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March 12, 2008

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

Dear Administrator Johnson:

I am writing to inquire why you have decided to reject the specific recommendations of the Clean Air Scientific Advisory Committee (CASAC) in finalizing an updated national ambient air quality standard (NAAQS) for ozone. Your decision marks the second occasion in less than two years in which you appear to have ignored CASAC's expert advice in updating a NAAQS.

Section 109 of the Clean Air Act provides that the Administrator of the Environmental Protection Agency is to establish NAAQS "requisite to protect the public health" and "allowing an adequate margin of safety."¹ As the Supreme Court has held, your decision on setting NAAQS is to be based solely on the pollutant's impacts on public health, a matter of science — not consideration of the potential costs of implementation of the standard.²

CASAC is mandated by Congress, through the Clean Air Act Amendments of 1977, to provide the EPA Administrator with independent advice on the technical bases for NAAQS.³ CASAC is comprised of some of the nation's leading experts on the health and environmental effects of air pollution and has conscientiously fulfilled its duty in providing its best scientific advice and recommendations to EPA Administrators for nearly 30 years.⁴

¹ Clean Air Act § 109(b)(1) (2005).

² *Whitman v. American Trucking Assns.*, 531 US 457 (2001).

³ Environmental Protection Agency, Clean Air Scientific Advisory Committee, Home Page (online at <http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC>) (accessed Mar. 10, 2008).

⁴ Congressional Research Service, *Air Quality Standards and Sound Science: What Role for CASAC?* (Sept. 18, 2007) (RL33807)

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Last year, CASAC informed you that its Ozone Review Panel was “unanimous in recommending that the level of the current primary ozone standard should be lowered from 0.080 ppm to no greater than 0.070 ppm.”⁵ CASAC based this recommendation on “overwhelming scientific evidence,” including “EPA’s own findings in the Ozone Air Quality Criteria Document (AQCD) and the Final Ozone Staff Paper.”⁶ Despite CASAC’s unanimous recommendation for a standard no greater than 0.070 ppm and the overwhelming scientific evidence supporting it, press accounts report you are setting the primary ozone standard at 0.075 ppm.⁷

This decision is remarkably similar to a decision you made in 2006 when reviewing the air quality standards for particulate matter. In that case, you ignored the scientific advice of CASAC by not lowering the level of the annual primary fine particle (PM_{2.5}) standard, not establishing a new coarse particle (PM_{10-2.5}) standard, and not setting a separate secondary PM_{2.5} standard.⁸ These decisions led CASAC to send you a rare public rebuke, stating, “we question whether you have appropriately given full consideration to CASAC’s expert scientific advice — obtained through open, public processes — in your final decisions on the PM NAAQS.”⁹

Your actions on the NAAQS for ozone and particulate matter over the past two years appear to ignore recommendations designed to protect public health and public welfare and suggest that science is not the primary basis for your decisions. Until 2006, EPA Administrators had “always accepted” CASAC’s “scientific advice with regard to final NAAQS designation.”¹⁰

Given the impact these decisions have on public health and public welfare, I request that you explain the rationale for disregarding CASAC’s advice in establishing the NAAQS for both ozone and particulate matter.

⁵ Letter from Dr. Rogene Henderson, Chair of the Clean Air Scientific Advisory Committee, to EPA Administrator Stephen L Johnson (Mar. 26, 2007).

⁶ *Id.*

⁷ *EPA Sets New Ozone Standard, Overrides Advisers*, Washington Post (online at <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/12/AR2008031202362.html?hpid=topnews>) (accessed on Mar. 12, 2008).

⁸ Letter from Dr. Rogene Henderson, Chair of the Clean Air Scientific Advisory Committee, to EPA Administrator Stephen L Johnson (Sept. 29, 2006) (online at [http://yosemite.epa.gov/sab/sabproduct.nsf/1C69E987731CB775852571FC00499A10/\\$File/casa-c-ltr-06-003.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/1C69E987731CB775852571FC00499A10/$File/casa-c-ltr-06-003.pdf)) (accessed on Mar. 12, 2008).

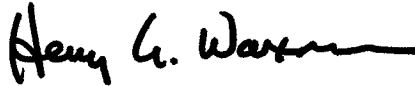
⁹ *Id.*

¹⁰ *Id.*

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If you have any questions concerning this request, please have your staff contact Greg Dotson or Erik Jones of the Committee staff at (202) 225-4407. I respectfully request a reply by March 28, 2008.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman". The signature is written in a cursive style with a long horizontal flourish at the end.

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member