

The Decline and Fall of Cap-and-Trade

By Patrick J. Michaels

***Summary:** For many months Al Gore and other supporters of cap-and-trade legislation have been predicting victory. It's only a matter of time, they said, before the federal government regulates the U.S. economy to reduce carbon emissions and end global warming. Gore and company have been investing their money in "green economy" industries, anticipating a windfall of profits from the changes in energy policy that Congress will mandate. But something's happened. Without any fanfare the effort has been stopped dead in its tracks. What happened—and why?*

At around 7:00 pm on Friday, June 26, 2009, the U.S. House of Representatives passed, on a 219-215 vote, the "American Clean Energy and Security Act of 2009" (ACES), also known as H.R. 2454.

ACES mandates that the U.S. reduce by 83 percent overall the total emissions of carbon dioxide in less than forty years. Adjusting for population changes, this would mean that government law and policy would allow the average American in 2050—less than forty years from now—to emit the carbon dioxide of the average citizen immediately after the Civil War. Even by 2020, the bill passed by the House requires a per-capita reduction of 33 percent below 2005 emissions, a very ambitious requirement.

The big environmental nonprofits were ecstatic. The House had passed the holy grail of the global warming movement—a binding cap on carbon dioxide emissions.



Air Force One bombarded by a blizzard in December 2009.

Surely the Senate would follow, perhaps with something even more stringent.

What could be finer? The National Resources Defense Council (NRDC) said it "set the U.S. on a course to create millions of new clean energy jobs." With the prospect of Senate action on the bill, NRDC doubled-down, saying that "it can be improved to achieve more emissions reductions by 2020." Neither could the World Wildlife Fund (WWF), the world's largest environmental group, leave well-enough alone: "This bill is not everything we need, but it is a critical starting point, at a crucial time," said WWF President and CEO Carter Roberts.

These statements were remarkably out of touch. Instead, it very soon became clear

that the House had committed electoral suicide. The widely-read and politically savvy Rasmussen Report is a daily staple in Washington. Every day it publishes a three-day moving average figure it calls the Presidential "Approval Index," which is the percent who "strongly approve" the President's performance minus those who "strongly disapprove."

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According to Rasmussen's tracking, prior to June 30, there were only two days in which President Obama's approval index was negative. After June 29, 2009 it was never positive.

Because it's a three-day moving average, the figures published on June 30 were the first three days sampled after the bill's passage on the 26th. It is therefore quantitatively demonstrable that cap-and-trade helped to turn the American people against President Obama. Congressional staff live by Rasmussen's index, checking it every morning to divine how to nuance their Member's messages. Every staffer in the Senate saw the switch from positive to negative and its concurrence with cap-and-trade, and no doubt rushed to tell the boss.

What would ACES actually do about global warming? The answer is: nothing detectable. In 1998, Tom Wigley, a climate scientist then at the National Center for Atmospheric Research, in Boulder, Colorado, published a very useful algorithm to calculate the effects of various emissions reduction proposals on global warming; for example, comparing the warming expected from "business as usual" (i.e. no mandated reductions) to warming if ACES were adopted by the United States only, and warming if ACES were adopted by the entire developed world.

Even in the last case, which is highly unlikely, global warming is reduced a mere .08°C (.14°F) by 2050, from 1.58°C to 1.50. Eight-hundredths of one degree

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Celsius! This amount is literally too small to measure. Similarly dismal figures result if the analysis is extended all the way to 2100.

The Senate Punts

The U.S. Senate saw the ominous effect of cap-and-trade on President Obama's approval index and chose instead to take up healthcare. By mid-July, a draft health bill was on the Senate floor—and the President's approval index tanked further.

Cap-and-Trade languished, then lapsed. First, it was claimed a bill would be ready by the August recess. Then Senator Barbara Boxer (D-CA) said her Environment and Public Works Committee would have a bill ready when the Senate came back after Labor Day, 2009. That was delayed until October. Finally, Boxer moved the bill onto the Senate floor in November. Even the most rudimentary head-count showed it far short of the 60 votes required to stop debate and force an up-or-down vote.

Recognizing this, in December 2009 Senators Graham (R-SC), Kerry (D-NH) and Lieberman (I-CT) proposed an alternative bill that delayed the regulation of CO2 emissions by autos and more specifically targeted cap-and-trade for utilities that generate electricity. More importantly, it prevented the regulation of greenhouse gas emissions by the Environmental Protection Agency (EPA) and had limits on the price that "emissions permits" would cost.

Most environmental groups damned it with faint praise, generally arguing that its price limitations would result in emissions reductions far beneath its targets, which were essentially the same as ACES. In this, they were right. Others objected to the proscription of EPA regulation. If the price limit was reached, emissions would likely not decline as scheduled, and EPA would be unable to step in.

Senator Graham was under enormous pressure from conservative South Carolinians who wondered why he was blundering into the quagmire of global warming, hardly a key issue in the Palmetto

State. In reality, the trio produced no actual bill, but they promised one in April, 2010. After fits and starts, they finally settled on Monday, April 26, for unveiling their legislation. But on April 25, Senator Graham walked away from his own bill, complaining that majority leader Harry Reid (D-NV) wanted immigration reform—not climate change—to be the Senate's next priority. (In a tough reelection fight, Reid courted Nevada's Hispanic vote with promises that he cared.) Without Graham's token Republican support, getting 60 votes again became impossible.

To many, Graham's tantrum with Reid seemed a bit contrived, as he was likely casting about for ways to extricate himself from legislation that was clearly unpopular with his constituents. But Kerry and Lieberman soldiered on, promising a bill on May 10, 2010. The closest thing they produced to a true bill was a "discussion draft."

Cap-and Trade as passed by the House was obviously unpopular, but the Senate was buffeted by other events far outside its control: The policy disasters of Climategate, Copenhagen, and the United Nations Intergovernmental Panel on Climate Change occurred in rapid succession, destroying the credibility of global warming's most prominent advocates. In addition, congressional action might be irrelevant if the Environmental Protection Agency stepped in to regulate carbon emissions by fiat.

Climategate

Climategate—the release of a massive cache of emails from the Climatic Research Unit at the University of East Anglia—was the first unforeseen disaster. This was the horde of over 3,000 emails, additional text, and computer code that were somehow moved from the server at the Climatic Research Unit (CRU) at the University of East Anglia in Great Britain. The identities of the persons or organizations responsible have as yet not been determined and/or revealed. The Climategate emails suggest that some of the world's leading climate scientists engaged in professional misconduct by composing what East

Anglia climatologist Keith Briffa called “a nice, tidy story” of climate history.

In what is perhaps the most egregious of the emails, from May 29, 2008, Phil Jones, the director of East Anglia’s CRU, wrote Michael Mann, a prominent climate researcher at Penn State University. Mann is the author of the famous temperature history known as the “hockey stick,” which is controversial because it claims that global temperature was static for 900 years (a long, flat “handle”), followed by 100 years of rapidly rising temperatures in the 20th century (a protruding “blade”).

Under the subject line “IPCC & FOI,” Jones wrote Mann: “Can you delete any emails you may have had with Keith [Briffa] re AR4 [a 2007 UN climate compendium]. Keith will do likewise . . . can you also email Gene [Wahl, an employee of the U.S. Department of Commerce] to do the same . . . We will be getting Caspar [Amman, of the U.S. National Center for Atmospheric Research] to do likewise.”

Mann is one of the Climategate principals who once proposed a plan, clearly laid out in emails whose veracity he has not challenged, to destroy a scientific journal that dared to publish three papers disagreeing with his views and those of his East Anglia colleagues.

Mann claims temperatures 800 years ago (sometimes referred to as the Medieval Warm Period) were not as warm as those measured recently. This is important because if modern temperatures are not unusual, then one may doubt the seriousness of the global warming “threat.” In a 2003 paper in the journal *Climate Research*, the Smithsonian’s Willie Soon and Harvard researcher Sallie Baliunas took exception to Mann’s work, which was at variance with many other independent climate studies.

The Soon-Baliunas paper should have been just part of the normal to-and-fro of science. But CRU’s Jones wrote Mann (March 11, 2003) “I’ll be emailing the journal to tell them I’m having nothing more to do with it until they rid themselves of this troublesome editor” (Chris de

Freitas of the University of Auckland). Mann responded to Jones the same day: “I think we should stop considering ‘Climate Research’ as a legitimate peer-reviewed journal. Perhaps we should encourage our colleagues . . . to no longer submit to, or cite papers in, this journal. We would also need to consider what we tell or request our more reasonable colleagues who currently sit on the editorial board.”

Mann subsequently wrote Jones (July 11, 2003) “I think the community should . . . terminate its involvement with this journal at all levels . . . and leave it to wither away into oblivion and disrepute.” Under pressure, *Climate Research* and several other journals then stopped accepting anything that substantially challenges the received wisdom on global warming perpetuated by the CRU.

In the course of the Climategate revelations, several related emails came to light indicating that the science behind ACES and the putative Senate cap-and-trade bills was not so clear (or “settled”, as Al Gore likes to call it). Particularly damaging was the fact that the CRU was withholding data to independent scientists who wanted to reproduce its work in climate history.

For instance, Warrick Hughes, an Australian scientist, wrote to request the original CRU temperature data (February, 2005). Here’s what Phil Jones, CRU’s director, wrote back: “We have 25 years or so invested in the work. Why should I make the data available to you, when your aim is to try and find something wrong with it[?]”

These revelations, and dozens of others, made big news, first in the blogosphere then, finally, in the legacy media. University review commissions were set up to whitewash the scandals, but the damage was done. In the U.S. Senate no one could bring up cap-and-trade without hearing the word “Climategate.”

The Copenhagen Fiasco

On Fox News, Dan Weiss, “Director of Climate Strategy” at the liberal Center for American Progress, accused me of leaking the Climategate emails. Not true. I know

only one thing about them: They were released to influence the U.N.’s important climate conference in Copenhagen, Denmark. In December 2009, the parties to the 1992 United Nations Framework Convention on Climate Change gathered to reach a new binding international agreement to limit emissions of greenhouse gases. It would replace the failed Kyoto Protocol. Climategate could not have happened at a more inauspicious time for those supporting a new treaty.

In retrospect, Kyoto was a waste of effort because China and India, two very large emitters (China is now the world’s largest, having passed the United States in 2006) were exempt. Without their participation, any new protocol is similarly futile.

President Obama went to Copenhagen to secure a commitment from the emerging industrial nations of China, India, Brazil and South Africa to cut their emissions. He failed to secure even a promise to consider a commitment. After declaring victory, the president fled the scene in Air Force One in an attempt to beat what turned out to be a record-setting December snowstorm back to Washington. He didn’t make it.

No one can say for sure that Climategate figured in the intransigence of the rapidly developing large state emitters. But not a day went by during the Copenhagen meeting without a new Climategate story or revelation. What’s most certain is that Copenhagen’s failure gave the the Senate another incentive to avoid considering cap-and-trade.

The Decline of the IPCC

Climategate and Copenhagen certainly threw up political roadblocks to frustrate supporters of a cap-and-trade bill. But they could always point to the conclusions of the U.N.’s Intergovernmental Panel on Climate Change (IPCC)—the self-proclaimed “consensus” of climate scientists—to provide them with scientific cover.

Or so it seemed until the IPCC suffered a series of disastrous reversals in 2009 and

2010 that occurred just after the release of the Climategate emails.

IPCC divides its reports into the products of three “working groups.” For instance, the Fourth Assessment Report (“AR4”), published in 2007, is the product of three groups named climate science (Working Group [WG] 1), effects of climate change (WG2), and mitigation and adaptation (WG3).

In the WG2 chapter on Asia, the following statement appeared concerning the massive Himalayan Ice Cap, the largest non-polar glacial system in the world: “... the likelihood of them [the Himalayan glaciers] disappearing by the year 2035 and perhaps sooner is very high if the Earth keeps warming at the current rate.”

The citation for this assertion is a non-refereed 2005 document from the World Wildlife Fund (WWF). WWF cited a news article in the (non-refereed) science periodical *New Scientist*, and that periodical cited a non-refereed article by Dr. Syed Hasnain, from what was called the “Working Group on Himalayan Glaciology.”

The depth of the Himalayan glacier complex is several hundred feet. It would be simply impossible to melt this in 25 years. One legend is that someone at the IPCC had simply transposed the numbers, turning 2305 into 2035. But this explanation proved not to be true at all.

It was put in on purpose.

In an interview with the London Sunday Mail (published January 24, 2010), Dr. Murari Lal, who was responsible for the IPCC WG2 chapter on Asia, acknowledged that the IPCC knew the 2035 figure was not from refereed literature. “We knew the WWF report with the 2035 date was ‘grey literature,’” he said.

The Indian government, quite aware that the IPCC was misstating the behavior of the Himalayan glaciers, had commissioned its own study, *Himalayan glaciers: A state-of-the art review of glacial studies, glacial retreat and climate change*, by Dr.

V. K. Riana. Rajenda Pauchari, who is the head of the IPCC, immediately denounced Riana’s study as “schoolboy science” and “voodoo science.” In fact, Dr. Riana found absolutely no evidence that the Himalayan glaciers would largely disappear in 25 years; indeed, he noted that several Himalayan glaciers are growing. Lal, who was in charge of the Asia chapter, told the Sunday Mail that the grey-literature citation was put into the report for political effect: “It related to several countries in this region and their water sources. We thought that if we can highlight it, it will impact policymakers and politicians and encourage them to take some concrete action.”

Several scientists had already criticized the 2035 statement during the review process for the WG2 document; but their comments were obviously ignored since the 2035 date remained in all IPCC drafts and revisions, including the final copy.

The reputation of IPCC was also harmed by the use another non-peer-reviewed study from WWF issued in 2000. The study said:

Up to 40 percent of the Amazonian forests could react drastically to even a slight reduction in precipitation; this means that the tropical vegetation, hydrology and climate system in South America could change very rapidly to another steady state, not necessarily producing gradual changes between the current and the future situation (Rowell and Moore, 2000).

Rowell and Moore (2000) is not a refereed citation.

In reality, the Amazon forest is quite resilient. Two years before the AR4 was published, the Amazon region had one of the driest years in its recorded climate history. While lakes dried up and river flows were severely reduced, satellite data found little if any change in the volume or appearance of the tropical forest. How did a non-refereed document with little resemblance to reality wind up in an IPCC report, withstanding multiple revisions to appear in the final published version?

Or consider the Synthesis Report of the

IPCC, which is supposed to summarize all three Working Group reports for policymakers, and which contained this statement on African agriculture on page 50: “By 2020, in some countries, yields from rain-fed agriculture could be reduced by up to 50 percent.”

This erroneous statement—predicting a 50 percent loss in yield by 2020—was often invoked by none other than Pauchari. Addressing a group of students attending a “model climate summit” in Potsdam in November, 2009, Pauchari said, “I speak to you as the voice of the world’s scientific community” and that “in some countries of Africa yields from rain-fed agriculture could be reduced by up to 50 percent.”

It seems that Pauchari was relying on yet another non-peer-reviewed paper from another green advocacy group, the “Climate Change Knowledge Network.”

There’s more. The IPCC did not rely solely on hard-to-detect misinformation on Himalayan glaciers and the Amazon rain forest. On page 547 the WG2 report tossed in this statement about the Netherlands:

The Netherlands is an example of a country highly susceptible to both sea-level rise and river flooding because 55 percent of its territory is below sea level where 60 percent of its population lives and 65 percent of its Gross National Product (GNP) is produced.

This is completely unsourced. The IPCC blamed the Dutch Environment Ministry for the mistatements, but just because a government bureaucrat said it doesn’t make it true.

The Dutch ministry issued a clarification that only 26 percent of its country is below sea level and 29 percent is subject to riverine flooding. (That adds up to 55 percent). Moreover, river flooding has very little to do with global warming. Inland rivers exceed their banks because of heavy rainfall events rather than sea-level rise. And there’s no evidence for any increase in European storminess.

The overall Summary for Policymakers for the WG1 report—which is by far the most “read” portion of the report said:

Antarctic sea ice extent continues to show interannual variability and localized changes but no statistically significant average trends, consistent with the lack of warming reflected in atmospheric temperatures averaged across the region. {3.2, 4.4}

This is wrong. Satellite data indeed show a statistically significant increase in Antarctic sea-ice extent. (See, for example, data from Cryosphere Today, a daily update of sea-ice published at the University of Illinois.)

A check of IPCC gaffes shows no instances where the organization used non-refereed grey-literature sources to underestimate the magnitude of climate change or its effects. We can be pretty sure—given the amount of attention errors like these received—that supporters to the global warming hypothesis have been looking for some to mitigate this misinformation. Clearly they have found none.

One can say with statistical confidence that the IPCC is biased. In all of the instances cited above, the IPCC describes events that are worse than the findings in the peer-reviewed literature. Every mistake moves in the same direction. The UN body is pervasively biased. (For those interested in statistics, the UN’s probability of being truly biased is true at the .97 confidence level).

The Death of Cap-and-Trade: EPA’s “Endangerment” Finding

In the end, the Senate absolved itself of any responsibility for expensive emissions regulation. Unfortunately, that’s not the end of the story.

On April 2, 2007, the U.S. Supreme Court handed down a landmark decision, *Massachusetts v. EPA*, in which it determined that the Clean Air Act Amendments of 1990 required that the Environmental Protection Agency state whether or not carbon dioxide is a

“pollutant,” i.e., a substance that poses a danger to human health and welfare. If it found an “endangerment,” then EPA would, under the law, be required to regulate (reduce) emissions, unless specifically exempted by an act of Congress.

On December 7, 2009, the first day of the ill-fated Copenhagen climate summit, the EPA did issue an endangerment finding. The timing was obvious. ACES had passed the House the previous June, but there was no pending legislation in the Senate. If President Obama was to reach Copenhagen with any credibility on the subject of emission reduction, he would have to assure other nations that the U.S. would meaningfully cut its carbon dioxide emissions.

Obama had to promise carbon dioxide regulation from some agency or branch of government. Clearly, he was unconvincing. The Senate’s resolve was weakened by Climategate, Copenhagen, and the IPCC brouhahas. But what will be the effect of EPA’s endangerment finding?

The Senate knows cap-and-trade legislation isn’t popular and promises to be very expensive. Inside the Beltway types bluster, “If the Senate doesn’t act, EPA will.” But is that such a bad deal? EPA would take the onus away from frightened lawmakers and put it squarely at the doorstep of the badly-redecorated Oval Office, where only one person stands for election every four years. If the green movement can achieve its dream of cap-and-trade, how upset will it be to see Obama damaged—or defeated? As always seem to happen in politics, an unexpected constellation of inconvenient events conspired to stymie passage of a Senate version of ACES. And EPA’s endangerment finding made it impossible. No doubt environmentalists were convinced on election night 2008 that their time had come. On the campaign trail, Obama said that people would say that the day he took Office that, “This was the moment when the rise of the oceans began to slow and our planet began to heal.” He had the House and the Senate to block a filibuster. He had it all.

But Washington is a community of

politicians who are here because of voters. No one thought the new president’s approval index would sink into negative territory. No one—except a few working scientists like myself — knew that the climate science establishment wielded a vicious billy club—until Climategate.

The green NGOs’ influence on the United Nations’ IPCC created a scandal that caused its decline and fall in world science. And because the activists overplayed their strong hand, they weakened the President’s, who had not one piece of legislation to carry to Copenhagen. Who would have forecast that by insisting that the EPA issue a carbon dioxide “endangerment” finding, President Obama spurred U.S. senators to run away from his legislation?

There is no more fitting image of the fate of cap-and trade—and of the dreams of green activists around the world—than the picture of President Obama’s plane, Air Force One, landing at Andrews Air Force Base after Copenhagen. It was obscured in a December blizzard.

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Many thanks,

**Terrence Scanlon
President**

GreenNotes

In late August, representatives from some of the nation's top environmental groups gathered in Milwaukee, Wisconsin to throw what they called a "CarnivOil," a faux circus highlighting the green movement's seemingly intractable struggle against the oil industry and other purveyors of fossil fuels. The Washington Post described the scene, which included, "...a stilt-wearing barker, free 'tar balls' (chocolate doughnuts), and a suit-wearing 'oil executive' punching somebody dressed like a crab." This churlish display was a reaction to the continued decline in fortunes of the greenies, who naturally blame the dastardly oil companies for their woes: **Bill McKibben**, co-founder of the green group **350.org**, lamented his cause's decline: "What was revealed by the last year or two was that the energy industry hasn't even had to break a sweat yet in beating this stuff [cap-and-trade, etc.] off." If the greenies thought things were bad for them before the event, they must be truly despondent now – reportedly, neither of the two green events organized in Wisconsin in August drew enough people to fill a high school gymnasium. Ouch.

Al Gore is also depressed about the downturn of green agenda. As reported by **Steve Milloy** on his blog **Green Hell**, Mr. Gore recently admitted to supporters in a conference call, "[T]his [cap-and-trade] battle has not been successful and is pretty much over for this year." Gore laid the lion's share of the blame at the feet of his former colleagues: "The U.S. Senate has failed us," he complained, "the federal government has failed us." Gore's commiseration transpired before a mad man, who reportedly experienced an "awakening" to radical environmentalism upon viewing Gore's propaganda film "An Inconvenient Truth," stormed the **Discovery Channel** building in Silver Springs, Maryland, taking hostages and making enviro-demands before being shot and killed by police. Gore is not responsible for the actions of one deranged supporter, but it is one more in a long string of recent embarrassments to the environmental movement. Kermit the Frog said it best – it ain't easy being green.

Still, green groups have not given up demanding action from the federal government. On September 9th, a coalition of green groups including the **Sierra Club**, **Environment America**, and the **Natural Resources Defence Council** sent a letter addressed to President **Barack Obama** and the **Environmental Protection Agency** demanding that the average fuel efficiency for the American fleet be raised to 60mpg within 15 years, in hopes presumably of spurring production of yet more hybrid vehicles for the car-buying public to ignore.

Three environmental groups, the **Tennessee Clean Water Network**, **Statewide Organizing for Community Empowerment** and the **Sierra Club**, recently reached a settlement in a lawsuit against the **National Coal Corporation** over discharges from the company's Zeb Mountain mine in East Tennessee. The lawsuit charged that the coal company's permit did not authorize it to discharge selenium. According to the Associated Press, "under the settlement, prior to issuance of a final permit by **Tennessee Department of Environment and Conservation**, National Coal has to report its selenium output to TDEC and the [environmental] groups." In other selenium news, Judge **Robert Chambers** of the U.S. District Court for the Southern District of West Virginia found **Patriot Coal** in contempt of court and gave the energy giant "two years to get its selenium discharges down to the limits specified in its mining permits," according to the Kansas City Star. Patriot – one of the largest coal suppliers in the U.S., with 14 mining operations in the upper South and Midwest - claims it will cost the company an upfront \$50 and another \$3 million a year to comply with the judges orders. If all of this sounds like a coordinated effort on behalf of green groups to bedevil energy companies with higher legal and operating costs, give yourself a point. If you think this will result in higher energy prices for everyone, but will hurt poor and working class families the hardest, give yourself another point.