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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510–6175

March 2, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

On January 18, President Obama issued an executive order that called for, among other things, a regulatory process based on "public participation and an open exchange of ideas." Further, the order states that regulations should be informed by "the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole."

We believe EPA has violated the letter and spirit of the President's executive order. EPA's proposed settlement agreements requiring the issuance of New Source Performance Standards for greenhouse gas (GHG) emissions from new, modified, and existing power plants and refineries are a case in point.

The settlement agreements were concocted in secret, as the businesses that would have to comply with them, and the consumers that would have to pay their ultimate costs, were not consulted. That the public had a mere 30 days to comment on what EPA wrought—after the fact—provides no consolation: EPA issued a press release *before* the comment period even commenced announcing that it would move forward "on GHG standards for fossil fuel power plants and petroleum refineries," and that the agreements are "a clear path forward for these sectors and is part of EPA's common-sense approach to addressing GHGs from the largest industrial pollution sources." These statements prejudge the outcome of the rulemaking, conveying a clear bias toward finalizing the agreements and issuing new regulations.

EPA has in effect legally committed itself to significant regulations without full public airing of the costs and benefits of GHG regulations under the NSPS program. EPA was not forced into this circumstance: EPA's actions were entirely discretionary; no court ordered them. One can only speculate as to what prompted its course of action. It is clear, however, that this process and the regulations it requires cannot be squared with the President's executive order.

The most significant element of the settlement agreements is that EPA proposes to exercise authority under section 111(d) of the Clean Air Act (CAA) to promulgate guidelines under which

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states will be required to adopt GHG standards for *existing* power plants and refineries. EPA has rarely used this authority in the past, and has never done so for power plant emissions.

This poses serious administrative challenges, and EPA should be readily aware of the negative consequences that can arise from entering into an ill-conceived consent decree given the recent experience of the "Boiler MACT" rule. In that case, the consent decree lacked sufficient time to consider public comments and, as a result, EPA was forced to simultaneously issue a regulation it conceded was flawed and announce proceedings to reconsider it. The same could very well occur in this case.

Stated plainly, EPA should seek to void the NSPS settlement agreements. The pending regulations of refineries could result in, among other harmful effects, higher gasoline and diesel prices for drivers, truckers, and farmers, while consumers could see higher electricity prices with new GHG regulations on power plants. As the price of gasoline reaches $4 a gallon, EPA should not impose higher costs and regulatory burdens on consumers as they struggle with 9 percent unemployment and an economy struggling out of recession.

In the event EPA stays the course, Congress has several options at its disposal to nullify the agreements, including, but not limited to, prohibiting the expenditure of funds to carry them out. Such steps would be appropriate given the gravity of the settlement agreements and how they were reached. In the coming days, we will be consulting with our colleagues on this matter. If EPA decides to move down the wrong path, we will take whatever actions are necessary to protect consumers and the economy.

We appreciate your attention to this letter.

Sincerely,

James M. Inhofe
Ranking Member
Senate Committee on
Environment and Public Works

Fred Upton
Chairman
House Energy and
Commerce Committee