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Select Committee on
Energy Independence and Global Warming
U.S. House of Representatives

January 15, 2008

Stephen L. Johnson
Administrator, Environmental Protection Agency (EPA)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Johnson:

I am writing to invite you to testify before the Select Committee on Energy Independence and Global Warming on February 7, 2008 in a room TBD regarding EPA's response to the Supreme Court's April 2007 decision in *Massachusetts v. EPA* and the President's May 14 Executive Order entitled "Cooperation Among Agencies in Protecting the Environment with Respect to Greenhouse Gas Emissions From Motor Vehicles, Nonroad Vehicles, and Nonroad Engines", as well as other developments related to the December 2007 passage of the Energy Bill.

As you know, the Supreme Court in *Massachusetts v. EPA* held that "Because greenhouse gases fit well within the Act's capacious definition of 'air pollutant,' EPA has statutory authority to regulate emission of such gases from new motor vehicles." The Court made clear that "the fact that DOT's mandate to promote energy efficiency by setting mileage standards may overlap with EPA's environmental responsibilities in no way licenses EPA to shirk its duty to protect the public 'health' and 'welfare The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."

On May 14, 2007, President Bush responded to the Supreme Court decision by directing his Cabinet, with guidance in the form of an Executive Order, to undertake a coordinated effort to promulgate regulations to "protect the environment with respect to greenhouse gas emissions from motor vehicles, nonroad vehicles, and nonroad engines." You led the Cabinet's press conference announcing the Executive Order, making clear the EPA would be leading the regulatory efforts by stating that: "Well, through – since this regulation will be done through – principally through the Clean Air Act, then it is my responsibility, the agency's responsibility to oversee and actually develop the regulation." You also made clear, both in this press conference and in subsequent statements, that the Administration would issue a proposed rule in the fall of 2007.

It is my understanding that since the Executive Order was signed, EPA and the National Highway Traffic Safety Administration (NHTSA) have, in fact, spent a considerable amount of time coordinating with one another in order to respond to the regulatory directive set out by the President, and that such a proposal was drafted by EPA staff in order for it to be released in time to meet the fall 2007 target for doing so. In fact, a December 21, 2007 article in the LA Times indicated that "the proposed standard cleared all EPA internal reviews and was forwarded to the Department of Transportation" the week of December 10, 2007.

On December 19, 2007, the President signed the Energy Independence and Security Act of 2007, which directs EPA to ensure that the nation's fuel supply includes 36 billion gallons of renewable fuels by 2022, and directs NHTSA to ensure that the overall fuel economy of our car and light truck fleet is no less than 35 miles per gallon by 2020. Since the bill was signed into law, it is my understanding that all work on the EPA rulemaking in response to the Supreme Court's decision in *Massachusetts v. EPA* has ceased, raising questions as to whether EPA plans to abandon these efforts. Just recently, the press reported that White House Council on Environmental Quality Chairman James Connaughton indicated that the Administration was studying "the need for further regulations and additional policies on heat-trapping greenhouse gases from automobiles and industrial emitters following passage last month of a new fuel economy standard."

I am concerned that, despite the Supreme Court's determination that "the fact that DOT's mandate to promote energy efficiency by setting mileage standards may overlap with EPA's environmental responsibilities in no way licenses EPA to shirk its duty to protect the public 'health' and 'welfare,'" EPA may be attempting to do just that in light of the passage of the Energy Independence and Security Act of 2007. Consequently, I request your appearance before the Select Committee to report on the status of the Agency's actions and plans in this sphere. Please ensure that your testimony includes responses to the following questions:

1. When will EPA release its conclusions regarding whether greenhouse gas emissions from automobiles contribute to pollution that may reasonably be anticipated to endanger public health or welfare? Has the EPA completed work on this portion of its response to *Massachusetts v. EPA*? If not, what remains to be done? If so, what are the reasons for the delay in its release? Has EPA concluded that passage of the Energy Independence and Security Act in any way impacts EPA's efforts or obligations regarding the "endangerment" determination, and if so, how?
2. When will EPA release the proposed vehicle and fuel regulations directed by the President in May 2007, under the guidance of the Executive Order? Has EPA completed work on this portion of its response to *Massachusetts v. EPA* and the May 2007 Executive Order? If not, what remains to be done? If so, what are the reasons for the delay in its release? Has EPA concluded that passage of the Energy Independence and Security Act of 2007 in any way impacts EPA's efforts or obligations in this area, and if so, how?

3. Assuming that EPA concludes that greenhouse gas emissions from automobiles contribute to pollution that may reasonably be anticipated to endanger public health or welfare, will EPA be announcing plans to develop regulations to reduce these emissions from stationary sources such as power plants or refineries? If so, when, and if not, why not? What is the status of EPA's consideration of these issues in the context of forthcoming new source performance standards for stationary sources or other relevant pending regulations?

I look forward to your testimony on this important matter. So that the Select Committee Members may adequately prepare for the hearing, please provide copies of the rulemaking documents referenced in the December 21, 2007 LA Times article that EPA forwarded to NHTSA by January 31, 2008. Thank you very much.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ed Markey". The signature is fluid and cursive, with a large, sweeping "E" and a stylized "M".

Edward J. Markey, Chairman
Select Committee on Energy Independence
& Global Warming