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ONE HUNDRED NINTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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May 19, 2005

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The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

The Honorable James L. Connaughton
Chairman
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20503

Dear Administrator Johnson and Chairman Connaughton:

I understand that the Environmental Protection Agency (EPA) and the Council on Environmental Quality (CEQ) have been invited to testify before the House Committee on Energy and Commerce regarding the Administration's Clear Skies Initiative (CSI) on Thursday, May 26, 2005. While I remain highly skeptical about the wisdom and need for extensive amendments to the Clean Air Act (CAA) at this time, I am writing in order to request some basic information from EPA and CEQ regarding multi-pollutant legislation and other CAA related issues in advance of the hearing. In the event that you cannot answer some of these questions due to time constraints, I would request that you identify those responses and analyses that cannot be completed prior to the hearing and provide a date certain for providing such information.

As you know, sound legislative policy requires that comprehensive and reliable background data be made uniformly available to all parties. Over the past few years, several competing proposals to address multiple pollutants from power plants have been introduced in both chambers of Congress. EPA has extensive capabilities to analyze how these proposals will affect public health, electricity prices, coal use, natural gas supplies, and many other economic and environmental factors. EPA has already done so for its own CSI proposal. Before Congress can engage in any serious consideration of multi-pollutant legislation, we must have the benefit of up-to-date and detailed information that allows direct comparisons between all potential approaches, including leaving the existing Clean Air Act in place.

Clear Skies Initiative Related Questions

In developing information regarding multi-pollutant proposals, I ask that EPA use the latest available modeling tools, and that EPA take account of its own regulatory activities, including the recent issuance of the Clean Air Interstate Rule (CAIR) and the Clean Air Mercury Rule (CAMR). In addition, I ask that you commit to continuing to provide updated information, on a real-time basis, for all competing legislative proposals, if and when further significant developments occur in the complex multi-pollutant area.

1. EPA has performed extensive modeling on the Administration's CSI proposal as introduced by Representative Barton (H.R. 999/S. 485 (108th Cong.)). The results of this effort can be seen on the EPA Web site at: <http://www.epa.gov/air/clearskies>. I request that this modeling be updated for H.R. 999, as discussed below, and that the same modeling then be done for the following legislative proposals as well:
 - The Manager's Amendment introduced by Chairman Inhofe and Senators Voinovich and Bond on March 9, 2005;
 - The Clean Air Planning Act (H.R. 1873);
 - The Clean Smokestacks Act (H.R. 1451 or its Senate counterpart, S. 150); and
 - EPA's previously released "Strawman Proposal."

In order to ensure that the information is the most accurate and up-to-date, while also ensuring that meaningful and direct comparisons are possible, I request that EPA conduct:

- a. IPM runs using the same modeling assumptions and parameters as EPA used for the analysis of CAIR and CAMR; and
- b. National air quality modeling runs using the same modeling platforms and assumptions that EPA used for CAIR.

Modeling outputs should be provided for the years 2010, 2015, and 2020. These modeling runs should include, as part of their base case, recently promulgated EPA rules, such as CAIR and CAMR. In addition, to the extent such proposals also contain provisions relaxing, or otherwise altering relevant provisions of the existing Clean Air Act (for instance, compliance extensions, exemptions from preconstruction permitting requirements, or exemptions from air toxics control requirements), the effect of these provisions should be modeled and included in

the results as well.¹ The analysis of each proposal should have the complete set of outputs that the agency produced for its own Clear Skies proposal.

2. EPA has recently modeled air quality benefits for the CAIR. Using the same models, please determine, for all counties or areas in the CAIR region, NO_x, SO_x, and Hg emission levels and ozone and PM 2.5 levels and attainment status under:
 - a. H.R. 999, and
 - b. CAIR plus CAMR.

Please provide modeling outputs for the years 2010, 2015, and 2020. Developing this regional analysis separately from the national analysis described above will allow everyone to clearly compare the results of Clear Skies versus CAIR/CAMR in the CAIR region.

3. I understand that EPA has completed IPM runs for at least 20-30 multi-pollutant scenarios over the past few years. To date, however, the agency has only released four such runs. Please provide a list of all such model runs with a brief description or summary of the primary parameters of such runs and the date such runs were conducted. Please also provide an estimate of both the total cost of such runs and the average cost per run. Please also provide any summary sheets, power-point presentations, or other documents associated with each such run that were used to brief EPA career staff or political appointees.
4. As you know, coal is one of our most abundant and reliable resources, and is therefore essential to our energy future. Coal mined in different areas of the country has different physical and chemical properties, such as sulfur, mercury, and Btu content. The Administration's CSI proposal sets out a specific mercury allocation ratio for bituminous, sub-bituminous, and lignite coal of 1.0, 1.25, and 3.0. EPA has stated that this ratio is based on estimated removal efficiencies for various types of coal using current technologies. What is in fact the technical basis for establishing this particular mercury allocation ratio?

¹ If EPA cannot predict the number of sources or areas that would take advantage of an "opt-in" or compliance extension provision then, as a default assumption, EPA should assume that the maximum number of sources or areas eligible for such extensions or options do in fact take advantage of their availability and model the effect of such changes accordingly. Alternatively, EPA could model the effect of various percentages of sources, such as 25 percent, 50 percent, and 75 percent, taking advantage of such provisions.

In addition, it is worth noting that the mercury allocations are to be granted in perpetuity, using the ratio described above. Given that the second phase mercury cap in CSI does not occur until 2018, what is the technical basis for permanently allocating mercury allowances using current removal efficiencies, when those efficiencies may be substantially different in 2018?² Might allocating allowances on that basis ultimately result in substantial inequities in mercury allocations to the advantage of utilities burning one type of coal versus another?

Questions Related to Section 1443 of H.R. 6

Section 1443 of the House-passed energy bill, H.R. 6, amends section 181 of the Clean Air Act to require EPA to grant compliance extensions to certain ozone nonattainment areas. Under Section 1443, EPA “must approve” an extension for a “downwind area” that requests an extension and submits a plan demonstrating attainment by the extended attainment date. I have a number of questions relating to this provision and its effect on ongoing efforts to attain the National Ambient Air Quality Standard for ozone.

1. Attached is a list of all areas that EPA recently classified as “Subpart 1” areas under the 8-hour ozone standard. This list was submitted on December 9, 2004, to members of the Senate Committee on Environment and Public Works, including Senators Carper, Voinovich, and Jeffords. Is this an accurate and complete list of all Subpart 1 areas? If not, please provide such a list. Could Section 1443 of H.R. 6 be used to extend the attainment date for any of these Subpart 1 areas?
2. Please identify each 8-hour Subpart 2 ozone area outside California that EPA has found is affected by “significant contribution.” Does EPA know of any reason(s) why any of these areas would not be eligible for a Section 1443 attainment extension, assuming they were to submit an extension request that is in compliance with the information and plan requirements of Section 1443? Which areas and why?

² In its mercury rule, EPA acknowledged that Hg control efficiencies may change in the future, stating that: “[a]t some point in the future, the performance of control technologies on Hg emissions could advance to the point that the rank of coal being fired is irrelevant to the level of Hg control that can be achieved (similar to the point reached by controls for SO₂ and NO_x emissions).” CAIR Rule p. 36.

3. EPA's CAIR rule states that a "significant contribution" to nonattainment may be as little as one percent of the overall emissions inventory for an area.³ Does Section 1443 of H.R. 6 require that extensions only be granted in cases where it is impossible for the area to attain due to the "significant contribution" of transported air pollution? Or, does Section 1443 allow an area to obtain an extension even where cost-effective local measures could provide for attainment without any upwind controls being implemented?
4. Has EPA performed an analysis of health impacts of Section 1443? Assuming all Subpart 2 areas outside of California were eligible for extensions under Section 1443 and obtained such extensions, what would be the health impacts? How would such a situation affect EPA's projections regarding the amount of residual nonattainment under CSI and CAIR?

Mercury Rule Related Questions

On May 28, 2004, I wrote a letter to then EPA Administrator Michael Leavitt, regarding EPA's process for finalizing its mercury rule. In that letter, I raised both substantive and procedural concerns regarding the EPA mercury rulemaking, some of which EPA Administrator Leavitt had identified himself. A substantial portion of the letter sought information regarding the effect of EPA's rule on various types of coal. Other concerns raised in the letter related to EPA's failure to conduct key analyses and to explain decisions that it had made or proposed. Given that nearly ten months remained before the rule was to be finalized, my overarching concern was that EPA state clearly its plans, both in terms of analysis and process, for finalizing the rule in a way that met the dictates of an open and public process, based on sound science and consistent with the requirements of applicable law, including the Administrative Procedures Act and the CAA.

On March 15, 2005, EPA finalized the CAMR. To date, EPA has not responded to my letter. As a result, I request that EPA answer the following questions:

1. Was my letter of May 28, 2004, included in the rulemaking docket, and did EPA respond to the concerns raised in my letter regarding the EPA rulemaking? If so, when and where?

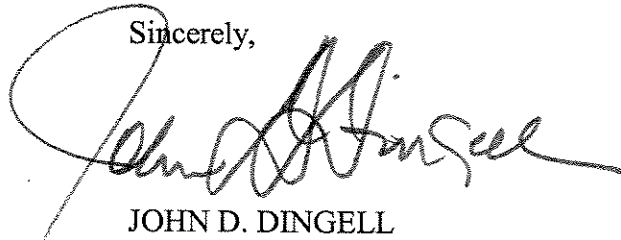
³ See CAIR Rule pages 70 and 162 which state that: "For the 8-hour ozone air quality factor, EPA employs the same threshold amounts and metrics that it used in the NOx SIP Call. That is, as described in section VI, emissions from an upwind State contribute significantly to nonattainment if the maximum contribution is at least 2 parts per billion, the average contribution is greater than one percent, and certain other numerical criteria are met." [and] "[s]pecifically, EPA considered an upwind State not to contribute significantly to a downwind nonattainment area if the State's maximum contribution to the area was either (1) less than 2 ppb, as indicated by either of the two modeling techniques; or (2) less than one percent of total nonattainment in the downwind area."

The Honorable Stephen L. Johnson
The Honorable James L. Connaughton
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2. Does EPA intend to respond to my May 28, 2004, letter or is it EPA's position that the simple passage of time has relieved it of the burden to respond to my concerns?
3. Will EPA commit to reviewing the letter and providing a response to the issues raised therein within a date certain? If so, when is that date?

Thank you for your attention to these important matters. If you have any questions regarding this letter, please contact me or have your staff contact Michael Goo, Minority Counsel, Committee on Energy and Commerce at (202) 226-3400.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Dingell". The signature is written in a cursive, flowing style with a large initial "J".

JOHN D. DINGELL
RANKING MEMBER

Attachment

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Ralph M. Hall, Chairman
Subcommittee on Energy and Air Quality

The Honorable Rick Boucher, Ranking Member
Subcommittee on Energy and Air Quality



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

DEC 9 2004

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Thomas R. Carper
Ranking Member
Subcommittee on Clean Air, Climate Change
and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Senator Carper:

Thank you for the opportunity to respond to questions for the record that followed an April 1, 2004 hearing on the implementation of the National Ambient Air Quality Standards for Particulate Matter and Ozone. I hope this information will be useful to you and Members of the Committee.

If you have any questions, you may call me at (202) 564-5200 or your staff may call Diann Frantz of my staff at (202) 564-3668.

Sincerely,

A handwritten signature in black ink that reads "Charles L. Ingebrøtson".

Charles L. Ingebrøtson
Associate Administrator

Enclosures

Internet Address (URL) • <http://www.epa.gov>

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

DEC 9 2004

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable George V. Voinovich
Chairman
Subcommittee on Clean Air, Climate Change
and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for the opportunity to respond to questions for the record that followed an April 1, 2004 hearing on the implementation of the National Ambient Air Quality Standards for Particulate Matter and Ozone. I hope this information will be useful to you and Members of the Committee.

If you have any questions, you may call me at (202) 564-5200 or your staff may call Diani Frantz of my staff at (202) 564-3668.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles L. Ingebretson".

Charles L. Ingebretson
Associate Administrator

Enclosures

TABLE 3-2: 8-hour Ozone Nonattainment Areas
 Listed by Classification then Design Value (2001-03 data)

Classification/Area Name	Design Value (ppb)
Severe 17	
Los Angeles South Coast Air Basin, CA	131
Serious	
San Joaquin Valley, CA	115
Riverside Co, (Coachella Valley), CA	108
Sacramento Metro, CA	107
Moderate	
Philadelphia-Wilmin-Atlantic Ci, PA-NJ-MD-DE	106
Los Angeles-San Bernardino Cos (W Mojave), CA	106
Baltimore, MD	103
Cleveland-Akron-Lorain, OH	103
New York-N. New Jersey-Long Island, NY-NJ-CT	102
Houston-Galveston-Brazoria, TX	102
Chicago-Gary-Lake County, IL-IN	101
Milwaukee-Racine, WI	101
Charlotte-Gastonia-Rock Hill, NC-SC	100
Sheboygan, WI	100
Dallas-Fort Worth, TX	100
Fredericksburg, VA	99
Washington, DC-MD-VA	99
Jefferson Co, NY	97
Boston-Lawrence-Worcester (E. MA), MA	95
Boston-Manchester-Portsmouth(SE), NH	95
Greater Connecticut, CT	95
Providence (All RI), RI	95
Ventura Co, CA	95
Springfield (Western MA), MA	94
Poughkeepsie, NY	94
St Louis, MO-IL	92
Marginal	
Portland, ME	91
Atlanta, GA	91
Beaumont-Port Arthur, TX	91
Norfolk-Virginia Beach-Newport News (HR), VA	90
Imperial Co, CA	87
Baton Rouge, LA	86
San Francisco Bay Area, CA	86

Areas reclassified from Moderate to Marginal-Effective Nov. 2004

Detroit-Ann Arbor, MI	97
Kent and Queen Anne's Cos, MD	95
Muskegon, MI	95
Richmond-Petersburg, VA	94
Cass Co, MI	93
La Porte Co, IN	93
Lancaster, PA	92
Memphis, TN-AR	92

Subpart 1

Buffalo-Niagara Falls, NY	99
Kern Co (Eastern Kern), CA	98
Nevada Co (Western Portion), CA	98
Allegan Co, MI	97
Indianapolis, IN	96
Cincinnati-Hamilton, OH-KY-IN	96
Columbus, OH	95
Youngstown-Warren-Sharon, OH-PA	95
Hancock, Knox, Lincoln and Waldo Cos, ME	94
Jamestown, NY	94
Pittsburgh-Beaver Valley, PA	94
Raleigh-Durham-Chapel Hill, NC	94
Door Co, WI	94
Franklin Co, PA	93
Kewaunee Co, WI	93
South Bend-Elkhart, IN	93
Toledo, OH	93
San Diego, CA	93
Erie, PA	92
Knoxville, TN	92
Louisville, KY-IN	92
Essex Co (Whiteface Mtn) NY	91
Allentown-Bethlehem-Easton, PA	91
Reading, PA	91
Huntington-Ashland, WV-KY	91
Benton Harbor, MI	91
Amador and Calaveras Cos (Central Mtn), CA	91
Mariposa and Tuolumne Cos (Southern Mtn), CA	91
Clearfield and Indiana Cos, PA	90
Canton-Massillon, OH	90
Dayton-Springfield, OH	90
Flint, MI	90
Manitowoc Co, WI	90
Greene Co, PA	89
York, PA	89
Rocky Mount, NC	89

Grand Rapids, MI	89
Lima, OH	89
Mason Co, MI	89
Chico, CA	89
Rochester, NY	88
Harrisburg-Lebanon-Carlisle, PA	88
State College, PA	88
Chattanooga, TN-GA	88
Benzie Co, MI	88
Fort Wayne, IN	88
Greene Co, IN	88
Muncie, IN	88
Sutter Co (Sutter Buttes), CA	88
<hr/>	
Albany-Schenectady-Troy, NY	87
Johnstown, PA	87
Madison and Page Cos (Shenandoah NP), VA	87
Parkersburg-Marietta, WV-OH	87
Wheeling, WV-OH	87
Birmingham, AL	87
Huron Co, MI	87
Terre Haute, IN	87
Phoenix-Mesa, AZ	87
Charleston, WV	86
Scranton-Wilkes-Barre, PA	86
Tioga Co, PA	86
Macon, GA	86
Kalamazoo-Battle Creek, MI	86
Lansing-East Lansing, MI	86
Steubenville-Weirton, OH-WV	86
Las Vegas, NV	86
Altoona, PA	85
Clarksville-Hopkinsville, TN-KY	85
Haywood and Swain Cos (Great Smoky NP), NC	85
Murray Co (Chattahoochee Nat Forest), GA	85
Evansville, IN	85
Jackson Co, IN	85

Early Action Compact - Marginal - Effective Nov. 2004
Greensboro-Winston Salem-High Point, NC 93

Early Action Compact - Subpart 1	
Columbia, SC	89
San Antonio, TX	89
Hickory-Morganton-Lenoir, NC	88
Fayetteville, NC	87
Greenville-Spartanburg-Anderson, SC	87
Denver-Boulder-Greeley-Ft Collins-Love., CO	87
Berkeley and Jefferson Counties, WV	86

Washington Co (Hagerstown), MD	86
Johnson City-Kingsport-Bristol, TN	86
Nashville, TN	86
Frederick Co, VA	85
Roanoke, VA	85

126 Areas
