

**ATTORNEYS GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS AND
THE STATES OF ARIZONA, CALIFORNIA, CONNECTICUT, DELAWARE, ILLINOIS, IOWA,
MAINE, MARYLAND, MINNESOTA, NEW JERSEY, NEW MEXICO, NEW YORK, OREGON,
RHODE ISLAND, VERMONT, AND WASHINGTON,
THE CITY SOLICITOR FOR THE CITY OF BALTIMORE ,
AND THE CORPORATION COUNSEL FOR THE CITY OF NEW YORK**

January 23, 2008

Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
United States Environmental Protection Agency 1101A
U.S. EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: *Massachusetts v. EPA* remand

Dear Administrator Johnson:

We are writing today because of our concern about the progress of the administrative proceedings on remand from last year's U.S. Supreme Court ruling in *Massachusetts v. EPA*, 549 U.S. ___, 127 S.Ct. 1438 (2007). For the reasons set forth below, we believe that EPA is unreasonably delaying action on the remand, and we request a response by February 27, 2008, regarding the agency's specific intentions for moving that remand forward.

As you know, in *Massachusetts v. EPA*, we and other parties challenged EPA's refusal to regulate greenhouse gas emissions from motor vehicles pursuant to the federal Clean Air Act. The Court ruled that EPA had authority to regulate greenhouse gases under the Clean Air Act. 127 S.Ct. at 1459-62. The Court also ruled that EPA had relied on improper policy grounds in denying a rulemaking petition that had been filed under Section 202 of the Act, and it ordered the agency to revisit the rulemaking petition based on proper statutory factors. *Id.* at 1462-63. As EPA itself described the Court's mandate just last month:

On April 2, 2007, the Supreme Court ruled that the EPA must determine, under Section 202(a) of the Clean Air Act, whether greenhouse gas emissions (GHG) from new motor vehicles cause or contribute to air pollution that endangers public health or welfare.

72 Fed. Reg. 69934 (December 10, 2007).

In response to the Court's ruling, you repeatedly indicated that the agency would be moving forward with regulation under Section 202 and other provisions of the Clean Air Act. *See e.g.*, Statement of Stephen L. Johnson, to House Select Committee on Energy Independence and Global Warming (June 8, 2007). In this manner, you acknowledged that the agency has concluded that the endangerment threshold has in fact been crossed. In order to keep the regulatory process on track, we urged you immediately to begin the formal process of making a determination of endangerment through publishing a formal notice to that effect. *See e.g.*, Testimony of Attorney General Martha Coakley to House Select Committee on Energy Independence and Global Warming (June 8, 2007). While you declined to take this step, you did on numerous occasions state that the agency would formally propose new regulations pursuant to the Clean Air Act, including under Section 202, by the end of 2007, with final regulations in place by the end of October 2008. Indeed, you reaffirmed that intent in a formal "regulatory plan" published on December 10, 2007. 72 Fed. Reg. 69934. Nevertheless, the end of 2007 has come and gone without any regulatory action by the agency and without any new commitment as to when the agency would act.

We are aware that Congress has enacted the Energy Independence and Security Act of 2007, which President Bush signed into law on December 19, 2007. That act tightened the fuel economy standards for motor vehicles under the Energy Policy and Conservation Act (EPCA). But such changes to EPCA do not affect EPA's authority or duties under Section 202 of the Clean Air Act or under the Supreme Court's remand. As the Supreme Court has emphasized, EPA's statutory obligation to protect public health and welfare is "wholly independent" from EPCA's "mandate to promote energy efficiency." 127 S.Ct. at 1462. Moreover, in enacting the new legislation, Congress could not have been clearer that it was not modifying EPA's existing obligations under other statutes. *See* P.L. 110-140, 2007 HR slip, § 3 ("Except to the extent expressly provided in this Act, or an amendment made by this Act, nothing in this Act or an amendment made by this Act supersedes, limits the authority provided or responsibility conferred by, or authorizes violation of any provision of law (including a regulation), including any energy or environmental law or regulation.").

The rulemaking petition at issue in *Massachusetts v. EPA* was filed in 1999, now almost a decade ago. EPA's failure to exercise its clear authority under the Clean Air Act and to act on the petition constitutes an abdication of its regulatory responsibility. We once again urge EPA immediately to begin the regulatory process by publishing formal notice of EPA's conclusion that greenhouse gas emissions from motor vehicles and other sources "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." *See* 42 U.S.C. 7521(a). There is no valid reason for EPA to continue to delay moving the regulatory process forward in this manner. We note, for example, that immediately beginning the formal process of making an endangerment determination will still allow the agency additional time to deliberate over regulatory design issues involved in actually setting the applicable emissions standards.

In sum, according to EPA's own schedule, it is past time for EPA to take action on the *Massachusetts v. EPA* remand, and we urge you to move forward at once. If EPA continues unreasonably to delay its actions on the remand, we intend to take action to enforce the D.C. Circuit's mandate. Please let us know in writing by February 27, 2008, specifically what EPA's plans are to comply with the mandate.

If you would like to discuss this further, feel free to contact us directly or to have your staff follow up with Massachusetts Assistant Attorney General James R. Milkey. His contact information is: James R. Milkey, Assistant Attorney General, Chief, Environmental Protection Division, Massachusetts Office of the Attorney General, One Ashburton Place, Boston, MA 02108; (617) 727-2200, ext. 2439 (ph); (617) 727-9665 (fax); jim.milkey@state.ma.us.

Thank you very much.

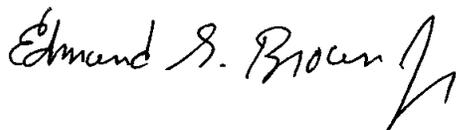
Very truly yours,



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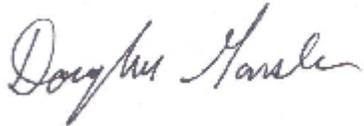
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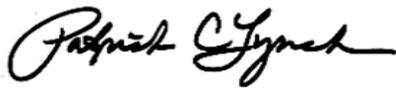
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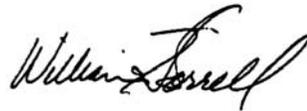
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cc. Honorable Michael B. Mukasey
Attorney General