

# United States Senate

WASHINGTON, DC 20510

October 25, 2018

The Honorable Elaine L. Chao  
Secretary  
U.S. Department of Transportation  
1200 New Jersey Ave. SE  
Washington, DC 20530

The Honorable Andrew Wheeler  
Acting Administrator  
Environmental Protection Agency  
1301 Constitution Ave. NW  
Washington, DC 20460

Dear Secretary Chao and Acting Administrator Wheeler:

We write regarding your proposals to dramatically weaken the fuel economy and greenhouse gas tailpipe standards for cars and light trucks. These proposals additionally seek to remove California's authority to set and enforce its own greenhouse gas tailpipe standards, wrongly asserting that California's authority is preempted by the Energy Policy and Conservation Act (EPCA), as amended by the 2007 Energy Independence and Security Act (EISA).

As elected officials who were deeply involved in the negotiation of the fuel economy provisions of EISA, we can attest to Congress' intent that California's authority under the Clean Air Act be preserved. Not only did Congress include a broadly worded savings clause that expressly retains all authorities conferred by environmental laws,<sup>1</sup> we did so in rejection of several alternative proposals to preempt California's authority. This intent was clearly expressed by two<sup>2</sup> of us<sup>3</sup> during the provisions' December, 2007 consideration on the House and Senate Floors.

This letter transmits contemporaneous emails and other documents that demonstrate unequivocally that in the month before EISA was enacted, there were repeated efforts on the part of the automobile industry, some Members of Congress and the Bush Administration to preempt, limit or otherwise constrain both EPA's and California's authority under the Clean Air Act. All of these efforts were rejected, and were not included in the enacted law.

Specifically, these materials (also attached) include:

- Several draft legislative proposals shared by representatives of Cerberus<sup>4</sup> in late-November, 2007 that sought to constrain EPA's authority to set greenhouse gas tailpipe standards for cars and light trucks, and remove California's authority to do the same.
- A November 30, 2007 press release that describes the Congressional agreement on the fuel economy provisions of EISA.
- Two December, 2007 Statements of Administration Policy issued by the Bush White House that threatened a Presidential veto of EISA, in part because it did not eliminate EPA's Clean Air Act authority to set greenhouse gas tailpipe standards for cars and light

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<sup>1</sup> See 42 USC 17002.

<sup>2</sup> <https://www.gpo.gov/fdsys/pkg/CREC-2007-12-06/pdf/CREC-2007-12-06-pt1-PgH14434-2.pdf>. See page 10 for the remarks of then-Congressman Edward J. Markey

<sup>3</sup> <https://www.gpo.gov/fdsys/pkg/CREC-2007-12-13/pdf/CREC-2007-12-13-pt1-PgS15385.pdf>. See page 2 for the remarks of Senator Feinstein and the late Senator Inouye

<sup>4</sup> At the time, Cerberus had purchased Chrysler, and hired Patton Boggs to represent them. See, for example, <http://www.pressreader.com/usa/the-detroit-news/20070718/282651798082147>

trucks in order to abrogate the Supreme Court's decision earlier that year in *Massachusetts v. EPA*.


- Draft legislative language proposed in mid-December, 2007 that sought to prevent EPA from setting more stringent greenhouse gas tailpipe standards for cars and light trucks than the fuel economy standards that would be set by the Department of Transportation.
- A press release issued on the date EISA was signed into law acknowledging that the new law did not include any provisions that impacted EPA's or California's authority to set greenhouse gas tailpipe standards for cars and light trucks.


Your Agencies' proposals that assert that California's Clean Air Act authority is preempted by EPCA (as amended by EISA) are starkly contradicted by the body of case law interpreting the interplay between EPCA, Clean Air Act<sup>5</sup>, State waivers under the Clean Air Act, and the legislative history of both acts. That history affirms that EPCA's preemption provisions simply do not apply to pollution standards applicable to new motor vehicles, including greenhouse gas pollution standards, set by EPA or by California acting pursuant to a Clean Air Act waiver. The documents we are transmitting today also make clear that Congress considered, and ultimately rejected, language that would have eliminated or otherwise constrained this authority, even when faced with two Presidential veto threats. We urge you to abandon your legally flawed proposal, and instead support efforts to identify and finalize a consensus approach to fuel economy and greenhouse gas tailpipe standards that has the support, and preserves the authority of, the State of California.

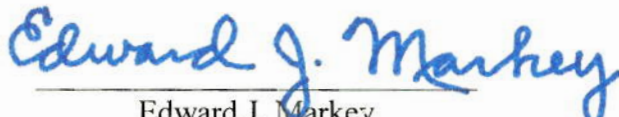
Thank you very much for your attention to this important matter. If you have any questions or concerns, please have your staff contact Michal Freedhoff of the Environment and Public Works Committee staff, at 202-224-8832, Trevor Higgins of Senator Feinstein's staff, at 202-224-3841 or Morgan Gray of Senator Markey's staff, at 202-224-2742.

With best personal regards, we are,

Sincerely yours,

  
Tom Carper  
United States Senator

  
Dianne Feinstein  
United States Senator

  
Edward J. Markey  
United States Senator

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<sup>5</sup> See for example *Massachusetts v. E.P.A.*, 549 U.S. 497, 532 (2007), which stated that the two statutory directives "may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency", and *Central Valley Chrysler-Jeep, Inc. v. Goldstene*, 529 F. Supp. 2d 1151, 1177 (E.D. Cal. 2007); *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295 (D. Vt. 2007), which both held that EPCA does not preempt California's standards.