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

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May 25, 2007

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The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Johnson:

We are writing you to follow up on your response to a January 19, 2007, letter regarding the failure of the Environmental Protection Agency (EPA) to finalize the implementation rule providing States guidance on meeting the fine particle standards issued in 1997. The Agency's February 9, 2007, response raises new questions about your ability to issue this and other rules in a timely fashion.

From the Agency's response to the previous inquiry, it appears that a major stumbling block in issuing the implementation rule was review by the Office of Management and Budget (OMB). We note that, according to the timetable set forth in the Agency's response, the draft final rule was at OMB for more than nine months, and much of that time was spent in "informal" review. The Agency also said that the draft proposed rule was at OMB for well over a year (from the Spring of 2004 to September 2005).

The Committee on Energy and Commerce and the Subcommittee on Oversight and Investigations have been concerned about OMB review of agency rules for more than two decades. In the Clean Air Act, Congress delegated rulemaking authority to the Administrator of EPA, not to OMB. Concerns about the transparency and timeliness of OMB review under President George H. W. Bush led President Clinton to adopt Executive Order 12866. This Executive Order includes provisions which generally limit OMB review of Agency rules to 90 days and provisions which are designed to ensure that the OMB review process is transparent. President George W. Bush has retained these provisions.

We are very troubled that, at least for the fine particle implementation rule, EPA and OMB appear to have used "informal" review as a way around the Executive Order's 90-day

limitation on review, and we wonder what the effect is on the transparency of the OMB review process. We are interested in understanding how often the Agency submits rules on an "informal" basis.

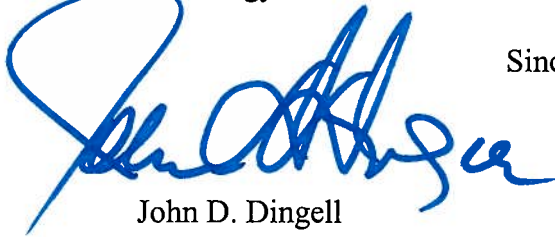
Furthermore, in explaining why it took the Agency so long to issue the fine particle implementation rule, the Agency's January 19 response stated that, rather than issuing the implementation rule, "EPA has focused on completing the PM NAAQS review, a significant number of rules with legally binding deadlines, and other priority actions." The Agency did not, however, provide details about these other priorities.

Although the Agency finally issued the fine particle implementation rule in March, it does not diminish our concern about the OMB review process. As part of our oversight responsibilities, we need to understand why this rulemaking has such a lengthy process. We ask that, by June 6, 2007, you please provide a list of all of the Clean Air Act-related proposed rules, final rules, or other actions that were at OMB for review, either formally or informally, from July 2006, through the date of your response to this letter. For each listed item, please provide the following:

1. The EPA air docket number;
2. The date a partial or full draft of the proposed rule, final rule, or other action was first sent to OMB for informal review, and the number of this document in the relevant EPA air rulemaking docket;
3. The date a draft of the proposed rule, final rule, or other action was first sent to OMB for formal review under E.O. 12866;
4. A copy of the OIRA Administrator's written explanation for such return if the Administrator of the Office of Information and Regulatory Affairs (OIRA) returned the action to the Agency for further consideration;
5. The written approval of an extension if the review process was extended by 30 days pursuant to the terms of E.O. 12866; and
6. The date OMB approved the action under E.O. 12866.

The Honorable Stephen L. Johnson
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If you have any questions, please contact us or have your staff contact Lorie Schmidt with the Committee on Energy and Commerce staff at (202) 225-2927.



John D. Dingell
Chairman

Sincerely,



Bart Stupak
Chairman
Subcommittee on Oversight
and Investigations