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ONE HUNDRED SEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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April 18, 2002

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The Honorable Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Whitman:

Pursuant to the "Seven Member Rule" (5 U.S.C. § 2954), we write to request that the Environmental Protection Agency provide us the modeling data generated by the agency that projects the effects of limiting emissions from power plants. This data includes projections of the emissions control technologies that would be selected by power plants; the costs of controls; the quantity, timing and location of emissions reductions; and the effects of these emissions reductions on air quality.

Background

Since January 2001, EPA has engaged in a substantial effort to model the effects of imposing caps on emissions of certain pollutants from power plants. We understand that there are two main modeling activities involved in this effort. Through this modeling, EPA has projected both the industry response to pollutant caps and the air quality impacts of these projected industry emission control efforts.

According to our understanding, the first modeling step uses the Integrated Planning Model (or "IPM"), which is a dynamic linear programming model of the U.S. electric power sector that was developed by ICF Consulting, Inc., for EPA.¹ Among other applications, the model can be used to forecast how the electric power industry would react to regulatory caps on emissions set at specified levels and applicable on specified dates. The model forecasts the least-cost pollution control technology that would be selected by each power plant and then projects the resulting quantity and location of emissions throughout the country.

¹U.S. EPA, *Documentation of EPA Modeling Applications (V.2.1) Using the Integrated Planning Model* (Mar. 2002) (EPA 430/R-02-004).

The second modeling step uses the emissions projected by the IPM as inputs for air quality models to project the air quality effects of the emissions caps. EPA uses the variable-grid Urban Airshed Model (UAM-V) to project ozone concentrations across the country. This is a three-dimensional photochemical grid model that calculates pollutant concentrations by simulating the physical and chemical processes that occur in the atmosphere.² EPA also uses the Regulatory Modeling System for Aerosols and Deposition (REMSAD), another three-dimensional grid model, to project fine particles and mercury concentrations and deposition across the country. Both of these models were developed and are maintained by Systems Applications International (SAI), a wholly owned subsidiary of ICF Consulting.³ EPA funded major portions of the development of REMSAD.⁴

Information Requested

The data we are requesting are the results of the emissions control and air quality modeling that EPA has performed or commissioned since January 1, 2001, for emissions limits on electric power plants. Specifically, we are requesting the outputs, in the form of the raw data and all summaries and explanatory materials, including charts and graphs, of the runs performed using the IPM and the UAM-V, REMSAD, or any other air quality models.

We are requesting this information because of its relevance to legislative proposals currently before Congress. Members have introduced at least six bills in the 107th Congress to limit emissions from the electric power sector. One of these bills is H.R. 1256, the Clean Smokestacks Act of 2001, which was introduced by Rep. Henry A. Waxman and which currently has 125 cosponsors. On February 14, 2002, President Bush also announced a proposal for legislation, which the Administration refers to as the "Clear Skies Initiative." These bills and the Administration's proposal differ in the number of pollutants they address, the level of emission reductions they require, and the time they allow for compliance, as well as in the type of regulatory approach they take. For example, H.R. 1256 would require significant emission reductions in four pollutants (sulfur dioxide, nitrogen oxides, mercury, and carbon dioxide) by 2007, while the Administration's Clear Skies Initiative would require lesser reductions in just three of these pollutants (sulfur dioxide, nitrogen oxides, and mercury) by 2018.

²U.S. EPA, *The Benefits and Costs of the Clean Air Act, 1990 to 2010* (Nov. 1999) (EPA-410-R-99-001).

³Overview of the Variable Grid Urban Airshed Model (UAM-V) System (available on the web at: <http://uamv.saintl.com/overview.html>); Overview of the REMSAD Modeling System (Oct. 15, 2001) (available on the web at: <http://remsad.saintl.com/overview.htm>).

⁴Overview of the REMSAD Modeling System (Oct. 15, 2001) (available on the web at: <http://remsad.saintl.com/overview.htm>).

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Our evaluation of these conflicting proposals would be greatly facilitated by access to the data requested in this letter. EPA has performed numerous model runs under a range of emissions limits and compliance dates for emissions of sulfur dioxide, nitrogen oxides, and mercury from the power sector. These runs have produced a body of technical data projecting the control technologies that would be implemented; costs; effects on electricity prices; changes in fuel sources; the location and timing of emissions reductions; and air quality, public health, and environmental benefits. The runs have evaluated both the Administration's proposal and alternative approaches. The data produced by EPA would thus substantially illuminate the advantages and disadvantages of the different legislative proposals. Indeed, the significance of the data is demonstrated by the fact that EPA has apparently spent hundreds of thousands of taxpayer dollars generating this valuable technical information.⁵

This technical data is also precisely the kind of information that it is appropriate for EPA to provide to Congress. The results of these modeling runs are not privileged as deliberative materials. In fact, if Congress were willing to waste taxpayer money to reproduce the information currently held by EPA, Congress could hire the same contractors to run the same models and generate data on the same range of potential emissions control levels and timing. EPA generated the information to inform the analysis of legislation, not for purposes of making regulatory decisions. As the legislative body, Congress has at least an equal -- if not greater -- need for this kind of information. Moreover, the Administration has already released its legislative proposal, so there is no basis to argue that release of the information could impede Administration policy deliberations.

Unfortunately, the Administration to date has shared almost none of this information with Congress. Rep. Waxman first requested this information on September 24, 2001.⁶ He renewed his request on March 7, 2002.⁷ Yet to date, EPA has not provided this information. In fact, the

⁵EPA has not revealed the precise cost of its modeling activities related to the Clear Skies proposal. However, agency personnel have informally indicated that individual model runs cost in the range of \$3,000 to \$10,000 each in costs for federal contractor activities alone, excluding the value of substantial EPA staff time. Agency personnel have also indicated that EPA has conducted over 50 IPM runs, as well as a smaller number of air quality model runs, which are significantly more costly than IPM runs on a per-run basis.

⁶Letter from Rep. Henry A. Waxman to Christine Todd Whitman, Administrator, U.S. Environmental Protection Agency (Sept. 24, 2001).

⁷Letter from Rep. Henry A. Waxman to Christine Todd Whitman, Administrator, U.S. Environmental Protection Agency (Mar. 7, 2002).

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Agency has so far released only two limited analyses to Congress.⁸ That is why this information is now being requested under the Seven Member Rule.

The Seven Member Rule

The Seven Member Rule provides that “[a]n Executive agency, on request of the Committee on Government [Reform] of the House of Representatives, or of any seven members thereof . . . shall submit any information requested of it relating to any matter within the jurisdiction of the committee.”⁹ As a federal court recently held, “[r]eading the terms of Section 2954 in their ordinary and common meanings as this Court must . . . the Court finds that the ‘Seven Member Rule’ requires an executive agency to submit all information requested of it by the Committee relating to all matters within the Committee’s jurisdiction upon the Committee’s request.”¹⁰

In this case, there can be no question about our right to the information under the Seven Member Rule. As required by the rule, the information we seek is within the jurisdiction of the Committee on Government Reform. The Government Reform Committee is the principal investigative committee in the House. Our Committee’s broad oversight jurisdiction encompasses oversight authority over federal air pollution laws.¹¹ We also have general oversight jurisdiction over “the economy and efficiency” of “the operation of Government activities.”¹² In addition, we are specifically charged under the House rules with the responsibility of making “findings and recommendations” that we report to “other standing

⁸These analyses were released in the fall of 2001 in response to Senate requests. One analysis was requested by Senators Jeffords and Lieberman in May 2001, and the other was requested by Senators Voinovich, Smith, and Brownback in June 2001.

⁹5 U.S.C. § 2954. The statutory language refers to the “Committee on Government Operations.” This Committee was renamed the Committee on Government Reform and Oversight in the 104th Congress and again renamed the Committee on Government Reform in the 106th Congress. References in law to the Committee on Government Operations are treated as referring to this Committee. *See References in Law to Committees and Officers of the House of Representatives*, Pub. L. No. 104-14, § 1(6), 109 Stat. 186 (1995).

¹⁰*Waxman v. Evans*, No. CV 01-4530 LGB (C.D. Cal. filed Jan. 18, 2002).

¹¹Rule X, cl. 4(c)(2). This rule gives the Committee on Government Reform jurisdiction to investigate “any matter” without regard to the jurisdiction of any other standing committee.

¹²Rule X, cl. 3(e).

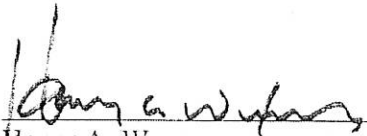
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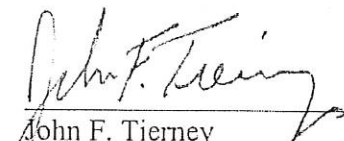
committee[s] having jurisdiction over the matter involved."¹³ All of these authorities establish that the information we seek relates to a matter within our Committee's jurisdiction, as required under the Seven Member Rule.

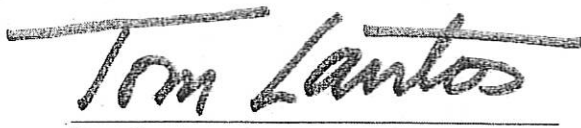
Conclusion

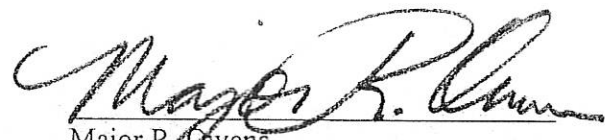
We ask that the information described above be provided expeditiously because Congress is actively considering the issue of controlling emissions from power plants. Thus, we request that you provide the information requested in this letter on or before May 3, 2002.

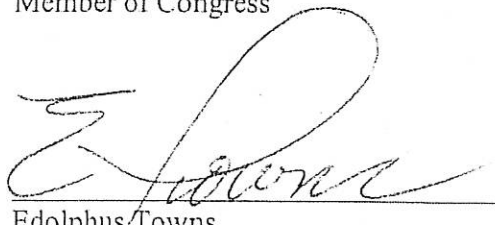
Sincerely,

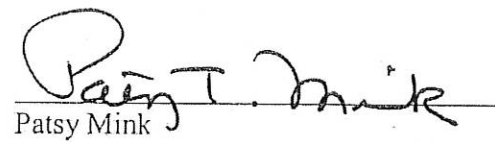

Henry A. Waxman
Ranking Minority Member

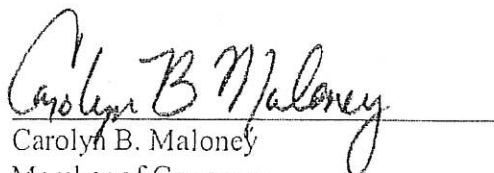

John F. Tierney
Ranking Minority Member
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs

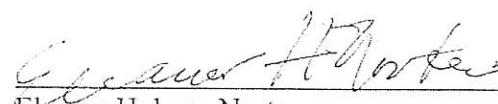

Tom Lantos
Member of Congress


Major R. Owens
Member of Congress


Edolphus Towns
Member of Congress

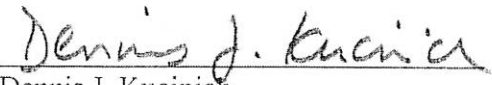

Patsy Mink
Member of Congress

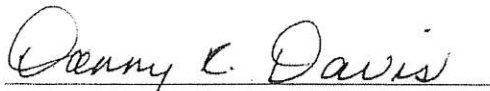

Carolyn B. Maloney
Member of Congress

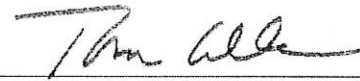

Eleanor Holmes Norton
Member of Congress

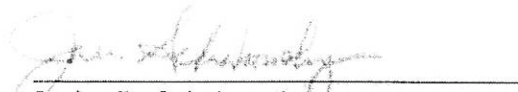
¹³Rule X, cl. 4(c)(2) ("The findings and recommendations of the committee . . . shall be made available to any other standing committee having jurisdiction over the matter involved").

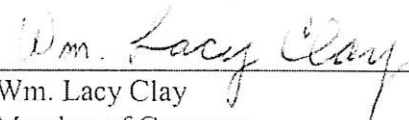

Elijah E. Cummings
Member of Congress

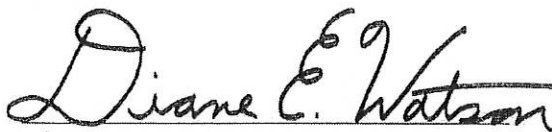

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Member of Congress

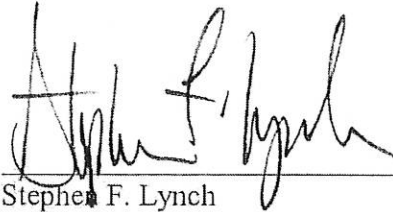

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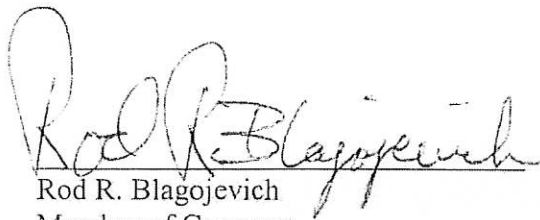

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