

BARBARA BOXER, CALIFORNIA, CHAIRMAN

MAX BAUCUS, MONTANA  
THOMAS R. CARPER, DELAWARE  
FRANK R. LAUTENBERG, NEW JERSEY  
BENJAMIN L. CARDIN, MARYLAND  
BERNARD SANDERS, VERMONT  
SHELDON WHITEHOUSE, RHODE ISLAND  
TOM UDALL, NEW MEXICO  
JEFF MERKLEY, OREGON  
KIRSTEN GILLIBRAND, NEW YORK

JAMES M. INHOFE, OKLAHOMA  
DAVID VITTER, LOUISIANA  
JOHN BARRASSO, WYOMING  
JEFF SESSIONS, ALABAMA  
MIKE CRAPO, IDAHO  
LAMAR ALEXANDER, TENNESSEE  
MIKE JOHANNIS, NEBRASKA  
JOHN BOOZMAN, ARKANSAS

# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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

March 8, 2011

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

Dear Administrator Jackson:

This is a follow-up to our correspondence of December 9, 2010. In that letter we expressed support for EPA's decision to delay its voluntary reconsideration of the 2008 National Ambient Air Quality Standards (NAAQS) for ground-level ozone, while underscoring our concern with the policy rationale supporting a decision to tighten the standards at this time.

In EPA's January 2010 proposal to revise the 2008 ozone standards, the Agency states that it is relying exclusively on the 2008 record. EPA specifically stated that "[s]cientific and technical information developed since the 2006 Criteria Document will be considered in the next periodic review, instead of this reconsideration rulemaking." 75 Fed. Reg. 2938, 2944 (January 19, 2010). However, based on the draft responses from members of the Clean Air Scientific Advisory Committee (CASAC), to which EPA submitted new charge questions on January 26, 2011, it is clear that a number of CASAC members are basing their responses about EPA's proposed revised standards on new studies that have been published *after* the close of the 2008 record. This is difficult to square with EPA's assertion that it is basing the reconsideration solely on the 2008 record.

In October 2008, EPA also initiated its next five-year review of the 2008 standards that is scheduled to be completed by May 2013. The scheduled five-year review will incorporate a full review of new science published since the last Criteria Document was finalized in 2006. EPA's proposed July 29, 2011 deadline for issuing its final reconsideration is more than three years into the next five-year review cycle, and will fall only 22 months before the currently scheduled full review of the ozone standard in 2013.

The prospect that CASAC members are considering new scientific studies despite EPA's assertion that its reconsideration decision will be based on the 2008 record, coupled with the fact that EPA's ozone reconsideration is occurring in parallel to its ongoing ozone NAAQS review scheduled for completion in 2013, raises a number of questions about the need to issue revised ozone standards before the ongoing full review of the 2008 standards is complete. To assist us in

understanding your decisions, we would appreciate responses to the following questions within two weeks of the date of this letter.

1. The 2008 ozone standards resulted in a significant strengthening of the 1997 standards from 0.08 parts per million (ppm), or effectively 0.084 ppm, to 0.075 ppm. We note that no court has concluded that the 2008 standards are insufficiently stringent, and further that Section 307(d) of the Clean Air Act expressly contemplates that EPA may promulgate standards that differ from CASAC recommendations. If EPA had not decided to reconsider the 2008 standards, but instead proceeded with the statutory five- year periodic review schedule, those 2008 standards would have been fully reviewed by March 2013.
  - Given the significant regulatory burdens for EPA, States, and emission sources to comply with ever changing NAAQS, why did EPA decide to force a reconsideration of the 2008 ozone standards, especially given that the reconsideration could delay the implementation of those standards?
2. In a December 8, 2010 motion, EPA sought additional time to complete its reconsideration so that it could seek advice from CASAC in evaluating the scientific evidence. What new information did you discover was lacking with regard to your reconsideration of the 2008 ozone standards to warrant an additional consultation with CASAC? When was this discovery made, and why was it announced only a few weeks before EPA's previously established December 31<sup>st</sup> deadline for completing the reconsideration?
3. On January 26, 2011 EPA solicited CASAC advice on the primary ozone standard. The charge questions appear to ask fundamental questions regarding the ozone health-related evidence. How do these questions differ from the charge questions submitted to CASAC during the 2008 review? Please provide copies of all charge questions related to the 2008 review.
4. EPA consulted with CASAC on the charge questions, via teleconference, on February 18<sup>th</sup> and on March 3<sup>rd</sup>.
  - Why did EPA decide to hold this important consultation via teleconferences rather than a face-to-face open public meeting(s)?
  - What was the process established for comment by the members of the public who participated in the CASAC teleconferences?
  - What is the process and timing for providing comments related to the charge questions? How much time will be allowed for the public to provide written comments?

- What is the process and timing for providing comments on CASAC's responses to the charge questions? How much time will be allowed for the public to provide written comments?
  - Please provide all draft and final CASAC responses to the charge questions.
5. Does EPA still believe that it would be beneficial to issue a revised rule in July 2011 knowing that it will be based on an out-dated record, and will not be based on as full and complete a review of the science as will occur in 2013? If so, why?
  6. If EPA proceeds with its reconsideration of the 2008 standards, based on its re-review of the 2008 record and outdated science, are you still planning to proceed with the five-year statutory review of the 2008 ozone standards based on new science?
    - If EPA finalizes its reconsideration by July 29, 2011, what will happen to the scheduled 2013 review? Could States face a new standard only 22 months after the reconsideration?
    - If EPA decides to delay the 2013 review, will this mean that the new science developed since the 2006 Criteria Document will not be fully reviewed until 2016?
  7. The CASAC preliminary individual responses to EPA's latest charge questions clearly reference and include consideration of new science. Please explain how the Agency can consider CASAC's advice while remaining within the bounds of the 2008 decision record.
  8. Does EPA still consider that it basing its reconsideration decision exclusively on the 2008 record when it is clear that CASAC's responses to the charges are informed by newer studies? Is it EPA's view that CASAC's responses to the charge questions *do not* reflect new science? If that is EPA's view, will interested stakeholders still have an opportunity to comment on CASAC's responses? When will the final CASAC responses to the charge questions be released?
  9. How will EPA's decision to delay the reconsideration affect the timing and substance of the Transport rules, including the Clean Air Transport Rule announced in July 2010 and planned additional rules to address revised air quality standards?
  10. Why did EPA exclude the 2008 standard of 0.075 ppm from its proposed range of 0.060 to 0.070 ppm in its reconsideration? How can EPA's 2010 proposal still be viewed as areconsideration if the original standard it is reconsidering is not included?
  11. Under the Clean Air Act, EPA has two years from promulgation of a NAAQS to finalize designations, with the opportunity for a one year extension—which, in the case of ozone, EPA was granted. Thus, the deadline for final ozone designations is now March 12, 2011. Does EPA plan to issue designations for the 2008 standards? What will happen to those designations if EPA finalizes its proposal to reconsider the 2008 standards in July 2011? If

The Honorable Lisa Jackson

March 8, 2011

Page 4

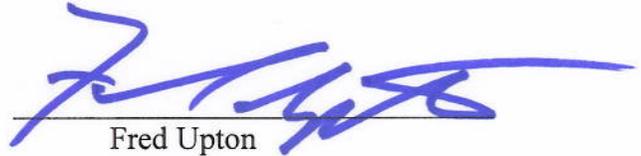
EPA plans on revoking the 2008 standards, how long will that process take and what requirements will fall on States with designated areas during that time period? Please explain how EPA plans to handle this issue and any potential legal repercussions to areas that are designated under the 2008 standards.

Sincerely,



---

James M. Inhofe  
Ranking Member  
Senate Committee on  
Environment and Public Works



---

Fred Upton  
Chairman  
House Energy and  
Commerce Committee