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## **Climate Change**

### **Boxer Asks Mukasey to Reverse Memo On Carbon Dioxide From Coal-Fired Plants**

Sen. Barbara Boxer (D-Calif.) asked Attorney General Michael Mukasey Dec. 22 to reverse a Dec. 18 Environmental Protection Agency memorandum declaring that the agency is not required to consider the potential for major sources of air pollution to emit carbon dioxide when issuing permits under the Clean Air Act's prevention of significant deterioration program.

"This illegal document issued by [EPA Administrator] Stephen Johnson makes it clear that he has become a renegade Administrator," Boxer said. "Mr. Johnson's latest action is intended to make the job of combating global warming more difficult and will add to the millions of taxpayer dollars he has wasted in defending his illegal decisions."

"The Attorney General has an obligation to intervene when the actions of the Administration are so clearly outside the law," said Boxer, who is chairman of the Senate Environment and Public Works Committee.

EPA spokesman Jonathan Shrader rejected Boxer's charges. "Administrator Johnson's memo is supported by 30 years of agency actions and provides clarity and consistency to the permitting process," he said.

### **Reversing the Environmental Appeals Board.**

Johnson issued the memo in response to a Nov. 13 Environmental Appeals Board ruling on a prevention of significant deterioration permit issued by the agency in 2007 for a power plant in Bonanza, Utah; the permit did not require carbon dioxide controls (*In re Deseret Power Electric Cooperative*, EPA EAB, PSD Appeal No. 07-03, 11/13/08; 247 WCCR, 12/18/08).

The board said the agency must justify its position that such controls are not required. Like new source review, PSD requires new and modified major stationary sources to install modern pollution controls if they increase emissions of air pollution.

In the memorandum Johnson restated the EPA position that carbon dioxide is not a regulated pollutant under the Clean Air Act, so PSD permits are not required to consider carbon dioxide emissions. In its challenge to the Bonanza plant permit, the Sierra Club argued that carbon dioxide is a regulated pollutant and that PSD permits must consider carbon dioxide emissions.

In her letter, Boxer asked Mukasey to "intervene immediately with Environmental Protection Agency Administrator Stephen Johnson to ensure that he withdraws his blatantly illegal memo."

### **Boxer Says Arguments Have Been Rejected.**

"The Johnson document presents as arguments against including carbon dioxide emissions in a Clean Air Act permit the same kind of transparent excuses for inaction on global warming pollution that both the Supreme Court and the Environmental Appeals Board flatly rejected in their respective opinions," Boxer said.

The Supreme Court said in 2007 that carbon dioxide is an air pollutant and that EPA must decide whether it endangers public health and welfare and justify its decision. EPA under Johnson has resisted making an endangerment decision, saying it could result in burdensome greenhouse gas regulations (*Massachusetts v. EPA*, 127 S. Ct. 1438, 63 ERC 2057 (U.S. 2007)).

Boxer said if EPA proceeds under the Johnson memo and issues PSD permits without carbon dioxide controls, it will result in lawsuits.

"The EPA under Mr. Johnson has had an almost perfect record of defeat when it comes to its major environmental policies," Boxer said. She pointed to reversals of EPA decisions in the federal courts, including the U.S. Supreme Court. "Court battles over Mr. Johnson's latest indefensible policy will only throw away more taxpayer dollars, in addition to the millions already wasted," she said.

She also said the Bush administration in its waning days should not be able to use last-minute "midnight rules" to alter federal environmental policy.

*By Steven D. Cook*

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*The Boxer letter to Attorney General Mukasey is available at <http://epw.senate.gov/public/index.cfm?FuseAction=Majority.PressReleases>.*

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