

United States Senate
WASHINGTON, DC 20510

March 5, 2010

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

I appreciated the opportunity to discuss your agency's efforts to impose climate regulations under the Clean Air Act at the Wednesday, March 3rd, hearing in the Appropriations Subcommittee on Interior, Environment, and Related Agencies. I understand the difficult task that you are confronted with in responding to the U.S. Supreme Court's decision in *Massachusetts vs. EPA*, and I am thankful for your efforts to ensure that Congress can exercise full and appropriate oversight of this matter.

I share the concerns of Senators Rockefeller, Brown (OH), Casey, McCaskill, Begich, Levin, Byrd and Baucus regarding the serious economic and energy security consequences that regulation of greenhouse gases (GHGs) under the Clean Air Act will have. Those Senators sent you a letter on February 19, 2010, and you attempted to allay their fears in a response dated February 22, 2010. I believe you did your best to clarify EPA's intentions with me at Wednesday's hearing as well, but I'm compelled to follow up on some of my questions.

Even after that hearing, I am left with a less-than-clear understanding of how your agency intends to regulate the emissions blamed for climate change. At its core, this confusion stems from the FY 2011 budget request, which was the subject of the hearing. It appears the Administration is trying to have it both ways. On one hand, the budget request assumes that a cap-and-trade bill will pass, and on the other hand, it seeks tens of millions of dollars to impose climate regulations without any input from Congress.

I remain hopeful that the Administration will become more specific about the energy and environmental policies it supports, and work with all members of Congress to pass a balanced bill. It is now clear that the threat of EPA climate regulations has not and will not coerce legislative action on climate change. Whatever bill may pass, it should advance because it is a good idea, and not because it is merely less problematic than the alternative.

The growing, bipartisan and bicameral opposition to EPA's climate regulations may very well result in legislative action to halt certain activities at your agency. In the event that does not occur, however, it remains incumbent upon EPA to provide Congress with sufficient information on how you plan to interpret and implement the Clean Air Act. This is critically important to

ensure that elected representatives can make appropriate legislative decisions. For that reason, I would ask that you answer a handful of questions.

According to the timeline you laid out in your February 22nd letter to Senator Rockefeller, “fewer than 400” stationary source emitters will face regulation under the Clean Air Act for their GHG emissions in the first half of 2011. Pursuant to that same timeline:

- a.) Approximately how many stationary sources would be regulated in the second half of 2011?
- b.) Approximately how many stationary sources would be regulated by the end of 2013?
- c.) Approximately how many stationary sources would be regulated starting in 2016 and beyond, when you've explained that the smallest sources will be phased in?
- d.) How do these numbers compare to the current level of regulation under the Clean Air Act?
- e.) Can you provide a comprehensive and specific list of examples of the smallest sources that EPA will regulate after 2016?
- f.) In 2016 and beyond, what is the smallest threshold (in tons per year) for regulated entities that EPA intends to subject to Clean Air Act permitting for GHG emissions?
- g.) It appears that the most intrusive and economically damaging regulations are the ones we have the least information on, so I would ask you to please provide the statutory definition of entities you designate as the “smallest sources” in the fourth bullet on page one of your February 22nd letter to Senator Rockefeller.
- h.) There currently does not appear to be any Best Available Control Technology (BACT) for many of the emitters you propose to regulate. Will you please identify emitters you propose to regulate for which no BACT exists and how you intend to implement the Clean Air Act in such circumstances?

Additional clarification is also requested on the full range of economic and employment impacts that EPA anticipates as a result of GHG regulations under the Clean Air Act. Despite requests from members of the House and Senate, your agency still has not released a full analysis of the impacts that stationary source regulations – when fully phased in – will have on the economy, or the potential job losses that could result from them. EPA has instead claimed, in a “Regulatory Impact Analysis for the Proposed Greenhouse Gas Tailoring Rule,” that it is providing “temporary regulatory relief” before it has even imposed regulations. It defies logic that an agency would purport to provide relief from a regulation while simultaneously claiming that it is not imposing “any new burden.”

This contradiction seems to indicate that EPA officials understand that these regulations will have significant adverse impacts on the economy. Last week in the February 22nd letter to Senator Rockefeller, you simply noted that “[t]he feasibility and commercial availability of a technology are certainly analyzed in any BACT process, and both feasibility and commercial availability are relevant to competitiveness.” This is an opaque answer to a very serious

question, and would ask you to provide some additional details in response to the following questions:

a.) Has EPA conducted a full analysis of the economic costs and job losses that would accompany regulation of stationary sources of GHG emissions under the Clean Air Act, once EPA has fully phased in those regulations to cover the "smallest sources"?

b.) If yes, will you provide the full analysis to Congress, and if not, will you conduct such an analysis?

One question that did not come up at Wednesday's hearing is the issue of "carbon leakage." As I'm sure you are aware, no effort to limit GHG emissions within the United States will appreciably reduce global concentrations of GHGs unless the rest of the world is a partner in the effort. Making matters even more complicated, if the United States acts alone, we risk pushing our businesses overseas, where they can operate more competitively.

Carbon leakage is again an issue that Senator Rockefeller and his co-signers raised in their February 19th letter that was largely sidestepped in your response. Your February 22nd letter directs those eight Senators to EPA's pre-existing analysis of the issue in the context of H.R. 2454, legislation that remains pending in the United States Senate and has not been signed into law. Please provide answers to the following questions:

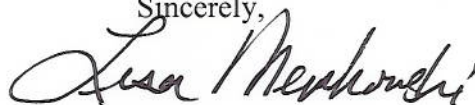
a.) Has the EPA conducted a full analysis of the economic costs and job losses that would be caused by "carbon leakage" as domestic products are further disadvantaged against imports and U.S. companies move abroad to avoid the additional costs proposed by the EPA?

b.) If yes, will you provide the full analysis to Congress, and if not, will you conduct such an analysis?

c.) In the absence of new legal authority provided by Congress, can your agency stop carbon leakage from occurring under the authorities provided by the Clean Air Act?

In previous correspondence related to the endangerment finding and associated regulations, you laudably provided a response within three calendar days. I would ask that you provide a similarly prompt response to the questions I have asked here, and hope to hear back no later than Tuesday, March 9, 2010.

Sincerely,

A handwritten signature in cursive script that reads "Lisa A. Murkowski". The signature is written in black ink and is positioned above the printed name.

Lisa A. Murkowski