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Congress of the United States
House of Representatives
Washington, DC 20515-0529

HENRY A. WAXMAN
29TH DISTRICT, CALIFORNIA

June 7, 2002

The Honorable Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Whitman:

I am writing about indications that the Administration is considering weakening the regulation to cleanup emissions from diesel-fueled trucks. This regulation, which was upheld by the D.C. Circuit only last month, is vital to the effort to reduce the nation's air pollution.

The information I have obtained indicates that the Administration is contemplating using trading strategies as a means of allowing engine manufacturers to evade compliance with emission reduction requirements. This information comes from a draft statement that appears to have been written after the recent court decision by EPA in conjunction with the Office of Management and Budget. According to the statement, EPA and OMB are considering "the potential use of market-based averaging, banking, and trading programs that might include permission to trade emission reduction credits between off-road and highway engines." A copy of the draft statement is enclosed.

Under the diesel rule upheld by the court, manufacturers of diesel-fueled truck engines must reduce emissions of particulate matter by 90% and nitrogen oxides by 95%, beginning in 2007. The proposal being considered by EPA and OMB would apparently allow manufacturers of these truck engines to exceed these emissions limits by obtaining emission credits from off-road vehicles. Moreover, because diesel engines and fuel are regulated together as a system, these weakening changes could potentially extend to the standards for diesel fuel as well.

A decision to weaken the diesel rule would be a shocking reversal. EPA projects that the rule will reduce annual NOx emissions by 2.6 million tons and particulate matter emissions by 109,000 tons.¹ You have stated that some 8,300 premature deaths, 5,500 cases of chronic bronchitis and 17,600 cases of acute bronchitis in children will be prevented annually due to this

¹"Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements," Regulatory Announcement, U.S. EPA (December 2000)(available online at <http://www.epa.gov/otaq/reg/hd2007/frm/f00057.htm>).

rule.² These reductions in diesel emissions are absolutely essential to urban air quality and should not be traded away.

While the proposal under consideration would presumably benefit engine manufacturers and possibly oil companies, there is no indication that it would provide any air quality benefits. I agree that the nation needs additional reductions in emissions from non-road diesel vehicles such as bulldozers and other construction equipment. But reductions from non-road vehicles can be obtained by a regulation that requires equivalent emission reductions from these sources. In fact, the Clean Air Act requires EPA to consider such equivalent standards as a starting point for a non-road vehicle rule.³ There is no need to undermine the rule reducing emissions from diesel trucks in order to achieve emission reductions from non-road vehicles.

I am also concerned about language in the draft statement that says EPA and OMB will “collaborate” in developing the new proposal. This appears to be an unprecedented action and raises serious questions. Congress granted rulemaking authority under the Clean Air Act to the Administrator of EPA, which is an independent regulatory agency, not to the Director of OMB, which is an agency under direct White House control. Moreover, OMB has limited expertise in air pollution control and in the past has urged EPA to base regulatory decisions on factors not consistent with the requirements or goals of the Clean Air Act. The draft directive to consider “how risks, benefits and costs might vary by type of off-road engine and geographical location of use” may be a reflection of this inappropriate OMB involvement. The Clean Air Act requires EPA to reduce these emissions to the greatest degree possible through available technology, taking cost, noise, energy, and safety factors into consideration.⁴ Congress did not authorize EPA to allow dirtier diesel engines in relatively pristine areas, such as national parks, just because the air quality is not yet degraded in those areas.

Your predecessor EPA Administrator Carol Browner signed the diesel rule on December 21, 2000.⁵ One of your first actions as Administrator was to direct that EPA move forward on schedule with this rule to make heavy-duty trucks and buses run cleaner. You stated, “The Bush Administration determined that this action not be delayed in order to protect public health and

²“Federal Circuit Court Gives EPA the Go-ahead To Make Diesel Trucks Run Cleaner,” Press Release, U.S. EPA (May 3, 2002).

³CAA §213(a)(3).

⁴CAA §213(a).

⁵U.S. Environmental Protection Agency, “Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements; Final Rule,” 66 Fed. Reg. 12 (January 18, 2001) (available online at <http://www.epa.gov/otaq/regs/hd2007/frm/frdslpre.txt>).

the environment.”⁶

When the D.C. Circuit Court of Appeals upheld the diesel rule last month, you reaffirmed this position, stating, “We applaud the court's decision to uphold such an important program. Now all Americans will receive significant health and environmental benefits from the dramatic cuts in air pollution released from these large trucks and buses.”⁷ The Administration’s commitment to the rule was widely praised. As the *Washington Post* editorialized, “[t]he Bush administration deserves credit for backing the standards and aggressively defending them in court.”⁸

Needless to say, there was no mention at that time of efforts within the Administration to weaken the rule.

Since coming into office, the Administration has taken many anti-environment actions and only a few pro-environment ones. The Administration’s support for the diesel rule was one of its few positive environmental accomplishments -- and one of its most significant. I urge you to renounce any effort to undermine this rare accomplishment.

In addition, I would appreciate answers to the following questions:

1. Is EPA considering revisions to the rule entitled, “Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements; Final Rule,” 66 Fed. Reg. 12 (January 18, 2001)?
2. If so, could such revisions create new legal jeopardy for a rule which has already survived legal challenge?
3. According to the draft statement, EPA and OMB will “collaborate” on developing the non-road diesel rule. This commingling of roles appears to be unprecedented. Please explain the roles of EPA and OMB in this collaboration.
4. If EPA is considering allowing OMB to be involved in the development of a regulatory impact analysis, will EPA’s budget support OMB’s role in the process?
5. Over the years, the refining industry has argued that it should be permitted to market dirtier fuel in clean-air attainment areas. Engine manufacturers have made similar arguments for weaker standards based on where those engines are used. These arguments

⁶“EPA Gives the Green Light on Diesel-Sulfur Rule,” Press Release, U.S. EPA (February 28, 2001).

⁷“Federal Circuit Court Gives EPA the Go-ahead To Make Diesel Trucks Run Cleaner,” Press Release, U.S. EPA (May 3, 2002).

⁸“Clean Air Victory,” *The Washington Post* (May 6, 2003).

have been appropriately rejected by EPA in the past on the grounds that the United States is a mobile society and high sulfur fuel -- regardless of where it is purchased -- can poison sophisticated emissions control technology. The draft statement suggests that OMB or EPA may now be showing a new receptiveness to these arguments. Please explain the language in the draft statement that states that the Administration will consider "how risks, benefits and costs might vary by type of off-road engine and geographical location of use."

I request that you respond no later than June 17, 2002.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman" followed by a long horizontal flourish.

Henry A. Waxman
Member of Congress

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OMB AND EPA AGREE ON NEED TO CURB POLLUTION FROM OFF-ROAD, DIESEL-POWERED VEHICLES

In an unusual collaboration, the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) and the Office of Air and Radiation of the Environmental Protection Agency (EPA) have agreed that curbing pollution from diesel-powered, non-road vehicles and equipment should be a top environmental priority of the Bush Administration. EPA has already been doing preliminary work on a rulemaking to reduce emissions from these sources, but the collaboration between OMB and EPA will allow the rulemaking effort to proceed on an expedited basis. This action will build on the recently reaffirmed EPA rule aimed at reducing pollution from on-road diesel-powered trucks and buses. It will also further the objectives of the Administration's recent Clear Skies Initiative, which is aimed at reducing similar pollutants from power plants.

OMB and EPA share a concern that inhalation of fine particles is associated with a variety of adverse health effects, including hospital admissions and premature mortality among patients with cardiopulmonary problems. For this reason, they believe that all significant sources of emissions that contribute to the formation of fine particulate matter (PM) need to be analyzed to determine whether regulatory action is appropriate. Although non-road diesel engines already are subject to regulation, they continue to represent an important and growing source of fine PM and other pollution in most metropolitan areas. There are currently several million of these engines in use in the U.S., primarily in the construction, mining, farm, and airport service sectors.

OMB and EPA also recognize that controlling exhaust from non-road diesel engines will likely require a lower-sulfur grade of fuel than is currently available. Refiners are already scheduled to begin producing such a low sulfur diesel fuel for on-highway applications in 2006. This is an expensive undertaking, and one that must be evaluated carefully in deciding whether and how to require additional desulfurization of diesel fuel. At the same time, refiners may benefit from the ability to plan for desulfurization of highway and non-road diesel supplies

concurrently.

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In light of the complex issues raised by this rulemaking, including the need to assure that the fuel supply is compatible with emissions control systems, EPA will work closely with OMB and other experts and interested stakeholders in developing the non-road diesel rule. In particular, the Agency will consult with state and local officials, diesel engine and equipment manufacturers, fuel refiners and marketers, public health experts and environmental organizations, as well as the Departments of Energy, Transportation and Agriculture.

EPA and OMB will also collaborate on the design of an innovative regulatory analysis to support the development of regulatory strategies to reduce emissions from non-road diesel engines. Among other things, this analysis will consider: (1) the potential use of market-based averaging, banking, and trading programs that might include permission to trade emission-reduction credits between off-road and highway engines, thereby stimulating more emission reduction at less cost; and (2) how risks, benefits and costs might vary by type of off-road engine and geographical location of use. Analysis and decision making under this agreement will fully comply with both the Clean Air Act and Presidential Executive Order 12866 on regulatory planning and review.

EPA Administrator Christine Todd Whitman will supervise this collaborative effort. She asked that day-to-day leadership be provided by Jeffrey Holmstead, Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency and John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.