United States Senate
Committee on Environment and Public Works
Oversight of EPA's Decision to Deny the California Waiver
Testimony of Edward G. Rendell, Governor, Commonwealth of Pennsylvania
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Good morning, Chairman Boxer, Ranking Member Inhofe and members of the committee. I thank you for your leadership in calling this hearing, and would like to express my appreciation for your invitation to speak and voice Pennsylvania's grave concern regarding President Bush's denial of California's greenhouse gas waiver request.

As authorized by Section 177 of the Clean Air Act, I am proud that Pennsylvania adopted the California Low Emission Vehicle program. Starting with the 2008 model year, Pennsylvania has begun implementing the requirement that only light-duty vehicles certified by California be sold in Pennsylvania. In fact, when we went through the rulemaking process in 2006, we received a record-breaking number of public comments in support that came both from those concerned about traditional pollutants, including the medical community, as well as those urging action on greenhouse gases.

Furthermore, we stand firmly with California in its effort to continue fighting for this waiver. Pennsylvania, like the other states adopting the new motor vehicle program for passenger cars and light-duty trucks, waited for nearly two years while the U.S. Environmental Protection Agency's administrator, Stephen L. Johnson, delayed decision on California's request for a waiver that will provide better protection for public health and the environment than the federal rule would do—even while keeping more money in consumers pockets rather than oil company coffers.

By 2025, when full fleet turnover is expected in Pennsylvania, the California Low Emission Vehicle II program will foster substantial improvement by way of lower smog-producing pollutants. The program will reduce the emission levels of volatile organic compounds by between 2,850 to 6,170 tons per year, and it will cut nitrogen oxide emissions by 3,540 tons per year. Additionally, implementing the program will also reduce six toxic pollutants from 5 to 11 percent, including a 7 percent to 15 percent cut in benzene, which is a known carcinogen.

Pennsylvania is relying on these emission reductions over the long-term to maintain ozone air pollution at healthy levels, but also to cultivate a stronger economic environment. Realizing these pollution reductions from the transportation sector means similar cuts will not have to come through stricter regulations on our industrial employers and utilities.

Returning to greenhouse gases, it has been estimated that Pennsylvania contributes about 1 percent of the world's greenhouse gases, with approximately 25 percent of that total coming from transportation. The expected 30 percent reduction in climate changing greenhouse gas emissions from passenger cars and light-duty trucks under this regulation is very important to us—and exceeds what Pennsylvania can expect to realize under the fuel efficiency requirements set forth in the recently enacted Energy Independence and

Security Act. To use the Corporate Average Fuel Economy, or CAFE, provisions of that act as grounds to say the California approach is not needed is simply false.

In a comparison by CARB, if Pennsylvania could cut greenhouse gases from automobiles using the California regulation as opposed to the federal standard, it would prevent an additional 2.2 million metric tons per year of climate changing gases from reaching the atmosphere by 2016, and 6.6 million metric tons per year by 2020.

And under the California requirement, consumers will also enjoy more fuel efficient vehicles than the federal CAFE standards. Because the California rules are significantly more effective at reducing greenhouse gases than the federal CAFE program, they also yield a better fuel efficiency, which translates into dollars saved at the pump. In 2005, California estimated that vehicle owners would save an overall cost savings of $3.50 per month to $7 per month. That was assuming a price of $1.74 per gallon of gasoline, so if you account for the increase of regular gasoline prices since then, which now stands at more than $3 per gallon, motorists should expect to save between $6 per month and $12 per month.

Given these realities, it is disheartening and disappointing that the president would make such a narrow minded and short-sighted decision to deny the waiver request for the greenhouse gas portion of California's regulation in question here today. The language contained within the federal Clean Air Act recognizes the special role California plays in forging ahead with cleaner vehicle standards and the need for other states with air quality problems to be able to adopt California's rules. We concur in California's arguments that its determination that their motor vehicle standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards is not arbitrary and capricious, that California continues to have a compelling and extraordinary need for their motor vehicle program, and that their standards and enforcement procedures are consistent with section 202(a).

California's greenhouse gas regulations address a very real problem with very real consequences. To back this up, California provided EPA with a detailed 251-page Initial Statement of Reasons for its regulation as well as a 446-page Final Statement of Reasons containing CARB's analyses and responses to comments, showing that California's regulation is directly related to reducing atmospheric greenhouse gases. California's standards are not arbitrary and capricious.

The EPA administrator claimed in his December 19, 2007 letter that California does not have a "need to meet compelling and extraordinary conditions" because of the "global nature of the problem of climate change." What the administrator ignored in that assertion was that climate change is causing compelling and extraordinary conditions in California. Along with warmer temperatures, climate change will cause a number of extraordinary and compelling conditions in California and around the globe—including worsening smog pollution in California cities that already suffer from some of the worst air quality in the nation.

The EPA has not adopted greenhouse gas standards for motor vehicles, and does not assert any inconsistency with section 202(a) of the Clean Air Act. We believe the EPA was obligated to grant the waiver because California has met all the legal obligations described in the Clean Air

Act. The April 2, 2007 Supreme Court decision in *Massachusetts vs. EPA* reinforces that obligation by affirming that greenhouse gases are pollutants. Additionally, just as the Supreme Court held that Administrator Johnson cannot ignore his obligation to determine whether greenhouse gases cause or contribute to air pollution which may be reasonably anticipated to endanger public health or welfare when EPA is presented with a petition for rulemaking, he cannot ignore his obligation to apply the Clean Air Act fairly and rationally in determining whether to honor the Act's presumption that favors granting California a waiver.

The Clean Air Act does not authorize the administrator to act arbitrarily and capriciously, as he did. The Clean Air Act expressly directs the administrator to waive federal preemption for California standards if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards, unless one of the three exceptions I just listed exists. The statutory presumption is that the waiver will be granted.

What is particularly troubling in the EPA's management of this decision was the issue of timing. California's regulations were adopted in September 2004, and in order for California to enforce its regulation for model year 2009 a decision was necessary before the end of calendar year 2007. California submitted its waiver request to EPA in December 2005. In its report, State and Federal Standards for Mobile Source Emissions released in May 2006, the National Academy of Sciences pointed out a consistent pattern of delay by EPA in considering waivers for California standards and the implications of such stalling tactics for both California and states that have adopted California standards. The National Academy of Sciences recommended a mandatory time limit of two years on waiver requests so that there would be certainty before the start of the applicable model year.

Despite the remaining questions over the legality of Administrator Johnson's "final decision," Pennsylvania will continue to stand in opposition to this waiver denial and will continue to fight it using every option available to us. On November 8, 2007, at my direction, the Pennsylvania Department of Environmental Protection intervened in two lawsuits—one in the U.S. District Court and one in the Court of Appeals—for unreasonable delay of EPA's decision on the California waiver request. Since the December 19, 2007 denial, Pennsylvania has joined with 14 other states to intervene in California's petition to the Ninth Circuit Court of Appeals for review of the Administrator's denial.

It is regrettable that over the last two years we have had to resort to legal actions to compel a decision, and, that we have to resort to legal actions to overturn the decision, rather than being able to look to President Bush's administration for leadership on this increasingly important issue.

December 19, 2007 should have been a day to mark a significant step forward in American energy policy, as the president signed the Energy Independence and Security Act. Instead, this bipartisan achievement was marred when it was used as political cover to reject California's greenhouse gas waiver request.

The fact of the matter is that, despite what Administrator Johnson may claim, allowing a more stringent greenhouse gas reduction regulation compared to the federal government's will not

create a confusing “patchwork” of state standards. There will only be two standards—the federal government’s and California’s—just as Congress intended when it allowed California to establish its own standards under the Clean Air Act.

In addition, Administrator Johnson asserted that the CAFE standards are much more effective than California’s proposed standard. But again, such is not the case. According to the California Air Resources Board, if all 19 states that have either moved to adopt the California standard or are seriously considering to do so, the greenhouse gas emissions reduction benefits above and beyond the possible benefits through the 2007 Energy Bill are expected to be 315 million metric tons by the year 2020, or 85 percent higher than through the CAFE standards.

The recently enacted energy bill should not be used as an excuse for inaction. It should be viewed as an opportunity. Now that American automakers must begin increasing the fuel economy of their vehicles, we have an opportunity to implement already established technology to control the greenhouse gas emissions that are threatening our planet and citizens.

The denial of the waiver is not simply a California issue. It has consequences for other states as well, but more importantly, this is part of the larger issue of protecting the basic life support mechanisms of our planet. Greenhouse gases are imperiling life as we know it, and the threat of a changing climate has ramifications for our basic human health and the foundations of our economy—buildings, infrastructure, land use, transportation and the sustainability of certain industries in certain geographic regions.

It has been frustrating to suffer the lack of leadership by this administration on controlling greenhouse gases, and the EPA’s waiver denial is yet another example of that failing. Each of us has been entrusted with a solemn obligation to be good stewards of God's creation. If the federal government doesn't wish to recognize that or exhibit real leadership on the issue, it needs to get out of the way and let states like California, Pennsylvania and others stand up and act to protect the health of our people, the environment, and our economy.

I applaud this committee for its leadership in investigating this issue, and those states that are fighting this unlawful decision. Thank you.