UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 13 2009

THE ADMINISTRATOR

The Honorable Senator Inhofe
United States Senate
Washington, DC 20510-8175

Dear Senator Inhofe:

Thank you for your letter of March 4, 2009. You requested information about the actions from the Bush Administration that EPA is reviewing or reconsidering, or reasonably expects to review or reconsider.

As you noted, on January 20, 2009, Rahm Emanuel, the President's Chief of Staff, sent a memorandum to the Heads of Executive Departments and Agencies concerning the management of the regulatory process in the Obama Administration. Additional guidance on implementing that memorandum was sent to Departments and Agencies by Office of Management and Budget (OMB) Director Peter Orszag on January 21, 2009.

EPA has complied with the directives contained in those memoranda. Specifically, we have not sent any regulations to the Office of the Federal Register (OFR) until they had been reviewed and approved by me or someone else appointed or designated by President Obama; we withdrew from the OFR regulations that had not been published; and we considered extending for 60 days the effective date of regulations that had been published but had not yet taken effect.

A total of 49 rules were affected by the Emanuel Memorandum. We completed review of thirty-three of these; the remainder are undergoing internal review. A list of the rules and their current status is attached for your reference.

EPA also withdrew all actions from OMB that were undergoing review under Executive Order 12866 at the time we took office. Of the actions withdrawn from OMB, three have been reviewed and resubmitted – the Endocrine Disruptor Screening Program, Polices and Procedures notice; the Renewable Fuels Standards Program proposed rule; and the Greenhouse Gas Mandatory Reporting proposed rule. I signed the latter on March 10, 2009, and it will be published in the Federal Register soon.

EPA has already publicly announced its intent to review several actions, either due to the Emanuel Memorandum or because of petitions for reconsideration from outside parties. For example, the effective date of the Oil Spill Prevention, Control and Countermeasure (SPCC) final rule was extended by 60 days to April 4, 2009, and an additional 30 days was made available for public comment. Similarly, in response to a petition for reconsideration we extended the effective date of the Prevention of Significant Deterioration and Nonattainment

New Source Review final rule to May 18, 2009. On March 12, 2009, I signed a proposal to further delay the effective date to allow for sufficient time to conduct the reconsideration proceeding. In response to a request from the President and a petition for reconsideration, EPA is reviewing and taking comment on the decision to deny the California waiver. We published a Federal Register notice on February 12, 2009 initiating this process. A public hearing was just held in Arlington, Virginia on March 5, 2009, to receive additional public input to that decision. As announced on February 17, 2009, EPA is also reviewing an interpretive memorandum issued by the previous Administrator that addresses when the Prevention of Significant Deterioration program applies to carbon dioxide. In each of these cases, the decision to review a previous action was publicly announced by EPA and additional comments from interested stakeholders are being solicited.

Courts have also remanded several major regulations completed during the last Administration to EPA for reconsideration. These include the Clean Air Interstate Rule (CAIR), the Greenhouse Gas Endangerment Finding, Maximum Achievable Control Technology (MACT) standards for Industrial Boilers, standards for Cooling Water Intake Structures, Construction and Development Effluent Guidelines, National Ambient Air Quality Standards for Particulate Matter, among others. Certain other significant rules, such as the Clean Air Mercury Rule, have been vacated altogether. EPA is in the process of developing new rules in response to these court actions.

In addition to these rules, the Bush Administration issued approximately four thousand final rules from the years 2001 through 2008, affecting virtually every environmental program. EPA took numerous other actions under the Bush Administration, including many by our regions. The review of previous rules and other actions is an ongoing process throughout the Agency and is influenced by many factors, including new technical or scientific information, legal developments, legislation, Administration priorities and the views of interested parties. I cannot state precisely which Bush Administration rules or other actions are or will be reviewed or reconsidered "for any reason" by me or the EPA staff. I can assure you, however, that, should we decide to reconsider such rules or other actions, I will conduct the process in a manner that is transparent, faithful to science, and guided by the law. This will of course include an "explanation of the statutory, regulatory and scientific basis" for the actions we take.

The President shares these goals and on January 21, 2009, in his Memorandum on Transparency and Open Government, directed Agency Heads to manage their Agencies based on a system of transparency, public participation, and collaboration. At EPA, whenever a new regulatory action is begun, the public is given notice via our website at http://www.epa.gov/lawsregs/search/ail.html. We also publish a Regulatory Agenda semi-annually that shows rules currently under development or recently completed (http://www.epa.gov/lawsregs/search/regagenda.html.). Should the Agency decide to modify an existing regulation, the public will be given the opportunity to provide their input during the public comment period. We will continue our current practice of providing notice to the Committee on those rules that we know are of high interest to Congress and the stakeholder community.

As to the scientific basis for future Agency actions, the President set out several principles in his March 9, 2009, Memorandum on Scientific Integrity to ensure that Agency Heads base their decisions on sound science. In that Memorandum, he directed that Agencies adopt appropriate rules and procedures to ensure the integrity of the scientific process used to generate the information supporting their decisions. Information used in fulfilling agency missions must be generated from well-established scientific processes, such as peer review. At EPA, we are committed to applying these principles in any future rulemaking.

In summary, I have every confidence that the record to support our reviews, and all our rules, will withstand scientific and legal scrutiny and be transparent to the public.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Jim Blizzard, in EPA's Office of Congressional and Intergovernmental Relations, at 202-564-1695.

Sincerely,



Lisa P. Jackson

Enclosure

EPA Attachment for Letter to Senators Inhofe and Barrasso
Status actions as of March 13, 2009

Actions Withdrawn from Office of Management and Budget Review

	Title of Action	Current Status
1	Endocrine Disruptor Screening Program – Policies and Procedures for Initial Screening	Resubmitted March 11, 2009
2	Modifications to RCRA Rules Associated with Solvent-Contaminated Wipes, Notice	Undergoing Review
3	RCRA Subtitle C Financial Test Criteria Regulatory Determination, Proposed Rule,	Undergoing Review
4	Greenhouse Gas Mandatory Reporting Rule, Proposed Rule,	Resubmitted February 11, 2009, Cleared March 9, 2009 Publication Pending
5	Renewable Fuel Standards Program, Proposed Rule	Resubmitted February 6, 2009
6	Effluent Limitations Guidelines and Standards for Airport Deicing, Proposed Rule	Undergoing Review
7	Review of the Primary National Ambient Air Quality Standard for Nitrogen Dioxide. Advance Notice	Proposal To Be Issued

Rules Withdrawn from the Office of the Federal Register

	Title of Action	Current Status
1	Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Regulations Requiring Onboard Diagnostic Systems on 2010 and Later Heavy-Duty Engines Used in Highway Applications Over 14,000 Pounds; Revisions to Onboard Diagnostic Requirements for Diesel Highway Heavy-Duty Vehicles Under 14,000 Pounds, Final Rule	Published February 24, 2009
2	Operating Permit Programs; Flexible Air Permitting Rule, Final Rule	Undergoing Review
3	Oil Pollution Prevention; Non-Transportation Related Onshore Facilities Compliance Dates, Final Rule	Undergoing Review
4	Air Quality Designations for the 2006 24-Hour Fine Particle (PM2.5) National Ambient Air Quality Standards , Final rule	Undergoing Review
5	Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ambient Air Quality Standards, Final Rule	Published February 10, 2009
6	Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Update to Materials Incorporated by Reference, Final Rule	Published February 10, 2009
7	Spiromesifen; Pesticide Tolerances, Final Rule	Published February 25, 2009

Rules In Federal Register Queue as of January 21*

	Title of Action	Current Status
1	Air Quality Index Reporting and Significant Harm Level for PM 2.5, Proposed Rule	Undergoing Review
2	North Carolina and South Carolina SIP; Final Rule for Finding of Failure to Submit State Implementation Plans Required for the 1997 8-Hour Ozone National Ambient Air Quality Standards, Final Rule	Undergoing Review
3	Connecticut SIP; Proposed Rule for Disapproval of Air Quality Implementation Plans, Connecticut; Attainment Demonstration for the Connecticut Portion of the New York-New Jersey-Long Island, NY-NY-CT 8-Hour Ozone Nonattainment Area, Proposed Rule	Undergoing Review
4	New Jersey SIP, Ozone Attainment Demonstration, Proposed Rule	Undergoing Review
5	Pennsylvania SIP; Approval and Promulgation of Air Quality Implementation Plans, Pennsylvania, Attainment Demonstration for the Philadelphia-Wilmington-Atlantic City Moderate 8-Hour Ozone Nonattainment Area, Proposed Rule	Undergoing Review
6	Maryland SIP; Approval and Promulgation of Air Quality Implementation Plans, Maryland, Attainment Demonstration for the Philadelphia-Wilmington-Atlantic City Moderate 8-Hour Ozone Nonattainment Area, Proposed Rule	Undergoing Review
7	Delaware SIP; Approval and Promulgation of Air Quality Implementation Plans, Delaware, Attainment Demonstration for the Philadelphia-Wilmington-Atlantic City Moderate 8-Hour Ozone Nonattainment Area, Proposed Rule	Undergoing Review
8	Maryland SIP; Approval and Promulgation of Air Quality Implementation Plans, Maryland, Attainment Demonstration for the Baltimore Moderate 8-Hour Ozone Nonattainment Area, Proposed Rule	Undergoing Review
9	NESHAP: Aluminum, Copper and Other Nonferrous Foundries, Proposed Rule	Published 2/9/2009
10	Amendments to 40 CFR Part 6: Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions, Direct Final Rule	Published 1/30/2009
11	Ohio SIP, Approval and Promulgation of Implementation Plans; Ohio New Source Review Rules, Final Rule	Undergoing Review
12	Kansas SIP, Approval and Promulgation of Air Quality Implementation Plans; Update to Materials Incorporated By Reference, Final Rule	Review Complete, Publication Pending
13	Alabama SIP; Approval and Promulgation of Air Quality Implementation Plans; Update to Materials Incorporated by Reference, Final Rule	Review Complete, Publication Pending
14	New Jersey SIP; Approval and Promulgation of Implementation Plans, New Jersey, Diesel Idling Rule Revisions, Final Rule	Review Complete, Publication Pending
15	Oklahoma SIP: Final Authorization of State Hazardous Waste Management Program Revision, Direct Final Rule	Published 2/4/2009
16	Nevada SIP: Approval and Promulgation of Implementation Plans: Revision to the Nevada State Implementation Plan: Updated Statutory and Regulatory Provisions: Rescission, Final Rule	Review Complete, Publication Pending
17	Stay of CAIR and CAIR FIP for Minnesota, Proposed Rule	Undergoing Review
18	Revised Exceptional Event Data Flagging Submittal and Documentation Schedule for 2008 Ozone Monitoring Data, Final Rule	Undergoing Review
19	Outer Continental Shelf Air Regulations Consistency Update for California, Proposed Rule	Review Complete, Publication Pending

* Some regional packages may have been signed before January 20th but not received in OPEI until a later date

Rules That Had Been Published But Were Not Yet Effective

	Title of Action	Current Status
1	Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Rule Requirements - Amendments, Part II, Final Rule	Effective Date Extended to April 4th, 2009
2	Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation, Final Rule	Effective Date Extended to May 18th, 2009, Issued Proposal to Further Extend Effective Date
3	Approval and Promulgation of Air Quality Implementation Plans; Illinois and Indiana; Finding of Attainment for 1-Hour Ozone for the Chicago-Gary-Lake County, IL-IN Area, Final Rule	Review Complete
4	Approval and Promulgation of State Implementation Plan; Georgia Nonattainment New Source Review Rules, Final Rule	Review Complete
5	Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Enhanced Vehicle Inspection and Maintenance Program, Direct Final Rule	Review Complete
6	Revisions to the California State Implementation Plan, Great Basin Unified Air Pollution Control District and Kern County Air Pollution Control District, Direct Final Rule	Review Complete
7	Revisions to the California State Implementation Plan, South Coast Air Quality Management District, Direct Final Rule	Review Complete
8	Regulation of Fuel and Fuel Additives: Gasoline and Diesel Fuel Test Methods, Direct Final Rule	Review Complete
9	Pesticide Regulations; Technical Amendments; Final Rule	Review Complete
10	Approval and Promulgation of Implementation Plans; Washington; Interstate Transport of Pollution, Final Rule	Review Complete
11	Approval and Promulgation of Implementation Plans; Texas; Control of Emissions of Nitrogen Oxides from Cement Kilns, Final Rule	Review Complete
12	Approval and Promulgation of Air Quality Implementation Plans; Texas; Attainment Demonstration for the Dallas/Fort Worth 1997 8-Hour Ozone Nonattainment Area, Final Rule	Review Complete
13	Air Quality: Revision to Definition of Volatile Organic Compounds – Exclusion of Propylene Carbonate and Dimethyl Carbonate, Final Rule	Review Complete
14	Approval and Promulgation of Implementation Plans; Nevada; Vehicle Inspection and Maintenance Program, Final Rule	Review Complete
15	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007, Direct Final Rule	Review Complete
16	Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Recodification of Regulations, Direct Final Rule	Review Complete
17	Nebraska; Final Authorization of State Hazardous Waste Management Program Revisions, Final Rule	Review Complete
18	Approval and Promulgation of State Implementation Plans: Oregon; Salem Carbon Monoxide Nonattainment Area; Designation of Areas for Air Quality Planning Purposes, Direct Final Rule	Review Complete
19	Approval and Promulgation of Air Quality Implementation Plans; Utah's Emission Inventory Reporting Requirements, Direct Final Rule	Review Complete
20	Approval and Promulgation of Air Quality Implementation Plans; Arkansas, Emissions Inventory for the Crittenden County Ozone Non-Attainment Area, Emissions Standards, Direct Final Rule	Review Complete

	Title of Action	Current Status
21	Approval and Promulgation of Air Quality Implementation Plans; Texas; Approval of the Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standard for El Paso County, Direct Final Rule	Review Complete
22	Amendment to Standards and Practices for All Appropriate Inquiries Under CERCLA, Direct Final Rule	Review Complete
23	Rulemaking to Reaffirm the Promulgation of Revisions to the Acid Rain Program, Direct Final Rule	Review Complete