



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

OCT - 3 2008

OFFICE OF
AIR AND RADIATION

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

Dear Mr. Chairman:

I am writing in response to your August 13, 2008 letter to Administrator Stephen L. Johnson regarding the agency resources used to develop and defend post-2001 Clean Air Act rules and decisions vacated or remanded in whole or in significant part by the U.S. Court of Appeals for the District of Columbia Circuit. As your request pertains to implementation of the Clean Air Act, Administrator Johnson has asked me to respond to your letter.

Attached you will find a list of 18 rules and decisions promulgated by EPA under the Clean Air Act since 2001 that have been vacated or remanded wholly or in significant part by the D.C. Circuit. To put this number in context, there have been 94 D.C. Circuit Court cases involving Clean Air Act rules issued since 2001; the other cases have been upheld in whole or significant part or settled, or are still pending. While we are disappointed that the 18 Agency actions did not fare better in court, we believe that much of the information and analysis developed in support of the rules continues to be useful for fashioning new rules and policies.

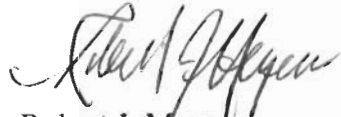
As you requested, for all identified actions, we have provided the date by which we have completed or plan to complete our response to the court's decision, as well as a rough estimate of the number of FTE and contract dollars that were spent developing and defending those rules. Since we do not prepare budgets that include line items for most rules, we have provided you with the kind of information that you indicated would be useful, including FTE estimates and contract dollar totals for each rule. The FTE estimates include the time that Office of Air and Radiation (OAR) and Office of General Counsel (OGC) staff contributed to the development and defense of the rules. Other agency offices expended a small amount of staff resources participating in intra-agency workgroups for these rules.

I share your concern that litigation and the time required for subsequent rule revisions can mean a loss of the public health protection that the initial rules would have provided. For example, while the mandate has not yet issued, the vacatur of the CAIR Rule has potential impact on both the scope and timing of the very large public health

benefits associated with that rulemaking. As indicated by the attached information, the EPA has responded, or has initiated actions to respond, to several court decisions while it is pursuing available legal options with respect to other decisions.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Cheryl Mackay, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Meyers", is written over a light gray rectangular background.

Robert J. Meyers
Principal Deputy Assistant Administrator

Enclosure