



**{In Archive} memo to President**  
**Lisa Heinzerling** to: Richard Windsor

03/13/2009 05:45 PM

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History: This message has been forwarded.  
Archive: This message is being viewed in an archive.

Lisa,

Attached is a draft of the memo you requested, using the form Eric obtained from the WH. This draft incorporates Allyn's suggestions.

I'll be eager to hear what you think.

I heard you're not feeling well. I hope you get better soon.

Lisa



Presidential\_Decision\_Memo endangerment LH 3-13.doc



**{In Archive} Fw: memo to President**

**Richard Windsor** to: Lisa Heinzerling, David McIntosh

03/13/2009 07:53 PM

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Lisa

Lisa Heinzerling

----- Original Message -----

**From:** Lisa Heinzerling

**Sent:** 03/13/2009 05:44 PM EDT

**To:** Richard Windsor

**Subject:** memo to President

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**{In Archive} Re: Fw: memo to President** 

**David McIntosh** to: Richard Windsor

Cc: "Lisa Heinzerling", "David McIntosh"

03/13/2009 08:45 PM

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From: Richard Windsor/DC/USEPA/US  
To: "Lisa Heinzerling" <heinzerling.lisa@epa.gov>, "David McIntosh" <mcintosh.david@epa.gov>  
Date: 03/13/2009 07:52 PM  
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**Richard Windsor** to: David McIntosh

Cc: "Lisa Heinzerling"

03/13/2009 08:58 PM

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**Cc:** "Lisa Heinzerling" <heinzerling.lisa@epa.gov>; "David McIntosh" <mcintosh.david@epa.gov>

**Subject:** Re: Fw: memo to President

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Lisa Heinzerling to: Richard Windsor

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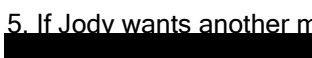
03/14/2009 11:37 AM

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Here I'll disagree again, this time with Jody Freeman's suggestion as conveyed through Nancy Sutley.

First, notice that this suggestion is the polar opposite of the one on the cause or contributes finding. That suggestion would be to pare back the endangerment finding for fear of the consequences that flow from a cause or contributes finding. This suggestion would enlarge the endangerment finding to include an ANPR. When one gets the sense that one might receive two opposite reactions to an idea from the same people, one has to wonder what the real concern is.

On doing an ANPR for cars along with the endangerment finding: I think this is a bad idea, for the following reasons:

1. No auto deal is near. Waiting for a deal -- if it ever comes -- will delay the endangerment finding indefinitely. (This is not to say we cannot come up with a good rule on autos; it is to say that the come-together moment OECC has been trumpeting to the press is not imminent.)
2. Even if there is something I do not know and an auto deal is indeed near, pairing the endangerment finding with an ANPR will still delay the endangerment finding because we will need to write the ANPR. This is not a simple matter.
3. Doing an ANPR will also delay the proposed auto rule, which we have scheduled for July/August (probably August; DOT has the same schedule). We will need to take comment on the ANPR, which will mean providing a chunk of time for a comment period and also take time away from actually writing the rule.
4. "ANPR" has become a dirty word in the context of EPA climate regulation. Last summer's ANPR on climate regulation was the Bush Administration's mechanism for putting off any action whatsoever on climate. I understand that an ANPR could still be useful in some settings, even when it comes to climate, but not in the context of endangerment and mobile sources. Last summer's ANPR was ABOUT endangerment and mobile sources, in large part. To do ANOTHER ANPR would be very awkward.
5. If Jody wants another mechanism for sealing an autos deal, that mechanism could be -- as you and I have discussed -- (b) (5)  Our lawyers believe that is a legally plausible way to go. It has precedent at the agency. I have suggested it in conversation with OECC. I do not honestly know why they would prefer an ANPR to this other mechanism.

We have a politically fraught but scientifically and legally straightforward decision ready to go: that is, that greenhouse gases endanger public health and welfare and that mobile sources contribute to the pollution that is dangerous. Ours is a simple and true story to tell. I do not believe we should complicate the story by adding spin-offs that are driven by an agenda that -- I fear -- has not been fully disclosed to us.

Richard Windsor

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From: Richard Windsor/DC/USEPA/US  
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**{In Archive} Re: Fw: memo to President**   
**Lisa Heinzerling** to: Richard Windsor

03/14/2009 11:43 AM

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Richard Windsor

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03/13/2009 08:57:56 PM

From: Richard Windsor/DC/USEPA/US  
To: David McIntosh/DC/USEPA/US@EPA  
Cc: "Lisa Heinzerling" <heinzerling.lisa@epa.gov>  
Date: 03/13/2009 08:57 PM  
Subject: Re: Fw: memo to President

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**{In Archive} Re: Fw: memo to President**   
**Richard Windsor** to: Lisa Heinzerling

03/14/2009 11:45 AM

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Cool!

Lisa Heinzerling

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**Sent:** 03/14/2009 11:43 AM EDT  
**To:** Richard Windsor  
**Subject:** Re: Fw: memo to President

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**{In Archive} Re: Fw: memo to President** 

**David McIntosh** to: Lisa Heinzerling

Cc: "Lisa P Jackson", Richard Windsor

03/16/2009 06:48 AM

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And here I've just made a few minor, additional line-edits -- and only to the two paragraphs that I originated.



Presidential\_Decision\_Memo endangerment LPJ 3-15 - redline LH - DM.doc

Lisa Heinzerling

What you've done is excellent. I've gone back and forth, too, wondering wheth...

03/15/2009 10:38:53 PM

From: Lisa Heinzerling/DC/USEPA/US  
To: "Lisa P Jackson" <(b) (6)>  
Cc: David McIntosh/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA  
Date: 03/15/2009 10:38 PM  
Subject: Re: Fw: memo to President

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On balance, I think your initial instinct to anticipate criticism is correct. I'd leave the memo the current length. I've added a few little suggested edits. In two places I highlighted text because otherwise you wouldn't be able to see what I had changed slightly as compared to David's version.

I've also renamed the memo for purposes of version control.

Thanks. See you tomorrow.

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03/15/2009 08:26:24 PM





**{In Archive} Re: Fw: memo to President**   
**Richard Windsor** to: David McIntosh, Lisa Heinzerling  
Cc: "Lisa Jackson"

03/16/2009 06:50 AM

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Ok - one last read and this will go. E 3 are the sole keepers here. Tx.  
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## DECISION MEMO

THE WHITE HOUSE

Washington

March --, 2009

### MEMORANDUM FOR THE PRESIDENT

FROM: LISA P. JACKSON

SUBJECT: POTENTIAL PRESIDENTIAL ANNOUNCEMENT OF EPA'S  
"ENDANGERMENT FINDING" ON GREENHOUSE GASES

I am writing to ask you to give your most serious consideration to the idea of personally announcing the Environmental Protection Agency's impending determination that greenhouse gases endanger public health and welfare. Climate change is the most pressing environmental issue of our time, and the "endangerment finding" soon to be issued by EPA will be the United States Government's first official recognition of this threat. I would urge that this announcement be the major Presidential event of this year's Earth Week.

#### **Background**

Alone among the federal agencies, EPA has the duty formally to determine whether greenhouse gases present a danger to public health and welfare. The Clean Air Act provides the statutory home for this duty. Under this law, the EPA Administrator must make a judgment as to whether air pollutants may reasonably be anticipated to endanger public health or welfare. In the previous Administration, EPA argued that it had no duty to make this finding. In *Massachusetts v. EPA*, the Supreme Court disagreed. Two years have elapsed since then.

Following your campaign pledge to follow the rule laid down in *Massachusetts v. EPA* and my own commitment, in my confirmation hearing, to do the same, I instructed my staff to turn their attention back to the endangerment finding. In doing so, I directed them to look carefully at the consequences of greenhouse gases and climate change for human health and also to incorporate the latest scientific evidence into their analysis. They have done so. A draft endangerment finding will be sent to OMB for interagency review on March 20. OMB has indicated that they will endeavor to complete the process of interagency review in three weeks, so that the endangerment finding would be ready to be issued in mid-April.

#### **The Issue**

The issue is whether you will personally announce the finding that greenhouse gases endanger public health and welfare, and make that announcement the centerpiece of your Earth Week activities this year.

## **Analysis and Policy Considerations**

You have made climate policy a central part of your domestic and international agenda. The premise of this policy is that greenhouse gases do indeed threaten human well-being. Yet the United States Government has never officially and formally proclaimed this basic fact. Quite to the contrary; until very recently, the official government position was one of avoidance and denial. The longstanding failure of the United States Government to announce – clearly, emphatically, and officially – that climate change is a real threat has not only delayed action on this grave danger, but it has also done significant damage to our international credibility and scientific integrity. In addition to emphasizing climate policy, you have also made re-engagement in the international community and renewed respect for scientific integrity essential pieces of your governing agenda. All of these parts of your broad mission come together in the official U.S. finding that greenhouse gases endanger public health and welfare.

In announcing this finding, you would be speaking not only to our own citizens but also to the world. The world has waited for a long time, breath held and hopes high, for the United States Government finally to acknowledge the real and serious threats of climate change. I believe that when the Government does so, through the endangerment finding EPA soon will make, you should be the one to deliver this long-awaited message.

If Earth Day passed without a finding, the domestic and foreign criticism would begin immediately and mount steadily. When, eventually, your Administration made the finding – something that, I will be so bold to say, is a near-certainty – it would be described as more the result of criticism than of leadership.

The endangerment finding does not unleash a pell-mell regulatory charge – something that I I oppose because it would provoke a public backlash. Instead, the regulatory process that begins with the endangerment finding unfolds deliberately and incrementally. Its pace and direction can be controlled – by the White House and EPA – in ways that are consistent with the law and that do not become lightning rods of criticism. In fact, the beauty of making the endangerment finding during Earth Week is that it would elate the Left without offering targets of opportunity to the Right. After all, the finding is comprised of nothing more than science and common sense. The document contains no gloomy regulatory to-do list.

I cannot imagine a more appropriate major Presidential event for Earth Week than this one. Earth Week this year runs from April 20-24.

## **Recommendation**

I recommend that you personally announce EPA's endangerment finding during a major Earth Week event.

Approve    Disapprove    Discuss

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Washington

March --, 2009

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