



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

MAR 26 2010

THE ADMINISTRATOR

Dear Senator Murkowski:

Thank you for your March 5, 2010 letter, which you sent following my March 3 appearance before the Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies. I welcome the opportunity to elaborate on the Environmental Protection Agency's (EPA's) work to comply with the law and follow the science while enhancing America's energy security, creating new opportunities for American innovators, and reducing the risks posed by greenhouse gas pollution.

In the first paragraph of your letter, you reference the U.S. Supreme Court's 2007 decision in *Massachusetts v. EPA*.<sup>1</sup> The Court concluded in that case that the Clean Air Act's definition of air pollution includes greenhouse gas emissions.<sup>2</sup> Further, the Court directed EPA to declare whether that pollution from motor vehicles endangers public health and welfare.<sup>3</sup> I have sworn an oath to uphold the laws of the United States, so I cannot disregard the Supreme Court's decision in *Massachusetts v. EPA*.

I appreciate the statement, made by your office last week, that you are not likely – at least in the near term – to ask the Senate to adopt a resolution overturning EPA's finding that greenhouse gas pollution endangers the health and welfare of the American people.<sup>4</sup> The Senate, on a bipartisan basis, has declared that greenhouse gas accumulation from human activity poses a substantial risk of increased frequency and severity of floods and droughts.<sup>5</sup> The National Academy of Sciences has concluded: "It is unequivocal that the climate is changing, and it is very likely that this is predominantly caused by the increasing human interference with the atmosphere. These changes will transform the environmental conditions on Earth unless counter-measures are taken."<sup>6</sup> Similarly, scientists at the thirteen agencies comprising the U.S. Global Change Research Program have reported that unchecked greenhouse gas emissions pose significant risks to the wellbeing of the American public.<sup>7</sup> I want to work with you and your colleagues to address this bipartisan concern in a responsible manner.

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<sup>1</sup> 549 U.S. 497 (2007).

<sup>2</sup> *Id.* at 528-29, 532.

<sup>3</sup> *Id.* at 534-35.

<sup>4</sup> "Murkowski Delays Vote on Resolution Blocking EPA from Regulating Emissions," *BNA Daily Environment Report* (March 15, 2010).

<sup>5</sup> S. Amt. 866 to H.R. 6, *Energy Policy Act of 2005* (motion to table amendment rejected on June 22, 2005; bill passed in the Senate on June 28, 2005).

<sup>6</sup> Statement by the National Academy of Sciences of the United States and the Science Academies of Twelve Other Nations (May 2007) ([http://www.nationalacademies.org/includes/G8Statement\\_Energy\\_07\\_May.pdf](http://www.nationalacademies.org/includes/G8Statement_Energy_07_May.pdf)).

<sup>7</sup> U.S. Global Change Research Program, *Global Climate Change Impacts in the United States* (2009) (<http://downloads.globalchange.gov/usimpacts/pdfs/climate-impacts-report.pdf>).

In your letter, you ask about the President's request that Congress fund EPA's work to address greenhouse gas emissions in the next fiscal year. At the beginning of the March 3 hearing, I described that request and the reasons for it. That description can be summed up in three points:

- Congress directed EPA to establish a nationwide greenhouse gas reporting system. The President requests funding for EPA to implement that system.
- EPA's greenhouse gas emissions standard for light duty vehicles is an integral part of an historic agreement between the federal government, States, and America's automobile industry, and also of EPA's compliance with the Supreme Court's decision in *Massachusetts v. EPA*. The President requests funding for EPA to implement that standard and to explore replicating the agreement's success in other parts of America's transportation sector.
- State governments and businesses have asked EPA to issue grants and perform work to prepare for the permitting of some of the largest stationary sources for their greenhouse gas emissions and to issue clear environmental rules for projects that sequester carbon dioxide underground. The President requests funding for EPA to issue those grants, perform that preparatory work, and provide those clear rules.

You also ask about the expected volume of stationary source permitting in the second half of 2011 and in 2013 under the approach that I described in my February 22, 2010 letter to Senator Rockefeller and his colleagues. In the March 3 hearing, I cited a figure of approximately 1,700 "prevention of significant deterioration" (PSD) permit applications in calendar year 2011. That is a high-end estimate for that entire year. A very high-end estimate of the volume of PSD permit applications in 2013 would be the 3,000 figure that I also cited at the hearing.

You then ask a series of eight questions about the volume of permitting for stationary source greenhouse gas emissions in and after 2016, and about the consequences of such permitting. I have enough information now to state with confidence that EPA can implement the Clean Air Act in a way that will not require small sources to undergo permitting for greenhouse gas emissions *any earlier* than 2016. That does not mean, however, that I have decided that small sources *will* need to undergo permitting for greenhouse gas emissions starting in 2016. In any event, I believe there is every reason to expect that Congress will enact a comprehensive program to address greenhouse gas pollution – a program that settles any questions about small sources – before 2016. I hope you share that expectation.

The final three questions in your March 5 letter rest on the premise that, in the absence of new legislation, the steps I am taking to comply with the Supreme Court's *Massachusetts v. EPA* decision will cause companies to move their U.S. manufacturing abroad. I cannot accept that premise. A multi-agency analysis completed last December demonstrates how substantial a new regulatory cost assessed for greenhouse gas emissions would need to be in order to present a risk of significant cross-border emissions "leakage."<sup>8</sup> I have yet to see any credible analysis demonstrating an appreciable risk that any of the steps EPA has actually taken or proposed for addressing greenhouse gas emissions could economically justify moving U.S. manufacturing

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<sup>8</sup> "Effects of H.R. 2454 on International Competitiveness and Emission Leakage in Energy-Intensive Trade-Exposed Industries" (December 2009) (<http://www.epa.gov/climatechange/economics/economicanalyses.html#interagency>).



abroad. Moreover, all of those EPA steps are grounded in Clean Air Act authorities that require the agency to consider cost, energy impacts, and available technologies carefully in determining the appropriate emissions reductions.

Over the years, unsubstantiated predictions of economic catastrophe have been directed at many of EPA's initiatives under the Clean Air Act to protect the health and wellbeing of the American people. When, more than thirty years ago, EPA began using the Act to reduce the lead in gasoline and require unleaded fuel for motor vehicles equipped with catalytic converters, the U.S. Chamber of Commerce insisted that "entire industries might collapse" as a result.<sup>9</sup> But no industries collapsed as a result, and now dangerous lead pollution in our air is ninety-two percent lower than it was in 1980.<sup>10</sup>

In the late 1990s, when EPA issued a Clean Air Act rule to phase out the use of the chlorofluorocarbons (CFCs) that were eating away the Earth's protective ozone layer, refrigeration companies forecasted shutdowns of supermarket coolers and the chiller machines used to cool office buildings, hotels and hospitals.<sup>11</sup> Companies that used CFCs in manufacturing claimed the transition would be next to impossible.<sup>12</sup> But the doom and destruction never came to pass. Refrigerators and air conditioners stayed on. Innovators found alternatives to CFCs and developed new equipment, the combination of which proved both more efficient and safer for the ozone layer. By making its products better and cleaner, the American refrigeration industry improved its competitive position in markets overseas.

So I believe it is appropriate to greet with some skepticism the recent, unsupported claims that economic harm will result from the measured steps EPA is taking now to comply with the Supreme Court's conclusion that greenhouse gas pollution falls within the Clean Air Act's scope. I continue to work toward solutions that serve the mutual goals of environmental protection and economic growth.

Finally, I would be remiss if I did not reiterate my concern about one particular effect of a disapproval resolution. Nullifying EPA's finding that greenhouse gas pollution endangers the public would prevent the agency from implementing its greenhouse gas standard for light duty vehicles. As you know, the endangerment finding is a legal prerequisite of that standard. Eliminating the EPA standard would forfeit a third of the greenhouse gas emissions reductions projected to result from last year's agreement between the Obama Administration, the States, and the nation's automakers and autoworkers,<sup>13</sup> and would undo that historic agreement. California and at least thirteen other States that have adopted California's greenhouse gas emissions standards likely would respond by enforcing their standards within their jurisdictions,<sup>14</sup> leaving

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<sup>9</sup> Quoted in William Kovarik and Matthew Hermes, "Impact of Catalytic Converters on Auto Manufacturers," *Chem Cases* (<http://www.chemcases.com/converter/converter-22.htm>).

<sup>10</sup> <http://www.epa.gov/airtrends/aqtrends.html>

<sup>11</sup> Testimony before the Senate Committee on Environment and Public Works (October 14, 1999).

<sup>12</sup> Michael Porter and Claas van der Linde, "Green and Competitive: Ending the Stalemate," *Harvard Business Review*, Vol. 73, Issue 5 (Sept./Oct. 1995), at 120-134.

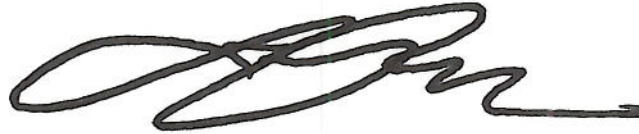
<sup>13</sup> 74 Fed. Reg. 49453, 49478-82 (September 28, 2009) (639 MMT CO<sub>2</sub> avoided by NHTSA rule; 947 MMT CO<sub>2</sub>e avoided by EPA rule).

<sup>14</sup> Letter from Mary Nichols, Chairman, California Air Resources Board, to Administrator Lisa Jackson and Secretary Ray LaHood (May 18, 2009) (<http://www.epa.gov/otaq/climate/regulations/air-resources-board.pdf>).

the automobile industry without the explicit nationwide uniformity that it has described as important to its business.<sup>15</sup>

I appreciate your publicly stated commitment to meeting the challenge of reducing greenhouse gas emissions in an effective and economically sensible way. I think we share the goal of safeguarding Americans' health and the nation's economic strength and security with strong policies to cut greenhouse gas pollution and make clean energy the profitable kind of energy. I look forward to working with you toward that vital goal, and I appreciate this opportunity to continue our dialogue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa P. Jackson', with a stylized, cursive script.

Lisa P. Jackson

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<sup>15</sup> Letter from Alan Reuther, Legislative Director, United Autoworkers, to Members of Congress (March 15, 2010); Letter from Dave McCurdy, President and Chief Executive Officer, Alliance of Automobile Manufacturers (March 17, 2010).