

**SIERRA CLUB
NATURAL RESOURCES DEFENSE COUNCIL
ENVIRONMENTAL DEFENSE FUND**

August 20, 2010

The Honorable Lisa Jackson
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: *New York v. EPA* (D.C. Cir. 06-1322)

Dear Administrator Jackson:

The Sierra Club, Natural Resources Defense Council, and Environmental Defense Fund urge the Environmental Protection Agency to act without further delay on the D.C. Circuit's remand in *New York v. EPA* (D.C. Cir. 06-1322). In this action, our organizations joined state and local governments in challenging EPA's failure to issue new source performance standards ("NSPS") under section 111 of the Clean Air Act limiting carbon dioxide emissions from power plants. On September 24, 2007, the D.C. Circuit remanded the case for further proceedings in light of the Supreme Court's ruling in *Massachusetts v. EPA*, 549 U.S. 497 (2007).

In the nearly three years since the D.C. Circuit remanded this case to EPA, the agency has failed to comply with the court's order. In the meantime, EPA has issued its finding that six greenhouse gases endanger human health and the environment, adopted standards regulating greenhouse gas emissions from light duty vehicles, and established a timetable for bringing new and modified stationary sources of greenhouse gases into the Act's preconstruction and operating permit programs. We applaud these important steps toward regulating the pollution that causes climate change. EPA's first national greenhouse gas limits, adopted for light duty vehicles, will reduce air pollution and strengthen our nation's energy security while providing certainty and confidence to spur durable investments in the U.S. auto sector's economic recovery. These encouraging actions, however, do not lessen the need for EPA to comply with its legal obligation and promptly issue a standard under section 111 limiting greenhouse gas emissions from power plants.

Power plants account for one-third of total U.S. greenhouse gas emissions. The category of electric generating units ("EGUs") has already been deemed to "cause[], or contribute[] significantly to, air pollution which may reasonably be

anticipated to endanger public health or welfare,” 42 USC § 7411(b)(1)(A), based on emissions of various conventional air pollutants. To the extent that specific findings on endangerment or contribution may be needed when revising a current NSPS to cover additional pollutants:

- EPA has already made the finding that greenhouse gas air pollution endangers public health and welfare. 74 Fed. Reg. 66,496 (Dec. 15, 2009); see also 75 Fed. Reg. 49,556 (Aug. 13, 2010) (denying reconsideration petitions).
- As the source of a third of total U.S. greenhouse gas emissions, EGUs undoubtedly contribute significantly to greenhouse gas air pollution. By comparison, in its endangerment determination, EPA found that the greenhouse gas emissions from new light-duty vehicles contribute to dangerous greenhouse gas air pollution. Collectively, EGUs emit more than 1.5 times more carbon dioxide than all light-duty vehicles, and more than 20 times the amount emitted by each year’s fleet of new vehicles. Without question, this constitutes “contribut[ing] significantly” to dangerous greenhouse gas air pollution within the meaning of Section 7411(b)(1)(A).

Demonstrated technologies can significantly reduce greenhouse gas emissions from power plants, and EPA must issue a standard based on the limit achievable by the best of these technologies.

The NSPS program is a central component of the Clean Air Act’s strategy for addressing stationary source pollution that complements the Act’s new source review (“NSR”) program. The NSPS helps guide the case-by-case analysis to determine the best available control technology (“BACT”) limit for a pollutant because it serves as the BACT floor. 42 USC § 7479(3). Adopting NSPS will therefore ease the burden on permitting authorities as they begin to establish BACT limits on greenhouse gases in preconstruction permits for the largest stationary sources. By providing a national baseline, the NSPS will help ensure a level playing field and make the BACT process more efficient and predictable.

It has been eight years since a coalition of environmental groups asked EPA to include greenhouse gases in the NSPS for power plants, six years since EPA entered a consent decree requiring it to review the power plant NSPS, five years since our organizations submitted detailed comments addressing these issues during the rulemaking proceeding, and three years since the D.C. Circuit ordered EPA to take action on the power plant NSPS in light of the Supreme Court’s decision in *Massachusetts v. EPA*. While the court did not establish a deadline for EPA to act on the remand order, three years is unwarranted, especially since the agency has not even begun to undertake action to comply. *Midwest Gas Users Ass’n v. FERC*, 833 F.2d 341, 359 (D.C. Cir. 1987) (holding that “a reasonable time for an agency decision could encompass ‘months, occasionally a year or two, but not several years or a decade.’” (quoting *MCI Telecomms. Corp. v. FCC*, 627 F.2d 322, 340 (D.C. Cir. 1980))). See also, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008)

(noting that mandamus petition is appropriate if EPA fails to undertake rulemaking consistent with court's remand order).

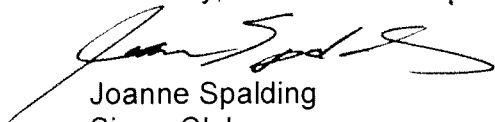
In light of the extended delay in responding to the D.C. Circuit's remand order, we respectfully ask EPA to agree by no later than September 15, 2010, to include greenhouse gases in its upcoming NSPS and to coordinate these measures with the forthcoming MACT rulemaking for utility boilers. The agency is scheduled to propose the utility NSPS and MACT standards in March 2011 and finalize them in November 2011. In keeping with EPA's multi-pollutant strategy, it makes sense to address greenhouse gases on the same schedule. In addition, we ask that EPA commit to exercising its authority under section 111(d) in that same rulemaking proceeding. This comprehensive approach will provide a framework for integrated air quality planning and management that encourages prudent investments in strengthening our nation's clean energy economy.

The remanded rule also addressed other categories of fossil-fuel-fired boilers (Industrial-Commercial-Institutional Steam Generating Units, 40 CFR part 60, subparts Db and Dc). We request that EPA identify and commit to a reasonable schedule for issuing revised standards that limit greenhouse gas emissions from new and existing sources in these categories as well. We would be happy to discuss with the agency what would constitute a reasonable schedule.

Barring agreement by September 15th, our remaining recourse will need to be seeking a court order compelling EPA action on the 2007 remand order.

We appreciate EPA's leadership in addressing greenhouse gas pollution and look forward to working with the agency as it acts to regulate greenhouse gases through the NSPS program. Please contact us at your earliest convenience regarding our proposed schedule for responding to the D.C. Circuit's remand order.

Sincerely,



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