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May 13, 2004

The Honorable Michael O. Leavitt
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Leavitt:

In April 2003, EPA indefinitely delayed the Integrated Planning Model (IPM) analysis of mercury control options requested by the Working Group on the Utility MACT. I repeatedly questioned EPA about the status of this analysis. I am writing to inquire about an apparent discrepancy between EPA's testimony at a joint hearing of the House Energy and Air Quality Subcommittee and the House Environment and Hazardous Materials Subcommittee on April 21, 2004, and past EPA statements.

In response to a Congressional inquiry about the delayed IPM analysis of mercury control options, EPA Administrator Whitman wrote in June 2003, "even though some of the analyses will be somewhat delayed. . .the EPA envisions conducting a limited number of analyses based on those scenarios that are believed to represent viable alternatives for a MACT standard." At a hearing before the House Energy and Air Quality Subcommittee in July 2003, EPA's witness reaffirmed Administrator Whitman's commitment, saying: "We are doing all the analysis that we need to do to propose a MACT standard, to do a proposal on time by December 15th. So we are on track to do everything we need to do to get - including the evaluation of options - to get the MACT standard out."

At the April 21, 2004, hearing, I asked the EPA's witnesses who in the Agency had made the decision to cancel the IPM modeling that Administrator Whitman had assured us EPA would complete. Mr. Holmstead, Assistant Administrator for Air and Radiation, responded by stating: "what this stakeholder group asked us to do would have been scientifically indefensible with the model that we had because as we learned about the model, it was designed to look at longer scenerios."

Neither Administrator Whitman nor any other EPA official had previously told Congress of EPA's inability to perform the analyses requested by the Working Group. To confirm the accuracy of Mr. Holmstead's testimony, I wrote to Mr. John A. Paul, co-chair of the Working Group on the Utility MACT. According to Mr. Paul's detailed response (attached), many members of the Working Group were intimately familiar with the IPM and its restrictions. Mr.

Paul states: "I am sure that any obstacles were recognized and plans made to deal with them. At none of our meetings was there any hint that EPA was incapable of modeling the stakeholder recommendations." Mr. Paul's letter establishes that: (1) EPA never requested that the working group modify their request in order to meet the requirements of the model, (2) EPA never informed the Working Group that it would be unable to model their request, and (3) EPA never even explained its decision to cancel the promised IPM analyses.

Please answer the following questions in order to clarify the discrepancy between Mr. Holmstead's testimony and Mr. Paul's letter.

1. Is it possible for EPA to analyze control options consistent with the various control options suggested by the Working Group's stakeholders?
2. Why did EPA fail to communicate to the Working Group that their modeling request was "scientifically indefensible?"
3. Will EPA communicate with the Working Group before issuing a final rule by the revised March 2005 deadline?
4. EPA did not inform Congress that the Working Group's modeling request was "scientifically indefensible" in either letters or testimony between April 2003 and April 2004, suggesting that EPA's scientific experts recently came to this conclusion. Did EPA scientists come to this conclusion? On what date did EPA's scientific experts finalize this conclusion? Upon what specific analysis did EPA base this conclusion?
5. Will EPA provide Congress with a technical analysis performed by EPA's modeling staff which demonstrates that an IPM analysis of the working group's options is "scientifically indefensible"?
6. If EPA's scientific experts have not performed a new analysis to explain Mr. Holmstead's assertions, will EPA correct or clarify Mr. Holmstead's statements?

As EPA Administrator, you have stated repeatedly that you will order all necessary analysis to finalize a rule in compliance with the Clean Air Act. Despite your public commitments, Mr. Holmstead continues to assert that EPA will not analyze any of the options recommended by the stakeholders, or any options under section 112 of the Act, and recent press reports suggest that no additional analysis has been performed to date. The Working Group was formed by EPA to recommend regulatory options that comply with the Clean Air Act. EPA proposes to regulate mercury, a hazardous air pollutant, under section 111 of the Clean Air Act while continually refusing to thoroughly consider the Working Group's proposals for regulation under section 112. I remain concerned that any rulemaking that fails to consider key regulatory options is highly vulnerable to remand by a federal court. If EPA refuses to conduct an analysis and public process for the mercury rule sufficient to withstand a legal challenge on procedural grounds, the Administration's ability to promulgate a defensible rule will remain in doubt.

For Congress to work with EPA to improve our environmental laws, EPA's testimony before Congress must be open, honest, and forthcoming. The discrepancy between EPA's recent testimony and the Agency's past communication with Congress suggests that EPA has not been forthcoming on this matter. I look forward to EPA's timely response to clarify this matter for the hearing record.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Allen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tom Allen
Member of Congress

THA:mn