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ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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August 3, 2007

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

Dear Administrator Johnson:

I am writing you regarding the Environmental Protection Agency's (EPA) proposed rulemaking to modify the Prevention of Significant Deterioration (PSD) increment modeling procedures under the New Source Review program of the Clean Air Act.¹ As proposed, the rule would weaken existing Clean Air Act protections for many national parks and other areas with pristine air quality. Specifically, it would change how EPA and the states analyze the harm posed to air quality by new polluting facilities seeking to locate in these clean air areas. According to news reports, EPA technical staff and the National Park Service raised serious concerns about these types of changes when they were proposed in a state-specific context several years ago.² In addition, given the complexity of the proposal and the significant public interest in the rulemaking, interested parties have notified EPA that the time allowed for public comment is inadequate to allow them to fully analyze and comment on the impact of these proposed changes. Thus, I am requesting that you extend the comment period for an additional sixty days.

As you know, the PSD program governs the permitting and construction of new emitting facilities in areas of the country with the cleanest air, including many national parks, wildlife refuges and wilderness areas. Under this program, EPA or the state assesses the quantity of new

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

² See, e.g., *EPA Proposes Major Changes To Modeling In Air Permit Reviews*, Inside EPA (May 20, 2007).

The Honorable Stephen L. Johnson
August 3, 2007
Page 2

emissions that a facility would produce compared to a baseline emissions level and projects the degradation of air quality that would result from operation of the facility. Depending on the extent of the harm, new emitters may be required to install additional emissions controls. Increment modeling is the analytical process used to calculate the emissions baseline and to estimate how much air quality degradation would be caused 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 polluted air.

On June 6, 2007, EPA issued a proposed rulemaking to change the technical procedures used for modeling under the PSD program. Several of these changes weaken the requirements, making it easier for a new polluting plant to be built without installing available emission controls. For example, EPA proposes to change the calculation of short-term increments, allowing long-term averages to mask the spikes in air pollution that short-term increments were meant to protect against. The rule also proposes to ignore pollution from major sources that are operating under variances, by excluding those sources from the analytical requirements. In addition, it would change the time period of emissions used to model pollutant concentrations in a way that could allow a polluter to cherry-pick the time period, selecting one that would show a lower or more favorable emissions rate when determining baseline, instead of using a standardized time-period. Finally, by granting broad discretionary "judgment" to the reviewing authority to determine modeling methodologies, the proposal threatens to allow questionable modeling techniques that make air appear cleaner than it actually is.

In the past, similar concerns about these types of changes were identified by technical staff within the EPA regional offices, and technical staff of the National Park Service, whose mission is to protect the parks and their air quality. In 2002, North Dakota proposed to allow similar increment modeling procedures. These changes were strenuously opposed by nearly every EPA regional office and the National Park Service, according to press accounts at the time. Please provide to the Committee all internal comments from any EPA regional offices on all drafts of the current proposed rule. Please also provide all comments on all drafts of these proposals received through the interagency process. The Committee requests that you produce these documents on or before August 20, 2007.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set out in House Rule X. An attachment to this letter provides additional information about how to respond to the Committee's request.

In addition, I am requesting a sixty day extension of the public comment period, which is currently scheduled to end on August 6, 2007. Given the technical complexity and significant potential impact of this proposal on air quality and the environment, I believe such an extension is appropriate. An extension is further justified in this instance as EPA has already gone through a rulemaking process to adopt rules governing these analyses that are in effect and will continue

The Honorable Stephen L. Johnson

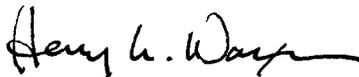
August 3, 2007

Page 3

to operate during the period of this rulemaking. If you decline to extend the comment period, please provide a justification for your decision identifying the harm, if any, that you believe would occur from a limited expansion of the opportunity for the public to participate in this important rulemaking.

If you have any questions regarding this request, please contact me or ask your staff to contact Alexandra Teitz or Greg Dotson with the Committee staff at 202-225-4407.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

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Responding to Oversight Committee Document Requests

In responding to the document request from the Committee on Oversight and Government Reform, please apply the instructions and definitions set forth below.

Instructions

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. Each document produced should be produced in a form that renders the document capable of being copied.
5. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.
6. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.

9. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Documents produced in an electronic format should also be produced in a searchable format.
10. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
11. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
12. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
13. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
14. All documents should be bates-stamped sequentially and produced sequentially.
15. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 2157 of the Rayburn House Office Building, and the minority set should be delivered to the minority staff in Room B350A in the Rayburn House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.
16. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “documents in your possession, custody, or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms “person” or “persons” means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms “referring” or “relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.