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United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510–6175

October 26, 2011

The Honorable Barbara Boxer
Chairman
Senate Committee on Environment and Public Works
Washington, D.C. 20510

The Honorable Tom Carper
Chairman
Subcommittee on Clean Air and Nuclear Safety
Senate Committee on Environment and Public Works
Washington, D.C. 20510

Dear Senators Boxer and Carper,

I write to request that the Committee on Environment and Public Works conduct oversight hearings on the President's decision to stop the Environmental Protection Agency (EPA) from tightening the National Ambient Air Quality Standards (NAAQS) for ozone. Following the President's announcement you both made public statements underscoring the need for Committee oversight. Senator Carper publicly committed to hold a hearing in the Clean Air Subcommittee on the Administration's actions.[1] Agreeing with the need for a hearing, Senator Boxer stated that the Committee would "examine the charge that this type of regulation actually harms our economy."[2] Although I think most observers would agree that the President has simply acknowledged the obvious – that EPA's rules create regulatory burdens and uncertainty that undermine job creation – I fully support the need for such a hearing and urge you to have your staff work with Committee minority staff to schedule a hearing as soon as possible.

Administrator Jackson has claimed that she is required by law to lower the ozone NAAQS and that the current standard is "legally indefensible." In direct contradiction to the Administrator's position, the President's action has confirmed that EPA's review of the ozone NAAQS was required by neither law nor science.

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[1] "Sen. Carper Disappointed in White House Decision on Public Health Ozone Standard," 02 September 2011 < http://carper.senate.gov/public/index.cfm/pressreleases?ID=f66de1dd-611d-4b21-be27-43f0b53453f9> 23 September 2011.
[2] Darren Goode, "Barbara Boxer: I hope greens sue President Obama," 7 September 2011 < http://www.politico.com/news/stories/0911/62806.html> 23 September 2011.

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At the start of President Obama's administration, rather than wait for the 5-year review of the ozone NAAQS set forth in the Clean Air Act (CAA), EPA decided to begin a reconsideration of the 2008 standards. Since that time, the Agency expended a tremendous amount of time and resources on what was a frivolous and unnecessary review of an outdated scientific record. In so doing, the Agency sought to tighten the standards to a level that would have effectively imposed a "construction ban" on much of the country, dealing a blow to an already weak economy, exacerbating job loss and hurting working families. Now these efforts have been abandoned.

Further, it would appear, the Agency's support for a tighter ozone standard was based, in large part, on the proposition that the EPA Administrator was required to set the NAAQS to within a range deemed appropriate by the Agency's scientific review panel – the Clean Air Scientific Advisory Committee (CASAC). But this interpretation of the Administrator's duties flies in the face of common sense and robs her of the ability to exercise the discretion afforded by the CAA. In particular, the Act requires the Administrator to set standards that are in her judgment, "requisite" – that is, neither higher nor lower than necessary – to protect public health. This decision necessarily requires the Administrator to weigh various factors before setting the standard, including information and effects that may fall outside of a strict interpretation of the scientific record, which is not always clear. Binding the Administrator's judgment to CASAC's recommendations effectively delegates the Administrator's authority to set the NAAQS to an unaccountable scientific review panel – a panel whose credibility and independence, incidentally, are now the subject of an investigation on the part of EPA's Office of Inspector General.

In addition to questions surrounding the EPA's decision to revise the NAAQS, there are pressing matters the Committee should examine related to the 2008 standard itself. Specifically, now that the 2008 standards will be implemented, the EPA has set an aggressive timeline for the States to develop and implement State Implementation Plans (SIP) for non-attainment areas. In her September 22, 2011 Memorandum to Regional Air Division Directors, Assistant Administrator McCarthy states that EPA "will quickly initiate and complete a rulemaking" to establish nonattainment area classification thresholds.[3] Ms. McCarthy also notes in this same Memorandum that there is uncertainty with regard to the timing of the designations due to ongoing litigation, and that EPA may also face litigation on the schedule for required implementation steps, such as the submittal of SIPs, including infrastructure SIPs and interstate transport SIPs. These uncertainties may weigh heavily on states with severe budget constraints and workload issues. In Oklahoma and surrounding states, many areas are in or near non-attainment status under the 2008 standards; costly SIPs that must be drafted and implemented quickly will strain local governments and cost Oklahomans jobs. In addition, we are concerned with the timing of these requirements in light of the fact that EPA will be reviewing the standard in 2013-2014 and possibly issuing a new standard at that time.

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[3] Gina McCarthy, Memorandum to Air Division Directors, Regions 1-10, September 22, 2011

This could force States into an expensive and seemingly endless loop of State planning submittals.

I agree with your assessment that the President's decision to ask EPA Administrator Lisa Jackson to reconsider the draft NAAQS was unexpected. A hearing on this matter, as we fulfill our Constitutional oversight duties, will help to resolve the many outstanding questions about the processes in use at the EPA in the rule's development and withdrawal, as well as its replacement's implementation. I look forward to joining with you on this important work.

Sincerely,

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