

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
RUTH VAN MARK, MINORITY STAFF DIRECTOR

July 25, 2012

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

Re: EPA's Proposed Consent Decree for Finalization of PM NAAQS

Dear Administrator Jackson:

On June 26, 2012, EPA issued a *Federal Register* Notice seeking comments on a proposed settlement requiring EPA to finalize the particulate matter National Ambient Air Quality Standard (PM NAAQS) by December 14, 2012. The proposed settlement provides ammunition to EPA critics who charge that the Agency manipulates regulatory litigation to thwart public comment and interagency review. Not only is the settlement fundamentally inconsistent with the Agency's own assessment of the time needed to finalize this complex rulemaking, it also conflicts with the schedule of previous major NAAQS rules. Further, the December deadline will also prevent EPA from weighing the conclusions of an ongoing Office of Inspector General (OIG) investigation that has direct bearing on the PM NAAQS rulemaking. More specifically, the OIG is investigating alarming evidence of EPA abuse of scientific information and mismanagement of its Clear Air Act Scientific Advisory Committee (CASAC) – the scientific advisory body specifically established by Congress to provide impartial advice on setting NAAQS. Given the time needed for EPA to consider the thousands of comments you anticipate and given the importance of the rulemaking issues at stake, the Agency has a clear responsibility to reject the proposed settlement schedule.

This Administration came into office pledging full transparency, open government and to “restore science to its rightful place.” EPA's proposed PM settlement schedule disregards these objectives. As Ms. Gina McCarthy unequivocally stated in her January 13, 2012 Declaration before the D.C. Court of Appeals, the PM NAAQS involve many “complex scientific, technical and policy issues of great public health significance.” In fact, the proposal itself refers to thousands of pages of information contained in supporting EPA documents, including the Policy Assessment, the Integrated Science Assessment and the Risk and Exposure Assessment, all involving complex technical issues. Specifically, the proposal seeks comment on five PM NAAQS, including a novel urban visibility standard that is based on a highly subjective deciview metric. Given that EPA expects significant and detailed comments that will take time to review and respond to, Ms. McCarthy stated in her Declaration that it would take “approximately one

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year” from issuance of proposal to complete the rulemaking. I agree. Why then does EPA now propose a settlement that would cut this time in half?

There is simply no realistic way to achieve the December 14, 2012 deadline without relying on a predetermined answer that ignores public comments and undercuts valuable scientific review and deliberation. This is the opposite of open government, transparency, and sound science. As part of this Committee’s effort to understand how this policy reversal could occur, I request that you provide me with copies of all memorandum, documents, emails to and from Ms. McCarthy and her office with other Administration officials on the appropriateness of the settlement timeframes. If EPA adheres to this truncated schedule, I will have detailed follow up questions to determine exactly who in the Agency reviewed and considered each comment in the timeframe permitted and whether this occurred before EPA committed to a final decision.

This radically shortened schedule also prevents EPA from weighing the conclusions of the OIG’s investigation into EPA’s potential mismanagement of CASAC and the Agency’s handling of both the PM and ozone NAAQS review. Unfortunately, this is not surprising. Concerns over EPA’s failure to balance perspectives, rotate members, and address potential financial conflicts of interests—as required in accordance with Administration policy—have raised grave misgivings regarding objectivity. In response to the substantial information I presented detailing potential conflicts with Administration guidance and law on its management of CASAC and other review committees, the OIG concluded there was sufficient merit in these concerns to initiate an investigation. EPA should allow the OIG to do its job and wait until the investigation is submitted to the public for consideration as part of the rulemaking process. The public has a right to consider the information that this investigation may yield and EPA’s explanation of any failures, in commenting on the PM NAAQS proposal. An open and frank dialogue is a foundational step toward informing the public and enabling the meaningful input our laws require.

For this very reason, Section 113g of the CAA gives the Administrator the authority to withdraw or withhold consent from a final order or agreement if the public comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent. The OIG investigation provides a unique opportunity to learn from previous failures, correct areas of weakness, and ensure the highest level of scientific integrity. In light of the OIG investigation into EPA’s potential mismanagement of CASAC and Ms. McCarthy’s own request for more time, the Agency should reject the proposed settlement schedule and allow for a minimum of one year after the completion of the investigation before finalizing the PM or any other NAAQS.

Sincerely,



James M. Inhofe
Ranking Member

U.S. Senate Committee on Environment and Public Works

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CC: Dr. John P. Holdren, Assistant to the President for Science and Technology, Director of the White House Office of Science and Technology Policy, and Co-Chair of the President's Council of Advisors on Science and Technology (PCAST)
The Honorable Arthur A. Elkins, Jr., Inspector General, Environmental Protection Agency
The Honorable Gina McCarthy, Assistant Administrator for the Office of Air and Radiation, Environmental Protection Agency