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April 4, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

I am writing in regard to EPA's March 5, 2008, response to my letter raising concerns about the proposed rulemaking entitled "Prevention of Significant Deterioration New Source Review: Refinements of Increment Modeling Procedures."

EPA's response offers no assurances that address my principal concern: that the proposed rule will increase air pollution in national parks, wildlife refuges, and other areas with clean air. As I explained in my February 6, 2008, letter, strong objections to the proposal were expressed by EPA regional modeling staff based on their view that the proposal would have the effect of adversely impacting air quality in these "class I" areas.¹ EPA's letter assured me that "all interested offices within EPA, including technical staff in the Regional Offices, had full opportunity to express their concerns with earlier drafts of the proposed rule" and that "all concerns were considered prior to publication of the proposal."² EPA documents provided to the Committee do not support this assertion.

In order to help the Committee understand the effects of a proposed rule that will increase pollution in some of the nation's most treasured areas, I request that EPA provide answers to the attached questions. These questions will also help the Committee understand EPA's statement regarding consideration of the regional staff's comments.

¹ Letter from Chairman Henry A. Waxman, to Stephen L. Johnson, Administrator, Environmental Protection Agency (Feb. 6, 2008).

² Letter from Robert J. Meyers, Principal Deputy Assistant Administrator, Environmental Protection Agency to Chairman Henry A. Waxman (Mar. 5, 2008).

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I request that you please provide a complete response to these questions by April 18, 2008.

If you have any questions concerning this request, please have your staff contact Greg Dotson of the Committee staff at (202) 225-4407.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry A. Waxman".

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

Attachment

Questions Regarding the U.S. Environmental Protection Agency's Proposed Rulemaking Entitled "Prevention of Significant Deterioration New Source Review: Refinements of Increment Modeling Procedures."

1. How was the need for this proposal identified and who within the agency suggested the promulgation of this rule?
2. When was this rule put on the agency's regulatory agenda? Please describe the process used to add rulemakings to EPA's agenda that are not ordered by a court or required by statute.
3. On what date was technical staff outside the Office of Air Quality Planning and Standards, including regional modeling staff, notified that this rule was being drafted?
4. On what date did technical staff outside the Office of Air Quality Planning and Standards, including regional modeling staff, receive the text of the draft proposal?
5. On what date were their comments due?
6. Documents reviewed by the Committee suggest that some EPA staff believed their comments would not be considered. Staff stated that they did not "want to spend any time on Don Quixote impersonations" because they did "not expect the proposed rule to change direction based on the comments we submit."³ What steps were taken to fully consider staff comments and assure staff that their comments would in fact be considered? Were staff comments critical of the proposal presented to the Administrator?
7. In what ways was the proposal modified in response to comments from EPA's technical staff?
8. Staff of the National Park Service have suggested this proposal would "make it much easier to build power plants" near national parks.⁴ Does the agency deny this?
9. EPA staff criticized the rule's proposal to allow the use of an annual average emission rate for evaluating 24-hour and 3-hour pollution levels because such a method would

³ E-mail from Kerry Clough, RA, Region 8, Environmental Protection Agency to Richard Long, P2, Region 8, Environmental Protection Agency (Dec. 13, 2006); E-mail from Adina Wiley, Region 6, Environmental Protection Agency, to Erik Snyder, Region 6, Environmental Protection Agency (Nov. 8, 2006).

⁴ E-mail from Valerie Naylor, Superintendent, Theodore Roosevelt National Park, National Park Service, to Don Shepherd, National Park Service (May 31, 2007).

“almost always mask a short-term concentration peak.”⁵ Another EPA employee compared this proposal to determining compliance with highway speed limits based on an individual’s annual average speed.⁶ Does the agency dispute these characterizations? If yes, please explain why the agency disputes them. If no, please explain whether the rule addresses this concern in any way.

10. Please quantify the public health impact of the short-term concentration peaks described in question 9.
11. Analysis by EPA’s Region 7 estimated that the annual averaging proposal could underestimate pollution levels by 1.5 to 13 times compared to actual short-term emissions.⁷ Does EPA contest this estimate? If so, please provide any supporting analysis. Was Region 7’s analysis included in the record for the rule? If not, why not?
12. With regard to the variance issue, EPA’s March 5, 2008, letter states that a “permit must ... model the Class II increment including the variance source.” Does EPA believe that this requirement offers some protection of the air quality in Class I areas? If so, please explain how EPA believes that would occur.
13. Agency staff responding to a draft, argued that the variance exception “gives a permanent ‘pass’ to [sources operating under a variance], regardless of subsequent events.”⁸ Was the draft edited to address these concerns before publication of the proposal? If so, what changes were made?
14. Which regions and staff supported the proposal to allow the use of proprietary models and methodologies for calculating actual emissions? In what other contexts does EPA believe that modeling data and program code should be kept out of the public eye?

⁵ Region 6, U.S. Environmental Protection Agency, Additional Comments on Draft Proposal (Dec. 11, 2006).

⁶ E-mail from John Bunyak, National Park Service, to Susan O’Brien, Department of Interior (Mar. 14, 2007).

⁷ Region 7, Environmental Protection Agency, Statistical Analysis of Short Term Increments (undated).

⁸ Dave Campbell, Region 3, U.S. Environmental Protection Agency, Compilation of Regional Comments — First Round of Comments, 7 (Nov. 13, 2006).