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February 6, 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 strongly urge that the Environmental Protection Agency (EPA) protect the air quality in our national parks and abandon the proposed rulemaking entitled "Prevention of Significant Deterioration New Source Review: Refinements of Increment Modeling Procedures."¹ This proposal would roll back existing air quality protections for national parks and wilderness areas, making it easier to build large, new polluting facilities nearby without installing adequate pollution controls.

On August 3, 2007, I requested that you provide the Committee with internal documents regarding this proposal. The documents the agency has provided reveal a rulemaking gone awry. The agency's technical experts, the regional modeling staff, heavily criticized the proposal and said it "would allow for significant degradation" of the air quality in our national parks.² Documents obtained from the National Park Service (NPS) reveal that NPS staff shared many of the same concerns, calling components of the proposal "bad public policy" that would "make it much easier to build power plants" near national parks.³

¹ U.S. Environmental Protection Agency, Proposed Rule, Prevention of Significant Deterioration New Source Review: Refinement of Increment Modeling Procedures 72Fed.Reg.31372 (June 6, 2007).

² Region 10, U.S. Environmental Protection Agency, Compilation of Regional Comments — Second Round of Comments (responses to Rothblatt e-mail) (Dec. 19, 2006).

³ E-mail from John Bunyak, National Park Service, to Susan O'Brien, Department of Interior (Mar. 14, 2007); E-mail from Valerie Naylor, Superintendent, Theodore Roosevelt National Park, National Park Service, to Don Shepherd, National Park Service (May 31, 2007).

The prevention of significant deterioration (PSD) program governs the permitting and construction of new polluting facilities in areas of the country with the cleanest air, including many national parks, wildlife refuges, and wilderness areas (termed "class I" areas). Under this program, EPA regional offices or states assess how much the area's air quality would be degraded by pollution from the proposed facility. Depending on the extent of the harm, new polluters may be required to install additional emissions controls. "Increment modeling" is the analytical process used to calculate the baseline quantity of emissions in the area and to estimate how much the air quality would be degraded by a proposed facility. Meaningful and reliable data from increment modeling is essential to protect air quality, public health, and the environment in areas of the country where we do not already have dangerously polluted air.

This rulemaking would codify substantial changes to the modeling procedures used in the PSD program. According to EPA, the proposed changes are "intended to clarify how States and regulated sources may calculate increases in concentrations [of pollution] for the purposes of determining compliance with the PSD increments."⁴ While this ostensible goal is not controversial, the actual effect of the proposal issued by EPA would be to make it easier to build new pollution sources in clean air areas without installing adequate pollution controls. Experts at both NPS and EPA expressed significant concerns about individual proposed changes and their cumulative effect:

1. The rule proposes to allow the use of an annual average emission rate for evaluating 24-hour and 3-hour pollution levels. According to EPA's own staff, however, this approach will "almost always mask a short-term concentration peak," the very danger that short-term increments are intended to prevent.⁵ NPS staff compared this proposal to "allowing a person to average all the variations in his driving speed over [an] entire year to see whether he is complying with the 55 mile per hour speed limit."⁶ Analysis by one EPA region demonstrated that the current proposal could underestimate short-term pollution levels by 1.5 to 13 times compared to actual short-term emissions.⁷ EPA staff stated that

⁴ U.S. Environmental Protection Agency, Proposed Rule, Prevention of Significant Deterioration New Source Review: Refinement of Increment Modeling Procedures 72Fed.Reg.31372 (June 6, 2007).

⁵ Region 6, U.S. Environmental Protection Agency, Additional Comments on Draft Proposal (Dec. 11, 2006).

⁶ E-mail from John Bunyak, National Park Service, to Susan O'Brien, Department of Interior (Mar. 14, 2007).

⁷ Region 7, Environmental Protection Agency, Statistical Analysis of Short Term Increments (undated).

“the protection of short term PSD increments cannot be assured” using this new technique.⁸

2. The proposed rule grants broad authority to allow reviewing authorities to select the period of time to use in determining actual emissions. Authorities could choose to waive consideration of the regular time period (the preceding two years) in favor of a period they deem “more representative of normal.”⁹ According to EPA staff, however, this change “could inappropriately raise the baseline emissions” and lead to cherry-picking of a period that “gives the preferred result.”¹⁰
3. The proposal gives special treatment to pollution from sources operating under a variance by allowing the permitting agency to pretend that those sources of pollution did not exist. Agency staff argued that such an exception “gives a permanent ‘pass’” to those sources, “regardless of subsequent events.”¹¹ Agency staff further note that this change would represent “a substantial weakening in increment protection” and “would allow for significant degradation throughout an entire class I area.”¹² NPS staff asserted that this change would “make it much easier to build power plants adjacent to Class 1 areas.”¹³

⁸ Annamaria Coulter, Air Modeling Contact, Permitting Section, Region 2, U.S. Environmental Protection Agency, Compilation of Regional Comments — First Round of Comments, 4 (Nov. 13, 2006).

⁹ U.S. Environmental Protection Agency, Proposed Rule, Prevention of Significant Deterioration New Source Review: Refinement of Increment Modeling Procedures 72 Fed.Reg. 31372 at 31397 (June 6, 2007).

¹⁰ U.S. Environmental Protection Agency, Region 8, Compilation of Regional Comments — Second Round of Comments (responses to Rothblatt e-mail) (Dec. 19, 2006); U.S. Environmental Protection Agency, Region 10, Compilation of Regional Comments — Second Round of Comments (responses to Rothblatt e-mail), (Dec. 19, 2006); *See also* U.S. Environmental Protection Agency, Region 10, Compilation of Regional Comments — Second Round of Comments (responses to Rothblatt e-mail), version circulated in attachment to e-mail from Steve Rothblatt, Region 5, Environmental Protection Agency to EPA staff (Dec. 14, 2006).

¹¹ Dave Campbell, Region 3, U.S. Environmental Protection Agency, Compilation of Regional Comments — First Round of Comments, 7 (Nov. 13, 2006).

¹² U.S. Environmental Protection Agency, Region 9, Compilation of Regional Comments — Second Round of Comments (responses to Rothblatt e-mail) (Dec. 19, 2006); U.S. Environmental Protection Agency, Region 10, Compilation of Regional Comments — Second Round of Comments (responses to Rothblatt e-mail) (Dec. 19, 2006).

¹³ E-mail from Valerie Naylor, Superintendent, Theodore Roosevelt National Park, National Park Service, to Don Shepherd, National Park Service (May 31, 2007).

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4. The proposal allows the use of proprietary models and methodology for calculating actual emissions. One EPA commenter noted that “the program code, utility program codes and all data should be in the public domain. This is necessary to allow regulatory agencies and the public to verify the modeling results and its associated conclusions.”¹⁴

EPA’s Region 8 staff summarized these concerns as follows:

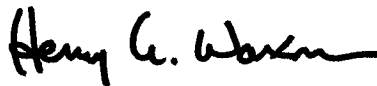
In summary, we believe that this proposal, for the reasons stated above, would jeopardize protection of the PSD increments and is contrary to the provisions of [Clean Air Act] Section 160. We urge that the proposal be reworked to correct these issues before it is promulgated.¹⁵

The documents reviewed by the Committee also indicate that the rulemaking was drafted through an insufficiently open process, that regional technical staff were given only the briefest opportunity to comment, and that even the strongest objections of the staff were disregarded.

I urge you to abandon this unsound proposal. If EPA is committed to improving the clarity of PSD increment modeling, I urge you to start over and develop a new proposal that draws upon the agency’s extensive expertise and fulfills the agency’s mission of protecting human health and the environment. I also request that by March 5, 2008, you provide an explanation of how this flawed proposal was cleared for your signature, and why the concerns identified by the key technical staff were ignored.

If you have any questions concerning this request, please have your staff contact Greg Dotson of the Committee staff at (202) 225-4407.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

¹⁴ Dave Bray and Herman Wong, Region 10, U.S. Environmental Protection Agency, Compilation of Regional Comments — First Round of Comments, 17 (Nov. 13, 2006).

¹⁵ U.S. Environmental Protection Agency, Region 8, Compilation of Regional Comments – Second Round of Comments (responses to Rothblatt e-mail) (Dec. 19, 2006).