

Attorneys General of New York, Connecticut, Delaware, the District of Columbia, Iowa, Maine, Maryland, Massachusetts, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington and the Secretary of the Commonwealth of Pennsylvania Department of Environmental Protection

June 8, 2017

E. Scott Pruitt
Administrator, United States Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Midterm Evaluation of Emission Standards for Passenger Cars and Light Duty Trucks for Model Years 2022-25

Dear Administrator Pruitt:

The undersigned Attorneys General and the Secretary of the Commonwealth of Pennsylvania Department of Environmental Protection submit this letter in response to your letter to California Governor Brown dated May 2, 2017, regarding the Environmental Protection Agency's midterm evaluation of the current federal standards for greenhouse gas emissions from cars and light-duty trucks. We write to express our strong disagreement with your contention that EPA's midterm evaluation process was legally flawed. If you seek to roll back these important standards, we intend to pursue appropriate legal action to defend them in court.

Background

The federal standards for model years 2022-25—together with the parallel standards California enacted and many of our states voluntarily adopted—will substantially cut the greenhouse gas emissions that cause climate change as well as reduce the pollutants that cause smog and foul the air that people breathe. Cars and light-duty trucks emit about 20 percent of greenhouse gases (mostly carbon dioxide) from fossil fuel combustion in this country. All told, these vehicles emit well over a trillion tons in greenhouse gases each year from their tailpipes, emissions that are raising the amount of carbon dioxide in the atmosphere to levels that are already producing increasingly intense climate-change impacts such as sea-level rise, extreme weather, and ocean acidification.

In 2009, the principal U.S. automotive regulators—EPA, the California Air Resources Board, and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA)—partnered with the auto industry and other stakeholders to assess how best to reduce greenhouse gas emissions using readily available and affordable technologies. This cooperation resulted in the 2012 rulemaking, which set increasingly stringent standards for greenhouse gas emissions from cars and light-duty trucks for the 2017-25 model years. 77 Fed. Reg. 62,624 (Oct. 15, 2012). In addition to substantially cutting carbon pollution—by the equivalent of the annual emissions of 422 million cars currently on the road—these standards limit nitrogen oxide and other smog-forming emissions that trigger asthma attacks. And by improving the fuel economy of these vehicles, the standards will reduce our country's dependence on foreign oil.

To confirm achievability of the more stringent standards for model years 2022-25, EPA agreed to complete a midterm evaluation by April 2018. 40 C.F.R. § 86.1818-12(h). EPA had to

consider several factors in its evaluation, including the availability and effectiveness of technology, the costs to manufacturers and consumers, and the impact of the standards on emission reductions, energy security, fuel savings, and automobile safety. *Id.*, § 86.1818-12(h)(1).

EPA followed the process set forth in its regulations. First, after extensive research, EPA issued a draft Technical Assessment Report (TAR) jointly with NHTSA and CARB last summer, which found that the existing standards for model years 2022-25 can be met using existing available technology. EPA provided a 60-day public comment period, assessed those comments, and issued a draft final decision to maintain the current standards. EPA subsequently provided a 30-day comment period on the draft final decision and considered those public comments prior to issuing its final determination affirming the standards in January 2017. EPA concluded that the current standards are feasible at reasonable cost, will achieve significant carbon dioxide emissions reductions, and will provide significant economic and environmental benefits to consumers.

Indeed, even though EPA concluded that the record regarding the automakers' fuel economy technologies supported making the standards *more* stringent, it decided that regulatory certainty weighed in favor of keeping the current standards in place.

EPA's Midterm Evaluation Complied with Applicable Law and is Consistent with the Facts

In light of these facts, the characterization in your May 2 letter that EPA "circumvented" the required legal and scientific processes in its midterm evaluation is erroneous and inconsistent with your stated desire to "follow the letter of the law." First, although your letter contends there was insufficient opportunity for public comment during the process, EPA followed the regulatory requirements for seeking and considering public comments on both the draft TAR and the draft decision to maintain the current standards. *See* 40 C.F.R. § 86.1818-12(h)(2)(ii), (iii).

Second, your assertion that EPA deviated from the "required process" by not submitting these draft documents to the Office of Management and Budget (OMB) or the Department of Transportation is completely unfounded. Neither OMB nor DOT review is required for the midterm evaluation under the 2012 rule. *See* 40 C.F.R. § 86.1818-12(h).

Third, your argument that EPA acted prematurely by completing the midterm evaluation over a year ahead of the deadline finds no support in the language of the regulations. With respect to both the publication of the draft TAR and the final decision, the regulations prescribe deadlines by which the agency must act. *See id.*, § 86.1818-12(h)(1) (requiring EPA to issue its final determination by "[n]o later than April 1, 2018") and (h)(3) (requiring EPA to publish its draft TAR by "no later than November 15, 2017"). Although EPA is often faulted for *missing* deadlines, we are unfamiliar with any occasion on which the EPA Administrator has criticized his own agency for fulfilling its regulatory obligations *ahead* of schedule.

More fundamentally, it would have served no purpose for EPA to delay issuing its final decision until the last possible moment. As Governor Brown pointed out to you in his letter dated March 15, 2017, there are at least three separate reports by scientists, engineers, and other

experts analyzing the standards and concluding that they are feasible. The record is clear that appropriate technology exists *now* for automakers to achieve the current standards for model years 2022-25 at a reasonable cost. The timing of EPA’s action reflected the reality that, as a result of their technological resourcefulness, automakers were already ahead of schedule in complying with the standards to date and that conditions were ripe to assess the technology available for the later model years. The reasonableness of EPA’s determination was further confirmed by the decision reached by CARB in March that its parallel standards—which many of our states have adopted—are readily achievable by automakers. *See* California Air Resources Board, Resolution No. 17-3 (March 24, 2017), pp. 7, 15-16, <https://www.arb.ca.gov/board/res/2017/res17-3.pdf>.

In his March 15 letter, Governor Brown said California was prepared to take all necessary steps to preserve the current standards. In our view, EPA’s midterm evaluation was lawful and fully supported by the record. And in light of the critical public health and environmental benefits the standards will deliver, if EPA acts to weaken or delay the current standards for model years 2022-25, like California, we intend to vigorously pursue appropriate legal remedies to block such action.

Ultimately, we are hopeful that you meant what you said in your opening in your letter to Governor Brown—that you too seek “cleaner and more efficient vehicles” and that you are committed to “the principles of cooperative federalism underlying environmental statutes.” No environmental statute embodies those principles of cooperative federalism more fully than the Clean Air Act. And few steps would be simpler to ensure cleaner and more efficient vehicles than EPA’s keeping in place its current standards for greenhouse gas emissions for cars and light duty trucks.

Sincerely,



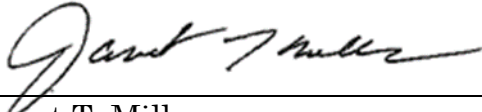
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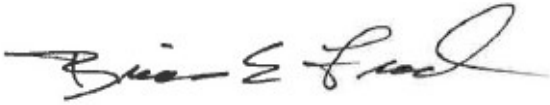
Tom Miller
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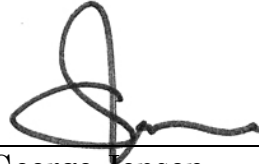
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