

Congress of the United States

Washington, DC 20515

June 10, 2009

Environmental Protection Agency
EPA Docket Center, Mailcode 6102T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

**Request for Extension of Comment Period
Proposed Endangerment and Cause or Contribute Findings for
Greenhouse Gases Under Section 202(a) of the Clean Air Act
Docket EPA-HQ-OAR-2009-0171**

Dear Administrator Jackson:

We respectfully request the Environmental Protection Agency (EPA) extend, by 60 days, the comment period on EPA's Proposed Endangerment and Cause and Contribute Findings for Greenhouse Gases under the Clean Air Act ("Proposed Endangerment Findings").¹

As you are aware, Members of Congress have expressed grave concern that an affirmative endangerment finding for carbon dioxide and other greenhouse gases would place thousands of American small businesses, already struggling in one of the toughest economic climates our generation has ever seen, in a legally uncertain position, further threatening their survival in this economy.² What is more, these same businesses are currently responding to several other rules proposed by your agency, including a Proposed Rule on Mandatory Reporting of Greenhouse Gases,³ EPA's proposed revisions to the National Renewable Fuel Standard Program⁴ and analyzing the recently reported H.R. 2454, American Clean Energy and Security Act, authored by Representatives Waxman and Markey. We are concerned that given the relationship between these climate change proposals and the cumulative demands they impose, EPA's June 23, 2009 deadline does not allow stakeholders adequate time.

It is true the Proposed Endangerment Findings do not, in isolation, establish any regulatory requirements. However, this fact is immaterial as such findings are a clear predicate for any standard-setting rulemaking for greenhouse gases. The recently announced Notice of Upcoming Joint Rulemaking to Establish Vehicle GHG Emissions and CAFE Standards, relying in part on authority from the Clean Air Act (CAA), specifically Section 202, reveal the Administration's intention to regulate immediately following the finalization of the Proposed Endangerment Findings.

¹ Proposed Endangerment and Cause and Contribute Findings for Greenhouse Gases under the Clean Air Act, 74 Fed. Reg. 18886 (April 24, 2009).

² Letter from Congressman Darrell Issa, Ranking Member, House Committee on Oversight and Government Reform to The Honorable Lisa Jackson, Administrator, Environmental Protection Agency, March 12, 2009 (hereinafter "Letter").

³ Proposed Rule on Mandatory Reporting of Greenhouse Gases, 74 Fed. Reg. 16448 (April 10, 2009).

⁴ Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, 74 Fed. Reg. 24904 (May, 26, 2009).

As you are aware, once a pollutant is “subject to regulation under the act,” a regulatory dragnet is triggered, subjecting thousands of businesses, large and small, to onerous Prevention of Significant Deterioration (PSD) and Title V permitting requirements.⁵ Such a decision could have immediate effects, impeding the construction and permitting of new energy projects.⁶ Nothing in the CAA limits the application of permitting requirements to energy sources, so it could be applied to thousands of small businesses, farms, churches, and schools, subjecting the owners to unknown civil liabilities if they fail to obtain necessary permits.⁷ Clearly, EPA’s final decision on the Proposed Endangerment Findings will have great consequence to the U.S. economy and to businesses struggling to survive these harsh economic times.

For a rule of this magnitude, 60 days is simply inadequate.

As you are aware, it is clearly within EPA’s discretion to extend the comment period. The Supreme Court in *Massachusetts v. EPA* made clear that EPA has discretion in the timing of its issuance of any regulations.⁸ Moreover, the D.C. Circuit has also stated that nothing in the Supreme Court’s decision “imposes a specific deadline by which EPA must determine whether a particular air pollutant poses a threat to public health or welfare.”⁹ Accordingly, we foresee no legal obstacles to EPA granting this request.

Given these concerns, we respectfully request EPA provide a 60-day extension to the comment period so that interested parties are permitted adequate time to respond to the Proposed Endangerment Findings. If you choose to not grant this request, we request your staff provide our offices with a detailed explanation justifying the decision. Please contact Senior Counsel Kristina Moore, with Oversight and Government Reform Committee, if you have any questions.

Sincerely,



Darrell E. Issa
Ranking Member
Committee on Oversight and Government Reform



Joe Barton
Ranking Member
Committee on Energy and Commerce

⁵ Letter from William Kovacs, Vice President, U.S. Chamber of Commerce to the Honorable Stephen Johnson, Administrator, Environmental Protection Agency, Oct. 10, 2008, (stating that, “PSD is triggered the moment CO2 becomes a regulated pollutant under the CAA.”) (available at <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=EPA-HQ-OAR-2008-0318-0402.1>).

⁶ *Id.*

⁷ Letter, *supra*, note 2.

⁸ *Massachusetts v. EPA*, 549 U.S. 497, 533 (2007).

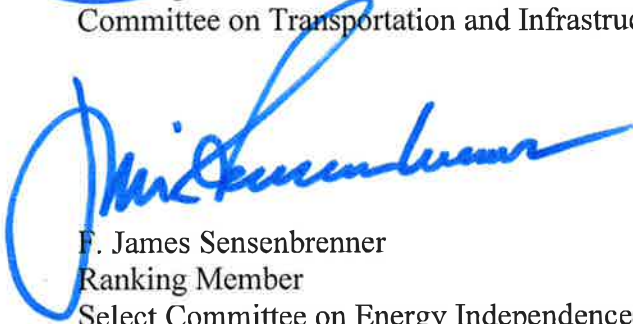
⁹ *Massachusetts v. EPA*, No. 03-1361, Order, Document No. 0121688432, at 2 (D.C. Circuit June 26, 2008).



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