United States Senate

WASHINGTON, D.C. 20510

February 19, 2010

The Honorable Lisa P. Jackson
Administrator
Environmental Protection Agency
Washington, DC 20460

Dear Administrator Jackson:

We write with serious economic and energy security concerns relating to the potential regulation of greenhouse gases (GHGs) from stationary sources under the Clean Air Act. Ill-timed or imprudent regulation of GHGs may squander critical opportunities for our nation, impeding the investment necessary to create jobs and position our nation to develop and produce its own clean energy. We need a clear understanding of how you view your agency's responsibilities and the processes by which you intend to carry them out in order to represent the workers, industries, taxpayers, and economic interests of our states.

We understand that in order to comply with the 2007 Supreme Court decision in *Massachusetts v. EPA,* your agency issued a determination that greenhouse gases may reasonably be anticipated to endanger public health and welfare. We also understand that this determination, also known as an endangerment finding, is the first step in the rulemaking process for regulation of greenhouse gas emissions from new motor vehicles, which was the subject of *Massachusetts v. EPA*, and we support moving forward with a single national standard for this purpose.

Nevertheless, we remain concerned about the possible impacts on American workers and businesses in a number of industrial sectors, along with the farmers, miners, and small business owners who could be affected as your agency moves beyond regulations for vehicle greenhouse gas emissions to implement regulations to curtail GHG pollution from stationary sources. We understand that with the endangerment finding in place, the EPA has the obligation to regulate GHG emissions from stationary sources under the Act's prevention of significant deterioration (PSD) provisions related to existing operating permit programs. We have a responsibility to the workers and industries in our states to address both your agency's timetable for the implementation of these stationary source regulations, and what you intend the exact requirements for businesses to be.

As you are undoubtedly aware, there are legislative efforts in the House and Senate seeking to disallow further agency action based on the endangerment finding. As we consider those legislative initiatives and the larger issues of economic stability and carbon regulation, we need clarification from you on a number of key questions to provide certainty to stakeholders in our states who out of necessity must make long-term capital investment decisions. Putting these investments at risk would further destabilize the economy. Therefore, we request that you promptly respond to the following information requests and questions to assist us in taking the proper course of action for our constituents:

1) Given the serious nature of potential regulation and businesses' need for certainty, please provide us with a precise understanding of when you plan to proceed with any regulation of greenhouse gas emissions from stationary sources, and when and how the U.S. Congress would be able to review and address these regulations.

2) Is it your reading of Senate Joint Resolution 26 (introduced on January 21, 2010) that it would essentially nullify EPA's endangerment finding? If so, how would this affect EPA's ability to regulate both mobile sources as well as stationary sources?

3) Please describe what EPA intends to accomplish with the "tailoring rule," which you announced on September 30, 2009. How will this rule affect your implementation of the Clean Air Act on stationary sources of emissions? Do smaller-scale emitters of these gases, from family farms to neighborhood dry cleaners to hospital power plants, need to be concerned with these regulations? What is your assessment of the likelihood of the tailoring rule surviving already announced legal challenges? Currently, PSD regulations are applied to fewer than 400 facilities per year for pollutants such as ozone. How many facilities would be required to obtain permits under GHG regulation under the Clean Air Act?

4) In light of the multiple legislative options before Congress related to EPAs endangerment finding, what is EPA's plan to respond to concerns these proposals raise? How would passage of various resolutions affect the agency's ongoing efforts to engage in preparatory work designed to help policymakers understand how future comprehensive climate and energy legislation would affect potentially regulated entities?

5) Large electric generators using domestically produced coal and natural gas are uncertain about potential "Best Available Control Technology" or "BACT" standards for carbon dioxide (CO_2). What does EPA expect coal and natural gas plant operators to do if there is no standard? What process will you use to determine such standards and the range of options for such facilities given the pre-commercial standing of current CO_2 abatement technologies such as carbon capture and storage (CCS)?

6) There is genuine concern from the domestic oil and gas industries, from entities operating at the wellhead to pipeline operators, processing plants, and refiners, that they will be severely disadvantaged in the world marketplace by stationary source regulations. Can you characterize how these regulations will translate into costs for these industries? Has your agency analyzed or will you consider the impacts on competitiveness that these costs could have on these industries?

7) Comprehensive clean energy legislation must ensure a robust US manufacturing base for clean energy production, invest in US research and development of new clean energy technologies, and mitigate costs to energy-intensive and trade-exposed industries. If EPA regulates GHGs for stationary sources, what are the direct and indirect cost implications for industrial sources of Clean Air Act prevention of significant deterioration (PSD) regulations? Has your agency analyzed or will you consider so-called "carbon leakage" and the competitiveness impacts of these costs on these industries? Will your agency publish impact analyses on these critical issues prior to implementing the regulation?

8) How would a resolution striking down the endangerment finding affect EPA's ability to provide resources or technical expertise intended to address and adapt to climate change effects, including,

but not limited to: Efforts to analyze climate and weather variability and its effects on agriculture, fisheries, species habitats, and coastal development among communities along the Gulf Coast and elsewhere; research programs related to climate change effects on mountain snowpack throughout the Pacific Coast and Mountain West regions; and the infrastructure, energy, and socioeconomic implications of relocating Alaska communities due to historically unprecedented coastal erosion?

The President and you have been explicit in calling on Congress to pass comprehensive legislation that would enhance our nation's energy and climate security. We strongly believe this is ultimately Congress' responsibility, and if done properly, will create jobs, spur new clean energy industries, and greatly advance the goal of U.S. energy independence. If done improperly, these opportunities could be lost.

Thank you for your attention to this matter. We look forward to your prompt response.