

Congress of the United States
House of Representatives
Washington, D.C. 20515

January 19, 2007

The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Dear Administrator Johnson:

The decision last fall to revise the fine particle ambient air quality standards highlights the troubling fact that the Agency has not yet issued the implementation rule for the fine particle standards issued in 1997. The Environmental Protection Agency's (EPA) review of fine particle health effects research confirmed that PM_{2.5} levels found in many parts of this country are resulting in thousands of cases of death and disease. EPA's decision to retain the annual fine particle standard and tighten the daily standard underscores the importance of attaining the fine particle standards set in 1997.

In light of these findings, I am puzzled why EPA has yet to issue its 1997 fine particle implementation rule to provide States needed guidance for the air quality plans they must submit in April 2008, to demonstrate how they will achieve the 1997 standards guidance. The Agency has now issued revised PM standards, and the States still await instructions for meeting the previous standards.

EPA has known since 2001, when the 1997 standards were affirmed by the courts, that it needed to issue an implementation rule. EPA's failure to issue this rule in a timely manner makes it harder for States to do their job and causes uncertainty for businesses in areas that will need local control programs to meet the 1997 standards.

Over the past few years, EPA has repeatedly indicated that the fine particle implementation rule would be issued soon, and has repeatedly failed to meet its deadlines. In April 2004, then-EPA Administrator Michael Leavitt testified that EPA intended to propose the fine particle implementation rule in June 2004, and finalize it "later this year [2004] or early in

2005.”¹ A year later, in April 2005, you responded to a request for a date certain for the proposed and final implementation rules by stating that “[t]he inter-agency review will be completed shortly, after which time I will sign the proposed rule.”² The proposed rule was not signed until five months later, although inter-agency review is only supposed to take 90 days. Acting Assistant Administrator for Air and Radiation Bill Wehrum testified earlier this year that EPA was “on track to promulgate the final implementation rule likely by mid-2006.”

More recently, EPA said that it would issue the final implementation rule in October 2006.³ On September 21, 2006, EPA staff said that the draft final implementation rule was at the Office of Management and Budget (OMB) for inter-agency review, but it is not included in the OMB Web site log of Executive Order Submissions Under Review on OMB’s Web site. It is now January 2007, and EPA has yet to issue the final PM2.5 implementation rule.

The failure by EPA to issue the rule in a timely manner raises serious concerns about EPA’s commitment to meeting the 1997 fine particle standards and about the Agency’s management of this rulemaking process. With respect to this rulemaking process, we ask that you provide answers to the following questions by no later than Monday, February 5, 2007:

1. When will you sign the final implementation rule for the 1997 fine particle standards?
2. Is the Administration’s delay in issuing the fine particle implementation rule for the 1997 standards an indication that the Administration believes it is not important for areas to meet the fine particle standards?
3. Please provide a timeline from 2004 through 2007 showing the different stages in the development of the proposed and final implementation rules. Please include an identification of the time periods when any rulemaking documents were being reviewed (formally or informally) by OMB or other parts of the Executive Branch.

¹ Statement of Administrator Michael Leavitt, Hearing on the Implementation of the National Ambient Air Quality Standards for Particulate Matter and Ozone, United States Senate, Committee on Environment and Public Works, Subcommittee on Clean Air, Climate Change, and Nuclear Safety (April 1, 2004).

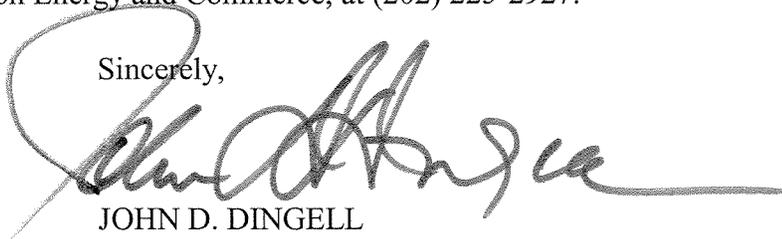
² Responses of Stephen L. Johnson to Questions from Members of the Senate Committee on Environment and Public Works, Response to Question 1 from Senator Jeffords (April 13, 2005).

³ Briefing materials provided by EPA at House staff briefing on Sept. 21, 2006.

4. Please provide all documents related to this rulemaking that contain or reflect discussions with or comments from OMB or other parts of the Executive Branch as part of formal or informal review of the proposed or final rule.
5. Please identify the agency resources that were devoted to this rulemaking process over the last three years.
6. Please identify the actions, if any, that you, Assistant Administrator Holmstead, or Acting Administrator Wehrum took to try to expedite this rulemaking process.

If you have any questions, please contact me or have your staff contact Lorie Schmidt, Counsel with the Committee on Energy and Commerce, at (202) 225-2927.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Dingell", written over a large, light-colored circular scribble.

JOHN D. DINGELL
CHAIRMAN
COMMITTEE ON ENERGY AND COMMERCE

cc: Joe Barton, Ranking Member
Committee on Energy and Commerce

Rick Boucher, Chairman
Subcommittee on Energy and Air Quality

J. Dennis Hastert, Ranking Member
Subcommittee on Energy and Air Quality