



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 17 2007

Ms. Mary D. Nichols, Chairman
Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

OFFICE OF
AIR AND RADIATION

RE: EPA-HQ-OAR-2006-0173; California's Request for a Waiver of Preemption for its Motor Vehicle Greenhouse Gas Standards

Dear Chairman Nichols:

I would like to inform you that the Environmental Protection Agency (EPA), recently received a letter from the Alliance of Automobile Manufacturers (Alliance) dated August 9, 2007, requesting that, in light of the comments submitted on July 24, 2007 by the California Air Resources Board, EPA reopen and extend the comment period for the waiver request.

After an evaluation of the recent Alliance letter, and in light of EPA's need to reasonably and timely consider California's request, we have declined to reopen and extend the comment period and have informed the Alliance of this decision. Although the comment period closed on June 15, 2007, and as we stated in the Agency's letter to the Alliance of June 8, 2007, we will continue to evaluate any additional comments received to the extent practicable. Accordingly, if any party would like to submit additional comments for our consideration, we urge that this be accomplished as quickly as possible.

EPA remains committed to issuing a decision on California's request in a responsible and expeditious manner. On June 21, 2007, Administrator Johnson wrote to Governor Arnold Schwarzenegger indicating that he would make a final decision on the California waiver request by the end of the year. Previously, the Agency held two public hearings on the waiver and declined requests to extend the public comment period beyond the period specified in its Federal Register Notice of April 30, 2007.

Should you have any further questions, please feel free to contact me or David Dickinson, of the Office of Transportation and Air Quality at (202) 343-9256.

Sincerely,

A handwritten signature in black ink, appearing to read "Margo C. Tsirigotis Oge".

Margo Tsirigotis Oge
Director

Office of Transportation and Air Quality

EPA-2408



August 9, 2007

Via UPS

The Hon. Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Subject: **EPA-HQ-AR2006-0173 (72 Fed. Reg. 21,260 (Apr. 30, 2007))**

Dear Administrator Johnson:

I am writing to request that EPA reopen and extend for 45 days the comment period for California's request for a waiver in relation to its vehicle greenhouse gas program.

The comment period for this waiver request closed on June 15, 2007. Thirty-nine days after the close of the comment period, the California Air Resources Board (CARB) submitted more than 800 pages of new materials in support of this request. The Alliance of Automobile Manufacturers did not receive these materials until August 2, 2007. Numerous other stakeholders--including several that have submitted comments opposing the waiver--have not received these materials at all.

Opponents of the waiver request should be entitled to comment on all the information offered by CARB in support of the waiver. Otherwise, they cannot be expected to carry any burden that might be assigned to them in this proceeding. Furthermore, if opponents are precluded from offering rebuttal information and views, then the Agency's decision on the waiver request will not be properly informed. Indeed, any such decision would not be credible and would constitute arbitrary and capricious Agency action.

The events leading up to this urgent request are as follows:

- On April 30, 2007, EPA published a Federal Register notice announcing the waiver request and the first of two public hearings. EPA indicated that the public comment period would close on June 15, 2007. (See Tab 1.)
- On May 9, 2007, the Alliance wrote to EPA requesting a 30-day extension of the deadline for written comments. (See Tab 2.) Other parties also requested extensions.

**BMW Group • DaimlerChrysler • Ford Motor Company • General Motors
Mazda • Mitsubishi Motors • Porsche • Toyota • Volkswagen**

- Public hearings took place on May 22 (in Washington, D.C.) and May 30 (in Sacramento). The Alliance testified at both hearings.
- During the May 30 hearing, representatives of California and of CARB referred to additional information in support of the waiver application to which they had not yet provided public access. The Alliance immediately submitted a Public Records Act request for these materials. In response, CARB sent to the Alliance only those materials that were submitted to EPA in CARB's original waiver application, plus emails related to the logistics of the Sacramento hearing.
- On June 5, 2007, the Alliance provided an initial written response to the legal questions posed in EPA's initial Federal Register notice. (See Tab 3.)
- On June 8, 2007, EPA denied our request for an extension of the comment period, but suggested that EPA would continue to conduct communications with the Alliance and other stakeholders after the close of the comment period. (See Tab 4.)
- On June 11, 2007, the Alliance submitted a second letter requesting that EPA allow an additional 21 days for public comment on the waiver petition, starting from the time when ARB has completed all of its submissions to EPA and supplied back-up documentation to support these submissions. The Alliance letter also requested a written explanation by the EPA of the procedures EPA would follow in written communications with interested parties after the close of the comment period. (See Tab 5.) To date, no such explanation has been provided.
- On June 15, 2007, the Alliance submitted its final comment package to EPA. In its cover letter, the Alliance renewed its request for a 21-day comment period following final submittals by CARB. (See Tab 6.)
- On July 24, *thirty-nine days after the close of the comment period*, CARB submitted a 32-page supplemental comment responding to the comments of the Alliance and others. This supplemental package cites 182 separate documents and includes 800 pages of attachments. (See Tab 7.) The Alliance received a copy of the main document almost a week later, and received the numerous attachments on August 2.

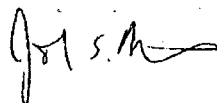
Normally, a request for a waiver would be accompanied by all of California's requesting documents. This makes sense, since EPA has taken the position that the party challenging a waiver has the primary burden of proof. The events outlined above appear to turn the normal waiver process on its head, leaving those challenging the waiver with the burden of proof while denying them access to critical information and/or a full and fair opportunity to comment.

Finally, in addition to all of the above, EPA appears to be having major problems in uploading materials to the docket for this rulemaking. We understand that more than 60,000 comments were submitted. As of today, more than 90 percent of the comments have not been uploaded to the public docket. This makes it impossible for the Alliance and others to review or discuss these comments with EPA staff.

We urge EPA to reopen and extend by 45 days the comment period for this important waiver decision. This comment period should begin to run only after EPA finishes uploading all prior submittals to the docket.

Thank you for your attention to this very important matter.

Sincerely yours,



John T. Whatley
Vice President & General Counsel

Cc: Dep. Administrator Marcus Peacock
Margo Oge (Assistant Admin. for OTAQ)
Roger Martella (General Counsel)
David Dickinson (OTAQ)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
AIR AND RADIATION

Mr. John T. Whatley
Vice President & General Counsel
Alliance of Automobile Manufacturers
1401 Eye Street
Suite 900
Washington, DC 20005-6562

RE: EPA-HQ-OAR-2006-0173; California's Request for a Waiver of Preemption for its Motor Vehicle Greenhouse Gas Standards

Dear Mr. Whatley:

Thank you for your letter dated August 9, 2007, to Administrator Stephen L. Johnson, requesting that the Environmental Protection Agency (EPA), reopen and extend the comment period for California's request for a waiver for its motor vehicle Greenhouse Gas (GHG) emission standards.

EPA remains committed to issuing a decision on California's request in a responsible and expeditious manner. On June 21, 2007, Administrator Johnson wrote to Governor Arnold Schwarzenegger indicating that he would make a final decision on the California waiver request by the end of the year. Previously, the Agency held two public hearings on the waiver and declined requests to extend the public comment period beyond the period specified in its Federal Register Notice of April 30, 2007.

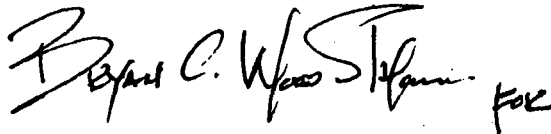
As you know, on July 24, 2007, after the close of the comment period, EPA received additional written comments from the California Air Resources Board (CARB), including a number of additional attachments. Your request to reopen the comment period on the California waiver cites this material and requests that opponents of the waiver request be offered an opportunity to provide rebuttal information.

After an evaluation of your concerns as detailed in your letter, and in light of EPA's need to reasonably and timely consider California's request, we must respectfully decline your request to reopen and extend the comment period. Although the comment period closed on June 15, 2007, and as we stated in the Agency's letter of June 8, 2007, we will continue to evaluate any additional comments received to the extent practicable. Accordingly, if the Alliance (or any other party) intends to submit additional comments for our consideration, as California did recently, we urge that you accomplish this as quickly as possible.

Your letter also raises concerns about accessing comments within the public docket and that many comments are not yet posted. As you may know, the vast majority of the public comments received in this docket are "Mass Comment Campaign" comments which are typically short identical letters (or E-Mails) submitted by hundreds or thousands of individual commenters. The standard practice for the docket staff is to identify these comments as "Mass Comment Campaign" comments and to designate a single entry to the docket to represent the number of identical comments actually received in the docket. The docket entry will have attached a sample of the letter or E-mail that was received. In the docket for the California GHG waiver, there are numerous entries posted to represent the mass campaign comments received. We are not aware of any comments that have not been posted and are not available.

Should you have any further questions, please feel free to contact me or David Dickinson of my staff at (202) 343-9256.

Sincerely,

A handwritten signature in black ink, appearing to read "Margo Tsigotis Oge". The signature is stylized and includes a small "FOX" mark at the end.

Margo Tsigotis Oge
Director
Office of Transportation and Air Quality