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August 13, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson,

On April 4, 2008, I wrote to you raising concerns and requesting information about the numerous rules issued by EPA under the Bush Administration that have been overturned by the courts. Such losses produce substantial delays in environmental protection, waste of government resources, and confusion and costs for states and regulated entities. My inquiry requested information that would document the extent of the losses as well as some of their consequences in terms of the length of delays in environmental protections and the amount of wasted agency resources.

On April 18, 2008, EPA provided a partial response to my inquiry. While EPA identified the rules and outcomes of the cases at issue, EPA did not provide any information regarding the agency resources expended to develop and defend rules subsequently overturned by the courts. This letter reiterates and expands that portion of my initial request. It also requests additional information regarding the length of the resulting delays in public health and environmental protections.

Specifically, I asked EPA to identify the amount of agency resources in money and personnel expended to develop and defend each rule that was largely or entirely overturned by the court. In response, EPA asserted that it does not keep records of the staff resources expended on developing and defending a rulemaking. While I recognize that EPA does not have a formal system for tracking staff time on a project-by-project basis, my understanding is that agency managers do in fact assign staff to projects and keep informal estimates of the Full Time Equivalents allocated to various rulemakings. In addition, EPA pays contractors to support many specific rulemakings and must track these expenditures.

Thus, for each Clean Air Act rule or decision made since 2001 that was remanded or vacated by the D.C. Circuit or voluntarily remanded by EPA in whole or in significant part, I

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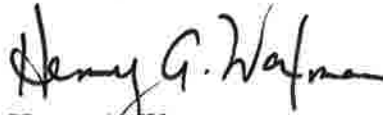
reiterate my request for EPA to identify the amount of agency resources in money and personnel expended to date to develop and defend the rule or decision that was challenged. If precise quantifications are not possible for certain rules, rough estimates are acceptable. Please separately quantify the contract expenditures for each of these rules and decisions.

Many of the rules rejected by the courts would have provided critical public health and environmental protections if EPA had issued them in a form that conformed to the Clean Air Act requirements. For these rules, the time between the issuance of the rule overturned by the court and a new final rule provides some information regarding the degree of public health and environmental harm from these losses.

Thus, for each Clean Air Act rule or decision made since 2001 that was remanded or vacated by the D.C. Circuit or voluntarily remanded by EPA in whole or in significant part, please indicate the date on which EPA promulgated a new final rule or decision, or plans to issue such a new final rule or decision. With respect to the five rules issued pursuant to a deadline for which EPA provided this information in response to my initial request, please update the information provided if there have been any changes since April.

Please provide your response by August 29, 2008. If you have any questions about this request, please have your staff contact Alexandra Teitz of the Committee staff at (202) 225-4407.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member