

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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February 28, 2012

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

Dear Administrator Jackson:

I hold serious concerns about the Environmental Protection Agency's (EPA) recent rulemaking activity under Title II of the Clean Air Act (CAA). From all indications, EPA is recklessly pursuing its global warming agenda to the detriment of its goals as it relates to real pollution and our nation's energy security objectives. Indeed, the Agency's proposal is contrary to the spirit and intent of the Clean Air Act, resulting in increased public exposure to harmful pollutants. It also undermines the National Highway Traffic Safety Administration's (NHTSA) effort to promote the use of clean-burning alternative fuels and compressed natural gas (CNG). I am therefore seeking information regarding Agency actions that contribute to air pollution and EPA's conflict with NHTSA on the subject of fuel economy regulation and incentivization.

Recently, EPA and NHTSA jointly proposed new greenhouse gas (GHG) emissions and corporate average fuel economy standards for light-duty vehicles, *2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards*, 76 Fed. Reg. 74,854 (Dec. 1, 2011). These standards would impose substantial costs upon car buyers. According to EPA's analysis, compliance with the newly proposed GHG standards would add an average of \$2,000 to the cost of new cars in 2016, in addition to hundreds of dollars already added to the cost of each new car by the EPA's GHG standards for previous model years.¹ Unfortunately, EPA severely limited the opportunity for public comment on these rules: originally the Agency allowed only sixty days after December 1 for comments, including the holidays. Later, when it extended the deadline, EPA allowed only two more weeks—far too brief for the public and affected constituencies to review and meaningfully comment on rules that will shape the automobile industry for years to come.

As EPA stresses in the proposed rulemaking, the new GHG emissions requirements are “designed to promote advanced technologies that have the potential to provide ‘game changing’

¹ See EPA, *Draft Regulatory Impact Analysis: Proposed Rulemaking for 2017-2025 Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards*, pp. 3-78 to 3-80 (Nov. 2011) (“DRIA”).

GHG emissions reductions in the future.”² But in so doing, at least two aspects of the joint EPA-NHTSA proposal raise substantial questions of the agencies’ adherence to the objectives of two important federal statutes:

First, the GHG standards would, by EPA’s admission, increase the emission of “fine particulate matter” (PM_{2.5}), a National Ambient Air Quality Standard (NAAQS) criteria pollutant that most of us would agree should be *reduced*, not increased. Unlike emissions of carbon dioxide, PM_{2.5} emissions actually do affect public health.

Second, EPA’s GHG standards conflict with NHTSA’s implementation of the Energy Policy and Conservation Act, as amended by the Energy Independence and Security Act of 2007 (EISA), by silently limiting NHTSA’s incentive structure for cars fueled by alternative fuels.

I question EPA’s judgment and authority in exacerbating air pollution and nullifying NHTSA’s administration of that Agency’s statutory responsibilities. We certainly should not allow EPA’s global warming agenda to reduce our nation’s potential to displace foreign oil.

1. EPA’s Global Warming Agenda Increases PM_{2.5} Emissions that Harm Public Health

In EPA’s *Draft Regulatory Impact Analysis*, the Agency explains at length its understanding of the health effects of exposure to PM_{2.5}. But despite EPA’s awareness of those effects, **its GHG regulations would, by its estimation, increase downstream tailpipe PM_{2.5} emissions**, by nearly 20,000 tons by 2025. This increase would owe in part to the “rebound effect”: improvements in fuel efficiency will encourage people to drive *more*.³

In addition, the EPA recognized that an increase in downstream tailpipe PM_{2.5} emissions could be still further exacerbated by EPA’s attempt to promote advanced engine technologies. By imposing increasingly strict GHG emissions requirements, EPA seeks to promote development of improved engine technologies, such as “gasoline direct injection fuel systems.”⁴ But while direct injection systems may well reduce GHG emissions, they *increase* PM_{2.5} emissions. The California Air Resources Board, for example, recently projected that increased use of fuel-efficient technologies would *increase* PM emissions substantially between 2015 and 2040, so much so that California sees a need to counteract that effect with its own separate program of anti-PM_{2.5} regulations.⁵

² 76 Fed. Reg. at 75,012.

³ See *Joint TSD* at pp. 4-3 to 4-4.

⁴ See, e.g., 76 Fed. Reg. at 75,086; see also EPA, *Draft Joint Technical Support Document: Proposed Rulemaking for 2017-2025 Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards* at p. 3-85 (Nov. 2011) (“*Joint TSD*”).

⁵ California Air Resources Board, *LEV III PM Technical Support Document: Development of Particulate Matter Mass Standards for Future Light-Duty Vehicles*, Appendix P, p. P-52 (Dec. 7, 2011).

In short, EPA's attempt to regulate GHG emissions will increase PM_{2.5} emissions. And while EPA seems to suggest that reductions in *upstream* emissions will more than offset the downstream tailpipe increases,⁶ the upstream emissions are materially different and do not present the same population-weighted exposure.⁷

Finally, I am concerned that a major reason why EPA is planning on promulgating Tier 3 regulations, which are discretionary, is to hide the increase in PM_{2.5} emissions that are created by its global warming agenda. Fuel manufacturers have already reduced sulfur content by 90 percent. A recent study by Baker & O'Brien estimates that capital costs associated with implementing the Tier 3 standard could be as high as \$17 billion, with annual reoccurring operational costs of \$13 billion. These unnecessary costs could add up to 25 cents per gallon to the cost of gasoline for consumers at a time when gas prices are currently at a winter month high and are expected to increase. This is an incredibly high price to pay to disguise the hidden pollution produced by EPA's GHG standards.

2. EPA's Global Warming Agenda Undermines U.S. Energy Security Objectives

As EPA and NHTSA stress throughout the notice of proposed rulemaking, the agencies are jointly implementing two separate statutes: EPA is implementing Title II of the CAA,⁸ while NHTSA is implementing the Energy Policy and Conservation Act, as amended by the Energy Independence and Security Act of 2007 (EISA).⁹

As the agencies recognize, these are very different statutory frameworks, with distinct requirements, policies, and prohibitions.¹⁰ Nevertheless, EPA and NHTSA assert that "there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."¹¹

But in fact, the two agencies' respective regulatory proposals are at odds in at least one important way. NHTSA, in an effort to promote conservation, cleaner fuel, and reduced consumption of foreign oil,¹² proposes to continue to use a 0.15 "multiplier" to adjust the nominal fuel economy of vehicles fueled by CNG or alternative fuels.¹³ With that adjustment, a vehicle is deemed to use

⁶ See 76 Fed. Reg. at 75,100-01 ("we estimate net reductions [in PM_{2.5} emissions] because the net emissions reductions from reduced fuel refining, distribution and transport is larger than the emission increases due to increased VMT and increased electricity production.").

⁷ See A. Carlton, *et al.*, "To What Extent Can Biogenic SOA be Controlled?", *Environmental Science & Technology*, v. 44, no. 9, p. 3379 (2010) ("Species with substantial emissions contributions from mobile sources ... affect the population-weighted averages of PM_{2.5} more strongly than domain-average estimates.").

⁸ See 76 Fed. Reg. at 74,900-902

⁹ See *id.* at 74,896-900.

¹⁰ See *id.* at 74,902-04.

¹¹ *Id.* at 74,903 (citing *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007)).

¹² *Id.* at 74,898.

¹³ *Id.* at 75,341-43.

only fifteen percent of the fuel that it actually uses, substantially boosting the vehicles' fuel economy and thus relaxing the necessary fuel economy requirements for the remainder of the auto manufacturer's production line.

EPA, by contrast, proposes no corresponding "multiplier" for CNG and alternative fuel vehicles in its own GHG regulations. This results in a situation where auto companies can use NHTSA's 0.15 "multiplier" only to the extent that their fleet remains compliant with EPA's GHG restrictions. EPA is thus undermining NHTSA's effort to promote displacement of imported petroleum because the Agency's GHG standards indirectly caps the number of natural gas vehicles that a company can produce.

This is precisely the type of conflict that EPA forewarned in its brief before the Supreme Court in *Massachusetts v. EPA*, explaining that adoption of GHG rules "would subvert the implementation by the Department of Transportation (DOT) of the Energy Policy and Conservation Act (EPCA), 49 U.S.C. 32901-32919."¹⁴ As EPA further explained in that brief, "EPCA offers automakers *substantial flexibility to choose appropriate methods of meeting fleetwide standards*, and it provides for congressional oversight of standards promulgated by DOT pursuant to the statute."¹⁵

In its decision, the Court concluded that EPA's and NHTSA's administration of their respective statutes "may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."¹⁶ That may be true, but only if EPA and NHTSA take care to avoid inconsistency. In this case, EPA has done precisely the opposite.

Instead of taking all steps necessary to align its rules with NHTSA's statutory obligations, EPA's proposed GHG regulations under the CAA sharply conflict with NHTSA's administration of the Energy Policy and Conservation Act and the EISA. EPA appears to have undertaken no effort to address this noteworthy conflict, which prevents NHTSA from providing (as EPA described in its *Massachusetts v. EPA* brief) "substantial flexibility to choose appropriate methods of meeting fleet-wide standards"—an incentive that Congress and the President *reconfirmed* in the EISA.¹⁷ The Supreme Court may have authorized the EPA to promulgate GHG regulations so long as those regulations are consistent with NHTSA's policy and obligations, but it certainly did not authorize EPA to negate NHTSA's administration of the Energy Policy and Conservation Act, which predates *Massachusetts v. EPA*, or the EISA, which postdates it.

For these reasons, I am concerned that EPA's focus on GHG emissions will directly undermine implementation of two important federal policies embodied by federal law: (1) to reduce, or at least not exacerbate, PM_{2.5} emissions; and (2) to promote the use of CNG and alternative fuels for transportation. Therefore, I request the following information in order to determine whether EPA is complying with or counteracting the requirements and policies of the CAA and Energy Policy and Conservation Act (as amended by the EISA):

¹⁴ EPA Br., *Massachusetts v. EPA*, No. 05-1120, at pp. 24-25 (Oct. 2006).

¹⁵ *Id.* at 25 (emphasis added).

¹⁶ *Massachusetts v. EPA*, 127 S. Ct. 1438, 1462 (2006).

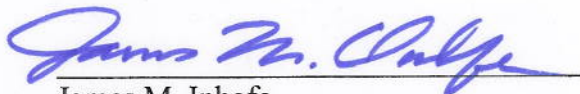
¹⁷ See Pub. L. No. 110-140, § 109 (amending 49 U.S.C. § 32906).

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1. On what basis does EPA conclude that its proposed rule's deleterious effect on PM_{2.5} emissions will be offset within the proposed GHG regulations?
2. If the GHG regulations will not themselves offset EPA's own increase in PM_{2.5} emissions, then on what basis does EPA have authority to increase public exposure to this pollutant?
3. How much of the PM_{2.5} emissions problem created by EPA's GHG standards will be offset by the proposed Tier 3 fuel regulations?
4. On what basis can EPA guarantee that its GHG regulations, lacking a "0.15 multiplier" for CNG and alternative fuel vehicles, will not limit auto companies' utilization of NHTSA's own proposed 0.15 "multiplier?"
5. If there is a residual possibility for conflict between EPA's and NHTSA's proposed rules, with respect to NHTSA's 0.15 "multiplier," then on what basis does EPA have authority to limit NHTSA's implementation of Congress's statutes and policies favoring that incentive program for CNG and alternative fuel vehicles?

EPA should not be pursuing a global warming crusade, regardless of the impact on the health of our citizens and our nation's energy security. Certainly, such action would further undermine the credibility of the EPA and the federal government in the eyes of millions of Americans. Due to the important nature of my concerns I ask that you respond to my questions in writing within 14 business days of receipt of this letter. If you have any questions please contact Todd Johnston or J.W. Hackett with the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,



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

CC: The Honorable David L. Strickland, Administrator, National Highway Transportation Safety Administration
Jeffrey Zients, Acting Director, Office of Management and Budget