STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
EDMUND G. BROWN JR.
ATTORNEY GENERAL

March 5, 2009

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Request for Comments on California State Motor Vehicle Pollution Control Standards; Greenhouse Gas Regulations; Reconsideration of Previous Denial of a Waiver of Preemption; 74 Fed. Reg. 7040 (Feb. 12, 2009); Docket ID No. EPA-HQ-OAR-2006-0173

Dear Administrator Jackson:

These comments are submitted in support of California's waiver application. I strongly support EPA's decision to reconsider its decision denying the waiver. The denial was in error, on both legal and factual grounds. EPA's willingness to review that decision represents an important step after years of Bush Administration resistance to environmental protection. I intend to submit more detailed comments addressing both the factual errors and legal defects in

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In this denial, EPA departed from long standing past practice and considered whether California's GHG emissions standard was needed to meet compelling and extraordinary conditions related to a specific pollutant – GHG emissions. Until this decision, EPA had looked at California's emissions program in its totality, as the Clean Air Act requires. 42 U.S.C. § 7543. California's separate emissions program has been approved because of the state's climate, geography, extraordinarily severe air quality problems, and the large number and concentration of motor vehicles contributing to these problems. The Administrator also determined that climate change impacts in California were not sufficiently different from the nation as a whole and, therefore, did not support adoption of state standards regulating motor vehicle greenhouse gas emissions. This conclusion ignores that California continues to have compelling and extraordinary conditions justifying its own mobile source program, and that the impacts from climate change will be particularly severe in the state, given California's extensive coastline, significant dependence on snow pack for water supply, vulnerability to floods and wildfires, severe ozone problem, and other impacts. These fundamental errors, among others, undermine the legitimacy of the waiver denial because they misconstrue the Clean Air Act and depart from decades of prior, sound agency practice.

In the landmark case *Massachusetts v. EPA*, 127 S. Ct. 1438 (2007), the Bush Administration fought to avoid its responsibility to deal with the threat of global warming. It took the case all the way to the U.S. Supreme Court, which rejected its arguments and ruled that global warming emissions are pollutants under the Clean Air Act. Even after the Court's decision, EPA delayed taking any action on greenhouse gases for close to two years. EPA's decision denying California's waiver was another attempt to avoid the agency's obligation to administer the Clean Air Act, as Congress wrote it. Now that EPA is reconsidering that decision, California looks forward to working with EPA so that these important standards can, finally, become effective.

EPA Should Grant the Waiver as Soon as Possible.

Global warming is the arguably most urgent environmental issue of our time. Our way of life and perhaps even our survival depend on our response to this problem. The regulations before you are a first, bold step toward dealing with global warming. They are ready to be enforced. Without Congress' foresight in allowing California its important leadership role in setting automobile emissions standards, we would not have these ready-to-implement regulations today. All we need is a waiver from EPA. That waiver is long overdue. We have been waiting since 2005 for it.

Fourteen states plus the District of Columbia have adopted California's greenhouse gas emissions regulations, with another four states in the process. The 14 states represent at least 37 percent of the nation's vehicles and the four states in the process will raise the level to approximately 47 percent. There are several more states debating whether to adopt the program and, if they move forward, will represent over half the nation. We are optimistic that EPA will, upon reconsideration, grant California's waiver request, thereby allowing California's standards to become effective.

EPA therefore should waste no time in granting California's waiver application. I am confident that upon reconsideration, the agency will determine that the request is consistent with the Clean Air Act and must be granted.

Sincerely,

EDMUND G. BROWN JR.
Attorney General

cc: Dickinson.David@EPA.gov