Do On Climate?

But let me be brutally clear at this outset: We should not need to be doing this, that is, organizing and sponsoring these hearings.

Instead, EPA should be doing it, i.e., garnering public sentiment for more far-reaching federal action, and taking testimony as to the strong pathways, grounded in the best available science, that we have proposed.

And to do this especially in highly impacted communities, including those threatened by climate-induced events.

But, to date, the Agency has not taken up our stronger approach, and so it has not seen fit to hold such hearings. And so, to the extent of our capacity, we are taking on that role, and thus, taking it to the streets. Now, as to those stronger pathways, I can note that:

**First**, on January 25, 2021, just five days after the inauguration, Dr. Hansen and I wrote to the new President, urging him to make **“full use of a powerful tool already at your disposal to accelerate the necessary decarbonization of our power, industrial, agricultural, and transportation systems.”**

That tool, the **Independent Offices Appropriations Act of 1952**, enables EPA to impose a rising fee on oil, gas and coal, based on that industry's horrendous impact to our common airshed, a vital natural resource. When could EPA impose such fees to address that problem? To quote part of our letter: “any time an administration in power is willing to do so.”

That **characterization of the Agency's authority**, by the way, was not initially our own. Rather, we appropriated directly from the conservative legal scholar E. Donald Elliott, who served as General Counsel of the Environmental Protection Agency from 1989-1991.

**Second**, in June of 2022, we filed a **Citizen's Petition** with EPA under §§6 and 21 of the Toxic Substances Control Act, demanding the Agency's construction and implementation of a binding plan to oversee an orderly phase out, as necessary, of oil, gas and coal, and their associated GHG emissions, within reach of United States law.

I filed that Petition on behalf not only of Dr. Hansen, and his organization Climate Science, Awareness and Solutions, but also on behalf of the also aforementioned Dr. Donn Viviani, himself a 35-year veteran EPA policymaking scientist.

And also on behalf of three other experts: Richard Heede, the highly regarded climate accountability analyst; John Birks, a renowned atmospheric chemist; and Lise Van Susteran, a physician and investigator of the **impact of our failure to date to seriously address the risk of dangerous climate change on the emotional health of our children**.

And on behalf, of course, of CPR Initiative.

Plainly, the Toxic Substances Control Act demands effective and persistent action.

Specifically, upon the Administrator's determination that any part or parts of the life cycle of a chemical substance **presents an unreasonable risk** of injury to health or the environment, **then**, the federal EPA **shall – not may, but shall** – impose restrictions – restrictions **even to the point of prohibition** -- upon the production, processing, distribution in commerce, use or disposal of such substances.

**For how long** must EPA impose those requirements? Congress in the law expressly provided the answer to that: for as long as necessary to eliminate the unreasonable risk.

These authorities, in combination, are critically important to addressing what President Biden himself has called the **existential threat** of unarrested climate change. Why so? Because the dangerous anthropogenic interference with Earth's climate system – as prohibited by the 1992 UNFCCC – is a function predominately of the production, distribution, and use as intended of fossil fuels.

If those authorities are now invoked, and enforced as intended by Congress, the free reign of oil, gas and coal will come to an end.

No longer will that industry be permitted to treat our common airshed as a free and open sewer for its wastes.

No longer, moreover, will our government stand idly by or otherwise subserve that special interest, at the direct expense of the more fundamental interests of our progeny, whose legitimate and reasonable expectations for life, liberty, and happiness are now at risk of being burned to the crisp or otherwise swept away by one or other supercharged atmospheric or oceanic maelstrom.

To be fair, as we must, our expert federal environmental agency has been somewhat busy during Biden's short years as president.

It has, for instance, been working through a backlog to fashion restrictions on a range of other harmful chemical substances. As well, it has drafted at least a couple of impressively complicated rules to tamp down GHG emissions from new motor vehicles and from the power sector. And it is assisting in the implementation of the Inflation Reduction Act of 2022.

Altogether, those efforts, in my view, amount to more than just tinkering at the margins.

But in point of fact: far more needs to be done – if we are to protect and restore a viable climate system, or even meet the President's goals.

Strangely enough, EPA at times has denied this, *but we know that the Agency knows better*. As does the President.

If our nation is to exercise genuine leadership on climate, *we must be willing actually to restrict supply -- and not rely only on diffuse and expensive efforts to depress demand*.

We are now in a climate crisis – we are right in it – and our federal government, not least of us, needs to act like it.

Not to panic, but to think. Not to fret, but to act. Not to placate vested interests, but to compel their reorientation.

It is for our posterity that the framers devised our imperfect and yet promising Constitution, aiming to secure the rule of law in a democratic republic. That requires, at minimum, enforcement of existing fundamental law.

Our federal climate policy needs to subserve the interests of all of us, not some of us.

Let this be a start, a start of something enduring, in service to our common humanity.

Thank you.