

**STATEMENT OF
STEPHEN L. JOHNSON
ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE**

January 24, 2008

Good morning, Chairman Boxer and members of the Senate Committee on Environment and Public Works. I appreciate the opportunity to come before this Committee to discuss EPA's response to California's request for a waiver of preemption for its greenhouse gas motor vehicle emission standards.

Let me begin by saying that climate change and greenhouse gases are global problems. As the President recognized at the Major Economies Meeting last September, the leading countries of the world are at a deciding moment when, together, we must reduce greenhouse gas emissions instead of allowing the problem to grow. In fact, in my letter to Governor Schwarzenegger I stated that the problem of climate change "poses challenges for the entire nation and indeed the world" and that "greenhouse gas emissions harm the environment in California and elsewhere regardless of where the emissions occur."

The President has committed the United States to take the lead in reducing greenhouse gas emissions by pursuing new, quantifiable actions. I congratulate the Congress and the President for doing just that; by enacting the Energy Independence and Security Act (EISA) the nation will be taking many new, quantifiable actions that will

reduce greenhouse gases and improve our energy security. In particular I would like to congratulate Congress in passing significant increases to the nation's fuel economy standards. These national standards recognize that climate change is a global problem and are part of the solution. Also, as you know EISA mandates substantial requirements for renewable fuels (36 billion gallons annually) and efficiency of appliances, lighting systems, and government operations. This law—which is mandatory and binding—will produce some of the largest emission cuts in our nation's history. Early estimates suggest more than 6 billion metric tons of greenhouse gases will be avoided through 2030.

As I have previously testified before this committee, EPA's consideration of the California waiver request has involved a thorough review of the issues which were presented both in the original request and in thousands of pages of comments, documents, and technical information that were filed with the Agency as part of our process to consider the request under section 209 of the Clean Air Act.

Consistent with the requirements of section 209, EPA has undertaken an extensive public notice and comment process. The Agency held two public hearings. One occurred on May 22, 2007 in Washington, D.C. and the other in Sacramento, California on May 30, 2007. The Agency directly heard from over 80 individuals at these hearings who represented a broad set of interests, including state and local governments, public health and environmental organizations, academia, industry, and citizens.

EPA received a substantial amount of written material both during the public comment period for the waiver request, which ended on June 15, 2007, and thereafter. We received supplemental comments from the California Air Resources Board on July 24, 2007, and November 5, 2007, and from automobile manufacturers on October 1, 2007, and October 9, 2007. Utilizing my available discretion, I decided EPA would consider all belated comments in its decision-making process, to the fullest extent practicable.

EPA has also devoted the necessary staff resources to review the extensive comments that were received and to examine various technical and legal issues related to the full range of options available to me. Within the Agency, these issues have been considered in great detail and I requested a number of briefings and follow-up briefings and spent many hours reviewing these materials as well as the record directly. These briefings have consumed a considerable amount of staff time and many hours of my personal time and attention.

EPA's review of the California waiver petition included an assessment of the information presented by California and others in support of its waiver request, an assessment of comments received from those in opposition to the waiver request, a review of the legislative history of the relevant Clean Air Act provisions, a review of relevant past litigation with respect to California waiver decisions, and a consideration of the options available to EPA in addressing and responding to the waiver request.

During the briefing process, I encouraged an open discussion of issues involved regarding the waiver criteria specified in section 209. At the outset, I asked that staff develop the full range of options available and their ramifications. I asked for both technical information and personal viewpoints relevant to the consideration of the waiver request. I also received information relevant to the legal framework, options, and ramifications under which my decision on the waiver request would be made.

At the end of this process, however, there is a judgment to be made. The Clean Air Act indicates that waivers shall not be granted to California if the Administrator makes any of three separate findings spelled out in the Act. The Act vests this authority and responsibility with me as the head of the Agency.

I am well aware that many members of Congress, governors, and others urged me to approve the California waiver request and to act quickly in this regard. Proposed legislation under the cosponsorship of this Committee's Chair and several members of this Committee was, in fact, reported on August 2, 2007, with a written report filed on December 12, 2007. This legislation would have required EPA to make decisions with respect to pending waiver requests by September 30, 2007 and to make decisions with respect to future waiver requests within 180 days.

I fully understand the serious concerns that were expressed in requests to grant the California waiver and the perspectives on law and policy on which they were based.

Those advocating approval of the waiver made their views regarding the law and relevant policy abundantly clear.

Throughout my consideration of this matter, however, my responsibilities under the Clean Air Act remained unaltered. And it was only after a thorough review of the numerous arguments and material presented to the Agency and developed internally within the Agency, as well as my own personal consideration of this matter, that I announced that I directed my staff to prepare a decision document for my signature. The final decision document and federal register notice are currently being prepared by Agency staff. When I review and sign the decision document for publication, that will be the final agency action and that will be the time for any court challenges. As with prior waivers, I expect that decision to be a final action of national applicability, and accordingly, as is the normal course of Agency practice on a waiver request, the Federal Register notice of the decision will say so. The decision document will be placed in EPA's docket for this proceeding at that time.

As I explained in my December 19, 2007 letter to Governor Schwarzenegger, and as this Committee well knows, EPA has considered and granted numerous previous waivers requested by the State of California. These waivers have covered a range of issues. Some waivers have effectively granted approval to large, multiyear programs to improve the emission performance of entire fleets of cars and trucks. And EPA has acted on many smaller, discrete issues such as emission test procedures and minor amendments

to existing standards. Often the notice describing EPA's consideration and findings with respect to these issues has consumed barely a page in the Federal Register.

Previous waiver requests and previous waiver decisions, however, have addressed air pollutants that predominantly affected local and regional air quality. In these cases, the purpose of the waiver was to help the state make further progress on its long, unfinished struggle to comply with Federal, State and local air quality requirements. As I stated in my letter to the Governor, “[i]n contrast, the current waiver request for greenhouse gases is far different; it presents numerous issues that are distinguishable from all prior waiver requests.” My letter noted that greenhouse gases are “fundamentally global in nature. Greenhouse gases contribute to the problem of global climate change, a problem that poses challenges for the entire nation and indeed the world. Unlike pollutants covered by other waivers, greenhouse gas emissions harm the environment in California and elsewhere regardless of where the emissions occur.” This challenge “is not exclusive or unique to California and differs in a basic way from the previous local and regional air pollution problems addressed in prior waivers.” In light of the global nature of the problem, I therefore indicated that it is my view that California does not have a need for these greenhouse gas standards to meet compelling and extraordinary conditions. That is, under the statutory criteria spelled out in Section 209 of the Clean Air Act, California had not met the requirements for a waiver.

In addition to the need for me to make a decision of great importance for both the Clean Air Act and the country as a whole, I have also been aware of the Congressional

debate and approval of the Energy Independence and Security Act. I was aware, during the fall of 2007, that Congress was considering amendments to Title II of the Clean Air Act respecting the regulation of both vehicles and fuels.

Indeed, this legislative effort included proposed language that could have affected EPA's authority under the Clean Air Act with respect to greenhouse gas emissions generally and/or motor vehicles specifically. This consideration and debate was recognized within subsequent statements on the Senate floor with respect to the intent and reach of H.R. 6, the Energy Independence and Security Act of 2007. Senators sought to clarify in their remarks the effect of this law both on Federal regulations and regulations promulgated by the State of California.

In the context of this ongoing consideration of legislation in both bodies of Congress and subsequently in the Conference Committee on H.R. 6, it was important for me to review the legislation Congress approved before announcing my decision and directing staff to prepare the final decision document. It is particularly important given that Congress was specifically contemplating amendments to the Clean Air Act, and in fact amended Section 211 of the law.

Ultimately, as you know, Congress did not amend either section 209 of the Clean Air Act, or approve specific legislative language addressing the California waiver request in the legislation which was cleared by the House of Representatives on December 18th and signed into law by President Bush on December 19, 2007.

With respect to the timing of my review of this matter and my letter to Governor Schwarzenegger, from December 10th to December 15th, 2007, I traveled to Beijing, China to participate in the U.S.-China Strategic Economic Dialogue and to co-chair the second Joint Committee on Environmental Cooperation with Chinese Minister Zhou Sengxian. Upon my return from these meetings and with the Congress nearing completion of its work on energy legislation, I informed EPA staff of my intention to deny the waiver request based on the criteria specified in section 209.

As indicated above, the energy legislation enacted by Congress ultimately did not amend section 209 of the Clean Air Act, but it does provide a policy context in which the issue of federal versus state standards affecting greenhouse gas emissions can be reviewed. Clearly, Congress intended to take action to substantially strengthen fuel economy standards and to thereby promote several policy goals, including increased energy security for our country and environmental improvements.

I believe that it is preferable, as a matter of policy, to have uniform national standards to address fuel economy issues across the entire fleet of domestic and foreign manufactured vehicles sold in the United States. I just think this is common sense and I am glad the Congress moved away from previous policy positions that effectively blocked increases in fuel economy standards to proactively approve a substantial increase in fuel economy for cars and light duty trucks.

But let me be clear. My letter indicating how I plan to proceed with respect to the instant matter of the California waiver request is based on the exercise of my own judgment in this matter given the application of the law, the facts and information that were presented to me. While I know that some on this Committee disagree with my direction to Agency staff on the California waiver request, I believe this direction is the proper course under the Clean Air Act, just as I believe Congress's decision to increase fuel economy standards is the proper course for our nation.

Again, thank you for the opportunity to appear before the committee today. I stand ready to answer your questions.