



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

MAR 03 2008

THE ADMINISTRATOR

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Chairman Waxman:

Thank you for your letter dated February 1, 2008, requesting information about the U.S. Environmental Protection Agency's (EPA) response to the U.S. Supreme Court's decision in *Massachusetts v. EPA*, 127 S. Ct. 1438 (2007). Following are responses to the questions submitted in your letter.

Question 1: Please describe the EPA resources that have been devoted to implementation of the President's 20-in-10 plan. Your description should include the number of EPA employees who have worked on the issue, the number of EPA work hours spent on the issue, and an estimate of the financial cost to the agency of the effort.

Response: In FY 2007, in response to the Supreme Court's decision in *Massachusetts v. EPA* and the President's Executive Order 13432 issued May 14, 2007, EPA's Office of Air and Radiation (OAR) internally redirected \$5.3 million in contract dollars and redeployed 53 staff members to begin work on an effort to develop new regulations that would cut greenhouse gas (GHG) emissions from motor vehicles and their fuels. This effort included the establishment of a number of technical staff teams, including one focused on the development of a vehicle rule, one on a fuels rule, another on an endangerment determination, and supporting teams conducting work on core analyses of the economics, costs, benefits, energy security, and environmental impacts of GHG rules. The payroll-related costs of this redirection of 53 staff members totaled approximately \$1.4 million in FY 2007. This payroll cost, combined with the \$5.3 million in contract resources, resulted in a total OAR allocation of approximately \$6.7 million in FY 2007. All of the payroll dollars were expended in FY 2007. The contract dollars were for obligation in FY 2007 and supported OAR in FY 2007 and in FY 2008.

As to the funds and staff time dedicated to evaluate whether, in my judgment, emissions of GHGs cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, approximately three to four staff members and approximately \$50 thousand in contract dollars have supported EPA's efforts to date. The vast majority of the FY

2007 dollars and FTE cited in the paragraph above were for the development of the draft proposed fuels and vehicle rules.

Going forward into FY 2008, the Agency continued work associated with the Executive Order, based on an expectation of completing final regulations in coordination with the Department of Transportation (DOT) by the end of calendar year 2008. EPA expected that during FY 2008 a significant amount of additional analyses would be required to support final rulemakings. OAR's FY 2008 resource plan developed prior to October 2007 called for the continued redirection of 53 staff members, and additional analytical work requiring \$2.6 million in additional contract support. Thus, the EPA contract and payroll-related resources estimated in OAR's FY 2008 resource plan totaled approximately \$9.3 million.¹ These estimates were developed prior to enactment of the Energy Independence and Security Act of 2007, P.L. 110-140.

Question 2: Please describe any ongoing efforts to implement the President's 20-in-10 plan. Your description should include the number of employees who are now actively working on the issue, the number of EPA work hours currently being spent on the issue each week, and an estimate of the future financial cost to the agency of the effort.

Response: As indicated above, the Agency began FY 2008 by proceeding with its plan originally developed in response to the President's Statement of May 14, 2007. However, as a result of the passage of Energy Independence and Security Act of 2007 (EISA) on December, 19, 2007, the Agency is now in the process of considering the impact of EISA on our draft vehicle and fuel proposals, including its impact on our FY 2008 funding needs.

Work on the fuels proposal has continued. However, there are a number of significant differences between the renewable fuel standard (RFS) provisions of EISA and the fuels program EPA was developing under the President's 20-in-10 plan. As a result, substantial new analytical work will be required in FY 2008 on the renewable fuels rule. This includes new analyses related to renewable fuel lifecycle emissions, costs and benefits of EISA fuel volumes, and the environmental, economic, and energy security impacts of these fuel volumes. OAR's preliminary estimate is that this work will require at least \$2.9 million in new contract funding in FY 2008. In addition, approximately 38 staff members and the associated payroll dollars will be required to support this new work.

The work that EPA will spend on any rule will depend on the nature of the coordination and consultation between EPA and the Department of Transportation.

Question 3: Please describe the product and status of your efforts to date to implement the President's 20-in-10 plan. Please state whether EPA drafted regulatory proposals to implement the plan, whether those proposals have been reviewed and approved internally within EPA, and if so, by which officials, whether those proposals were shared with other agencies, and the status of any ongoing review of those proposals within EPA and the Administration.

¹ The OAR resources noted here, and in other parts of the letter, represent the bulk of the Agency's resources devoted to these rulemaking efforts. Other offices at EPA that have supported these efforts include the Office of General Counsel, the Office of Research and Development, and the Office of the Administrator.

Response: Before the enactment of EISA, EPA was proceeding with work on all aspects of a possible regulation. Although EPA previously indicated that it planned to propose a greenhouse gas rulemaking by the end of 2007, this obviously did not occur. A major factor contributing to this result was the approval by Congress and the President's signature into law of EISA on December 19, 2007.

In this regard, EISA amended Clean Air Act provisions requiring a Renewable Fuels Standard (RFS) that were first established in the Energy Policy Act of 2005. EISA also separately amended existing Energy Policy and Conservation Act (EPCA) provisions with regard to the Department of Transportation's authority to set Corporate Average Fuel Economy (CAFE) Standards.

With regard to the RFS, Congress amended Section 211(o) of the Clean Air Act to increase the RFS from 7.5 billion gallons in 2012 to 36 billion gallons in 2022. The law makes numerous other significant changes. The net result of this enactment was to supplant much of the analysis that EPA had performed in conjunction with its federal partners in support of the greenhouse gas rulemaking effort relative to fuels. In addition, as a result of the legislation's inclusion of a regulatory deadline of December 2008 for many of the RFS provisions, EPA is currently in the process of developing necessary implementing regulations specific to the new law's requirements.

With regard to motor vehicle regulations, as I have testified before the Senate Environment and Public Works Committee, EISA did not amend Section 202 of the Clean Air Act, which contains EPA's general authority to regulate air emissions from motor vehicles and motor vehicle engines. However, it is abundantly clear that EISA did substantially alter the Department of Transportation's authority to set mileages standards for cars and trucks under EPCA, which directly affects the emission of GHGs from new motor vehicles. The legislation directs the Department to set CAFE standards to achieve at least a 35 miles per gallon standard by 2020, directs that rulemaking to focus on 5 year increments, and allows the broader use of attribute-based standards.

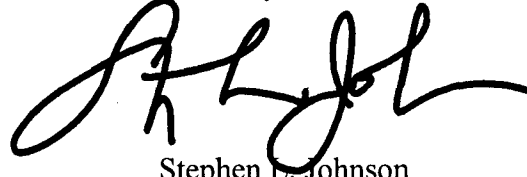
This new statutory authority, which is now less than two months old, has required DOT to review its previous regulatory activities that it had undertaken pursuant to Executive Order 13432. Since the Executive Order requires close coordination between EPA and other Federal agencies and, since EISA itself requires consultation between EPA and DOT with regard to new CAFE standards affecting cars and trucks, it is therefore incumbent on EPA to work with DOT on new standards which rely on the new law.

Question 4: Please provide the date by which you anticipate proposing regulatory actions to comply with the Supreme Court's decision in *Massachusetts v. EPA*.

Response: I am currently unable to provide you and the committee with a specific date, though we are working to resolve the open issues as promptly as is feasible. I will, however, endeavor to keep the Committee apprised of EPA's response both with regard to the Supreme Court's opinion in *Massachusetts v. EPA* and the new energy law approved by Congress.

Again, thank you for your letter. Please contact me if you have further questions, or your staff may contact Josh Lewis in the Office of Congressional and Intergovernmental Relations at 202-564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Johnson', written in a cursive style.

Stephen L. Johnson