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June 11, 2010

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

While the President has repeatedly stated that job creation and economic growth are his top priorities, in the environmental arena it appears the Administration is allowing ideology to trump objective science and sound public policy, and is issuing new rules that will significantly impede economic development and growth throughout the United States. In particular, we are concerned that the Administration, through the Environmental Protection Agency (EPA), is promulgating a whole host of unworkable, multi-billion dollar environmental regulations without fully considering all available scientific information, and without regard to the realistic compliance costs, job impacts, or the ability of states, municipalities and/or businesses to implement the new regulations.

In the past we have expressed very serious concerns about the Administration's global warming regulations and EPA's process for developing its endangerment finding, the agency's highly expedited issuance of that finding, and the agency's reliance on the scientific assessments of outside groups, including the United Nations Intergovernmental Panel on Climate Change (IPCC), without a careful and critical examination of their conclusions and findings. Further, we have significant concerns about the potentially hundreds of billions of dollars or more in compliance costs that are triggered by the finding, the over 6 million entities that may ultimately be subject to complex new permitting requirements, potential enforcement actions, fines and penalties, and threats of citizen suits and other third-party litigation. EPA itself has acknowledged that the stationary source permitting requirements triggered by the endangerment finding are totally unworkable, and that it would be administratively impossible for EPA and states to administer those new requirements, or for employers and businesses to comply.

We write today regarding another set of multi-billion dollar regulations proposed by the Obama Administration which also appear to be extraordinarily expensive and unworkable. Specifically, in January 2010, EPA proposed new National Ambient Air Quality Standards (NAAQS) for ground-level ozone, the main component of smog. NAAQS ozone standards have been revised a number of times over the past several decades, including in 1997 when EPA set an 8-hour “primary” ozone standard, as well as an identical “secondary” standard, to a level of 0.08 parts per million (ppm), or effectively 0.084 ppm. While EPA significantly strengthened that standard in 2008 to a level of 0.075 ppm, in January 2010 this Administration took the unprecedented step of setting aside the 2008 standards, and proposing its own alternative standards based on the prior administrative record and a “provisional assessment,” and without conducting a full review of the currently available scientific and technical information. EPA is now proposing a new primary ozone standard within the range of 0.060-0.070 ppm, as well as a distinct cumulative, seasonal secondary standard within the range of 7-15 ppm-hours. EPA has also proposed an accelerated implementation schedule.

We are very concerned about the proposed standards, not only because there appear to be questions about the development of the proposed standards, but also because EPA estimates that the costs would range from **\$19 billion to \$90 billion annually**, or nearly a trillion dollars over ten years. Moreover, it appears, based on EPA’s own ozone maps and estimates, that most counties in the country could violate the standards, particularly if EPA chooses to set the standard at the lower end of the proposed range. Further, it also appears many areas of the country, including rural and remote areas, could never be in attainment because the standards are so low that they may exceed natural background ozone levels, or ozone levels due to foreign emissions from Asian or other sources.

We understand EPA plans to finalize the proposed ozone standards by August 31, 2010. Before EPA finalizes such standards, we believe your agency should provide the Congress with fuller information about the EPA’s process for developing and proposing the new standards, the counties or municipalities expected to be in violation, whether the new standards can realistically be implemented by areas that have higher ozone levels due to natural background ozone levels or foreign emissions, and the potential restrictions that the new standards will place on future economic growth and development for non-attainment areas.

We request your responses to the following questions within two weeks of the date of this letter:

1. Under Sections 108 and 109 of the Clean Air Act (CAA), EPA is authorized to set NAAQS for certain criteria pollutants, including ozone, and the Act sets out specific procedures for revising those standards.
 - a. In proposing the new standards, why isn’t EPA conducting a full analysis of all available data, including more recent data?

- b. In proposing the standards, why isn't EPA following the express procedures set forth in Section 109 of the CAA?
2. Under the Clinton Administration's 1997 ozone standards:
 - a. What types of measures have been required by state and local governments to come into compliance with those standards?
 - b. What were the estimated costs for compliance with the 1997 standards and how do those compare with estimated costs for the proposed new standards?
 - c. What analysis, if any, did EPA conduct relating to the potential impacts on employment of the 1997 standards?
 - d. What were EPA's projections with regard to attainment of the 1997 standards, and approximately how many counties in the United States have still not been able to come into compliance?
 - e. What are the primary reasons for the inability of these counties to come into compliance?
3. Under the Obama Administration's proposed ozone standards, we understand that EPA projects, based on 2006-2008 data, that of the 675 counties that currently monitor ozone levels, 515 counties (76%) would violate a 0.070 ppm standard, and 650 counties (96%) would violate a 0.060 ppm standard.
 - a. Please identify the 515 counties that would violate a 0.070 ppm standard, and the expected time needed for attainment.
 - b. Please identify the additional 135 counties that would violate a 0.060 ppm standard, and the expected time needed for attainment.
4. According to the attached map from EPA's Clean Air Status Trends Network (CASTNET) 2008 Annual Report, it appears many areas of the country that do not currently have ozone monitors would also be likely to violate the new smog standards, including in very rural and remote areas.
 - a. How many counties don't currently have ozone monitors?
 - b. Based on CASTNET data and any other data EPA may have regarding ozone levels in non-monitored counties, how many additional counties could be in violation of EPA's proposed ozone standards if a monitor were present? Please identify those counties using the CASTNET data and any other data available, and the expected time needed for attainment.

- c. Would there be areas with monitored air quality that attain the proposed standards but that might nevertheless be considered to be in “nonattainment” because they are in a Consolidated Metropolitan Statistical Area (CMSA) in which one monitor or more exceeds the proposed standards?
5. According to the EPA Fact Sheet for the Obama Administration’s proposed ozone standards, the implementation costs range from \$19 to \$90 billion annually while EPA projects the value of the health benefits would range from \$13 to \$100 billion per year.
 - a. What are the primary studies EPA is relying upon in the development of its health benefits estimates? What are the major uncertainties in those studies that could affect the estimates?
 - b. How many of the health-based studies included in the criteria document for the proposed ozone standards were based on statistically significant evidence compared to those studies that were not?
 - c. How many of the new health-based studies included in the provisional assessment for the proposed ozone standards were based on statistically significant evidence compared to those studies that were not?
 - d. Can EPA provide any assurances that the value of the health benefits will outweigh the implementation costs?
6. Under the Obama Administration’s proposed ozone standards, what control requirements, including offsets, transportation planning measure or other measures, may apply to nonattainment areas?
 - a. It appears the proposed standards would create a significant number of new nonattainment areas in the Western United States. How would nonattainment in rural or remote Western states and tribal lands be addressed?
 - b. In the event that an area fails to attain any new standards by the applicable date, what would be the potential consequences, including any sanctions or penalties?
 - c. What will happen to states or localities that cannot come into compliance with the proposed standards because of a lack of economically or technically feasible technology necessary to attain compliance?
 - d. What will happen to states or localities that have natural background ozone levels, and/or ozone levels due to transport from outside the United States, that are currently close to or exceed the new standards?

- i. Will such areas be designated as being in nonattainment?
 - ii. Will EPA require states or localities to attain standards lower than concentrations below the non-controllable background levels?
7. Given, as EPA recognizes, that there would be many new nonattainment areas, does EPA believe it is realistic to require states to provide recommendations to EPA by January 7, 2011? Is it reasonable to require State Implementation Plans by December 2013?
 - a. If EPA believes these deadlines are realistic, please explain the basis for that conclusion.
8. Does EPA anticipate requiring separate planning requirements for a seasonable secondary standard if one is adopted as proposed? How does EPA plan to implement this type of secondary standard?
9. Has EPA prepared any analyses of the potential employment impacts of the proposed standards on specific sectors of the economy, including the manufacturing and construction sectors? If yes, please provide copies of such analyses.
10. Has EPA prepared any analyses of the potential relocation of production facilities outside the United States as a result of implementation of the proposed standards? If yes, please provide copies of such analyses.
11. Has EPA prepared any analyses of the potential impacts of the proposed standards on small businesses? If yes, please provide copies of such analyses.


If the EPA withholds any documents or information in response to this letter, please provide a Vaughn Index or log of the withheld items. The index should list the applicable question number, a description of the withheld item (including date of the item), the nature of the privilege or legal basis for the withholding, and a legal citation for the withholding claim.

Should you have any questions, please contact Minority Committee staff at (202) 225-3641.

Sincerely,



Joe Barton
Ranking Member



Michael Burgess
Ranking Member
Subcommittee on Oversight and Investigations

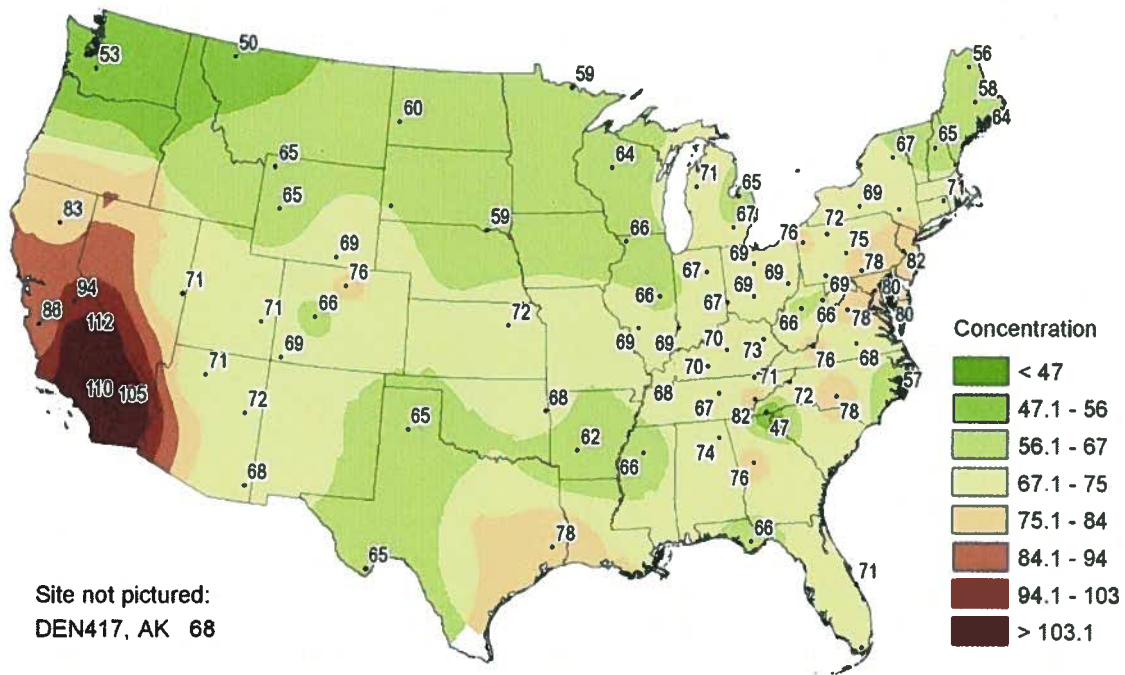
Letter to the Honorable Lisa Jackson
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Enclosure

cc: The Honorable Henry A. Waxman
Chairman

The Honorable Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

Figure 4-3 Fourth Highest Daily Maximum 8-Hour Average Ozone Concentrations for 2008



Source: Clean Air Status and Trends Network (CASTNET), 2008 Annual Report, February 2010, p. 38: http://www.epa.gov/castnet/docs/annual_report_2008.p