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# Congress of the United States

## House of Representatives

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October 18, 2011

The Honorable Gina McCarthy  
Assistant Administrator for the Office of Air and Radiation  
Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Dear Ms. McCarthy:

On behalf of the Committee on Oversight and Government Reform and the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending, I thank you for your testimony at the hearing entitled, "Running on Empty: How the Obama Administration's Green Energy Gamble Will Impact Small Business and Consumers." As a follow-up to your testimony, I ask that you clarify statements you made during the hearing.

As you know, in the Energy Policy and Conservation Act (EPCA), Congress delegated to the National Highway Traffic Safety Administration (NHTSA) the authority to set Corporate Average Fuel Economy Standards (CAFE).<sup>1</sup> However, Congress clearly and specifically prohibited state regulation of fuel economy by including an express preemption provision:

When an average fuel economy standard prescribed under this chapter [49 U.S.C. § 32901 *et seq.*] is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation *related to* fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter.<sup>2</sup> [emphasis added]

Congressional preemption language does not get much clearer. As is plainly evident, Congress intended to preempt not only the direct regulation of fuel economy standards by states, but also any state regulation "relating to" fuel economy standards.

The State of California, which obtained a waiver from the Environmental Protection Agency (EPA) in 2009 to regulate "greenhouse gas emissions" for vehicles, was a significant

<sup>1</sup> Pub. L. 94-163, 89 Stat. 871 (1976).

<sup>2</sup> Energy Policy and Conservation Act, 49 U.S.C. § 32919(a) (1975).

factor driving the negotiations on fuel economy standards. As Jeremy Anwyl explained to the Subcommittee:

I meet with the car companies on a regular basis. The expression that I hear repeatedly is they felt they had a “gun to their head,” and by that I think they are referring to the threat of a California opt-out, California waiver. We’ve talked about the balkanization of the marketplace, but the cost associated with needing individual standards across the 50 states would be overwhelming. So the threat of the California waiver is very real and very scary.<sup>3</sup>

Chairman Jordan and Vice Chair Buerkle questioned you about California’s participation in the fuel economy negotiations. In response to these questions, you stated the following:

**Chairman Jordan:** I think the question is that the statute seems to indicate that you can’t have preemption and yet the EPA says you can have preemption, so what gives?

**Administrator McCarthy:** Actually, I believe that what you’re referring to are fuel economy regulations. What California is regulating and what EPA is regulating are greenhouse gas emission standards.

\* \* \*

**Chairman Jordan:** I guess maybe here’s the question – I’m not a legal scholar on this – but it seems that when you read the statute, it talks about a regulation related to fuel economy standards, and greenhouse gases are certainly related to fuel economy standards, is that right?

**Administrator McCarthy:** They are closely aligned but they are different, Mr. Chairman.

\* \* \*

**Vice Chair Buerkle:** I just have a quick question for the three of you. It’s a yes or no question, if you wouldn’t mind. Are the greenhouse gas rules – either the EPA’s or the California rules – are they related to fuel economy? Mr. Strickland, yes or no?

**Administrator Strickland:** No, they regulate greenhouse gas emissions.

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<sup>3</sup> “*Running on Empty: How the Obama Administration’s Green Energy Gamble Will Impact Small Business and Consumers*”: Hearing before the Subcomm. on Regulatory Affairs, Stimulus Oversight and Gov’t Spending of the H. Comm. on Oversight and Gov’t Reform, 112th Cong. (2011) (question and answer with Jeremy Anwyl, Chief Executive Officer of Edmunds.com).

**Administrator McCarthy:** They regulate greenhouse gas emissions.

**Ms. Oge:** They regulate greenhouse gas emissions.

**Vice Chair Buerkle:** So they're not related to fuel economy, under oath.

**Administrator Strickland:** No. They're greenhouse gas emission regulations.

**Administrator McCarthy:** We do not regulate fuel economy standards.

**Vice Chair Buerkle:** And all three of you agree with that?

**Administrator McCarthy:** Yes.

**Ms. Oge:** Yes.

**Administrator Strickland:** Yes.<sup>4</sup>

Your statements under oath misled the Subcommittee in understanding the relationship between fuel economy standards and greenhouse gas regulations. The difference between regulating greenhouse gases and regulating fuel economy is a distinction without a difference. Even President Obama knows that EPA's and California's greenhouse gas standards and NHTSA's CAFE standards are one and the same. In his remarks announcing the MY 2017-2025 standards, President Obama said: "By 2025, the average fuel economy of their vehicles will nearly double to almost 55 miles per gallon."<sup>5</sup> [emphasis added] The reference to 55 miles per gallon is, of course, a reference to the greenhouse gas standards set by EPA.<sup>6</sup> NHTSA's target for fuel economy standards is slightly lower at 49.5 miles per gallon.<sup>7</sup>

The core of this Committee's inquiry focuses on the process by which the Administration developed the MY 2017-2025 fuel economy standards. By obstinately insisting that greenhouse gas regulation and fuel economy regulation are separate and unrelated endeavors, you not only contradict President Obama's understanding of the issue and defy common sense, but you impede the Committee's important oversight work.

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<sup>4</sup> "Running on Empty: How the Obama Administration's Green Energy Gamble Will Impact Small Business and Consumers": Hearing before the Subcomm. on Regulatory Affairs, Stimulus Oversight and Gov't Spending of the H. Comm. on Oversight and Gov't Reform, 112th Cong. (2011).

<sup>5</sup> President Barack Obama, President Obama Announces Historic 54.5 mpg Fuel Efficiency Standard (July 29, 2011), available at <http://m.whitehouse.gov/the-press-office/2011/07/29/president-obama-announces-historic-545-mpg-fuel-efficiency-standard>.

<sup>6</sup> See 2017-2025 Model Year Light-Duty Vehicle GHG Emissions and CAFE Standards: Supplemental Notice of Intent, 76 Fed. Reg. 48,758, 48,759 (Aug. 9, 2011).

<sup>7</sup> *Id.*

The Honorable Gina McCarthy

October 18, 2011

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I ask that you fully explain your statements to the Subcommittee and explain why your characterization of fuel economy and greenhouse gas standards differs from that of President Obama. Please respond by no later than 5:00 p.m. on Tuesday, November 1, 2011. I look forward to your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", written over a horizontal line. The signature is fluid and cursive.

Darrell Issa  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member