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

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March 1, 2007

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

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. That letter requested that you provide responsive answers and documents by February 5, 2007. Although the Agency provided a written response on February 9, 2007, the response stated that you could not provide the documents by the deadline.

Your written responses to the questions posed affirm the importance of these documents to the Committee on Energy and Commerce and the Subcommittee on Oversight and Investigations in order for us to perform our oversight function. We request that you produce the documents no later than Wednesday, March 7, 2007, to the Subcommittee on Oversight and Investigations, which has begun to review this matter.

When the EPA tightened the fine particle standards last fall, it affirmed the importance of the 1997 standards in protecting public health. EPA also confirmed that fine particle levels found in many parts of this country are resulting in thousands of cases of death and disease. Under the Clean Air Act, the States are responsible for submitting plans in April 2008, to demonstrate how they will meet these important health-based standards. EPA has now issued more stringent fine particle standards, yet EPA has not given the States guidance for meeting the previous standards. EPA's failure to issue this rule in a timely manner makes it harder for States to do their job and causes uncertainty for businesses in areas that will need local control programs to meet the 1997 standards.

The Agency's response that its "goal" is to issue the fine particle implementation rule in March is hardly comforting. Given that it is six years after the Supreme Court upheld the Agency's 1997 fine particle decision and approximately a year before the States are required to submit their air quality plans, we are disappointed that the Agency could not commit to a date certain to finalize the rule. As detailed in the January 19 letter, for several years the Agency's actions have fallen far short of its intentions to act on this rule, starting with the Agency's stated intention in Spring, 2004, to finalize the rule in late 2004 or early 2005.

Based on the time line the Agency provided in response to the January 19 letter, it appears that a substantial amount of the time spent on this rule has been consumed in review by the Office of Management and Budget (OMB) pursuant to Executive Order 12866. The Agency's response indicated that the draft proposed rule was at OMB for review from Spring, 2004, to September, 2005. The proposed rule was published in November, 2005, and was open for public comment until the end of January, 2006. The Agency's response indicates that the final rule has been at OMB for review for approximately half of the elapsed time since the public comment period closed over a year ago.

Congress has delegated rulemaking authority under the Clean Air Act to the EPA Administrator, not to OMB. It is your responsibility to issue rules in a timely manner. We are deeply troubled that, in response to the request for a description of the actions you personally had taken to expedite this rulemaking, the Agency's response did not describe even one action taken by you.

Both the implementation rule and the fine particle standards are authorized by the Clean Air Act, which is solely within the legislative jurisdiction of the Energy and Commerce Committee in the House of Representatives. As Chairmen of the Committee and Subcommittee with oversight responsibility for implementation of the Clean Air Act, it is important that we understand why this important public health rule has been so long delayed. As such, the January 19 letter contained the following request:

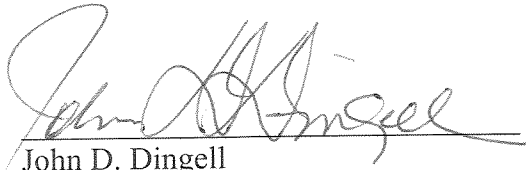
"Please provide all documents related to this rulemaking that contain or reflect discussions with or comments from OMB or other parts of the Executive Branch as part of formal or informal review of the proposed or final rule."

The Agency's response to that letter has raised serious questions about the critical role that OMB review is playing in your inability to fulfill your obligation to finalize the fine particle implementation rule, which reinforces the Committee's and Subcommittee's need for the requested documents.

The Honorable Stephen L. Johnson  
Page 3

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

Sincerely,



John D. Dingell  
Chairman  
Committee on Energy and Commerce



Bart Stupak  
Chairman  
Subcommittee on Oversight and  
Investigations

cc: The Honorable Joe Barton, Ranking Minority Member  
Committee on Energy and Commerce

The Honorable Ed Whitfield, Ranking Minority Member  
Subcommittee on Oversight and Investigations

The Honorable Rick Boucher, Chairman  
Subcommittee on Energy and Air Quality

The Honorable J. Dennis Hastert, Ranking Minority Member  
Subcommittee on Energy and Air Quality