



November 15, 2006

The Honorable Susan Collins  
Chair, Senate Committee on  
Homeland Security and Governmental  
Affairs  
Washington, DC 20510

The Honorable Joseph Lieberman  
Ranking Member, Senate Committee on  
Homeland Security and Governmental  
Affairs  
Washington, DC 20510

Dear Senators:

We are writing to oppose the nomination of Susan Dudley to become the administrator of the Office of Information and Regulatory Affairs (OIRA) for the Office of Management and Budget, and we call upon you to reject this nomination.

Susan Dudley's record is one not merely of controversial, provocative statements but of something much more troubling: a consistent, unrelenting hostility to protective standards of the public interest. We have documented this record in the attached report, *The Cost Is Too High: How Susan Dudley Threatens Public Protections*. The only consistency in her intellectually inconsistent statements has been an abiding opposition to regulatory safeguards of the public health, safety, privacy, and the environment.

Dudley's responses to the committee's questions in the November 13 hearing did not dispel our concerns and, instead, exacerbated them. Some of her statements were quite misleading; among them:

- She tried to avoid responsibility for asserting that there is no justification for the Davis-Bacon Act.<sup>1</sup> When confronted with such a controversial position on this major protection for workers, Dudley tried to evade her statements about Davis Bacon overall by attributing them to the GAO. Only after repeated question did Dudley concede that she actually believed what she had written.
- She evaded questioning about her support for the "senior death discount," or measures of regulatory benefits that assign lower values to the lives of the old than to the lives of the young. Dudley denied having supported any senior death discount measure other than using life-year measures. The facts are different: in her comments to EPA on its rule to lower the levels of arsenic in the drinking

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<sup>1</sup> John Charles Bradbury & Susan E. Dudley, *Regulatory Studies Program Comments on Department of Labor, Employment Standards Administration, Wage and Hour Division Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts; Proposed Rule* at App.I-1 ("There is no economic justification for a federal role in defining construction practices and determining wages, as required by the Davis-Bacon Act."), available at <[http://www.mercatus.org/repository/docLib/MC\\_RSP\\_PIC1999-05\\_DOL-Davis-Bacon\\_990608.pdf](http://www.mercatus.org/repository/docLib/MC_RSP_PIC1999-05_DOL-Davis-Bacon_990608.pdf)>.

water, she argued that its benefits were “overstate[d],” and that EPA could correct that overstatement with “sensitivity that estimates benefits based on a value per life-year saved, or an age-adjusted value per life.”<sup>2</sup> An “age-adjusted value per life” means precisely assigning different cash figures to lives based on age.

- She downplayed her criticism of NHTSA’s historic decision in 2003 to raise fuel economy for light trucks — a decision she called “the worst rule of 2003” — by adding that she had criticized only NHTSA’s *analysis* of the rule, not the larger enterprise of improving fuel economy. In fact, her comments in a *Washington Post* column raised objections to the fuel economy program in its entirety: “NHTSA continues to force vehicle manufacturers to achieve higher miles per gallon than the market would offer, or consumers would choose, in the absence of the regulation.”<sup>3</sup>

We point out these inconsistencies not to catch her in a mere mistake but, instead, to emphasize our concerns that Dudley’s anti-regulatory record is an unmistakable portent of the radical agenda that Dudley would bring to OIRA. As Senator Durbin memorably put it during the 2001 confirmation hearing for previous OIRA administrator John Graham, many nominees with long records of hostility to the public interest experience “confirmation conversions,” in which they see the light and recognize the errors of their past positions just in time for the hearing. We learned from the painful experience of Graham’s tenure that such conversions are all too often short-lived. Dudley notably could not identify any criticisms of her record that came closest to being true other than her belief that markets work. If that is the extent of her recognition of the problems we have identified from her record, we must repeat our insistence that the cost to the public of a Dudley-led OIRA would be much too high.

Aside from acknowledging to a committee led by a senator from Maine, which is downwind of the nation’s pollution, that she was probably wrong in writing that downwind states could compensate upwind polluting states as an alternative to federal pollution controls, Dudley has not given any indication that she could truly set aside the radical ideology she has espoused for years if confirmed to the powerful role of OIRA administrator. We call on members of this committee to reject her nomination.

Sincerely,

American Federation of State, County, and Municipal Employees  
Natural Resources Defense Council  
OMB Watch  
Public Citizen  
United Auto Workers

CC: Members of the Senate Committee on  
Homeland Security and Governmental Affairs

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<sup>2</sup> Susan E. Dudley, *Public Interest Comment on the Environmental Protection Agency’s Request for Comments on National Drinking Water Regulations for Arsenic 4* (Oct. 31, 2001), available at <[http://mercatus.org/repository/docLib/MC\\_RSP\\_PIC2001-14EPA-Arsenic\\_011031.pdf](http://mercatus.org/repository/docLib/MC_RSP_PIC2001-14EPA-Arsenic_011031.pdf)> (emphasis added).

<sup>3</sup> Cindy Skrzycki, *2003’s Bouquets and Brickbats* (*The Envelope, Please*), WASH. POST (2003).