



ADMINISTRATOR  
OFFICE OF  
INFORMATION AND  
REGULATORY AFFAIRS

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

July 10, 2008

The Honorable Stephen L. Johnson  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator Johnson:

I am writing with regard to the draft Advance Notice of Proposed Rulemaking (ANPR) "Regulating Greenhouse Gas Emissions Under the Clean Air Act," submitted to the Office of Management and Budget (OMB) on June 17, 2008 pursuant to Executive Order 12866. The issues raised during interagency review are so significant that we have been unable to reach interagency consensus in a timely way, and as a result, this staff draft cannot be considered Administration policy or representative of the views of the Administration. However, given the Administration's commitment to respond to the Supreme Court's decision in *Massachusetts v. EPA*, we have determined in this case that consensus is not necessary in order for EPA to seek public comment on the wide-ranging issues raised by the draft regarding the potential regulation of greenhouse gases under the Clean Air Act. Thus, as we have discussed, you are withdrawing the draft from review under Executive Order 12866, and I am waiving the requirement for review due to the extraordinary circumstances presented here. Of course, given the significance of any actions to address greenhouse gas emissions under the Clean Air Act, any future notice would be subject to interagency review under Executive Orders 12866 and 13342.

The enclosed letter from the Secretaries of Agriculture, Commerce, Transportation, and Energy, along with summaries of issues raised by their departments, and letters from the Chairman of the Council on Environmental Quality, the Director of the Office of Science and Technology Policy and the Chairman of the Council of Economic Advisors, and the Chief Counsel for Advocacy at the Small Business Administration identify important concerns. As reflected in these letters, there is strong disagreement with many of the legal, analytical, economic, science and policy interpretations in the draft; however, these letters do reflect agreement with you that the Clean Air Act is a deeply flawed and unsuitable vehicle for reducing greenhouse gas emissions. Interagency reviewers concluded upon reading the draft that trying to address greenhouse gas emissions through the existing provisions of the Clean Air Act will not only harm the U.S. economy, but will fail to provide an effective response to the global challenge of climate change.

As the President observed in April:

Decisions with such far-reaching impact should not be left to unelected regulators and judges. Such decisions should be debated openly [and] made by the elected representatives of the people they affect.

EPA should seek public comment on the issues raised in the attached letters and should address these issues before it considers, and before OMB reviews, a notice of proposed rulemaking under the Clean Air Act.

The draft sets out a hypothetical roadmap outlining ways in which different provisions of the Clean Air Act could be applied to address greenhouse gas emissions. Following such a regulatory roadmap could result in the piecemeal application of command-and-control regulation—based on EPA staff determinations of the availability and suitability of a wide range of technology—covering both U.S. manufacturing activity and a broad range of commercial and household activities to an extent well beyond the scope of current regulation. To illustrate:

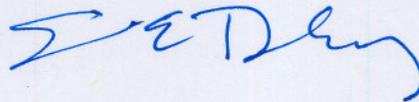
- The draft observes that regulation under almost any section of the Act would trigger the prevention of significant deterioration (PSD) program, which could require case-by-case EPA permitting covering building design for large office and residential buildings, hotels, retail stores and other similarly-sized projects;
- The draft discusses potential requirements that would regulate the design of plants in the U.S. manufacturing sector to increase energy efficiency;
- The draft discusses various technologies to achieve greenhouse gas emission reductions in the trucking industry, including devices to limit vehicle speed;
- In the agricultural sector, the draft discusses animal feeding operations, agricultural soil management, and fire management practices as a source of greenhouse gas emissions;
- The draft discusses approaches to reduce greenhouse gas emissions from households, for example, it notes that it “could require a different unit of measure tied to [a] machine’s mission or output—such as grams per kilogram of cuttings from a ‘standard’ lawn for lawnmowers”;
- The draft suggests reducing greenhouse gases from shipping through both ship design and marine operations, including redesigning ship hulls, limiting ship speed, using less ballast, and regulating route planning and port management. (It notes that “innovative strategies for reducing hull friction include coatings with textures similar to marine animals...”).

To mitigate the far reaching and potentially harmful effects of regulating greenhouse gases under the Clean Air Act, the draft offers several untested legal propositions for “flexible” interpretations of the Act. In the case of PSD permitting, which could capture thousands of small sources never before regulated under the Clean Air Act, the draft specifically acknowledges that these novel theories violate the plain meaning of the Act, but suggests “the plain meaning of

legislation is not conclusive...” The draft also relies on untested legal theories to suggest that some Clean Air Act provisions could be adapted to provide economic incentives to reduce greenhouse gas emissions. For example, it suggests that a regulatory program based on National Ambient Air Quality Standards might permit the adoption of a nationwide cap-and-trade program. Even if this regulatory approach legally could support economic incentives, it would likely be narrowly focused to cover a limited set of activities, and would not successfully engage the ingenuity and creativity of American citizens so that future generations can continue to enjoy both prosperity and environmental quality.

Addressing greenhouse gas emissions may be the most significant environmental policy decision of our generation, and I respect that you are engaging public debate on the appropriateness of relying on the Clean Air Act, written decades ago to address different air quality concerns, to guide these policies. I appreciate that EPA will publish in the *Federal Register* this letter along with the enclosed letters from your Cabinet and other colleagues in addition to the June 17<sup>th</sup> EPA draft in order to facilitate public understanding of, and public comment on, the issues associated with regulating greenhouse gases under the Clean Air Act.

Sincerely,



Susan E. Dudley  
Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget