Appendix C

California Waiver Correspondence

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

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www.oversight.house.gov

December 20, 2007

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

Yesterday, you announced a decision to reject California's efforts to reduce greenhouse gas emissions from automobiles. Prior to making this decision you assured the House Oversight and Government Reform Committee, as well as the state of California and many others, that you would make this decision on the merits.

It does not appear that you fulfilled that commitment. Your decision appears to have ignored the evidence before the agency and the requirements of the Clean Air Act. In fact, reports indicate that you overruled the unanimous recommendations of EPA's legal and technical staffs in rejecting California's petition.

Your decision not only has important consequences to our nation, but it raises serious questions about the integrity of the decision-making process. Accordingly, the Committee has begun an investigation into this matter. To assist our Committee in this inquiry, I request that you provide us with all documents relating to the California waiver request, other than those that are available on the public record. This request includes all communications within the agency and all communications between the agency and persons outside the agency, including persons in the White House, related to the California waiver request. And all agency staff should be notified immediately to preserve all documents relating to the California waiver request.

You should produce to the Committee all responsive documents from your office by January 10, 2008. All responsive documents from the Office of Transportation and Air Quality and the Office of General Counsel should be produced by January 17, 2008, and all other responsive documents should be produced by January 23, 2008.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. An attachment to this letter provides additional information about how to respond to the Committee's request.

If you have any questions concerning this request, please have your staff contact Greg Dotson of the Committee staff at (202) 225-4407.

Sincerely,

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 04 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to respond to your letter of December 20, 2007, requesting information regarding California's request for a waiver under section 209 of the Clean Air Act. You request certain records by January 10, 2008, and additional documents thereafter. Please be assured that EPA respects your very strong interest in this issue and is committed to providing the Committee to the extent possible information necessary to satisfy its oversight interests consistent with our Constitutional and statutory obligations.

Your request is a top priority for the Agency and we are working hard to respond as quickly as possible. To that end, the Agency has taken a number of steps to expedite the process of collecting and evaluating the responsiveness of gathered documents. As you know, the Agency responded immediately after receiving your request by sending mass mailers on December 21 and 26, 2007, directing all Agency personnel to preserve responsive documents. Points of contact for each office within the Agency were established to ensure the document collection process is coordinated across the entire Agency. Preliminary results suggest there may be tens of thousands of emails and documents that are possibly responsive to your request. Accordingly, we have established a computer database to facilitate the collection and evaluation of documents, and thus make further response ultimately more efficient.

Although we have taken the steps described above in order to process the request as quickly and effectively as possible, this will still be a significant logistical burden on the Agency. Therefore, we will need additional time to process your request. We expect to further respond by Friday, January 11, 2008.

If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom M. Davis, III
Ranking Member

Dotson

Environment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.. 20460

JAN 1 1 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to further respond to your letter of December 20, 2007 requesting information regarding California's request for a waiver under section 209 of the Clean Air Act. You requested certain records by January 10, 2008, and additional documents thereafter. I responded by letter on January 4, 2008, indicating the steps the Agency is taking in order to respond this request. This letter updates you on our efforts.

Please be assured that EPA respects your very strong interest in this issue and is committed to providing the Committee information necessary to satisfy its oversight interests to the extent possible and consistent with our Constitutional and statutory obligations. As I stated in my January 4 letter, your request is a top priority for the Agency and we are working hard to respond as quickly as possible. As you know, the Agency responded immediately after receiving your request by sending mass mailers on December 21 and 26, 2007, directing all Agency personnel to preserve responsive documents. We have also established a computer database to facilitate the collection and processing of documents, and thus make further response more efficient.

Although our document collection process is still ongoing, we have made significant progress in collecting possibly responsive documents from across the Agency. The volume of possibly responsive documents already collected is consistent with the estimate given in my January 4 letter. I expect staff in the Administrator's Office and the Office of Air and Radiation will have substantially completed their searches by today and those in other parts of the Agency by January 18.

If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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www.oversight.house.gov

January 14, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

On December 20, 2007, I wrote to request that you provide the Committee with documents relating to your decision to reject California's efforts to reduce greenhouse gas emissions. I requested that the documents be produced on a rolling schedule, starting on January 10 with responsive documents from your immediate office. On January 4 and January 11, 2008, your staff responded to my letter, but did not provide any documents.

I appreciate the efforts EPA is taking to collect responsive documents, but I am concerned about the failure of the agency to meet the Committee's January 10 deadline. I am also concerned that no schedules for document production are proposed in your letters.

In an effort to accommodate the agency without unduly delaying the Committee's investigation, I ask that your staff work with Committee staff to establish by the close of business on January 16 mutually agreeable deadlines for producing documents to the Committee.

The Committee will also be conducting transcribed interviews or depositions of agency staff who may have knowledge of the agency's deliberations. As a first step in this process, I request that a schedule be established by the close of business on January 16 for the interview or deposition of the following officials:

- Robert Meyers, Principal Deputy Assistant Administrator, Office of Air and Radiation
- Jason Burnett, Associate Deputy Administrator, Office of the Administrator
- Margo Oge, Director, Office of Transportation and Air Quality
- Karl Simon, Director, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality
- Brian McLean, Director, Office of Atmospheric Programs
- Dina Kruger, Director, Climate Change Division, Office of Atmospheric Programs

- Rob Brenner, Director, Office of Program Analysis and Review

In prior investigations, the Committee has allowed counsel representing the agency to be present during transcribed interviews. In this case, since your own conduct is being examined, this accommodation would not be appropriate, although counsel employed by the agency may participate if they certify that their presence is as counsel for the witness. Attachments to this letter provide additional information about Committee interview and deposition procedures.

If you have any questions concerning this request, please have your staff contact Greg Dotson of the Committee staff at (202) 225-4407.

Sincerely,

Henry A. Waxman
Chairman

Enclosures

cc: Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 1 8 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to your letter of January 14, 2008 in which you requested that EPA staff work with your Committee staff to establish mutually agreeable deadlines for producing the documents you requested regarding California's request for a waiver under section 209 of the Clean Air Act, as well as a schedule for the interview or deposition of seven specified Agency officials.

Your letter of December 20, 2007 requested all responsive documents from the Office of the Administrator by January 10, 2008, and additional documents thereafter. In my letters of January 4 and January 11, we indicated our willingness to cooperate with the Committee and to provide, to the extent possible and consistent with our Constitutional and statutory obligations, information necessary to satisfy the Committee's oversight interests. We also detailed the extensive efforts that we have already undertaken to collect and process the requested documents.

As we discussed with your staff on January 15, we are making every effort to cooperate and support your oversight efforts to the maximum extent possible. The Agency has a strong desire for transparency regarding the Agency's decision-making process on California's waiver request. To date, scores of staff have put hundreds of hours into responding to your request, as well as a similar request from Chairman Boxer of the Senate Environment and Public Works Committee. We have made significant progress in collecting potentially responsive documents from across the Agency and are working diligently to process these documents. Please be assured that we are processing these documents in accordance with established and necessary standards for responding to Congressional oversight requests. Your request is a top priority for the Agency, and we will continue to devote additional personnel to this important task in order to further expedite the process.

Given the high volume of potentially responsive documents, we explained to your staff the difficulty involved in establishing firm document production deadlines by January 16, and we appreciate your willingness to provide us with additional time to negotiate this schedule. After consulting with your staff earlier today, we were able to meet a mutually agreed upon schedule for responding further to your document request. Accordingly, we expect to provide responses in accordance with the following schedule:

- Today – We are providing copies of hard-copy documents from the Administrator's Office by a separate transmittal.
- By January 25, 2008 – Additional response concerning the Administrator's Office; and initial responses concerning the Office of General Counsel and the Office of Air and Radiation.
- By February 1, 2008 – Finish responses concerning the Administrator's Office and Office of General Counsel; and additional interim response concerning Office of Air and Radiation.
- By February 8, 2008 – Initial response concerning other offices; and additional interim response concerning Office of Air and Radiation.
- By February 15, 2008 – Complete response.

As we discussed with your staff earlier today, we also indicated our desire to accommodate the Committee's request for transcribed interviews of EPA personnel, consistent with the Committee's past practice for interviews of Executive Branch personnel including those from EPA. As we explained previously, including in our letter to you dated April 12, 2007, excluding Agency counsel from representing Agency officials during such interviews raises the concern, among others, that witnesses may need to obtain outside counsel at personal expense. Requiring staff to retain private counsel while speaking in their official capacity could impose upon them an extraordinary burden and unnecessarily distract them from their official duties. Since the employees would be providing information about their official activities while at EPA, the Agency has a strong interest in providing support to its employees who are called to provide information to Congress regarding their official actions.

During today's conference call, we explained that Agency staff have expressed a desire for Agency counsel to participate as counsel for the witnesses. Your staff expressed a concern about the role Agency counsel would serve in protecting the confidentiality of the interview process. We take those concerns seriously and are interested in reaching a mutually agreed upon accommodation. We will be following up with your staff early next week to further discuss this issue. In the interim, we have asked those staff members whom you have asked to interview to identify and hold blocks of time between January 25 and February 8, 2008 so these interviews may be scheduled as expeditiously as possible once we are able to reach mutually agreeable accommodation on the representation question.

I hope that these efforts and accommodations demonstrate the seriousness with which the Agency takes your request. As I said before, this is a top priority for the Agency. If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 1 8 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in further response to your December 20, 2007 letter requesting information regarding California's request for a waiver under section 209 of the Clean Air Act. You requested certain records by January 10, 2008, and additional documents thereafter. I responded by letters on January 4 and 11, 2008, indicating the steps the Agency is taking in order to accommodate this request. This letter further responds to your request.

EPA respects your very strong interest in this issue and is committed to providing the Committee to the extent possible information necessary to satisfy its oversight interests consistent with our Constitutional and statutory obligations. As stated in the Agency's prior responses, your request is a top priority for the Agency and we are working hard to respond as quickly as possible. We believe staff across the Agency have substantially completed their collection of potentially responsive documents. We have completed the processing of hard-copy documents from the Administrator's Office, and we are beginning to process the remaining documents from that office and those from the other parts of the Agency. Please find enclosed copies of hard-copy documents from the Administrator's Office. We expect to provide interim responses concerning documents from the other offices on a rolling basis consistent with the schedule negotiated with your staff, and we expect to complete our response by February 15, 2008.

Please note that EPA has identified an important Executive Branch confidentiality interest in a number of these documents because they reflect internal deliberations and/or attorney-client communications regarding California's waiver request. We recognize the importance of the Committee's need to inform itself in order to perform its oversight functions, but we remain concerned about any further disclosure of this information for a number of reasons. First, because the documents reveal deliberative process information internal to the Agency, EPA is concerned about the chilling effect that would occur if Agency employees believed their frank and honest opinions and analysis expressed as part of assessing California's waiver request were to be disclosed in a broad setting. The Supreme Court has recognized this "chilling effect" concern in particular. See United States v. Nixon, 418 U.S. 683 (1974). Second, further disclosure could result in needless public confusion about the Administrator's decision that EPA will be denying

California's request. That is, many of the documents are pre-decisional and thus do not reflect the Agency's full and complete thinking on the matter. Indeed, final decision documents have not yet been completed and made available to the public through publication in the Federal Register, so the public, if given access to the pre-decisional documents, would effectively be denied access to the full, complete rationale by the Agency. Finally, the Agency is currently engaged in ongoing litigation regarding this matter, and future litigation is expected. The documents contain privileged and confidential attorney-client communications and attorney work product. Further disclosure of this type of confidential information could jeopardize the Agency's ability to effectively litigate claims related to California's waiver request.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. As such, we are providing you with copies for the majority of the Administrator's Office's hard-copy documents. EPA has copied these documents on paper with a watermark that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized to Congress Only for Oversight Purposes." Through this accommodation, EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

Given the Agency's strong interest in transparency, Administrator Johnson has directed us to provide these documents despite privileges he may assert over them. This production includes, in particular, briefing papers prepared and presented directly to the Administrator. Given the ongoing litigation, however, the Agency must redact portions of some documents in order to adequately protect confidential, internal information. Despite this concern, the Administrator, in furtherance of his goal of transparency, has authorized us to provide this redacted material for inspection at your convenience.

We look forward to continued discussions with your staff as we move forward with this process. If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

January 24, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

I am writing regarding the Committee's pending request to conduct transcribed interviews or depositions with seven EPA officials who may have knowledge of EPA's deliberations on the denial of California's request for a waiver to reduce greenhouse gas emissions from motor vehicles.

Today, the Committee is noticing depositions for the following individuals at the following times:

Mr. Karl Simon	Wednesday, January 30, 2008, at 1:00 p.m.
Ms. Dina Kruger	Thursday, January 31, 2008, at 1:00 p.m.
Mr. Brian McLean	Tuesday, February 5, 2008, at 1:00 p.m.
Mr. Rob Brenner	Wednesday. February 6, 2008, at 2:30 p.m.
Ms. Margo Oge	Thursday, February 7, 2008, at 1:00 p.m.
Mr. Jason Burnett	Monday, February 11, 2008, at 9:30 a.m.
Mr. Robert Meyers	Tuesday, February 12, 2008, at 9:30 a.m.

I recognize that our staffs are discussing whether mutually agreeable arrangements can be made to conduct transcribed interviews of these officials instead of depositions. I am prepared to continue these discussions and to convert the depositions to interviews if we can reach an understanding.

I ask you inform the Committee by noon on Friday, January 25, 2008, whether the individuals will be available for depositions at the scheduled times. It would be my preference to proceed with voluntary depositions rather than to invoke the compulsory process of the Committee.

I have enclosed a copy of the Committee's rules for depositions. I request that you make a copy of these rules available to each witness.

Thank you for your cooperation.

Sincerely,

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

110th Congress
1st Session
HOUSE OF REPRESENTATIVES

RULES

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

TOGETHER WITH

SELECTED RULES OF THE HOUSE OF REPRESENTATIVES (Including Clause 2 of House Rule XI)

AND

SELECTED STATUTES OF INTEREST

FEBRUARY 2007

Printed for the use of the Committee on Oversight and Government Reform

110th Congress
1st Session

HOUSE OF REPRESENTATIVES

RULES

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

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FEBRUARY 2007

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I. RULES OF THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

U.S. House of Representatives

110th Congress

Rule XI, clause 1(a)(1)(A) of the House of Representatives provides:

> The Rules of the House are the rules of its committees and subcommittees so far as applicable.

Rule XI, clause 2(a)(1) of the House of Representatives provides, in part:

> Each standing committee shall adopt written rules governing its procedure. * * *

In accordance with this, the Committee on Oversight and Government Reform, on January 18, 2007, adopted the rules of the committee:

Rule 1.—Application of Rules

Except where the terms "full committee" and "subcommittee" are specifically referred to, the following rules shall apply to the Committee on Oversight and Government Reform and its subcommittees as well as to the respective chairs.

[See House Rule XI, 1.]

Rule 2.—Meetings

The regular meetings of the full committee shall be held on the second Thursday of each month at 10 a.m., when the House is in session. The chairman is authorized to dispense with a regular meeting or to change the date thereof, and to call and convene additional meetings, when circumstances warrant. A special meeting of the committee may be requested by members of the committee following the provisions of House Rule XI, clause 2(c)(2). Subcommittees shall meet at the call of the subcommittee chairs. Every member of the committee or the appropriate subcommittee, unless prevented by unusual circumstances, shall be provided with a memorandum at least three calendar days before each meeting or hearing explaining (1) the purpose of the meeting or hearing; and (2) the names, titles, background and reasons for appearance of any witnesses. The ranking minority member shall be responsible for providing the same information on witnesses whom the minority may request.

[See House Rule XI, 2 (b) and (c).]

Rule 3.—Quorums

(a) A majority of the members of the committee shall form a quorum, except that two members shall constitute a quorum for taking testimony and receiving evidence, and one-third of the members shall form a quorum for taking any action other than for which the presence of a majority of the committee is otherwise required. If the chairman is not present at any meeting of the committee or subcommittee, the ranking member of the majority party on the committee or subcommittee who is present shall preside at that meeting.

(b) The chairman of the committee may, at the request of a subcommittee chair, make a temporary assignment of any member of the committee to such subcommittee for the purpose of constituting a quorum at and participating in any public hearing by such subcommittee to be held outside of Washington, DC. Members appointed to such temporary positions shall not be voting members. The chairman shall give reasonable notice of such temporary assignment to the ranking members of the committee and subcommittee.

[See House Rule XI, 2(h).]

Rule 4.—Committee Reports

Bills and resolutions approved by the committee shall be reported by the chairman following House Rule XIII, clauses 2–4.

A proposed report shall not be considered in subcommittee or full committee unless the proposed report has been available to the members of such subcommittee or full committee for at least three calendar days (excluding Saturdays, Sundays, and legal holidays, unless the House is in session on such days) before consideration of such proposed report in subcommittee or full committee. Any report will be considered as read if available to the members at least 24 hours before consideration, excluding Saturdays, Sundays, and legal holidays unless the House is in session on such days. If hearings have been held on the matter reported upon, every reasonable effort shall be made to have such hearings printed and available to the members of the subcommittee or full committee before the consideration of the proposed report in such subcommittee or full committee. Every investigative report shall be approved by a majority vote of the committee at a meeting at which a quorum is present.

Supplemental, minority, or additional views may be filed following House Rule XI, clause 2(l) and Rule XIII, clause 3(a)(1). The time allowed for filing such views shall be three calendar days, beginning on the day of notice, but excluding Saturdays, Sundays, and legal holidays (unless the House is in session on such a day), unless the committee agrees to a different time, but agreement on a shorter time shall require the concurrence of each member seeking to file such views.

An investigative or oversight report may be filed after sine die adjournment of the last regular session of Congress, provided that if a member gives timely notice of intention to file supplemental, minority or additional views, that member shall be entitled to not

less than seven calendar days in which to submit such views for inclusion with the report.

Only those reports approved by a majority vote of the committee may be ordered printed, unless otherwise required by the Rules of the House of Representatives.

Rule 5.—Proxy Votes

In accordance with the Rules of the House of Representatives, members may not vote by proxy on any measure or matter before the committee or any subcommittee.

[See House Rule XI, 2(f).]

Rule 6.—Record Votes

A record vote of the members may be had upon the request of any member upon approval of a one-fifth vote of the members present.

Rule 7.—Record of Committee Actions

The committee staff shall maintain in the committee offices a complete record of committee actions from the current Congress including a record of the rollcall votes taken at committee business meetings. The original records, or true copies thereof, as appropriate, shall be available for public inspection whenever the committee offices are open for public business. The staff shall assure that such original records are preserved with no unauthorized alteration, additions, or defacement.

[See House Rule XI, 2(e).]

Rule 8.—Subcommittees; Referrals

(a) There shall be five standing subcommittees with appropriate party ratios. The chairman shall assign members to subcommittees. Minority party assignments shall be made only with the concurrence of the ranking minority member. The subcommittees shall have the following fixed jurisdictions:

(1) The Subcommittee on Domestic Policy—Oversight jurisdiction over domestic policies, including matters relating to energy, labor, education, criminal justice, and the economy. The subcommittee also has legislative jurisdiction over the Office of National Drug Control Policy;

(2) The Subcommittee on Federal Workforce, Postal Service, and the District of Columbia—Federal employee issues, the municipal affairs (other than appropriations) of the District of Columbia, and the Postal Service. The subcommittee's jurisdiction includes postal namings, holidays, and celebrations;

(3) The Subcommittee on Government Management, Organization, and Procurement—The management of government operations, reorganizations of the executive branch, and Federal procurement;

(4) The Subcommittee on Information Policy, Census, and National Archives—Public information and records laws such as the Freedom of Information Act, the Presidential Records Act, and the Federal Advisory Committee Act, the Census Bu-

reau, and the National Archives and Records Administration; and

(5) The Subcommittee on National Security and Foreign Affairs—Oversight jurisdiction over national security, homeland security, and foreign affairs.

(b) Bills, resolutions, and other matters shall be expeditiously referred by the chairman to subcommittees for consideration or investigation in accordance with their fixed jurisdictions. Where the subject matter of the referral involves the jurisdiction of more than one subcommittee or does not fall within any previously assigned jurisdiction, the chairman shall refer the matter as he may deem advisable. Bills, resolutions, and other matters referred to subcommittees may be reassigned by the chairman when, in his judgment, the subcommittee is not able to complete its work or cannot reach agreement therein. In a subcommittee having an even number of members, if there is a tie vote with all members voting on any measure, the measure shall be placed on the agenda for full committee consideration as if it had been ordered reported by the subcommittee without recommendation. This provision shall not preclude further action on the measure by the subcommittee.

Rule 9.—Ex Officio Members

The chairman and the ranking minority member of the committee shall be ex officio members of all subcommittees. They are authorized to vote on subcommittee matters; but, unless they are regular members of the subcommittee, they shall not be counted in determining a subcommittee quorum other than a quorum for taking testimony.

Rule 10.—Staff

Except as otherwise provided by House Rule X, clauses 6, 7 and 9, the chairman of the full committee shall have the authority to hire and discharge employees of the professional and clerical staff of the full committee and of subcommittees.

Rule 11.—Staff Direction

Except as otherwise provided by House Rule X, clauses 6, 7 and 9, the staff of the committee shall be subject to the direction of the chairman of the full committee and shall perform such duties as he may assign.

Rule 12.—Hearing Dates and Witnesses

(a) Each subcommittee of the committee is authorized to meet, hold hearings, receive testimony, mark up legislation, and report to the full committee on any measure or matter referred to it.

(b) No subcommittee of the committee may meet or hold a hearing at the same time as a meeting or hearing of the committee.

(c) The chair of each subcommittee shall set hearing and meeting dates only with the approval of the chairman with a view toward assuring the availability of meeting rooms and avoiding simultaneous scheduling of committee and subcommittee meetings or hearings.

(d) Each subcommittee chair shall notify the chairman of any hearing plans at least two weeks before the date of commencement of hearings, including the date, place, subject matter, and the names of witnesses, willing and unwilling, who would be called to testify, including, to the extent the chair is advised thereof, witnesses whom the minority members may request.

(e) Witnesses appearing before the committee shall, so far as practicable, submit written statements at least 24 hours before their appearance and, when appearing in a non-governmental capacity, provide a curriculum vitae and a listing of any Federal Government grants and contracts received in the previous fiscal year.

[See House Rules XI, 2 (g)(3), (g)(4), (j) and (k).]

Rule 13.—Open Meetings

Meetings for the transaction of business and hearings of the committee shall be open to the public or closed in accordance with Rule XI of the House of Representatives.

[See House Rules XI, 2 (g) and (k).]

Rule 14.—Five-Minute Rule

(a) A committee member may question a witness only when recognized by the chairman for that purpose. In accordance with House Rule XI, clause 2(j)(2), each committee member may request up to five minutes to question a witness until each member who so desires has had such opportunity. Until all such requests have been satisfied, the chairman shall, so far as practicable, recognize alternately based on seniority of those majority and minority members present at the time the hearing was called to order and others based on their arrival at the hearing. After that, additional time may be extended at the direction of the chairman.

(b) The chairman, with the concurrence of the ranking minority member, or the committee by motion, may permit an equal number of majority and minority members to question a witness for a specified, total period that is equal for each side and not longer than thirty minutes for each side.

(c) The chairman, with the concurrence of the ranking minority member, or the committee by motion, may permit committee staff of the majority and minority to question a witness for a specified, total period that is equal for each side and not longer than thirty minutes for each side.

(d) Nothing in paragraph (b) or (c) affects the rights of a Member (other than a Member designated under paragraph (b)) to question a witness for 5 minutes in accordance with paragraph (a) after the questioning permitted under paragraph (b) or (c). In any extended questioning permitted under paragraph (b) or (c), the chairman shall determine how to allocate the time permitted for extended questioning by majority members or majority committee staff and the ranking minority member shall determine how to allocate the time permitted for extended questioning by minority members or minority committee staff. The chairman or the ranking minority member, as applicable, may allocate the time for any extended questioning permitted to staff under paragraph (c) to members.

Rule 15.—Investigative Hearing Procedures

Investigative hearings shall be conducted according to the procedures in House Rule XI, clause 2(k). All questions put to witnesses before the committee shall be relevant to the subject matter before the committee for consideration, and the chairman shall rule on the relevance of any questions put to the witnesses.

Rule 16.—Stenographic Record

A stenographic record of all testimony shall be kept of public hearings and shall be made available on such conditions as the chairman may prescribe.

Rule 17.—Audio and Visual Coverage of Committee Proceedings

(a) An open meeting or hearing of the committee or a subcommittee may be covered, in whole or in part, by television broadcast, radio broadcast, Internet broadcast, and still photography, unless closed subject to the provisions of House Rule XI, clause 2(g). Any such coverage shall conform with the provisions of House Rule XI, clause 4.

(b) Use of the Committee Broadcast System shall be fair and nonpartisan, and in accordance with House Rule XI, clause 4(b), and all other applicable rules of the House of Representatives and the Committee on Oversight and Government Reform. Members of the committee shall have prompt access to a copy of coverage by the Committee Broadcast System, to the extent that such coverage is maintained.

(c) Personnel providing coverage of an open meeting or hearing of the committee or a subcommittee by Internet broadcast, other than through the Committee Broadcast System, shall be currently accredited to the Radio and Television Correspondents' Galleries.

Rule 18.—Committee Web site

The chairman shall maintain an official committee Web site for the purpose of furthering the committee's legislative and oversight responsibilities, including communicating information about the committee's activities to committee members and other members of the House. The ranking minority member may maintain an official Web site for the purpose of carrying out official responsibilities including but not limited to communicating information about the activities of the minority to committee members and other members of the House.

Rule 19.—Additional Duties and Authorities of Chairman

The chairman of the full committee shall:

(a) Make available to other committees the findings and recommendations resulting from the investigations of the committee or its subcommittees as required by House Rule X, clause 4(c)(2);

(b) Direct such review and studies on the impact or probable impact of tax policies affecting subjects within the committee's jurisdiction as required by House Rule X, clause 2(c);

(c) Submit to the Committee on the Budget views and estimates required by House Rule X, clause 4(f), and to file reports with the House as required by the Congressional Budget Act;

(d) Authorize and issue subpoenas as provided in House Rule XI, clause 2(m), in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the committee;

(e) Prepare, after consultation with subcommittee chairs and the minority, a budget for the committee which shall include an adequate budget for the subcommittees to discharge their responsibilities;

(f) Make any necessary technical and conforming changes to legislation reported by the committee upon unanimous consent; and

(g) The chairman is directed to offer a motion under clause 1 of Rule XXII of the Rules of the House whenever the chairman considers it appropriate.

Rule 20.—Subjects of Stamps

The committee has adopted the policy that the determination of the subject matter of commemorative stamps and new semi-postal issues is properly for consideration by the Postmaster General and that the committee will not give consideration to legislative proposals specifying the subject matter of commemorative stamps and new semi-postal issues. It is suggested that recommendations for the subject matter of stamps be submitted to the Postmaster General.

Rule 21.—Panels and Task Forces

(a) The chairman of the committee is authorized to appoint panels or task forces to carry out the duties and functions of the committee.

(b) The chairman and ranking minority member of the committee may serve as ex-officio members of each panel or task force.

(c) The chairman of any panel or task force shall be appointed by the chairman of the committee. The ranking minority member shall select a ranking minority member for each panel or task force.

(d) The House and committee rules applicable to subcommittee meetings, hearings, recommendations and reports shall apply to the meetings, hearings, recommendations and reports of panels and task forces.

(e) No panel or task force so appointed shall continue in existence for more than six months. A panel or task force so appointed may, upon the expiration of six months, be reappointed by the chairman.

Rule 22.—Deposition Authority

The chairman, upon consultation with the ranking minority member, may order the taking of depositions, under oath and pursuant to notice or subpoena.

Notices for the taking of depositions shall specify the date, time, and place of examination. Depositions shall be taken under oath

administered by a member or a person otherwise authorized to administer oaths.

Consultation with the ranking minority member shall include three business days written notice before any deposition is taken. All members shall also receive three business days written notice that a deposition has been scheduled.

Witnesses may be accompanied at a deposition by counsel to advise them of their rights. No one may be present at depositions except members, committee staff designated by the chairman or ranking minority member, an official reporter, the witness, and the witness's counsel. Observers or counsel for other persons, or for agencies under investigation, may not attend.

A deposition shall be conducted by any member or staff attorney designated by the chairman or ranking minority member. When depositions are conducted by committee staff attorneys, there shall be no more than two committee staff attorneys permitted to question a witness per round. One of the committee staff attorneys shall be designated by the chairman and the other by the ranking minority member. Other committee staff members designated by the chairman or ranking minority member may attend, but may not pose questions to the witness.

Questions in the deposition shall be propounded in rounds, alternating between the majority and minority. A single round shall not exceed 60 minutes per side, unless the members or staff attorneys conducting the deposition agree to a different length of questioning. In each round, a member or committee staff attorney designated by the chairman shall ask questions first, and the member or committee staff attorney designated by the ranking minority member shall ask questions second.

The chairman may rule on any objections raised during a deposition. If a member of the committee appeals in writing the ruling of the chairman, the appeal shall be preserved for committee consideration. A witness that refuses to answer a question after being directed to answer by the chairman may be subject to sanction, except that no sanctions may be imposed if the ruling of the chairman is reversed on appeal.

Committee staff shall ensure that the testimony is either transcribed or electronically recorded or both. If a witness's testimony is transcribed, the witness or the witness's counsel shall be afforded an opportunity to review a copy. No later than five days thereafter, the witness may submit suggested changes to the chairman. Committee staff may make any typographical and technical changes requested by the witness. Substantive changes, modifications, clarifications, or amendments to the deposition transcript submitted by the witness must be accompanied by a letter signed by the witness requesting the changes and a statement of the witness's reasons for each proposed change. Any substantive changes, modifications, clarifications, or amendments shall be included as an appendix to the transcript conditioned upon the witness signing the transcript.

The individual administering the oath, if other than a member, shall certify on the transcript that the witness was duly sworn. The transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall be filed, together with any elec-

tronic recording, with the clerk of the committee in Washington, DC. Depositions shall be considered to have been taken in Washington, DC, as well as the location actually taken once filed there with the clerk of the committee for the committee's use. The chairman and the ranking minority member shall be provided with a copy of the transcripts of the deposition at the same time.

The chairman and ranking minority member shall consult regarding the release of depositions. If either objects in writing to a proposed release of a deposition or a portion thereof, the matter shall be promptly referred to the committee for resolution.

A witness shall not be required to testify unless the witness has been provided with a copy of the committee's rules.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 2 5 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

Dear Mr. Chairman:

This is in further response to your December 20, 2007 letter requesting information regarding California's request for a waiver under section 209 of the Clean Air Act. You requested certain records by January 10, 2008, and additional documents thereafter. I responded by letters on January 4, January 11, and January 18, indicating the steps the Agency is taking in order to accommodate this request, and providing an initial set of responsive documents. This letter further responds to your request.

At this time, we have identified additional documents that are responsive to your request. Copies of those documents are enclosed. These documents were collected from various EPA headquarters and regional offices, including the Office of the Administrator and the Office of General Counsel.

As we have previously indicated, we expect to provide responses in accordance with the following schedule:

- Finish responses concerning the Administrator's Office and Office of General Counsel, and additional interim response concerning the Office of Air and Radiation by Friday, February 1.
- Initial response concerning other offices; and additional interim response concerning Office of Air and Radiation by Friday, February 8.
- Complete the production of the remaining documents by Friday, February 15.

We hope that these efforts and accommodations demonstrate the seriousness with which the Agency takes your request. As I have said before, this is a top priority for the Agency. If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 1 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in further response to your December 20, 2007 letter requesting information regarding California's request for a waiver under section 209 of the Clean Air Act. You requested certain records by January 10, 2008, and additional documents thereafter. I responded by letters on January 4 and 11, 2008, indicating the steps the Agency has taken in order to accommodate this request. On January 18 we provided an initial set of documents from the Office of the Administrator. On January 25, we provided additional documents collected from various EPA headquarters and regional offices, including the Office of the Administrator and the Office of General Counsel, and set forth a schedule for production of the remaining documents. This letter further responds to your request.

At this time, we have identified additional documents that are responsive to your request. These documents have been collected from various EPA headquarters and regional offices. Copies of these documents are enclosed. Information that is not responsive to your request has been redacted and marked with the notation "NR".

Please note that EPA has identified an important Executive Branch confidentiality interest in a number of these documents because they reflect internal deliberations and/or attorney-client communications regarding California's waiver request. We recognize the importance of the Committee's need to inform itself in order to perform its oversight functions, but we remain concerned about any further disclosure of this information for a number of reasons. First, because the documents reveal deliberative process information internal to the Agency, EPA is concerned about the chilling effect that would occur if Agency employees believed their frank and honest opinions and analysis expressed as part of assessing California's waiver request were to be disclosed in a broad setting. Second, further disclosure could result in needless public confusion about the Administrator's decision that EPA will be denying California's request. That is, many of the documents are pre-decisional and thus do not reflect the Agency's full and complete thinking on the matter. Indeed, final decision documents have not yet been completed and made available to the public through publication in the Federal Register, so the public, if given access to the pre-decisional documents, would effectively be denied

access to the full, complete rationale by the Agency. Finally, the Agency is currently engaged in ongoing litigation regarding this matter, and future litigation is expected. The documents contain privileged and confidential attorney-client communications and attorney work product. Further disclosure of this type of confidential information could jeopardize the Agency's ability to effectively litigate claims related to California's waiver request.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. As such, we are providing you with copies for the majority of these documents. EPA has copied these documents on paper with a watermark that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized to Congress Only for Oversight Purposes." Through this accommodation, EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

Given the Agency's strong interest in transparency, Administrator Johnson has directed us to provide these documents despite privileges he may assert over them. Because of the ongoing litigation, however, the Agency must redact portions of some documents in order to adequately protect confidential, internal information. Despite this concern, the Administrator, in furtherance of his goal of transparency, has authorized us to provide this redacted material for inspection at your convenience. We can make these available for inspection at any time beginning on Monday, February 4.

We look forward to continued discussions with your staff as we move forward with this process. If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

Facsimile Transmission

Environmental Protection Agency
Office of Congressional and Intergovernmental Relations (1301A)
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

202/501-1519 (fax)

DATE: 2/4/08

FAX #: 225-2382

TO: House Committee on Oversight and Government Reform

FROM: U.S. EPA

Number of pages to follow: 1

comments:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 04 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL RELATIONS

Dear Mr. Chairman:

This is in response to your letter of February 1, 2008 in which you request that the U.S. Environmental Protection Agency (EPA) provide you with copies of five documents regarding California's request for a waiver under section 209 of the Clean Air Act. As an accommodation, we had previously provided to your committee staff for inspection on January 23, 2008.

EPA respects your role as Chairman and is committed to providing the Committee to the extent possible information necessary to satisfy its oversight interests consistent with our Constitutional and statutory obligations. As we explained in our January 18th letter, and again in discussions with your staff, the documents you are requesting are internal Executive Branch documents that raise very important confidentiality interests. Because of this, we need additional time to consider your request. Let me assure you that we expect to respond to you your request as expeditiously as possible.

In addition, I would like to clarify the deadlines EPA articulated in its January 18 letter. The letter stated we expected to complete our response for the Administrator's Office and the Office of General Counsel by February 1. As we have informed your staff in a teleconference call today, we have substantially completed the response for those offices. However, we needed additional time and will provide a supplemental response concerning those documents this week. We also clarified that we are consulting with other Executive Branch agencies about any documents that concern their interests, as part of our established procedures for processing documents in response to a Congressional oversight request. As our January 18 letter stated, we expect to complete our response by February 15.

If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 05 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in regard to your letter of January 14, 2008 in which you asked EPA to make seven specified Agency officials available for transcribed interviews. As we previously stated in letters dated January 18 and 25, we are willing to accommodate the Committee's request for transcribed interviews of EPA personnel to the extent possible. EPA respects your very strong interest in this issue and is committed to providing the Committee to the extent possible information necessary to satisfy its oversight interests consistent with our Constitutional and statutory obligations. Indeed, the Agency's actions to date in working with the Committee fully demonstrate the good faith and diligence by which the Agency is handling your request.

I am writing to you to address and hopefully resolve two issues pertaining to your requests for transcribed interviews. First, the Agency's proposed accommodations regarding the presence of counsel are set forth below. Second, EPA requests the Committee continue to accommodate the Agency's confidentiality interests. We offer these accommodations and raise these issues with the understanding and appreciation that the Legislative and Executive Branches are coequal branches of government, and the oversight process should balance and accommodate the interests of both branches to the fullest extent possible. We recognize the Committee's strong oversight interest in this issue, and offer reasonable accommodations below that enable the Committee to conduct its oversight responsibilities to the fullest extent possible while still addressing the confidentiality interests of the Executive Branch.

I. The Critical Presence of Counsel with the Witnesses Can Be Achieved in a Manner that Protects the Committee's Concerns.

As you know, the Agency has strong concerns about the exclusion of Agency counsel from the Committee's interview of Agency employees. Excluding counsel does not adequately protect the need of the Executive Branch to ensure the accuracy and completeness of representations, or to protect the confidentiality and integrity of the Agency's deliberations and legal advice. The absence of Agency counsel also could impose undue burdens and hardship on Agency staff, who have been requested to discuss actions performed in their official capacity, to hire personal counsel. To that end, we have offered the Committee a number of accommodations that we believe would allow the Committee to obtain the information it desires for its oversight purposes while protecting the Agency's institutional interests and avoiding any undue hardship on Agency employees. Although we have yet to reach mutual agreement on any such accommodations, we are hopeful that continued discussions will enable us to do so.

As a further accommodation, we agreed, with the consent of the witnesses, to move forward with transcribed interviews of the first two witnesses without counsel in the interview room. Karl Simon and Dina Kruger appeared last week for transcribed interviews. Agency counsel was seated outside of the interview room to be available for consultation with the witnesses. Despite this accommodation, we continue to believe that the presence of Agency counsel during interviews is consistent with the Committee's past practices for interviews of Executive Branch personnel, including those from EPA, the Department of Transportation and the Council on Environmental Quality. Although we provided this accommodation in order to avoid a compulsory process, we expect to continue good faith negotiations toward reaching a mutually agreeable arrangement.

Throughout this process, we have made good faith efforts to be responsive to the Committee's concerns. For example, in response to your concerns about the presence of EPA counsel, we asked the Department of Justice (DOJ) to provide assistance to the Agency employees being interviewed. When your staff again expressed concerns about the presence of attorneys, we indicated our willingness to create a "firewall" between DOJ attorneys attending the interviews and any potential Agency witnesses or other personnel involved in the underlying substantive issue.

Despite this proposed accommodation of DOJ counsel assisting with this process, we understand that you continue to have concerns about the integrity of the investigative process. We have worked hard to understand and address your concerns and, after further consideration, we believe that sufficient accommodations can be made to address your concerns. Your staff requested we provide a written description of any such accommodation. Although the following is subject to agreement by the Department of Justice, we believe we can offer the following accommodations for the interviews of those individuals requesting counsel:

- Advise witnesses to limit communications among themselves regarding the content of the interviews;
- Requesting DOJ attorneys who accompany the witnesses to not disclose contents of interviews to other witnesses and to take appropriate steps to ensure that such information is not communicated indirectly to other witnesses; and
- Providing for recusals of EPA employees involved in the underlying substantive matter (i.e. evaluation of California's request for a waiver under section 209 of the Clean Air Act) and DOJ attorneys involved in the related litigation from participation in the congressional interview process.

We believe these extraordinary accommodations will ensure that the Committee's investigative process is not compromised for a number of reasons:

- First, your staff articulated a concern about receiving untainted witness testimony. Because witnesses will not be privy to the information provided by other witnesses, the Committee will be receiving untainted testimony from each witness.
- Second, your staff also indicated a concern regarding the coordination of witness testimony. The limitation on communications between and amongst witnesses in conjunction with the limitation on communication of DOJ attorneys with other witnesses ensures that each witness will be providing testimony independent of other witnesses.
- Third, the internal EPA recusals will ensure that other personnel with knowledge of the underlying substantive matter will not have knowledge of any witness testimony, and thus would be unable to influence any future interviews.
- Fourth, we believe these limitations on disclosure adequately address your staff's concern about any potential chilling effect related to the presence of DOJ attorneys. Witnesses can be assured that any information they provide to the Committee will not be widely disseminated within the Agency. Additionally, DOJ counsel will only accompany those witnesses who request counsel.

Although we have agreed to make these further accommodations, the Agency continues to believe that the exclusion of counsel constitutes a significant deviation from the Committee's past practices with other Executive Branch personnel. It does not adequately protect the Agency's interest in ensuring the accuracy and completeness of representations made, and may subject Agency employees to an undue hardship if they retain outside counsel. As stated above, we believe that the Legislative and Executive Branches are coequal branches of government, and the oversight process should balance and accommodate the interests of both branches to the fullest extent possible. Therefore, we offer these accommodations based on the understanding that the Committee will not disclose the contents of interviews outside of the Committee.

II. EPA Retains Confidentiality Interests in These Issues as the Transcribed Interviews Proceed.

In addition to resolving the representation issues, we also respectfully request the Committee work to accommodate the Agency's confidentiality interests in certain information that may be disclosed in the interviews. As we explained in our January 18 letter, EPA has an important Executive Branch confidentiality interest in any information that reflects internal deliberations and/or attorney-client communications regarding California's waiver request. This concern applies whether the information is contained in documents or obtained through testimony. We recognize the importance of the Committee's need to inform itself in order to perform its oversight functions, but we remain concerned about any disclosure of this type of information beyond the Committee for two reasons.

First, to the extent Agency employees reveal deliberative process information internal to the Agency, EPA is concerned about the chilling effect that would occur if these and other Agency employees believed their frank and honest opinions and analysis expressed as part of assessing California's waiver request were to be disclosed to the public. Second, the Agency is currently defending ongoing litigation regarding this matter, and future litigation is expected. Any testimony given by witnesses which discloses privileged and confidential attorney-client communications and attorney work product could jeopardize the Agency's ability to effectively litigate claims related to California's waiver request, if further disclosed outside the Committee.

Although we are aware of the Committee's position that the Agency cannot exert a claim of privilege before Congress, the Agency has an interest in maintaining its ability to claim that any disclosures to Congress have not waived any privileges that would apply in litigation. As such, in transcribed interviews of Agency employees where Agency or DOJ counsel are not present, we would like to assert a standing objection to questions that elicit disclosure of confidential information. We recognize and appreciate the Committee's willingness thus far to respect the Agency's confidentiality interests. EPA respectfully requests that the Committee continue to protect any confidential information obtained from Agency employees during the interviews from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

Despite our concerns, we are hopeful that further discussions with the Committee will result in a mutually agreeable arrangement for the presence of DOJ counsel. To that end, we would appreciate bringing this issue to resolution with the Committee at the earliest opportunity to ensure counsel representation in upcoming interviews. As we discussed with your staff on several occasions recently, we are interested in pursuing the accommodation of DOJ counsel with an appropriate understanding of confidentiality satisfactory to both the Agency and the Committee. We share your goal of resolving this issue amicably and look forward to discussing this further.

We hope that our efforts to accommodate your request demonstrate the seriousness with which the Agency takes your oversight responsibility. As I have said before, this is a top priority for the Agency and we are committed to cooperating with your investigation to the fullest extent possible. If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 05 2008

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter supplements our February 1, 2008 response to your letter of December 20, 2007 requesting information regarding California's request for a waiver under section 209 of the Clean Air Act.

At this time, we have identified additional documents that are responsive to your request. These documents have been collected from various EPA headquarters and regional offices. Copies of these documents are enclosed. Information that is not responsive to your request has been redacted and marked with the notation "NR".

Please note that EPA has identified an important Executive Branch confidentiality interest in a number of these documents because they reflect internal deliberations and/or attorney-client communications regarding California's waiver request. We recognize the importance of the Committee's need to inform itself in order to perform its oversight functions, but we remain concerned about any further disclosure of this information for a number of reasons. First, because the documents reveal deliberative process information internal to the Agency, EPA is concerned about the chilling effect that would occur if Agency employees believed their frank and honest opinions and analysis expressed as part of assessing California's waiver request were to be disclosed in a broad setting. Second, further disclosure could result in needless public confusion about the Administrator's decision that EPA will be denying California's request. That is, many of the documents are pre-decisional and thus do not reflect the Agency's full and complete thinking on the matter. Indeed, final decision documents have not yet been completed and made available to the public through publication in the Federal Register, so the public, if given access to the pre-decisional documents, would effectively be denied access to the full, complete rationale by the Agency. Finally, the Agency is currently engaged in ongoing litigation regarding this matter, and future litigation is expected. The documents contain privileged and confidential attorney-client communications and attorney work product. Further disclosure of this type of confidential information could

jeopardize the Agency's ability to effectively litigate claims related to California's waiver request.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. As such, we are providing you with copies for the majority of these documents. EPA has copied these documents on paper with a watermark that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized to Congress Only for Oversight Purposes." Through this accommodation, EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

Given the Agency's strong interest in transparency, Administrator Johnson has directed us to provide these documents despite privileges he may assert over them. Because of the ongoing litigation, however, the Agency must redact portions of some documents in order to adequately protect confidential, internal information. Despite this concern, the Administrator, in furtherance of his goal of transparency, has authorized us to provide this redacted material for inspection. We can make these available for inspection at your convenience.

Finally, I want to reiterate that EPA is working diligently to respond to your request as quickly as possible and has devoted considerable resources to that end. As explained in my February 4, 2008 letter and in conversations with Committee staff, we have substantially completed the response on behalf of the Administrator's Office and the Office of General Counsel. However, we need additional time to continue processing a small number of additional documents from those offices and expect to provide a supplemental response concerning those documents by the end of this week.

We look forward to continued discussions with your staff as we move forward with this process. If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 0 6 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of February 1, 2008 in which you request that the U.S. Environmental Protection Agency (EPA) provide you with copies of five documents regarding California's request for a waiver under section 209 of the Clean Air Act that, as an accommodation, we had previously provided to your staff for inspection.

As you are aware, EPA, in the interest of transparency with the Committee, has provided the Committee with access to the full contents of these documents, despite the Agency's significant confidentiality interests in these sensitive internal documents that were prepared for the Administrator. EPA respects your very strong interest in this issue and is committed to providing the Committee information necessary to satisfy its oversight interests to the extent possible consistent with our Constitutional and statutory obligations. As stated in our January 18 letter transmitting these and other documents, EPA has identified important Executive Branch confidentiality interests in these and other documents because they reflect internal deliberations and/or attorney-client communications regarding California's waiver request. In an effort to accommodate the Committee's oversight interests, we provided many documents from the Office of the Administrator in hard copy. Despite our concerns, detailed below, the Agency further accommodated your oversight interests by providing your staff with the opportunity to inspect the five documents at issue on January 23rd, and we understand your staff took considerable notes regarding their contents. This was a significant accommodation that we had hoped would satisfy the Committee.

Thus, EPA made available the full contents of these documents to the Committee in order to promote transparency with the Committee. We recognize the importance of the Committee's need to inform itself in order to perform its oversight functions, but at the same time we remain concerned about further disclosure of these sensitive internal documents beyond the Committee's use. As you likely are aware, the Agency is currently engaged in ongoing litigation regarding this matter in three separate actions brought to date, and future litigation is expected. The documents contain confidential deliberative, attorney-client and attorney work product information for which the Agency would ordinarily assert a privilege in litigation. Further disclosure of documents

containing sensitive internal advice to the Administrator, including deliberative and attorney-client privileged materials, could be cited in litigation against the United States and potentially impede the government's ability to defend its actions. Further, beyond the concerns related to the litigation, because the documents reveal deliberative process information internal to the Agency, EPA is concerned about the chilling effect that would occur if Agency employees believed their frank and honest opinions and analysis expressed as part of assessing California's waiver request were to be disclosed in a broad setting.

While the Agency supports the Committee's oversight responsibility, the Agency must also balance the risk of these documents being cited inappropriately in litigation. The accommodation of making the documents available to the Committee in the reading room, and allowing the Committee to take notes, addresses both the Committee's interest in examining the Agency's decision while protecting the compelling confidentiality concerns of the Agency.

Despite the foregoing concerns, the Agency is willing to offer a further accommodation and provide the Committee access to the documents for use during transcribed interviews of Agency employees if the Committee requests. Beyond these accommodations offered by the Agency, the Committee at this time has not articulated why physical copies of these documents are necessary to fulfill its legislative and oversight interests, particularly in light of the significant accommodations we have already made and/or offered. In light of the lack of a demonstrated need from the Committee as well as the potential harm to the Agency from disclosure of privileged information, EPA concludes that it would be inappropriate to disclose copies of these documents at this time.

If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 0 8 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is a further response to your letter of December 20, 2007 requesting information regarding California's request for a waiver under section 209 of the Clean Air Act.

At this time, we have identified additional documents that are responsive to your request. These documents have been collected from various EPA headquarters and regional offices. Copies of these documents are enclosed. Information that is not responsive to your request has been redacted and marked with the notation "NR".

Please note that EPA has identified an important Executive Branch confidentiality interest in a number of these documents because they reflect internal deliberations and/or attorney-client communications regarding California's waiver request. We recognize the importance of the Committee's need to inform itself in order to perform its oversight functions, but we remain concerned about any further disclosure of this information for a number of reasons. First, because the documents reveal deliberative process information internal to the Agency, EPA is concerned about the chilling effect that would occur if Agency employees believed their frank and honest opinions and analysis expressed as part of assessing California's waiver request were to be disclosed in a broad setting. Second, further disclosure could result in needless public confusion about the Administrator's decision that EPA will be denying California's request. That is, many of the documents are pre-decisional and thus do not reflect the Agency's full and complete thinking on the matter. Indeed, final decision documents have not yet been completed and made available to the public through publication in the Federal Register, so the public, if given access to the pre-decisional documents, would effectively be denied access to the full, complete rationale by the Agency. Finally, the Agency is currently engaged in ongoing litigation regarding this matter, and future litigation is expected. The documents contain privileged and confidential attorney-client communications and attorney work product. Further disclosure of this type of confidential information could

jeopardize the Agency's ability to effectively litigate claims related to California's waiver request.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. As such, we are providing you with copies of the majority of these documents. EPA has copied these documents on paper with a watermark that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized to Congress Only for Oversight Purposes." Through this accommodation, EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

Given the Agency's strong interest in transparency, Administrator Johnson has directed us to provide these documents despite privileges he may assert over them. Because of the ongoing litigation, however, the Agency must redact portions of some documents in order to adequately protect confidential, internal information. Despite this concern, the Administrator, in furtherance of his goal of transparency, has authorized us to provide this redacted material for inspection. We can make these available for inspection at your convenience.

Finally, I want to reiterate that EPA is working diligently to respond to your request as quickly as possible and has devoted considerable resources to that end. If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency; Serve: Roger R. Martella, Jr., General Counsel, U.S. EPA

You are hereby commanded to be and appear before the Committee on Oversight and Government Reform of the House of Representatives of the United States at the place, date and time specified below.

☐ **to testify** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____ Time: _____

☑ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2157 Rayburn House Office Building

Date: February 12, 2008 Time: 12:00 noon

To U.S. Marshals Service or any staff member of the House Committee on Oversight and Government Reform to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 8th day of February, 2008.

Attest: Lorraine C. Miller
Clerk

Henry A. Waxman
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency; Serve: Roger R. Martella, Jr., General Counsel, U.S. EPA

Address 1200 Pennsylvania Avenue, NW, Room 4014, Ariel Rios North, Washington, DC 20004

before the Committee on Oversight and Government Reform

U.S. House of Representatives
110th Congress

Served by (print name) KRISTIN AMERLING

Title CHIEF COUNSEL, COMMITTEE ON OVERSIGHT + GOV'T REFORM

Manner of service facsimile (by prior agreement) (202-564-1428)

Date 2/8/08

Signature of Server Kristin Amerling

Address 2157 Rayburn HOB, US House of Representatives, Washington, DC 20515

SCHEDULE

1. Unredacted and complete copies of each version of the document entitled "Briefing for the Administrator: California's GHG Waiver Request: Follow-Up on Additional Questions" dated October 30, 2007, as further described below:

    a. Document attached to October 30, 2007, 06:53am, email from Joshua Eller to Aaron Dickerson et al.;
    b. Document attached to October 29, 2007, 03:30pm, email from Betsy White to JoBeth Banas et al.;
    c. Document attached to October 29, 2007, 05:55pm, email from Marta Montoro to Betsy White;
    d. Document attached to October 30, 2007, 08:39am, email from Betsy White to Joshua Eller et al.; and
    e. Document on which Administrator Johnson made handwritten notes.

Schedule Instructions

1. In complying with the subpoena, you shall produce all responsive documents in your possession, custody, or control.

2. Documents responsive to the subpoena shall not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.

3. In the event that any entity, organization, or individual denoted in the subpoena has been, or is currently, known by any other name than that herein denoted, the subpoena shall be read also to include them under that alternative identification.

4. Each document produced shall be produced in a form that renders the document capable of being copied.

5. When you produce documents, you shall identify the paragraph or clause in the Committee's subpoena to which the documents respond.

6. Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this subpoena was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they shall be organized into separate folders by subject matter prior to production.

7. Each folder and box shall be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the subpoena to which the documents are responsive, shall be provided in an accompanying index.

8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.

9. If any of the subpoenaed information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you shall consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format shall be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Documents produced in an electronic format shall also be produced in a searchable format.

10. In the event that a responsive document is withheld on any basis, you shall provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.

11. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, you shall identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

12. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you shall produce all documents which would be responsive as if the date or other descriptive detail were correct.

13. This subpoena is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date shall be produced immediately upon location or discovery subsequent thereto.

14. All documents shall be bates-stamped sequentially and produced sequentially.

15. Two sets of documents shall be delivered, one set to the majority staff and one set to the minority staff. The majority set shall be delivered to the majority staff in Room 2157 of the Rayburn House Office Building, and the minority set shall be delivered to the minority staff in Room B350A of the Rayburn House Office Building. You shall consult with Committee staff regarding the method of delivery prior to sending any materials.

16. Upon completion of the document production, you shall submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents

located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, whether classified or unclassified, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.

4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
FACSIMILE (202) 225-4784
MINORITY (202) 225-5074

www.oversight.house.gov

February 11, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Johnson:

On December 20, 2007, I wrote to request that you provide the Committee with documents relating to your decision to reject California's efforts to reduce greenhouse gas emissions.

On February 1, 2008, the Environmental Protection Agency (EPA) continued producing documents responsive to the Committee's request. However, over 450 of these documents were redacted. Your staff asserted an "Executive Branch confidentiality interest in a number of these documents because they reflect internal deliberations and/or attorney-client communications."[1]

Although this is not a valid basis for withholding information from the Committee, I agreed to have Committee staff review the documents to assess whether the redacted portions of the documents would be necessary for the Committee's investigation. This process has been constructive. Committee staff has reviewed unredacted versions of the redacted documents submitted to the Committee and has determined that much of the redacted information is unnecessary for the investigation. Of the over 450 documents that the staff reviewed, I currently am requesting that you provide 27 unredacted documents to the Committee. These 27 documents are identified in the enclosed list.

I ask you to provide complete, unredacted copies of these documents to the Committee by close of business on Tuesday, February 12, 2008.

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[1] Letter from Christopher P. Bliley, Associate Administrator, to Rep. Henry A. Waxman (Feb. 1, 2008).

If you have any questions concerning this request, please have your staff contact Greg Dotson or Jeff Baran of the Committee staff at (202) 225-4407.

Sincerely,

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

Appendix A

Documents to Be Provided to the Committee in Complete, Unredacted Form

- 6/4/07, 5:37 p.m. e-mail from John Hannon to Carol Holmes with attached briefing slides for 6/5/07 briefing.
- 6/5/07, 11:04 a.m. e-mail from Steven Silverman to Carol Holmes.
- 6/5/07 Office of General Counsel (OGC) briefing slides for the Administrator.
- 7/19/07, 11:08 p.m. e-mail from Carol Holmes to Kevin McLean.
- 8/22/06, 7:15 p.m. e-mail from Chet Thompson to Charles Ingebretson.
- 8/30/07, 5:03 p.m. e-mail from Maureen Delaney to Sarah Dunham, et al.
- 9/4/07 Office of Transportation and Air Quality briefing slides for Principal Deputy Assistant Administrator, Office of Air and Radiation, entitled: "GHG Waiver Update."
- 9/12/07, 2:36 p.m. e-mail from Carol Holmes to Greenhouse Gases (GHG) team.
- 9/12/07, 5:17 p.m. e-mail from Karl Simon to David Dickinson, et al.
- 9/12/07, 5:42 p.m. e-mail from John Hannon to Karl Simon.
- 9/13/07, 8:42 a.m. e-mail from Michael Horowitz to Karl Simon.
- 9/13/07, 9:19 a.m. e-mail from John Hannon to Michael Horowitz.
- 9/19/07, 9:34 a.m. e-mail from Michael Horowitz to Roger Martella, et al. with attached slides entitled: "California GHG Waiver: Options."
- 10/2/07, 2:50 p.m. e-mail from Bruce Schillo to Robin Kime with attachment.
- 10/2/07, 6:58 p.m. e-mail from John Hannon to Roland Dubois, et al.
- 10/9/07, 4:19 p.m. e-mail from Carol Weisner to Abigail Guadano, et al.
- 10/24/07, 1:21 p.m. e-mail from Ann Wolverson to Kelly Schulz.
- 10/29/07, 9:56 a.m. e-mail from Carol Holmes to Cheryl Graham.
- 10/29/07, 5:03 p.m. e-mail from Kelly Schulz to Jerry Clifford, et al.
- 11/26/07 e-mail from Cece Kremer to Charles Ingebretson regarding Jason Burnett and Roger Martella.

- 11/29/07 handwritten notes with the notation "w/SJ" at the top of the page.
- 11/29/07, 3:13 p.m. e-mail from Rick Albright to Judy Kirtcher.
- 12/10/07, 3:02 p.m. e-mail from Weisner to Wendy Chavez.
- 12/13/07 e-mail from Jack Bowles to Anthony Reed, cc: Christopher Bliley.
- 12/20/07, 8:16 a.m. e-mail from Michael Horowitz to John Hannon, et al.
- 12/20/07, 9:26 a.m. e-mail from Robert Judge to David Dickinson, et al.
- Undated slides entitled: "California GHG Waiver Arguments Against Granting."

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 12 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of February 11, 2008 in which you request that the U.S. Environmental Protection Agency (EPA) provide you with copies of 27 specified documents regarding California's request for a waiver under section 209 of the Clean Air Act. As an accommodation, we had previously provided to your Committee staff the opportunity to inspect and take notes on these documents.

EPA respects your role as Chairman and is committed to providing the Committee to the extent possible information necessary to satisfy its oversight interests consistent with our Constitutional and statutory obligations. As we explained in our February 1st letter, the documents you are requesting are internal Executive Branch documents that raise very important confidentiality interests. Portions of redacted documents you have requested may also contain information that EPA has identified as not responsive to your oversight request. Because of these concerns, we need additional time to respond to your request and would appreciate further clarification on the scope of your February 11th letter. Let me assure you we are interested in resolving these issues as expeditiously as possible so that we may be able to further respond no later than Friday.

If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

for Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 12 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to the subpoena issued by you on February 8, 2008, which directs the U.S. Environmental Protection Agency (EPA) to provide the Committee with copies of five documents related to California's request for a waiver under section 209 of the Clean Air Act.

EPA respects your very strong interest in this issue and is committed to providing the Committee information necessary to satisfy its oversight interests to the extent possible consistent with our Constitutional and statutory obligations. Throughout our correspondence on this matter, EPA has emphasized its strong interest in transparency with the Committee. As such, EPA has provided the Committee with access to the full contents of these documents, despite the Agency's significant confidentiality interests in these documents which were prepared for the Administrator. As stated in our January 18 letter transmitting these and other documents, EPA has identified important Executive Branch confidentiality interests in these and other documents because they reflect internal deliberations and/or attorney-client communications regarding California's waiver request.

As you are likely aware, the Agency is currently engaged in ongoing litigation regarding this matter in three separate actions brought to date, and future litigation is expected. The documents contain confidential deliberative, attorney-client and attorney work product information for which the Agency would ordinarily assert a privilege in litigation. Further disclosure of documents containing sensitive internal advice to the Administrator, including deliberative and attorney-client privileged materials, could be cited in litigation against the United States and potentially impede the government's ability to defend its actions. The accommodation of making the documents available to the Committee in the reading room, and allowing the Committee to take notes, addresses both the Committee's interest in examining the Agency's decision while protecting the compelling confidentiality concerns of the Agency.

Further, beyond the concerns related to the litigation, because the documents reveal deliberative process information internal to the Agency, EPA is concerned about

the chilling effect that would occur if Agency employees believed their frank and honest opinions and analysis expressed as part of assessing California's waiver request were to be disclosed in a broad setting. Disclosure at this time would also be inappropriate because the final decision documents have not yet been published in the Federal Register and publicly released.

EPA has made many efforts to accommodate the Committee's oversight interests, and we are disappointed that the Committee ultimately resorted to a compulsory process. EPA provided your staff with the opportunity to inspect the five documents at issue on January 23rd, and we understand your staff took considerable notes regarding their contents. We also offered to provide the Committee access to the documents for use during transcribed interviews of Agency employees. These were significant accommodations that we had hoped would satisfy the Committee.

The Committee has not articulated why physical copies of these documents are necessary to fulfill its legislative and oversight interests, particularly in light of the significant accommodations we have already made and/or offered and despite EPA's request that it do so. We are disappointed that the Committee was not satisfied by the Agency's efforts and felt that a compulsory process was necessary.

Please find enclosed copies of the five documents you requested. EPA has copied these documents on paper with a "Do Not Copy" watermark and a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized Only to Congress for Oversight Purposes in Response to Subpoena." Please note that EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

If you have any questions, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 15 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is a further response to your letter of December 20, 2007 requesting information regarding California's request for a waiver under section 209 of the Clean Air Act.

At this time, we have identified additional documents that are responsive to your request. These documents have been collected from various EPA headquarters and regional offices. Copies of these documents are enclosed. Information that is not responsive to your request has been redacted and marked with the notation "NR".

Please note that EPA has identified an important Executive Branch confidentiality interest in a number of these documents because they reflect internal deliberations and/or attorney-client communications regarding California's waiver request. We recognize the importance of the Committee's need to inform itself in order to perform its oversight functions, but we remain concerned about any further disclosure of this information for a number of reasons. First, because the documents reveal deliberative process information internal to the Agency, EPA is concerned about the chilling effect that would occur if Agency employees believed their frank and honest opinions and analysis expressed as part of assessing California's waiver request were to be disclosed in a broad setting. Second, further disclosure could result in needless public confusion about the Administrator's decision that EPA will be denying California's request. That is, many of the documents are pre-decisional and thus do not reflect the Agency's full and complete thinking on the matter. Indeed, final decision documents have not yet been completed and made available to the public through publication in the Federal Register, so the public, if given access to the pre-decisional documents, would effectively be denied access to the full, complete rationale by the Agency. Finally, the Agency is currently engaged in ongoing litigation regarding this matter, and future litigation is expected. The documents contain privileged and confidential attorney-client communications and attorney work product. Further disclosure of this type of confidential information could jeopardize the Agency's ability to effectively litigate claims related to California's waiver request.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. As such, we are providing you with copies of the majority of these documents. EPA has copied these documents on paper with a watermark that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized to Congress Only for Oversight Purposes." Through this accommodation, EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

Given the Agency's strong interest in transparency, Administrator Johnson has directed us to provide these documents despite privileges he may assert over them. Because of the ongoing litigation, however, the Agency must redact portions of some documents in order to adequately protect confidential, internal information. Despite this concern, the Administrator, in furtherance of his goal of transparency, has authorized us to provide this redacted material for inspection. We can make these available for inspection at your convenience.

Finally, I want to reiterate that EPA continues to work diligently to respond to your request as quickly as possible, and has devoted considerable resources to that end. In fact, with this letter, we have substantially completed our response. However, as explained in recent conversations with Committee staff, we need additional time to continue processing a relatively small number of additional documents, including those documents that we needed to share with other offices outside EPA. As we stated previously, in accordance with our established procedures for processing documents in response to Congressional oversight requests, we are consulting with other Executive Branch agencies about any documents that concern their interests. We hope to be able to provide a final response containing the remaining documents by the middle of next week.

If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 21 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is a further response to your letter of December 20, 2007 requesting information regarding California's request for a waiver under section 209 of the Clean Air Act.

At this time, we have identified additional documents that are responsive to your request. These documents have been collected from various EPA offices. Copies of these documents are enclosed. Information that is not responsive to your request has been redacted and marked with the notation "NR".

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Finally, I want to reiterate that EPA continues to work diligently to respond to your request as quickly as possible, and has devoted considerable resources to that end. This letter nearly completes our response; however, we still need some additional time to continue processing a small number of additional documents. As we stated previously, in accordance with our established procedures for processing documents in response to Congressional oversight requests, we are consulting with other Executive Branch agencies about any documents that concern their interests. This coordination with other Executive Branch agencies is ongoing, and we will respond further after the consultation is completed. However, concerning the remaining EPA documents, we hope to be able to provide a final response on those documents by the end of this week.

If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 22 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is a further response to your letter of December 20, 2007 requesting information regarding California's request for a waiver under section 209 of the Clean Air Act.

At this time, we have identified additional documents that are responsive to your request. These documents have been collected from various EPA offices. Copies of these documents are enclosed. Information that is not responsive to your request has been redacted and marked with the notation "NR". I am pleased to inform you that this letter substantially completes EPA's response concerning its documents; however, as we stated previously, we are continuing to consult with other Executive Branch agencies about any documents that concern their interests in accordance with our established procedures for processing documents in response to Congressional oversight requests. This coordination with other Executive Branch agencies is ongoing, and we will respond further after the consultation is completed.

Please note that EPA has identified an important Executive Branch confidentiality interest in a number of the documents included in this response because they reflect internal deliberations and/or attorney-client communications regarding California's waiver request. We recognize the importance of the Committee's need to inform itself in order to perform its oversight functions, but we remain concerned about any further disclosure of this information for a number of reasons. First, because the documents reveal deliberative process information internal to the Agency, EPA is concerned about the chilling effect that would occur if Agency employees believed their frank and honest opinions and analysis expressed as part of assessing California's waiver request were to be disclosed in a broad setting. Second, further disclosure could result in needless public confusion about the Administrator's decision that EPA will be denying California's request. That is, many of the documents are pre-decisional and thus do not reflect the Agency's full and complete thinking on the matter. Indeed, final decision documents have not yet been completed and made available to the public through publication in the Federal Register, so the public, if given access to the pre-decisional documents, would

effectively be denied access to the full, complete rationale by the Agency. Finally, the Agency is currently engaged in ongoing litigation regarding this matter, and future litigation is expected. The documents contain privileged and confidential attorney-client communications and attorney work product. Further disclosure of this type of confidential information could jeopardize the Agency's ability to effectively litigate claims related to California's waiver request.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. As such, we are providing you with copies of the majority of these documents. EPA has copied these documents on paper with a watermark that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized to Congress Only for Oversight Purposes." Through this accommodation, EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

Given the Agency's strong interest in transparency, Administrator Johnson has directed us to provide these documents despite privileges he may assert over them. Because of the ongoing litigation, however, the Agency must redact some documents in part or in full in order to adequately protect confidential, internal information. Despite this concern, the Administrator, in furtherance of his goal of transparency, has authorized us to provide this redacted material for inspection. We can make these available for inspection at your convenience.

If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

March 4, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

On December 20, 2007, I wrote to request that you provide the Committee with documents relating to your decision to reject California's efforts to reduce greenhouse gas emissions.

In response to this request, the Environmental Protection Agency (EPA) produced documents to the Committee throughout February 2008. However, many of these documents were redacted. Your staff asserted an "Executive Branch confidentiality interest in a number of these documents because they reflect internal deliberations and/or attorney-client communications."[1]

Although this is not a valid basis for withholding information from the Committee, I agreed to have Committee staff review the documents to assess whether the documents would be necessary for the Committee's investigation. This process has been constructive. Committee staff has reviewed unredacted versions of the redacted documents submitted to the Committee and has determined that much of the redacted information is unnecessary for the investigation. Of the documents that the staff reviewed, I am requesting that you provide to the Committee unredacted versions of the documents identified in Appendix B.

I also am reiterating my request for unredacted copies of the 24 documents listed in Appendix A. I requested these specific documents on February 1, 2008, but EPA has refused to provide them on the grounds that they either "contain confidential, internal information" or, in

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[1] Letter from Christopher P. Bliley, Associate Administrator, to Rep. Henry A. Waxman (Feb. 1, 2008).

EPA's view, are not responsive to the Committee's December 20, 2007, request.[2] Contrary to EPA's assertion, these documents are necessary for the Committee's investigation, and EPA has no legal basis for withholding these documents from the Committee.

I ask you to provide complete, unredacted copies of the documents listed in Appendices A and B to the Committee by close of business on Friday, March 7, 2008. Unless otherwise noted, EPA should provide unredacted copies of any attachments to these documents.

If you have any questions concerning this request, please have your staff contact Greg Dotson or Jeff Baran of the Committee staff at (202) 225-4407.

Sincerely,

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

[2] Letter from Christopher P. Bliley, Associate Administrator, to Rep. Henry A. Waxman (Feb. 15, 2008).

Appendix A

Documents to Be Provided to the Committee in Complete, Unredacted Form Pursuant to February 1, 2008, Request

- 6/4/07, 5:37 pm e-mail from John Hannon to Carol Holmes with attached briefing slides for 6/5/07 briefing
- 6/5/07, 11:04 am e-mail from Steven Silverman to Carol Holmes
- 6/5/07 OGC briefing slides for the Administrator
- 7/19/07, 11:08 pm e-mail from Carol Holmes to Kevin McLean
- 8/22/06, 7:15 pm e-mail from Chet Thompson to Charles Ingebretson
- 9/4/07 OTAC briefing slides for Bob Meyers entitled: "GHG Waiver Update"
- 9/12/07, 2:36 pm e-mail from Carol Holmes to GHG team
- 9/12/07, 5:17 pm e-mail from Karl Simon to David Dickinson, et al.
- 9/12/07, 5:42 pm e-mail from John Hannon to Karl Simon
- 9/13/07, 8:42 am e-mail from Michael Horowitz to Karl Simon
- 9/13/07, 9:19 am e-mail from John Hannon to Michael Horowitz
- 9/19/07, 9:34 am e-mail from Michael Horowitz to Roger Martella, et al. with attached slides entitled: "California GHG Waiver: Options"
- 10/2/07, 2:50 pm e-mail from Bruce Schillo to Robin Kime with attachment
- 10/2/07, 6:58 pm e-mail from John Hannon to Roland Dubois, et al.
- 10/9/07, 4:19 pm e-mail from Carol Weisner to Abigail Guadano, et al.
- 10/24/07, 1:21 pm e-mail from Ann Wolverson to Kelly Schulz
- 11/26/07 e-mail from Cece Kremer to Charles Ingebretson regarding Jason Burnett and Roger Martella
- 11/29/07 handwritten notes with the notation "w/SJ" at the top of the page
- 11/29/07, 3:13 pm e-mail from Rick Albright to Judy Kirtcher
- 12/10/07, 3:02 pm e-mail from Weisner to Wendy Chavez

- 12/13/07 e-mail from Jack Bowles to Anthony Reed, cc: Christopher Bliley
- 12/20/07, 8:16 am e-mail from Michael Horowitz to John Hannon, et al.
- 12/20/07, 9:26 am e-mail from Robert Judge to David Dickinson, et al
- Undated slides entitled: "California GHG Waiver Arguments Against Granting"

Appendix B
Documents to Be Provided to the Committee in Complete, Unredacted Form Pursuant to March 4, 2008, Request

Documents without EPA Bates Numbers

- final 1/11/06 briefing slides entitled "California's Light Vehicle GHG Emission Regulations"
- final 1/19/06 briefing slides entitled "Clean Air Act Preemption of California GHG Standards: California Request for a Waiver of Preemption"
- final 1/27/06 briefing slides entitled "California's Light Duty Vehicle GHG Regulations"
- 1/27/06, 8:10 p.m. e-mail from Bill Wehrum to Robert Meyers
- final 3/5/06 briefing slides entitled "Clean Air Act Preemption of California GHG Standards: California Request for a Waiver of Preemption" with and without handwritten notes on them
- all versions of the 4/10/06 briefing slides entitled "California's Waiver Request to EPA Re: Light Duty Vehicle GHG Regulations"
- 4/20/06, 12:41 p.m. e-mail from Richard Ossias to Thomas Swedle with attached briefing slides
- final 7/19/06 briefing slides entitled "California Motor Vehicle Greenhouse Gas Standards" with handwritten notes on them
- 7/24/06 document with heading "Issue: Implications of Supreme Court taking certiorari in Massachusetts v. EPA..."
- final 1/8/07 briefing slides entitled "Federal Preemption of California GHG Standards"
- 1/23/07, 12:31 p.m. e-mail from Michael Horowitz to Roger Martella
- 1/23/07, 2:49 p.m. e-mail from Roger Martella to David Dickinson, et al.
- 4/3/07, 12:58 p.m. e-mail from Richard Ossias to Carol Holmes with attachment
- 4/27/07, 9:57 a.m. e-mail from Roger Martella to Robert Meyers with attachment
- final 4/30/07 briefing slides entitled "EPA Evaluation of California's GHG Standards"
- all versions of the 4/30/07 briefing slides entitled "California's Request for a Waiver of Preemption of GHG Standards," including those with handwritten notes on them

- 6/4/07, 6:32 p.m. e-mail from Carol Holmes to John Hannon
- final 6/5/07 briefing slides entitled "OGC briefing for the Administrator"
- 6/12/07, 10:55 a.m. e-mail from David Dickinson to John Hannon
- 6/12/07, 11:02 a.m. e-mail from Michael Horowitz to David Dickinson
- 6/29/07, 11:37 a.m. e-mail from Roger Martella to Jessica Emond
- all versions of the 7/11/07 slides entitled "CA GHG Standards – Request for a Waiver of Preemption"
- 7/24/07, 8:40 a.m. e-mail from George Sugiyama to Michael Horowitz
- 7/24/07, 9:09 a.m. e-mail from Michael Horowitz to George Sugiyama
- final 8/3/07 briefing slides for Margo Oge entitled "CA Waiver: Compelling and Extraordinary Conditions (C and E)"
- 8/14/07 draft document that compares California and industry positions with and without handwritten notes on it
- final 8/30/07 briefing slides entitled "CA GHG Waiver Request: Three Additional Issues in Federal Register Notice"
- 9/20/07 briefing slides entitled "California GHG Waiver: Options Briefing for the Administrator" with Karl Simon's handwritten notes on them
- 10/16/07, 10:44 a.m. e-mail from Karl Simon to Michael Horowitz, et al. with attached 10/30/07 slides
- 10/29/07, 10:35 a.m. e-mail from Ann Wolverton to Karl Simon with attached briefing slides
- 11/29/07, 2:59 p.m. e-mail from David Dickinson to Karl Simon, et al. with attachment
- 12/19/07 John Hannon notes with heading "W/SJ"
- 12/20/07 John Hannon notes with heading "W/SJ"
- undated, two-page document entitled "Key Messages"
- undated document entitled "Effect of Granting the CA Waiver on PSD"

- undated briefing slides entitled "California GHG Waiver: Arguments Against Granting" with "CSH 9/12" written in the upper left-hand corner of the title page

- undated, six-page document that begins "Waiver of Preemption under Section 209(b)"

Documents with EPA Bates Number

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 05 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is a further response to your letter of December 20, 2007 requesting information regarding California's request for a waiver under section 209 of the Clean Air Act.

EPA respects your very strong interest in this issue and is committed to providing the Committee to the extent possible information necessary to satisfy its oversight interests consistent with our Constitutional and statutory obligations. Indeed, the Agency's actions to date in working with the Committee fully demonstrate the good faith and diligence with which the Agency is handling your request.

As you know, EPA substantially completed its response to your request on February 22, 2008. In so doing, we estimate that we have spent more than 2,000 hours in staff time and have provided or otherwise made available to the Committee more than 7,000 documents. Given the Administrator's direction to promote transparency to the Committee, the vast majority of these documents containing information pertaining to the California waiver have been provided in full to the Committee, including documents where the Agency has significant and well-established interests in preserving confidentiality. In other instances, the Agency has already engaged in extensive accommodations at the expense of the Executive Branch's compelling confidentiality interests.

As explained in my letters dated February 15, 2008 and February, 22, 2008, EPA has identified a number of documents that originated from or otherwise involve the interests of other parts of the Executive Branch. These remaining documents involve important Executive Branch confidentiality interests because they contain deliberative information communicated between EPA staff and attorneys and officials in other Executive Branch agencies. EPA has been consulting with the other Executive Branch agencies about these documents in accordance with our established procedures for processing documents in response to Congressional oversight requests. Consultations are continuing with the Department of Justice concerning the documents that involve its

interests, including a significant number of documents related to litigation involving California's waiver request. EPA has also been engaged in consultations concerning documents that involve the interests of White House offices and entities.

We recognize the importance of the Committee's need to inform itself in order to perform its oversight functions, but we remain concerned about disclosure of this information outside of the Executive Branch for a number of reasons. In addition to the chilling effect that would occur if EPA and other government officials believed their frank and honest opinions and analysis were disseminated in a broad setting or dissected in a Congressional proceeding, EPA is concerned that disclosure of this type of confidential Executive Branch information could jeopardize the Agency's ability to effectively litigate claims related to California's waiver request.

Despite the foregoing concerns, EPA is providing you copies of several documents that involve communications between EPA and White House offices and entities. EPA has copied these documents on paper with a legend that reads "Internal Deliberative Document of the Executive Branch; Disclosure Authorized to Congress Only for Oversight Purposes." Through this further accommodation, EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

Please be assured that your request is a top priority for the Agency and we are working hard to complete our response. We are continuing the consultations with the other Executive Branch agencies and will respond further as soon as possible. If you have further questions, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 7 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of March 4, 2008 in which you request that the U.S. Environmental Protection Agency (EPA) provide you with copies of 196 specified documents regarding California's request for a waiver under section 209 of the Clean Air Act. As an accommodation, we had previously provided to your Committee staff the opportunity to inspect and take notes on these documents.

EPA respects your role as Chairman and is committed to providing the Committee to the extent possible information necessary to satisfy its oversight interests consistent with our Constitutional and statutory obligations. As we explained in our previous correspondence and most recently in our February 22, 2008 letter, the documents you are requesting are internal Executive Branch documents that raise very important confidentiality interests. We are in the process of collecting and conducting a further review of the specific documents you have requested. Because of this, we need additional time to respond to your letter. Let me assure you that we expect to respond to your request as expeditiously as possible, and no later than March 14, 2008.

If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5051
FACSIMILE (202) 225–4784
MINORITY (202) 225–5074

www.oversight.house.gov

March 10, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

I am writing to request that EPA provide to the Oversight Committee documents that the agency has improperly withheld from the Committee.

On December 20, 2007, I wrote to request that you provide the Committee with documents relating to your decision to reject California's efforts to reduce greenhouse gas emissions.[1] I requested that the documents be produced on a rolling schedule, with all responsive documents produced by January 23.

On January 25, 2008, EPA informed the Committee that it would produce all responsive documents by February 15, 2008.[2] I agreed to this production schedule, and EPA produced documents to the Committee throughout February. However, many of these documents were redacted. Your staff asserted an "Executive Branch confidentiality interest in a number of these documents because they reflect internal deliberations and/or attorney-client communications."[3]

Although this is not a valid basis for withholding information from the Committee, Committee staff reviewed the redacted documents to assess whether the documents would be necessary for the Committee's investigation. This review has been productive, and as I have previously written you, I have determined that only a small subset of the redacted documents are

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[1] Letter from Chairman Henry A. Waxman to Stephen Johnson, Administrator, U.S. EPA (Dec. 20, 2007).

[2] Letter from Christopher P. Bliley, Associate Administrator, U.S. EPA, to Chairman Henry A. Waxman (Jan. 25, 2008).

[3] Letter from Christopher P. Bliley, Associate Administrator, U.S. EPA, to Chairman Henry A. Waxman (Feb. 1, 2008).

necessary for the investigation and need to be produced. Accordingly, I requested unredacted copies of selected documents on three occasions:

- On February 1, I requested five documents from EPA.[4] On February 6, EPA refused to provide the documents without citing any legal justification for its position.[5] On February 8, I issued a subpoena for the documents and EPA provided them on February 12.

- On February 11, I requested that 27 additional documents from EPA be provided by close of business on February 12.[6] On February 12, EPA stated that it would respond by February 15.[7] On February 15, EPA provided three of the 27 requested documents but refused to provide the remaining 24 documents.[8]

- On Monday, March 3, I requested 172 additional documents from EPA by Friday, March 7.[9] EPA wrote to me on Friday, March 7, and stated that EPA planned to respond by March 14.[10] EPA offered no assurance that the documents would be provided at that time or that they would be provided at all.

Additionally, EPA continues to withhold communications between EPA and the White House and the Department of Justice. EPA staff has indicated that there are "hundreds of documents" being withheld and the majority of these documents involve EPA and the White House.

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[4] Letter from Chairman Henry A. Waxman to Stephen Johnson, Administrator, U.S. EPA (Feb. 1, 2008).

[5] Letter from Christopher P. Bliley, Associate Administrator, U.S. EPA, to Chairman Henry A. Waxman (Feb. 6, 2008).

[6] Letter from Chairman Henry A. Waxman to Stephen Johnson, Administrator, U.S. EPA (Feb. 11, 2008).

[7] Letter from Christopher P. Bliley, Associate Administrator, U.S. EPA, to Chairman Henry A. Waxman (Feb. 12, 2008).

[8] Letter from Christopher P. Bliley, Associate Administrator, U.S. EPA, to Chairman Henry A. Waxman (Feb. 15, 2008).

[9] Letter from Chairman Henry A. Waxman to Stephen Johnson, Administrator, U.S. EPA (Mar. 3, 2008).

[10] Letter from Christopher P. Bliley, Associate Administrator, U.S. EPA, to Chairman Henry A. Waxman (Mar. 7, 2008).

I appreciate the efforts EPA has taken to collect responsive documents, but I am concerned about the failure of the agency to produce requested documents to the Committee. Therefore, I ask that your staff work with Committee staff to establish by the close of business on March 12, 2008, a mutually agreeable deadline for the production of the specifically requested documents, as well as the remaining documents involving the White House and Department of Justice. If no acceptable voluntary schedule is established, I anticipate taking steps to require production of the documents.

If you have any questions concerning this request, please have your staff contact Greg Dotson or Jeff Baran of the Committee staff at (202) 225-4407.

Sincerely,

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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www.oversight.house.gov

March 12, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

Since December, the Committee has been examining the Administration's decision to reject California's effort to regulate greenhouse gas emissions from motor vehicles. During this investigation, the Committee has received new information on a related issue: it appears that EPA's own efforts to regulate greenhouse gas emissions from motor vehicles have also been stymied.

Multiple senior EPA officials have told the Committee on the record that after the Supreme Court's landmark decision in *Massachusetts v. EPA*, you assembled a team of 60 to 70 EPA officials to determine whether carbon dioxide emissions endanger health and welfare and, if so, to develop regulations reducing CO_2 emissions from motor vehicles. According to these officials, you agreed with your staff's proposal that CO_2 emissions from motor vehicles should be reduced and in December forwarded an endangerment finding to the White House and a proposed motor vehicle regulation to the Department of Transportation. The proposed regulation would have produced significantly more CO_2 reductions than the revised fuel economy standards enacted last year.

The senior EPA officials who spoke with the Committee did not know what transpired inside the White House or the Department of Transportation or what directions the White House may have given you. They do know, however, that since you sent the endangerment finding to the White House, "the work on the vehicle efforts has stopped." They reported to the Committee that the career officials assigned to the issue have ceased their efforts and have been "awaiting direction" since December.

These accounts raise serious questions. It appears that EPA's efforts to regulate CO_2 emissions have been effectively halted, which would appear to be a violation of the Supreme

Court's directive and an abdication of your responsibility to protect health and the environment from dangerous emissions of CO_2.

I hope you will cooperate with the Committee's investigation of this matter.

Background

In August 2003, the Bush Administration denied a petition to regulate CO_2 emissions from motor vehicles by deciding that CO_2 was not a pollutant under the Clean Air Act.[1] In April 2007, the U.S. Supreme Court overruled that determination in *Massachusetts v. EPA*. The Court wrote:

> Because greenhouse gases fit well within the Clean Air Act's capacious definition of "air pollutant," we hold that EPA has the statutory authority to regulate the emission of such gases from new motor vehicles.[2]

Under the Clean Air Act, whether EPA is required to regulate CO_2 turns on whether CO_2 causes, or contributes to, air pollution that "may reasonably be anticipated to endanger public health or welfare."[3] The Court remanded this question to EPA, explaining:

> If EPA makes a finding of endangerment, the Clean Air Act requires the agency to regulate emissions of the deleterious pollutant from new motor vehicles. ... Under the clear terms of the Clean Air Act, EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do.[4]

In May 2007, the President signed an executive order directing EPA and other federal agencies to develop regulations to address greenhouse gas emissions from motor vehicles.[5] The

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[1] U.S. Environmental Protection Agency, EPA Denies Petition to Regulate Greenhouse Gas Emissions from Motor Vehicles (Aug. 28, 2003) (online at http://yosemite.epa.gov/opa/admpress.nsf/fb36d84bf0a1390c8525701c005e4918/694c8f3b7c16ff6085256d900065fdad!OpenDocument).

[2] U.S. Supreme Court, *Massachusetts et al v. Environmental Protection Agency et al.* (Apr. 2, 2007) (online at http://www.supremecourtus.gov/opinions/06pdf/05-1120.pdf).

[3] *Id.*

[4] *Id.*

[5] White House Office of the Press Secretary, *Executive Order: Cooperation Among Agencies in Protecting the Environment with Respect to Greenhouse Gas Emissions From Motor*

President explicitly stated that this order was in response to *Massachusetts v. EPA*. President Bush said:

> Last month, the Supreme Court ruled that the EPA must take action under the Clean Air Act regarding greenhouse gas emissions from motor vehicles. So today, I'm directing the EPA and the Departments of Transportation, Energy, and Agriculture to take the first steps toward regulations that would cut gasoline consumption and greenhouse gas emissions from motor vehicles.[6]

You testified before the House Oversight and Government Reform Committee on November 8, 2007. At that hearing, you said EPA would release proposed regulations by the end of the year, stating:

> While the Supreme Court's decision in *Massachusetts v. EPA* makes clear that carbon dioxide and other greenhouse gases are pollutants under the Clean Air Act, it also makes clear that the agency must take certain steps and make certain findings before a pollutant becomes subject to regulation under the law. Those steps include making a finding that a pollutant endangers public health or welfare, and developing the regulations themselves. The EPA plans to address the issue of endangerment when we propose regulations on greenhouse gas emissions for motor vehicles and fuels later this year.[7]

You went on to state: "I have committed to members of Congress and to the President that we will have that proposed regulation out for public notice and comment beginning by the end of this year and to work toward a final rule by the end of next year."[8]

The Recommendations of EPA's Career Staff

After the President's May 2007 executive order, EPA assembled a large team of experienced career officials to work on the endangerment finding and the regulation of CO_2. Karl Simon, the Director of the Compliance and Innovative Strategies Division in EPA's Office of Transportation and Air Quality, was asked by Committee staff how many EPA officials were assigned to these tasks. He answered: "Sum total for the endangerment finding, the vehicle

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Vehicles, Nonroad Vehicles, and Nonroad Engines (May 14, 2007) (online at http://www.whitehouse.gov/news/releases/2007/05/20070514-1.html).

[6] White House Office of the Press Secretary, *President Bush Discusses CAFE and Alternative Fuel Standards* (May 14, 2007).

[7] House Oversight and Government Reform Committee, Testimony of Stephen Johnson, Administrator, *EPA Approval of New Power Plants: Failure to Address Global Warming Pollutants*, 110th Cong. (Nov. 8, 2008).

[8] *Id.*

portion and the fuel portion is somewhere on the order of 60 or 70."[9] In the Office of Transportation and Air Quality alone, 53 officials worked full-time on the effort from May through December 2007, according to Margo Oge, the Director of the Office of Transportation and Air Quality.[10] These staff resources were supplemented by outside contractor resources with a $5.3 million budget in FY 2007.[11]

The process the staff followed was exhaustive. To assess whether CO_2 endangers health and welfare, the Office of Atmospheric Programs prepared multiple drafts of a technical support document that generated "about 500 comments" from "internal EPA review, external Federal expert review and ... other interagency comments."[12] The agencies that reviewed this document included the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration, the Department of Energy, and the White House Office of Science and Technology Policy.[13]

The career staff concluded that CO_2 emissions endanger both human health and welfare. According to Benjamin DeAngelo, EPA's Senior Analyst for Climate Change, the career staff reached this conclusion because "we thought that was most consistent with the underlying science."[14] On the issue of whether CO_2 emissions harm health, Brian McLean, the Director of the Office of Atmospheric Programs, told the Committee: "ultimately climate change can cause, through various direct and indirect effects — mostly indirect effects — consequences for public health."[15]

According to EPA staff, the proposal to regulate CO_2 emissions from motor vehicles was "about 300 pages" and had "extensive analysis about ... the costs and benefits."[16] This proposal was developed with close consultation with the National Highway Traffic Safety Administration. According to one EPA staff involved, it was a "collaborative effort" and "we worked quite

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[9] Transcript of Interview of Karl Simon, 155 (Jan. 30, 2008).

[10] Transcript of Interview of Karl Simon (Jan. 30, 2008); Transcript of Interview of Margo Oge (Feb. 7, 2008).

[11] Letter from Stephen Johnson, Administrator, U.S. EPA, to Chairman Henry A. Waxman, House Oversight and Government Reform Committee (Mar. 3, 2008).

[12] Transcript of Interview of Benjamin DeAngelo, 97 (Feb. 12, 2008).

[13] Transcript of Interview of Benjamin DeAngelo, 97 (Feb. 12, 2008).

[14] Transcript of Interview of Benjamin DeAngelo, 106 (Feb. 12, 2008).

[15] Transcript of Interview of Brian McLean, 50 (Feb. 5, 2008).

[16] Transcript of Interview of Margo Oge, 17 (Feb. 7, 2008).

extensively together on the tools we would use, the time frame under which we would operate, how we would construct the rulemaking."[17]

Ms. Oge, the Director of the Office of Transportation and Air Quality, told the Committee that there were also "2, 3 meetings a week" between "EPA political people, OMB, DOE, Ag, DOT on an ongoing basis."[18] Mr. McLean, the Director of the Office of Atmospheric Programs, confirmed this point, stating:

> I'm not aware of the content of any communication, but I'm aware that there were numerous meetings between people at EPA and people in other agencies. ... I believe OMB chaired a lot of those meetings.[19]

The proposal developed by the career EPA staff called for significant reductions in CO_2 emissions from motor vehicles. According to EPA officials, the agency's analysis showed that motor vehicles could achieve CO_2 emission reductions equal to a fleet fuel economy standard of 35 miles per gallon by 2018.[20] This nationwide standard is not as stringent as the California proposal, which called for achieving the equivalent of 35 miles per gallon by 2017 and achieving over 40 miles per gallon in 2020.[21] But it is significantly more stringent than the corporate average fuel economy (CAFE) standards in the recently passed Energy Independence and Security Act of 2007 (EISA), which do not require new motor vehicles to meet that 35 miles per gallon standard until 2020.[22]

Consideration by the EPA Administrator

Internal EPA documents indicate that you were scheduled to make decisions on the endangerment finding and the vehicle greenhouse gas rule as early as October 4, 2007. A

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[17] Transcript of Interview of Maureen Delaney (Feb. 11, 2008).

[18] Transcript of Interview of Margo Oge, 116 (Feb. 7, 2008).

[19] Transcript of Interview of Brian McLean, 15 (Feb. 5, 2008).

[20] Transcript of Interview of Karl Simon, 119-120 (Jan. 30, 2008).

[21] California Air Resources Board, Comparison of Greenhouse Gas Reductions Under CAFE Standards and ARB Regulations Adopted Pursuant to AB 1493, 7 (Jan. 2, 2008) (online at http://www.arb.ca.gov/cc/ccms/ab1493_v_cafe_study.pdf).

[22] Energy Independence and Security Act of 2007, Pub. L. No. 110-140, section 102.

"predecision GHG" meeting was scheduled with you on October 2, 2007.[23] A "decision GHG" meeting was scheduled with you on October 4, 2007.[24]

According to the EPA staff who spoke with the Committee, you were personally involved in the decisionmaking. One official said you asked for three briefings on the endangerment finding and read the technical support document "cover to cover."[25] Another official told the Committee that you may have participated in "five, maybe more" briefings.[26]

According to your staff, you supported their recommendations on two key points: (1) you agreed that CO_2 emissions endanger welfare and (2) you backed their proposal to reduce CO_2 emissions from motor vehicles. The main staff recommendation you rejected was the staff finding that CO_2 emissions also endangered human health. Five separate EPA officials told the Committee that you personally made the decision to exclude public health from the endangerment finding.[27]

After you endorsed the finding that CO_2 emissions endanger welfare, the proposed determination was submitted to the White House Office of Management and Budget. Dina Kruger, the Director of the Climate Change Division, told the Committee that the endangerment finding was transmitted to OMB "right around December 7 or 8."[28] Other EPA staff similarly recollected that the finding was sent to the White House "around December 6th"[29] or "around December 5th."[30] The transmittal of the endangerment finding to the White House was confirmed by the Director of the Office of Atmospheric Programs,[31] the Director of the Office of Policy Analysis and Review,[32] and the Director of the Office of Transportation and Air Quality.[33]

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[23] E-mail from Barbara Morris to Jim Ketcham Colwill et al. (Aug. 30, 2007) (bate stamped EPA 522).

[24] *Id.*

[25] Transcript of Interview of Benjamin DeAngelo, 94, 103 (Feb. 12, 2008).

[26] Transcript of Interview of Dina Washburn Kruger, 92 (Jan. 31, 2008).

[27] *See*, Transcript of Interview of Brian McLean, 68-69 (Feb. 5, 2008); Transcript of Interview of Robert David Brenner, 76 (Feb. 6, 2008); Transcript of Interview of Margo Oge, 120 (Feb. 7, 2008); Transcript of Interview of Maureen Delaney, 45-46 (Feb. 11, 2008); Transcript of Interview of Benjamin DeAngelo, 104 (Feb. 12, 2008).

[28] Transcript of Interview of Dina Washburn Kruger, 37 (Jan. 31, 2008).

[29] Transcript of Interview of Maureen Delaney, 88 (Feb. 11, 2008).

[30] Transcript of Interview of Benjamin DeAngelo, 108 (Feb. 12, 2008).

[31] Transcript of Interview of Brian McLean, 44-45 (Feb. 5, 2008).

[32] Transcript of Interview of Robert David Brenner, 74 (Feb. 6, 2008).

Around the same time, the proposal to reduce CO_2 emissions was transmitted to the Department of Transportation for review.[34] Ms. Oge, the Director of the Office of Transportation and Air Quality stated that the draft rule was sent to NHTSA "maybe the second week of December."[35]

Suspension of the EPA Regulatory Effort

The career EPA staff who the Committee interviewed did not know what communications you or other political appointees in the agency may have had with White House officials. But they did tell the Committee that after the White House received the endangerment finding and the Department of Transportation received the proposed motor vehicle regulation, work on the finding and regulation was stopped.

According to Mr. McLean, the Director of the Office of Atmospheric Programs, OMB has not engaged EPA in reviewing the endangerment finding.[36] This was confirmed by Ms. Kruger, the Director of the Climate Change Division, who stated that the agency has not worked on the endangerment finding "since coming back from the holidays."[37]

Ms. Oge, the Director of the Office of Transportation and Air Quality, provided a similar report regarding the proposal to reduce CO_2 emissions from motor vehicles. She told the Committee that the work on the vehicle CO_2 rule "stopped when we sent the document to the Department of Transportation."[38]

According to EPA staff, they have been informed that work has been discontinued so that EPA's activities can be reassessed in light of enactment of the Energy Independence and Security Act of 2007. One staffer stated that he believed there was a "desire to take a step back and to look at the rulemaking in light of the energy bill that had passed ... from the political level of EPA."[39] Another staffer stated that work discontinued on December 19, the day the Energy Independence and Security Act was signed, and that it was unclear "what would go forward following the new legislation."[40]

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[33] Transcript of Interview of Margo Oge, 105 (Feb. 7, 2008).

[34] Transcript of Interview of Karl Simon, 120 (Jan. 30, 2008).

[35] Transcript of Interview of Margo Oge, 105 (Feb. 7, 2008).

[36] Transcript of Interview of Brian McLean, 70 (Feb. 5, 2008).

[37] Transcript of Interview of Dina Washburn Kruger, 35 (Jan. 31, 2008).

[38] Transcript of Interview of Margo Oge, 105 (Feb. 7, 2008).

[39] Transcript of Interview of Benjamin DeAngelo, 89 (Feb. 12, 2008).

[40] Transcript of Interview of Maureen Delaney, 39-40 (Feb. 11, 2008).

There has, however, been no request to EPA staff to analyze whether passage of the law changes the analysis of the costs and benefits of the proposed EPA regulation. EPA staff informed the Committee that there was currently no "leadership direction"[41] and that staff "are awaiting direction."[42] According to Robert Brenner, the Director of the Office of Policy Analysis and Review:

> I have been in meetings where questions have been asked about what the likely schedule would be for the rules. But I have not heard any decisions on what a likely schedule would be, and I have not heard any specifics of work being done at this point on the rulemakings.[43]

As a legal matter, the passage of provisions in the Energy Independence and Security Act requiring the Department of Transportation to strengthen federal CAFE standards does not affect EPA's legal obligation to regulate CO_2 emissions. The Act included language to ensure that a change in CAFE requirements did not affect the Clean Air Act's provisions.[44] Moreover, the Supreme Court held in *Massachusetts v. EPA*:

> The fact that DOT's mandate to promote energy efficiency by setting mileage standards may overlap with EPA's environmental responsibilities in no way licenses EPA to shirk its duty to protect the public "health" and "welfare."[45]

Indeed, you have personally acknowledged that enactment of the Energy Independence and Security Act does not change the mandatory nature of EPA's responsibility. In January, you

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[41] Transcript of Interview of Maureen Delaney, 40 (Feb. 11, 2008).

[42] Transcript of Interview of Karl Simon, 121 (Jan. 30, 2008).

[43] Transcript of Interview of Robert David Brenner, 82 (Feb. 6, 2008).

[44] The Energy Independence and Security Act of 2007 states:

> SEC. 3. RELATIONSHIP TO OTHER LAW.
>
> Except to the extent expressly provided in this Act or an amendment made by this Act, nothing in this Act or an amendment made by this Act supersedes, limits the authority provided or responsibility conferred by, or authorizes any violation of any provision of law (including a regulation), including any energy or environmental law or regulation.

Pub. L. No. 110-140 (2007), Sec. 3.

[45] U.S. Supreme Court, *Massachusetts et al v. Environmental Protection Agency et al.* (Apr. 2, 2007) (online at http://www.supremecourtus.gov/opinions/06pdf/05-1120.pdf).

testified before the Senate that the Act does not "relieve me or the agency of its responsibilities under the Clean Air Act and under *Massachusetts v. EPA*."[46]

Conclusion

With your support, EPA made progress last year in responding to the Supreme Court decision in *Massachusetts v. EPA*. According to the statements of multiple career EPA officials, you approved a finding that CO_2 emissions endanger welfare and supported a proposal that would significantly curtail CO_2 emissions from motor vehicles. This proposal would apparently require CO_2 emission reductions equivalent to achieving a 35 miles per gallon CAFE standard by 2018.

It appears, however, that this effort was halted after the White House and the Department of Transportation received copies of your proposals. The Committee is seeking additional information regarding the circumstances that caused this delay.

To assist the Committee's investigation into this matter, I request that you provide the Committee with copies of the documents relating to the endangerment finding and the greenhouse gas vehicle rule, including copies of any communications with the White House and other federal agencies about these proposals.

As an initial step, I ask that you provide the following documents to the Committee by March 14, 2008:

- The technical support document prepared by the Office of Atmospheric Programs;
- The proposed endangerment finding that was transmitted to the White House Office of Management and Budget in December 2007; and
- The proposed vehicle greenhouse gas rule that was transmitted to NHTSA in December 2007.

The other responsive documents should be provided to the Committee by March 28, 2008.

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[46] Senate Committee on Environment and Public Works, *Oversight of EPA's Decision to Deny the California Waiver,* 110th Cong. (Jan. 24, 2008).

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. An attachment to this letter provides additional information about how to respond to the Committee's request.

If you have any questions concerning this request, please have your staff contact Greg Dotson or Jeff Baran of the Committee staff at (202) 225-4407.

Sincerely,

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

RCVD 3.12.08

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

Peterson

Environment

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of March 10, 2008 in which you request that the U.S. Environmental Protection Agency (EPA or Agency) work with your staff to reach a mutually agreeable deadline for the production of certain documents related to your ongoing investigation of EPA's decision on California's request for a waiver under section 209 of the Clean Air Act. Your letter requested 196 documents identified in your letters of February 11 and March 3, as well as documents involving the White House and Department of Justice (DOJ).

EPA respects your very strong interest in this issue and is committed to providing the Committee information necessary to satisfy its oversight interests to the extent possible and consistent with our Constitutional and statutory obligations. Your request has been and remains a top priority for the Agency, and we are working hard to bring our efforts to a close. To date, EPA has spent more than 2,000 hours of staff time responding to these requests and has provided or otherwise made available to the Committee more than 7,000 documents in response to this request.

By letter dated February 11, 2008, you requested unredacted copies of 27 specific documents. EPA responded on February 15, 2008, providing copies of three of the documents. However, EPA also explained that, due to our significant Executive Branch confidentiality interests, we would be unable at such time to provide copies of the 24 remaining documents. As explained in our letter, EPA had already provided as an accommodation all California waiver related information from these documents to the Committee, either in hard copy or for review by Committee staff. On March 4, 2008, you reiterated your request for unredacted copies of the 24 specified documents and requested copies of an additional 172 documents.

As explained in our previous correspondence and above, your request raises significant Executive Branch confidentiality interests because the documents at issue reflect internal deliberations and/or attorney-client communications or attorney work product about a matter that is currently the subject of ongoing and threatened litigation.

EPA remains concerned about any further disclosure of this information for a number of reasons. First, because the documents reveal deliberative process information internal to the Agency, EPA is concerned about the chilling effect that would occur if Agency employees believed their frank and honest opinions and analysis expressed as part of assessing California's waiver request were to be disclosed in a broad setting. Second, further disclosure could result in needless public confusion about the Administrator's decision to deny California's request. That is, many of the documents are pre-decisional and do not reflect the Agency's full and complete thinking on the matter. Only the final decision document, which was issued on February 29, 2008, is an accurate representation of the Agency's full, complete rationale on the decision.

For a number of these documents, EPA has already provided the Committee with copies disclosing all of the information related to the California waiver request; the only information not already provided to the Committee from these documents is deliberative information about other pending or ongoing issues unrelated to the waiver request. Many of the documents contain deliberative information or reflect attorney-client communications related to ongoing Agency matters on a variety of issues. EPA has an important Executive Branch confidentiality interest in this unrelated information and is concerned about further disclosure of the information, particularly since the Committee has failed to explain how its oversight interest in the California waiver decision would be furthered by obtaining hard copies of this unrelated information.

For example, one of the documents requested in your February 11 letter is an October 2, 2007 email between staff in the Administrator's Office. This email transmits a 26-page attachment entitled "Two Year Outlook." The email was already released to the Committee in unredacted form. The attachment is a spreadsheet that is an internal, EPA management tool used to track various regulatory activities by all EPA Headquarters Offices. The only reference to the California CO2 waiver petition in this document is found on page 6, and this entry was already provided in unredacted form to the Committee. The remaining entries, however, contain sensitive, deliberative information about the status of other ongoing or pending EPA activities unrelated to California's waiver petition. Similarly, one of the documents requested in your March 4 letter, document 534, is a September 11, 2007 email transmitting a draft agenda for a quarterly meeting between managers in the Office General Counsel and the Deputy Administrator about. One of the discussion topics was the California waiver, and that entry was already provided to the Committee in full. However, the remaining entries are unrelated to the California waiver and contain sensitive, deliberative and attorney-client information about the status of other ongoing or pending EPA activities being handled by the Office of General Counsel. It is unclear from your correspondence and discussions with your staff why the Committee continues to seek copies of these documents, in particular the non-responsive information, considering the extensive accommodations EPA has already made to provide the Committee with information about the California waiver decision.

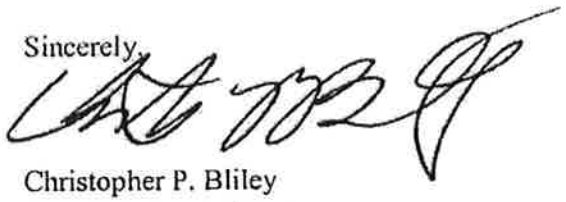
As discussed with your staff, EPA is currently reviewing your March 3 letter to determine how it can further accommodate the Committee's oversight interests. We informed your staff that we are continuing to review these documents again in light of

your request and our significant confidentiality concerns. We anticipate finishing our review by March 14, 2008, at which time we will be a better position to discuss any further accommodations concerning these documents.

Your March 10 letter also requested a timetable for documents involving DOJ and the White House. As you know, we provided an interim response, including the disclosure of several White House documents, by letter dated March 5, 2008. As we discussed with your staff yesterday, our consultations are ongoing concerning the approximately 400 documents involving DOJ interests and the approximately 160 remaining documents involving White House interests, although we expect them to conclude soon. We anticipate providing final responses regarding documents involving the White House and DOJ as soon as possible but no later than March 28, 2009.

We hope that our efforts to accommodate your interest in the California waiver issue demonstrate the seriousness with which the Agency takes your oversight responsibility. As I have said before, this is a top priority for the Agency, and we are working to fully respond to your latest letter as quickly as possible. If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,



Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency; Serve: Roger R. Martella, Jr., General Counsel, U.S. Environmental Protection Agency

You are hereby commanded to be and appear before the Committee on Oversight and Government Reform of the House of Representatives of the United States at the place, date and time specified below.

☐ **to testify** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____ Time: _____

☑ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2157 Rayburn House Office Building

Date: March 20, 2008 Time: 12:00 noon

To U.S. Marshals Service or any staff member of the House Committee on Oversight and Government Reform to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 13th day of March, 2008.

Attest: Lorraine C. Miller
Clerk

Henry A. Waxman
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency; Serve: Roger R. Martella, Jr., General Counsel, U.S. Environmental Protection Agency

Address 1200 Pennsylvania Avenue, NW, Room 4014, Ariel Rios North, Washington DC 20004

before the Committee on Oversight and Government Reform

U.S. House of Representatives
110th Congress

Served by (print name) KRISTIN AMERLING

Title CHIEF COUNSEL

Manner of service fax (by previous agreement) (202-564-1428)

Date 3/13/08

Signature of Server

Address 2157 Rayburn House Office Bldg, Washington, DC, 20515

SCHEDULE

1. Unredacted and complete copies (including any attachments) of the following documents, which were specifically listed and requested in Chairman Waxman's February 11, 2008, and March 4, 2008, letters to U.S. Environmental Protection Agency ("EPA") Administrator Stephen Johnson (copies of letters attached):

a. 8/22/06, 7:15 pm e-mail from Chet Thompson to Charles Ingebretson

b. 6/4/07, 5:37 pm e-mail from John Hannon to Carol Holmes with attached briefing slides for 6/5/07 briefing

c 6/5/07, 11:04 am e-mail from Steven Silverman to Carol Holmes

d. 6/5/07 OGC briefing slides for the Administrator

e. 7/19/07, 11:08 pm e-mail from Carol Holmes to Kevin McLean

f. 9/4/07 OTAC briefing slides for Bob Meyers entitled: "GHG Waiver Update"

g. 9/12/07, 2:36 pm e-mail from Carol Holmes to GHG team

h. 9/12/07, 5:17 pm e-mail from Karl Simon to David Dickinson, et al.

i. 9/12/07, 5:42 pm e-mail from John Hannon to Karl Simon

j. 9/13/07, 8:42 am e-mail from Michael Horowitz to Karl Simon

k. 9/13/07, 9:19 am e-mail from John Hannon to Michael Horowitz

l. 9/19/07, 9:34 am e-mail from Michael Horowitz to Roger Martella, et al. with attached slides entitled: "California GHG Waiver: Options"

m. 10/2/07, 2:50 pm e-mail from Bruce Schillo to Robin Kime with attachment

n. 10/2/07, 6:58 pm e-mail from John Hannon to Roland Dubois, et al.

o. 10/9/07, 4:19 pm e-mail from Carol Weisner to Abigail Guadano, et al.

p. 10/24/07, 1:21 pm e-mail from Ann Wolverson to Kelly Schulz

q. 11/26/07 e-mail from Cece Kremer to Charles Ingebretson regarding Jason Burnett and Roger Martella

r. 11/29/07 handwritten notes with the notation "w/SJ" at the top of the page

s. 11/29/07, 3:13 pm e-mail from Rick Albright to Judy Kirtcher

t. 12/10/07, 3:02 pm e-mail from Weisner to Wendy Chavez

u. 12/13/07 e-mail from Jack Bowles to Anthony Reed, cc: Christopher Bliley

v. 12/20/07, 8:16 am e-mail from Michael Horowitz to John Hannon, et al.

w. 12/20/07, 9:26 am e-mail from Robert Judge to David Dickinson, et al

x. Undated slides entitled: "California GHG Waiver Arguments Against Granting"

y. final 1/11/06 briefing slides entitled "California's Light Vehicle GHG Emission Regulations"

z. final 1/19/06 briefing slides entitled "Clean Air Act Preemption of California GHG Standards: California Request for a Waiver of Preemption"

aa. final 1/27/06 briefing slides entitled "California's Light Duty Vehicle GHG Regulations"

bb. 1/27/06, 8:10 p.m. e-mail from Bill Wehrum to Robert Meyers

cc. final 3/5/06 briefing slides entitled "Clean Air Act Preemption of California GHG Standards: California Request for a Waiver of Preemption" with and without handwritten notes on them

dd. all versions of the 4/10/06 briefing slides entitled "California's Waiver Request to EPA Re: Light Duty Vehicle GHG Regulations"

ee. 4/20/06, 12:41 p.m. e-mail from Richard Ossias to Thomas Swedle with attached briefing slides

ff. final 7/19/06 briefing slides entitled "California Motor Vehicle Greenhouse Gas Standards" with handwritten notes on them

gg. 7/24/06 document with heading "Issue: Implications of Supreme Court taking certiorari in Massachusetts v. EPA..."

hh. final 1/8/07 briefing slides entitled "Federal Preemption of California GHG Standards"

ii. 1/23/07, 12:31 p.m. e-mail from Michael Horowitz to Roger Martella

jj. 1/23/07, 2:49 p.m. e-mail from Roger Martella to David Dickinson, et al.

kk. 4/3/07, 12:58 p.m. e-mail from Richard Ossias to Carol Holmes with attachment

ll. 4/27/07, 9:57 a.m. e-mail from Roger Martella to Robert Meyers with attachment

mm. final 4/30/07 briefing slides entitled "EPA Evaluation of California's GHG Standards"

nn. all versions of the 4/30/07 briefing slides entitled "California's Request for a Waiver of Preemption of GHG Standards," including those with handwritten notes on them

oo. 6/4/07, 6:32 p.m. e-mail from Carol Holmes to John Hannon

pp. final 6/5/07 briefing slides entitled "OGC briefing for the Administrator"

qq. 6/12/07, 10:55 a.m. e-mail from David Dickinson to John Hannon

rr. 6/12/07, 11:02 a.m. e-mail from Michael Horowitz to David Dickinson

ss. 6/29/07, 11:37 a.m. e-mail from Roger Martella to Jessica Emond

tt. all versions of the 7/11/07 slides entitled "CA GHG Standards – Request for a Waiver of Preemption"

uu. 7/24/07, 8:40 a.m. e-mail from George Sugiyama to Michael Horowitz

vv. 7/24/07, 9:09 a.m. e-mail from Michael Horowitz to George Sugiyama

ww. final 8/3/07 briefing slides for Margo Oge entitled "CA Waiver: Compelling and Extraordinary Conditions (C and E)"

xx. 8/14/07 draft document that compares California and industry positions with and without handwritten notes on it

yy. final 8/30/07 briefing slides entitled "CA GHG Waiver Request: Three Additional Issues in Federal Register Notice"

zz. 9/20/07 briefing slides entitled "California GHG Waiver: Options Briefing for the Administrator" with Karl Simon's handwritten notes on them

aaa. 10/16/07, 10:44 a.m. e-mail from Karl Simon to Michael Horowitz, et al. with attached 10/30/07 slides

bbb. 10/29/07, 10:35 a.m. e-mail from Ann Wolverton to Karl Simon with attached briefing slides

ccc. 11/29/07, 2:59 p.m. e-mail from David Dickinson to Karl Simon, et al. with attachment

ddd. 12/19/07 John Hannon notes with heading "W/SJ"

eee. 12/20/07 John Hannon notes with heading "W/SJ"

fff. undated, two-page document entitled "Key Messages"

ggg. undated document entitled "Effect of Granting the CA Waiver on PSD"

iii. undated briefing slides entitled "California GHG Waiver: Arguments Against Granting" with "CSH 9/12" written in the upper left-hand corner of the title page

jjj. undated, six-page document that begins "Waiver of Preemption under Section 209(b)"

kkk. Documents produced in redacted form by the EPA on February 8, 2008, February 15, 2008, February 21, 2008, and February 22, 2008, with the following EPA Bates Numbers:

23	526
27	527
368	529
370	530
371	534
386	538
388	541
391	542
397	609
407	612
411	613
413	614
415	615
460	616
462	617
471	618
474	619
475	624
476	631
516	634
518	791
519	946
522	949
525	955

972 without attachment
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2959 (11/07 and 10/07 e-mails)
2964 (9/20/07 e-mail)
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Schedule Instructions

1. In complying with the subpoena, you shall produce all responsive documents in your possession, custody, or control.

2. Documents responsive to the subpoena shall not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.

3. In the event that any entity, organization, or individual denoted in the subpoena has been, or is currently, known by any other name than that herein denoted, the subpoena shall be read also to include them under that alternative identification.

4. Each document produced shall be produced in a form that renders the document capable of being copied.

5. When you produce documents, you shall identify the paragraph or clause in the Committee's subpoena to which the documents respond.

6. Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this subpoena was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they shall be organized into separate folders by subject matter prior to production.

7. Each folder and box shall be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the subpoena to which the documents are responsive, shall be provided in an accompanying index.

8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.

9. If any of the subpoenaed information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you shall consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format shall be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Documents produced in an electronic format shall also be produced in a searchable format.

10. In the event that a responsive document is withheld on any basis, you shall provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.

11. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, you shall identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

12. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you shall produce all documents which would be responsive as if the date or other descriptive detail were correct.

13. This subpoena is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date shall be produced immediately upon location or discovery subsequent thereto.

14. All documents shall be bates-stamped sequentially and produced sequentially.

15. Two sets of documents shall be delivered, one set to the majority staff and one set to the minority staff. The majority set shall be delivered to the majority staff in Room 2157 of the Rayburn House Office Building, and the minority set shall be delivered to the minority staff in Room B350A of the Rayburn House Office Building. You shall consult with Committee staff regarding the method of delivery prior to sending any materials.

16. Upon completion of the document production, you shall submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, whether classified or unclassified, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations,

questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.

4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5051
FACSIMILE (202) 225–4784
MINORITY (202) 225–5074

www.oversight.house.gov

February 11, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Johnson:

On December 20, 2007, I wrote to request that you provide the Committee with documents relating to your decision to reject California's efforts to reduce greenhouse gas emissions.

On February 1, 2008, the Environmental Protection Agency (EPA) continued producing documents responsive to the Committee's request. However, over 450 of these documents were redacted. Your staff asserted an "Executive Branch confidentiality interest in a number of these documents because they reflect internal deliberations and/or attorney-client communications."[1]

Although this is not a valid basis for withholding information from the Committee, I agreed to have Committee staff review the documents to assess whether the redacted portions of the documents would be necessary for the Committee's investigation. This process has been constructive. Committee staff has reviewed unredacted versions of the redacted documents submitted to the Committee and has determined that much of the redacted information is unnecessary for the investigation. Of the over 450 documents that the staff reviewed, I currently am requesting that you provide 27 unredacted documents to the Committee. These 27 documents are identified in the enclosed list.

I ask you to provide complete, unredacted copies of these documents to the Committee by close of business on Tuesday, February 12, 2008.

---

[1] Letter from Christopher P. Bliley, Associate Administrator, to Rep. Henry A. Waxman (Feb. 1, 2008).

If you have any questions concerning this request, please have your staff contact Greg Dotson or Jeff Baran of the Committee staff at (202) 225-4407.

Sincerely,

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

Appendix A

Documents to Be Provided to the Committee in Complete, Unredacted Form

- 6/4/07, 5:37 p.m. e-mail from John Hannon to Carol Holmes with attached briefing slides for 6/5/07 briefing.
- 6/5/07, 11:04 a.m. e-mail from Steven Silverman to Carol Holmes.
- 6/5/07 Office of General Counsel (OGC) briefing slides for the Administrator.
- 7/19/07, 11:08 p.m. e-mail from Carol Holmes to Kevin McLean.
- 8/22/06, 7:15 p.m. e-mail from Chet Thompson to Charles Ingebretson.
- 8/30/07, 5:03 p.m. e-mail from Maureen Delaney to Sarah Dunham, et al.
- 9/4/07 Office of Transportation and Air Quality briefing slides for Principal Deputy Assistant Administrator, Office of Air and Radiation, entitled: "GHG Waiver Update."
- 9/12/07, 2:36 p.m. e-mail from Carol Holmes to Greenhouse Gases (GHG) team.
- 9/12/07, 5:17 p.m. e-mail from Karl Simon to David Dickinson, et al.
- 9/12/07, 5:42 p.m. e-mail from John Hannon to Karl Simon.
- 9/13/07, 8:42 a.m. e-mail from Michael Horowitz to Karl Simon.
- 9/13/07, 9:19 a.m. e-mail from John Hannon to Michael Horowitz.
- 9/19/07, 9:34 a.m. e-mail from Michael Horowitz to Roger Martella, et al. with attached slides entitled: "California GHG Waiver: Options."
- 10/2/07, 2:50 p.m. e-mail from Bruce Schillo to Robin Kime with attachment.
- 10/2/07, 6:58 p.m. e-mail from John Hannon to Roland Dubois, et al.
- 10/9/07, 4:19 p.m. e-mail from Carol Weisner to Abigail Guadano, et al.
- 10/24/07, 1:21 p.m. e-mail from Ann Wolverson to Kelly Schulz.
- 10/29/07, 9:56 a.m. e-mail from Carol Holmes to Cheryl Graham.
- 10/29/07, 5:03 p.m. e-mail from Kelly Schulz to Jerry Clifford, et al.
- 11/26/07 e-mail from Cece Kremer to Charles Ingebretson regarding Jason Burnett and Roger Martella.

- 11/29/07 handwritten notes with the notation "w/SJ" at the top of the page.
- 11/29/07, 3:13 p.m. e-mail from Rick Albright to Judy Kirtcher.
- 12/10/07, 3:02 p.m. e-mail from Weisner to Wendy Chavez.
- 12/13/07 e-mail from Jack Bowles to Anthony Reed, cc: Christopher Bliley.
- 12/20/07, 8:16 a.m. e-mail from Michael Horowitz to John Hannon, et al.
- 12/20/07, 9:26 a.m. e-mail from Robert Judge to David Dickinson, et al.
- Undated slides entitled: "California GHG Waiver Arguments Against Granting."

March 4, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

On December 20, 2007, I wrote to request that you provide the Committee with documents relating to your decision to reject California's efforts to reduce greenhouse gas emissions.

In response to this request, the Environmental Protection Agency (EPA) produced documents to the Committee throughout February 2008. However, many of these documents were redacted. Your staff asserted an "Executive Branch confidentiality interest in a number of these documents because they reflect internal deliberations and/or attorney-client communications."[1]

Although this is not a valid basis for withholding information from the Committee, I agreed to have Committee staff review the documents to assess whether the documents would be necessary for the Committee's investigation. This process has been constructive. Committee staff has reviewed unredacted versions of the redacted documents submitted to the Committee and has determined that much of the redacted information is unnecessary for the investigation. Of the documents that the staff reviewed, I am requesting that you provide to the Committee unredacted versions of the documents identified in Appendix B.

I also am reiterating my request for unredacted copies of the 24 documents listed in Appendix A. I requested these specific documents on February 1, 2008, but EPA has refused to provide them on the grounds that they either "contain confidential, internal information" or, in

[1] Letter from Christopher P. Bliley, Associate Administrator, to Rep. Henry A. Waxman (Feb. 1, 2008).

EPA's view, are not responsive to the Committee's December 20, 2007, request.[2] Contrary to EPA's assertion, these documents are necessary for the Committee's investigation, and EPA has no legal basis for withholding these documents from the Committee.

I ask you to provide complete, unredacted copies of the documents listed in Appendices A and B to the Committee by close of business on Friday, March 7, 2008. Unless otherwise noted, EPA should provide unredacted copies of any attachments to these documents.

If you have any questions concerning this request, please have your staff contact Greg Dotson or Jeff Baran of the Committee staff at (202) 225-4407.

Sincerely,

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

[2] Letter from Christopher P. Bliley, Associate Administrator, to Rep. Henry A. Waxman (Feb. 15, 2008).

Appendix A

Documents to Be Provided to the Committee in Complete, Unredacted Form Pursuant to February 1, 2008, Request

- 6/4/07, 5:37 pm e-mail from John Hannon to Carol Holmes with attached briefing slides for 6/5/07 briefing
- 6/5/07, 11:04 am e-mail from Steven Silverman to Carol Holmes
- 6/5/07 OGC briefing slides for the Administrator
- 7/19/07, 11:08 pm e-mail from Carol Holmes to Kevin McLean
- 8/22/06, 7:15 pm e-mail from Chet Thompson to Charles Ingebretson
- 9/4/07 OTAC briefing slides for Bob Meyers entitled: "GHG Waiver Update"
- 9/12/07, 2:36 pm e-mail from Carol Holmes to GHG team
- 9/12/07, 5:17 pm e-mail from Karl Simon to David Dickinson, et al.
- 9/12/07, 5:42 pm e-mail from John Hannon to Karl Simon
- 9/13/07, 8:42 am e-mail from Michael Horowitz to Karl Simon
- 9/13/07, 9:19 am e-mail from John Hannon to Michael Horowitz
- 9/19/07, 9:34 am e-mail from Michael Horowitz to Roger Martella, et al. with attached slides entitled: "California GHG Waiver: Options"
- 10/2/07, 2:50 pm e-mail from Bruce Schillo to Robin Kime with attachment
- 10/2/07, 6:58 pm e-mail from John Hannon to Roland Dubois, et al.
- 10/9/07, 4:19 pm e-mail from Carol Weisner to Abigail Guadano, et al.
- 10/24/07, 1:21 pm e-mail from Ann Wolverson to Kelly Schulz
- 11/26/07 e-mail from Cece Kremer to Charles Ingebretson regarding Jason Burnett and Roger Martella
- 11/29/07 handwritten notes with the notation "w/SJ" at the top of the page
- 11/29/07, 3:13 pm e-mail from Rick Albright to Judy Kirtcher
- 12/10/07, 3:02 pm e-mail from Weisner to Wendy Chavez

- 12/13/07 e-mail from Jack Bowles to Anthony Reed, cc: Christopher Bliley
- 12/20/07, 8:16 am e-mail from Michael Horowitz to John Hannon, et al.
- 12/20/07, 9:26 am e-mail from Robert Judge to David Dickinson, et al
- Undated slides entitled: "California GHG Waiver Arguments Against Granting"

Appendix B
Documents to Be Provided to the Committee in Complete, Unredacted Form Pursuant to March 4, 2008, Request

Documents without EPA Bates Numbers

- final 1/11/06 briefing slides entitled "California's Light Vehicle GHG Emission Regulations"
- final 1/19/06 briefing slides entitled "Clean Air Act Preemption of California GHG Standards: California Request for a Waiver of Preemption"
- final 1/27/06 briefing slides entitled "California's Light Duty Vehicle GHG Regulations"
- 1/27/06, 8:10 p.m. e-mail from Bill Wehrum to Robert Meyers
- final 3/5/06 briefing slides entitled "Clean Air Act Preemption of California GHG Standards: California Request for a Waiver of Preemption" with and without handwritten notes on them
- all versions of the 4/10/06 briefing slides entitled "California's Waiver Request to EPA Re: Light Duty Vehicle GHG Regulations"
- 4/20/06, 12:41 p.m. e-mail from Richard Ossias to Thomas Swedle with attached briefing slides
- final 7/19/06 briefing slides entitled "California Motor Vehicle Greenhouse Gas Standards" with handwritten notes on them
- 7/24/06 document with heading "Issue: Implications of Supreme Court taking certiorari in Massachusetts v. EPA..."
- final 1/8/07 briefing slides entitled "Federal Preemption of California GHG Standards"
- 1/23/07, 12:31 p.m. e-mail from Michael Horowitz to Roger Martella
- 1/23/07, 2:49 p.m. e-mail from Roger Martella to David Dickinson, et al.
- 4/3/07, 12:58 p.m. e-mail from Richard Ossias to Carol Holmes with attachment
- 4/27/07, 9:57 a.m. e-mail from Roger Martella to Robert Meyers with attachment
- final 4/30/07 briefing slides entitled "EPA Evaluation of California's GHG Standards"
- all versions of the 4/30/07 briefing slides entitled "California's Request for a Waiver of Preemption of GHG Standards," including those with handwritten notes on them

- 6/4/07, 6:32 p.m. e-mail from Carol Holmes to John Hannon
- final 6/5/07 briefing slides entitled "OGC briefing for the Administrator"
- 6/12/07, 10:55 a.m. e-mail from David Dickinson to John Hannon
- 6/12/07, 11:02 a.m. e-mail from Michael Horowitz to David Dickinson
- 6/29/07, 11:37 a.m. e-mail from Roger Martella to Jessica Emond
- all versions of the 7/11/07 slides entitled "CA GHG Standards – Request for a Waiver of Preemption"
- 7/24/07, 8:40 a.m. e-mail from George Sugiyama to Michael Horowitz
- 7/24/07, 9:09 a.m. e-mail from Michael Horowitz to George Sugiyama
- final 8/3/07 briefing slides for Margo Oge entitled "CA Waiver: Compelling and Extraordinary Conditions (C and E)"
- 8/14/07 draft document that compares California and industry positions with and without handwritten notes on it
- final 8/30/07 briefing slides entitled "CA GHG Waiver Request: Three Additional Issues in Federal Register Notice"
- 9/20/07 briefing slides entitled "California GHG Waiver: Options Briefing for the Administrator" with Karl Simon's handwritten notes on them
- 10/16/07, 10:44 a.m. e-mail from Karl Simon to Michael Horowitz, et al. with attached 10/30/07 slides
- 10/29/07, 10:35 a.m. e-mail from Ann Wolverton to Karl Simon with attached briefing slides
- 11/29/07, 2:59 p.m. e-mail from David Dickinson to Karl Simon, et al. with attachment
- 12/19/07 John Hannon notes with heading "W/SJ"
- 12/20/07 John Hannon notes with heading "W/SJ"
- undated, two-page document entitled "Key Messages"
- undated document entitled "Effect of Granting the CA Waiver on PSD"

- undated briefing slides entitled "California GHG Waiver: Arguments Against Granting" with "CSH 9/12" written in the upper left-hand corner of the title page

- undated, six-page document that begins "Waiver of Preemption under Section 209(b)"

Documents with EPA Bates Number

23	618
27	619
368	624
370	631
371	634
386	791
388	946
391	949
397	955
407	972 without attachment
411	984
413	989
415	1265
460	1278
462	1282
471	1288
474	1383
475	1385
476	1386
516	1387
518	1388
519	1391
522	1392
525	1393
526	1401
527	1404
529	2959 (11/07 and 10/07 e-mails)
530	2964 (9/20/07 e-mail)
534	3438
538	3445
541	3468
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Main Line 202-564-5200

Date: 3/18/08 **Total Number of Pages:** 12

To: Greg Dotson **Fax:** 225-2382
Jeff Baran **Fax:**
Fax:
Fax:

From: Reynold Meni

Phone: 202-564-3669

Comments: Documents discussed during today's tele conference.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 1 8 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in further response to your December 20, 2007 letter to the U.S. Environmental Protection Agency (EPA or Agency) requesting documents related California's request for a waiver under section 209 of the Clean Air Act.

EPA respects your very strong interest in this issue and is committed to providing the Committee information necessary to satisfy its oversight interests to the extent possible and consistent with our Constitutional and statutory obligations. Indeed, the Agency's actions to date in working with the Committee fully demonstrate the good faith and diligence with which the Agency is handling your request.

As you know, EPA substantially completed its response to your request on February 22, 2008. In so doing, we estimate that we have spent more than 2,000 hours in staff time and have provided or otherwise made available to the Committee more than 7,000 documents. Given the Administrator's direction to promote transparency to the Committee, the vast majority of these documents containing information pertaining to the California waiver have been provided in full to the Committee, including documents where the Agency has significant and well-established interests in preserving confidentiality. In other instances, the Agency has already engaged in extensive accommodations at the expense of the Executive Branch's compelling confidentiality interests.

We recognize the importance of the Committee's need to inform itself in order to perform its oversight functions, but we remain concerned about disclosure of this information outside of the Executive Branch for a number of reasons. In addition to the chilling effect that would occur if EPA and other government officials believed their frank and honest opinions and analysis were disseminated in a broad setting or dissected in a Congressional proceeding, EPA is concerned that disclosure of this type of confidential Executive Branch information could jeopardize the Agency's ability to effectively litigate claims related to California's waiver request.

As explained most recently in my letter dated March 12, 2008, EPA has identified a number of documents that originated from or otherwise involve the interests of other parts of the Executive Branch. EPA has been consulting with the other Executive Branch agencies about these documents in accordance with our established procedures for processing documents in response to Congressional oversight requests. Consultations are continuing with the Department of Justice concerning the documents that involve its interests, including a significant number of documents related to litigation involving California's waiver request. EPA has also been engaged in consultations concerning documents that involve the interests of White House offices and entities.

Despite the foregoing concerns, EPA is providing you copies of several documents that involve communications between EPA and White House offices and entities. EPA has copied these documents on paper with a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized to Congress Only for Oversight Purposes." Through this further accommodation, EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

Please be assured that your request is a top priority for the Agency and we are working hard to complete our response. As discussed in our March 12 letter, we expect to finish our consultations concerning these documents and provide a final response by March 28, 2008. If you have further questions, please contact me or have your staff call Reynold Meni in my office at (202) 564-3669.

Sincerely,

Christopher P. Bliley
Associate Administrator

Enclosures

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 2 0 2008

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing on behalf of Administrator Stephen L. Johnson of the U.S. Environmental Protection Agency (EPA or Agency) regarding two matters. First, this is in response to your March 12, 2008 request for copies of documents related to the Agency's draft analysis of whether carbon dioxide and other greenhouse gases emitted by new motor vehicles cause or contribute to air pollution reasonably anticipated to endanger public health or welfare, and the Agency's preliminary work on a regulatory package to address greenhouse gas emissions from motor vehicles. Second, this responds to your March 4, 2008 request and subsequent subpoena for copies of 196 specific documents related to EPA's decision on California's request for a waiver under section 209 of the Clean Air Act.

EPA respects your role as Chairman and is committed to providing the Committee information necessary to satisfy its oversight interests in these matters to the extent possible and consistent with our Constitutional and statutory obligations.

Endangerment and Greenhouse Gas Rulemaking Documents

Your March 12 letter sought copies of documents related to EPA's analysis of endangerment conducted since the Supreme Court's April 2007 decision in *Massachusetts v. EPA* as well EPA's development of a greenhouse gas vehicle rule, including communications with the White House or other federal agencies on these matters. You asked that EPA respond by March 28, 2008. As an initial measure, you requested that EPA provide copies of three specific documents by March 14, 2008: a draft technical support document prepared by the Office of Atmospheric Programs; a draft of the endangerment finding; and a draft of the proposed greenhouse gas vehicle rule. EPA provided an interim response on March 14, 2008, informing you that we needed additional time because of the important Executive Branch confidentiality interests implicated by your request. We have also had conversations with your staff in an attempt to seek clarification on the scope and timing of your request. We appreciate these discussions, which have been helpful.

Notwithstanding these efforts, I wanted to provide a further response concerning your request for the three specific documents. Your request for this information implicates very important Executive Branch confidentiality interests. As drafts, the documents you request constitute part of the deliberative process in the development of a regulatory action. Because EPA has not finalized an endangerment finding or any part of a vehicles rule, the documents you reference do not reflect the final thinking of the Agency.

EPA is continuing to consider how best to proceed regarding any regulatory action that would affect emissions of greenhouse gases. While this process continues, EPA has an interest in ensuring predecisional information is not disseminated outside the Agency or Executive Branch and, more importantly, that candid discussions are encouraged. Disclosure of predecisional information could compromise the deliberative process, as well as result in needless public confusion about the status of EPA's efforts on these issues. Disclosure of information at this stage in the deliberative process could also raise questions about whether the Agency's actions were being taken in response to or influenced by proceedings in a legislative or public forum rather than through the established administrative process. For these reasons, EPA does not believe it would be appropriate to share the documents you requested at this time.

EPA recognizes the Committee's strong oversight interest in these issues, and we believe reasonable accommodations can be made that would enable the Committee to conduct its oversight responsibilities to the fullest extent possible while still addressing the confidentiality interests of the Executive Branch. We would be happy to discuss various accommodations with your staff. EPA will continue to evaluate its confidentiality interests in these documents as next steps are taken on these issues.

California Waiver Documents

As you know, EPA substantially completed its response to your request on February 22, 2008. In so doing, we estimate that we have spent more than 2,000 hours in staff time and have provided or otherwise made available to the Committee more than 7,000 documents. Given the Administrator's direction to promote transparency to the Committee, the vast majority of these documents containing information pertaining to the California waiver have been provided in full to the Committee, including documents where the Agency has significant and well-established interests in preserving confidentiality about matters involving pending or threatened litigation. In other instances, the Agency has already engaged in extensive accommodations at the expense of the Executive Branch's compelling confidentiality interests.

By letter dated February 11, 2008, you requested unredacted copies of 27 specific documents. EPA responded on February 15, 2008, providing copies of three of the documents. However, EPA also explained that, due to our significant Executive Branch confidentiality interests, we would be unable at such time to provide copies of the 24 remaining documents. As explained in our letter, EPA had already provided as an accommodation all California waiver related information from these documents to the

Committee, either in hard copy or for review by Committee staff. On March 4, 2008, you reiterated your request for unredacted copies of the 24 specified documents and requested copies of an additional 172 documents. On March 13, 2008, you authorized the issuance of a subpoena to obtain copies of these 196 specified documents. EPA has made many efforts to accommodate the Committee's oversight interests, and we are disappointed that the Committee ultimately resorted to a compulsory process, particularly given EPA had already provided copies of or access to all of the documents at issue.

Please find enclosed copies of 162 of the documents you requested. EPA has copied these documents on paper with a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized to Congress Only for Oversight Purposes in Response to Subpoena." Please note that EPA does not waive any confidentiality interests or litigation privileges in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

As discussed in our March 12, 2008 letter, a number of the documents you are requesting contain information not only on the California waiver but also on distinct and separate predecisional and deliberative matters, most notably the endangerment analysis and the greenhouse gas vehicle rulemaking. Thus, while EPA has provided all documents related to the California waiver in response to your initial request, these documents also contain information beyond the scope of the California waiver decision. EPA has already made extensive accommodations in order to ensure the Committee obtained all information about the California waiver contained in these documents. We respectfully ask that Committee subsume its request for these 34 documents into its subsequent March 12, 2008 request for information about EPA's work on endangerment and the greenhouse gas vehicle rulemaking. Accordingly, we respectfully request that you hold in abeyance your request and subpoena for 34 of these documents. Please see Attachment A for a list of these documents.

Although EPA has already provided the California waiver portions of these 34 documents for review by the Committee, EPA will provide copies with the California waiver information unredacted to the Committee by close of business today. However, EPA continues to have an important Executive Branch confidentiality interest in the portions that relate to the greenhouse gas vehicle rulemaking and the endangerment analysis because these two matters are at preliminary stages and have not yet been finalized or publicly announced. As discussed above, EPA looks forward to further discussions about ways that we may best accommodate your interest in these matters, including opportunities to review this information in a reading room. Furthermore, EPA will continue to evaluate its confidentiality interests to the extent next steps are taken on these issues.

If you have any questions, please contact me or have your staff call Reynold Meni in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

ATTACHMENT A

B-4
B-14
EPA-530
EPA-538
EPA-617
EPA-955
EPA-984
EPA-972
EPA-1288
EPA-1383
EPA-1385
EPA-1386
EPA-1388
EPA-1401
EPA-3503
EPA-3438
EPA-3532
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EPA-3584
EPA-3590
EPA-3697
EPA-3771
EPA-3931
EPA-4064
EPA-4156
A-2
A-3
A-8
A-16
A-17
A-22
A-23
A-24
A-26

March 24, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

I am writing to request that EPA provide documents that the agency has repeatedly failed to produce to the Oversight Committee.

On December 20, 2007, I wrote to request that you provide the Committee with documents relating to your decision to reject California's efforts to reduce greenhouse gas emissions.[1] I requested that the documents be produced on a rolling schedule, with all responsive documents produced by January 23, 2008.

On January 25, 2008, EPA informed the Committee that it would produce all responsive documents by February 15, 2008.[2] I agreed to this production schedule, and EPA produced documents to the Committee throughout February. However, EPA continues to withhold approximately 160 documents involving EPA and the White House. EPA staff has indicated that consultations with the White House regarding these documents are ongoing and are expected to conclude by March 28, 2008.[3] But EPA has offered no assurance that the documents will be provided at that time or that they will be provided at all.

I appreciate the efforts EPA has taken to collect responsive documents, but I am concerned about the failure of the agency to produce requested documents to the Committee.

---

[1] Letter from Chairman Henry A. Waxman to Stephen Johnson, Administrator, U.S. EPA (Dec. 20, 2007).

[2] Letter from Christopher P. Bliley, Associate Administrator, U.S. EPA, to Chairman Henry A. Waxman (Jan. 25, 2008).

[3] Letter from Christopher P. Bliley, Associate Administrator, U.S. EPA, to Chairman Henry A. Waxman (Mar. 12, 2008).

Therefore, I ask that EPA provide complete and unredacted copies of the approximately 160 documents involving the White House by noon on Friday, March 28, 2008. If EPA does not provide the documents by that time, I anticipate taking steps to require production of the documents.

If you have any questions concerning this request, please have your staff contact Greg Dotson or Jeff Baran of the Committee staff at (202) 225-4407.

Sincerely,

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 2 8 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in further response to your March 10, 2008 letter to the U.S. Environmental Protection Agency (EPA or Agency) requesting certain documents related to California's request for a waiver under section 209 of the Clean Air Act. Specifically, in that letter you requested documents concerning communications with the White House and the Department of Justice (DOJ) about the California waiver. EPA provided an interim response and status report for both categories of documents by letter dated March 12, 2008, and responded further concerning the White House documents by separate letter today.

EPA respects your very strong interest in this issue and is committed to providing the Committee information necessary to satisfy its oversight interests to the extent possible and consistent with our Constitutional and statutory obligations. As you know, this request remains a priority for the Agency, and we have spent more than 2,200 hours of staff time and already provided or otherwise made available to the Committee more than 7,000 documents in response. As explained in our March 12 letter, EPA identified a number of documents that involved DOJ and White House equities. In accordance with established third agency practice, we have consulted with DOJ about the documents within the scope of your request that involved DOJ equities.

As a result of these consultations, the agencies have identified documents that may be released to you. However, EPA has identified an important Executive Branch confidentiality interest in a number of these documents because they contain non-public, internal deliberative, attorney-client and attorney work product information for which the Agency would ordinarily assert a privilege in litigation. Further disclosure of such documents could impair the Agency's ability to defend itself in litigation and could result in a chilling effect among Agency employees if they believed their frank and honest opinions and analyses were to be disclosed in a broad setting. Notwithstanding these concerns, EPA is providing copies of these internal, non-public documents in order to

accommodate the Committee's oversight interest in this matter. EPA has copied those documents in which it has a confidentiality interest on paper with a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized to Congress Only for Oversight Purposes." Through this further accommodation, EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

Finally, pursuant to these consultations with DOJ, we have not provided as part of this response non-public documents that reflect communications between EPA and DOJ relating to ongoing litigation. You may wish to contact the DOJ Office of Legislative Affairs if you or your staff have questions about DOJ's position concerning access to non-public litigation documents.

If you have further questions about EPA's response, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

Enclosures

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 28 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

Dear Mr. Chairman:

This is in response to your letter of March 24, 2008 in which you request that the U.S. Environmental Protection Agency (EPA or Agency) provide you copies of approximately 160 documents related to California's request for a waiver under section 209 of the Clean Air Act.

EPA respects your role as Chairman and is committed to providing the Committee information necessary to satisfy its oversight interests to the extent possible and consistent with our Constitutional and statutory obligations. As you know, during collection of documents responsive to your December 20, 2007 request, we identified approximately 160 documents involving the interests of White House offices and entities. In accordance with our established procedures for processing documents in response to Congressional oversight requests, consultations are ongoing with the White House about those documents. Throughout the consultation process, EPA has provided the Committee with regular status updates. In an effort to accommodate the Committee's interest in these documents, EPA provided interim responses on March 5 and March 12, and provided several White House documents. At this time, the remaining White House documents are still being reviewed to determine how the Committee's oversight interests in these documents can best be accommodated. We anticipate being able to provide a further response by April 3, 2008.

Please be assured that your request is a top priority for the Agency and we are working hard to complete our response. If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 2 8 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in further response to your March 4, 2008 request and subsequent subpoena for copies of 196 specific documents related to EPA's decision on California's request for a waiver under section 209 of the Clean Air Act.

EPA respects your role as Chairman and is committed to providing the Committee information necessary to satisfy its oversight interests in these matters to the extent possible and consistent with our Constitutional and statutory obligations. As you know, EPA substantially completed its response to your request on February 22, 2008. In so doing, we estimate that we have spent more than 2,200 hours in staff time and have provided or otherwise made available to the Committee more than 7,000 documents.

By letter dated February 11, 2008, you requested unredacted copies of 27 specific documents. EPA responded on February 15, 2008, providing copies of three of the documents. However, EPA also explained that, due to our significant Executive Branch confidentiality interests, we would be unable at such time to provide copies of the 24 remaining documents. As explained in our letter, EPA had already provided as an accommodation all California waiver related information from these documents to the Committee, either in hard copy or for review by Committee staff. On March 4, 2008, you reiterated your request for unredacted copies of the 24 specified documents and requested copies of an additional 172 documents. On March 13, 2008, you authorized the issuance of a subpoena to obtain copies of these 196 specified documents. EPA has made many efforts to accommodate the Committee's oversight interests, and we are disappointed that the Committee ultimately resorted to a compulsory process, particularly given EPA had already provided copies of or access to all of the documents at issue.

On March 20, 2008, EPA provided unredacted copies of 162 of the documents as well as redacted versions of the 34 other documents you requested. As we discussed in our letter, the redacted portions of these 34 documents contained information about the Agency's work on endangerment and the greenhouse gas vehicle rulemaking that EPA believes is beyond the scope of the California waiver decision. EPA continues to have an

important Executive Branch confidentiality interest in the portions that relate to the greenhouse gas vehicle rulemaking and the endangerment analysis because these two matters are at preliminary stages and have not yet been finalized or publicly announced. Because the Committee submitted a separate request on March 12, 2008 for documents related to EPA's work on these two issues, EPA requested that the Committee subsume its demand for the remaining information from the 34 documents into its March 12 request. Accordingly, we respectfully requested that the Committee hold in abeyance its request and subpoena for any information in these 34 documents unrelated to the California waiver.

Notwithstanding our concerns, EPA made the redacted portions of these documents available for review by your staff on March 21, 2008. EPA also appreciated the opportunity to further discuss your request and EPA's response with Committee staff on March 25, 2008. Committee staff requested EPA reconsider its redactions of 15 of these documents. Upon further review, EPA is providing unredacted copies of documents A-22, A-26, B-4, 617, 1383, 3438, 3697, and 3503 and revised redacted copies of B-14, 955, 1386, 1388, 3532, and 3584. EPA has copied these documents on paper with a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized to Congress Only for Oversight Purposes in Response to Subpoena." Please note that EPA does not waive any confidentiality interests or litigation privileges in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

If you have any questions, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

APR 01 2008

Dotson
Environment

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

As follow up to the Committee's investigation of the U.S. Environmental Protection Agency's (EPA or Agency) decision on California's request for a waiver under section 209 of the Clean Air Act, your staff has requested additional information about research being conducted by the EPA Office of Research and Development into the effects of climate change on air pollution. Specifically, your staff has requested a copy of a draft interim report prepared by the EPA Global Change Research Program titled "Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Preliminary Synthesis of Climate Change Impacts on Ground-Level Ozone."

EPA respects your role as Chairman and is committed to providing the Committee information necessary to satisfy its interests in this research to the extent possible and consistent with our Constitutional and statutory obligations. EPA has identified an important Executive Branch confidentiality interest in the document your staff has requested because it is a preliminary draft of a report that is currently undergoing internal peer review and has yet to be finalized or released to the public. Because the draft is still being reviewed for technical accuracy and policy implications, it should not be construed to represent Agency policy. EPA expects the report to be finalized and released later this year.

Nevertheless, given the unique facts in this situation and EPA's interest in accommodating the Committee's interest in this matter, we are offering to provide the draft document for inspection in a reading room for you or other Committee members or staff that you may designate. Through this accommodation, EPA does not waive any confidentiality interests in this draft study or similar documents in other circumstances. EPA expects that the Committee and staff will protect the information contained in this draft study from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside

the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

If you have further questions, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 03 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

Dear Mr. Chairman:

This is in further response to your March 24, 2008 letter to the U.S. Environmental Protection Agency (EPA or Agency) requesting further action on the documents related to California's request for a waiver under section 209 of the Clean Air Act that involve White House equities.

As explained most recently in my letter dated March 28, 2008, EPA has identified a number of documents that originated from or otherwise involve the interests of other parts of the Executive Branch. As you know, EPA has been consulting with the other Executive Branch agencies about these documents in accordance with our established procedures for processing documents in response to Congressional oversight requests.

EPA has also been engaged in consultations concerning documents that involve the interests of White House offices and entities. Despite the foregoing concerns, EPA has provided the Committee with copies of several documents that involve communications between EPA and White House offices and entities. EPA is preparing an additional transmittal that will supplement these previous disclosures; we expect to send that transmittal on Friday, April 4, 2008. EPA is also interested in discussing the Committee's request for the remaining White House documents and possible accommodations that satisfy the Committee's oversight interests in light of the Executive Branch's important confidentiality interests.

Please be assured that your request is a top priority for the Agency and we are working hard to complete our response. If you have further questions, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3668.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 04 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in further response to your March 24, 2008 letter to the U.S. Environmental Protection Agency (EPA or Agency) requesting further action on the documents related California's request for a waiver under section 209 of the Clean Air Act that involve White House equities.

EPA respects your very strong interest in this issue and is committed to providing the Committee information necessary to satisfy its oversight interests to the extent possible and consistent with our Constitutional and statutory obligations. Indeed, the Agency's actions to date in working with the Committee fully demonstrate the good faith and diligence with which the Agency is handling your request. As you know, EPA substantially completed its response to your request on February 22, 2008. In so doing, we estimate that we have spent more than 2,200 hours in staff time and have provided or otherwise made available to the Committee more than 7,000 documents. Given the Administrator's direction to promote transparency to the Committee, the vast majority of these documents containing information pertaining to the California waiver have been provided in full to the Committee, including documents where the Agency has significant and well-established interests in preserving confidentiality. In other instances, the Agency has already engaged in extensive accommodations at the expense of the Executive Branch's compelling confidentiality interests.

We recognize the importance of the Committee's need to inform itself in order to perform its oversight functions, but we remain concerned about disclosure of this information outside of the Executive Branch for a number of reasons. In addition to the chilling effect that would occur if EPA and other government officials believed their frank and honest opinions and analysis were disseminated in a broad setting or dissected in a Congressional proceeding, EPA is concerned that disclosure of this type of confidential Executive Branch information could jeopardize the Agency's ability to effectively litigate claims related to California's waiver request.

EPA has identified a number of documents that originated from or otherwise involve the interests of other parts of the Executive Branch. As you know, EPA has been consulting with the other Executive Branch agencies about these documents in accordance with our established procedures for processing documents in response to Congressional oversight requests. EPA has concluded consultations with the Department of Justice (DOJ) concerning the documents that involve its interests, including a significant number of documents related to litigation involving California's waiver request. EPA provided a number of the DOJ communications to the Committee by letter dated March 28, 2008.

EPA has also been engaged in consultations concerning documents that involve the interests of White House offices and entities. Despite the foregoing concerns, EPA has provided the Committee with copies of several documents that involve communications between EPA and White House offices and entities. EPA has identified an additional 28 documents that may be disclosed to the Committee at this time. EPA has copied these documents on paper with a legend that reads "Internal Deliberative Document of the Executive Branch; Disclosure Authorized to Congress Only for Oversight Purposes." Through this further accommodation, EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

EPA is also interested in engaging in further discussions about possible accommodations for additional White House documents in light of the Executive Branch's important confidentiality interests. If you have further questions, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

Enclosures

cc: The Honorable Tom Davis
Ranking Minority Member

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency; Serve: Roger R. Martella, Jr., General Counsel, U.S. Environmental Protection Agency

You are hereby commanded to be and appear before the Committee on Oversight and Government Reform

of the House of Representatives of the United States at the place, date and time specified below.

☐ **to testify** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____ Time: _____

☑ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2157 Rayburn House Office Building

Date: April 11, 2008 Time: 12:00 noon

To U.S. Marshals Service or any staff member of the House Committee on Oversight and Government Reform

to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 8th day of April, 2008.

Tom a Wagman

Chairman or Authorized Member

Attest: Lorraine C. Miller

Clerk

PROOF OF SERVICE

Subpoena for Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency; Serve: Roger R. Martella, Jr., General Counsel, U.S. Environmental Protection Agency

Address 1200 Pennsylvania Avenue, NW, Room 4014, Ariel Rios North, Washington DC 20004

before the Committee on Oversight and Government Reform

U.S. House of Representatives
110th Congress

Served by (print name) KRISTIN AMERLING

Title CHIEF COUNSEL, HOUSE COMMITTEE ON OVERSIGHT + GOVT REFORM

Manner of service fax (by prior agreement) (202-564-1428)

Date 4/9/08

Signature of Server Kristin Amerling

Address 2157 Rayburn HOB, Washington, DC 20515

SCHEDULE

1. Unredacted and complete copies (including any attachments) of all documents relating to the California greenhouse gas waiver request that was the subject of your December 19, 2007, letter to Governor Schwarzenegger and that include or consist of communications between the Environmental Protection Agency (EPA) and persons in the White House, except: (a) documents that EPA previously provided to the Committee in complete and unredacted form in response to Chairman Waxman's letter of December 20, 2007 (attached), and (b) the 21 complete and unredacted documents EPA brought to Committee offices on April 8, 2008, for staff review.

Schedule Instructions

1. In complying with the subpoena, you shall produce all responsive documents in your possession, custody, or control.

2. Documents responsive to the subpoena shall not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.

3. In the event that any entity, organization, or individual denoted in the subpoena has been, or is currently, known by any other name than that herein denoted, the subpoena shall be read also to include them under that alternative identification.

4. Each document produced shall be produced in a form that renders the document capable of being copied.

5. When you produce documents, you shall identify the paragraph or clause in the Committee's subpoena to which the documents respond.

6. Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this subpoena was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they shall be organized into separate folders by subject matter prior to production.

7. Each folder and box shall be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the subpoena to which the documents are responsive, shall be provided in an accompanying index.

8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.

9. If any of the subpoenaed information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory

stick, or computer backup tape), you shall consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format shall be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Documents produced in an electronic format shall also be produced in a searchable format.

10. In the event that a responsive document is withheld on any basis, you shall provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.

11. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, you shall identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

12. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you shall produce all documents which would be responsive as if the date or other descriptive detail were correct.

13. This subpoena is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date shall be produced immediately upon location or discovery subsequent thereto.

14. All documents shall be bates-stamped sequentially and produced sequentially.

15. Two sets of documents shall be delivered, one set to the majority staff and one set to the minority staff. The majority set shall be delivered to the majority staff in Room 2157 of the Rayburn House Office Building, and the minority set shall be delivered to the minority staff in Room B350A of the Rayburn House Office Building. You shall consult with Committee staff regarding the method of delivery prior to sending any materials.

16. Upon completion of the document production, you shall submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, whether classified or unclassified, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.

4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the subpoena any information which might otherwise be construed to be outside its scope. The singular

includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

December 20, 2007

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

Yesterday, you announced a decision to reject California's efforts to reduce greenhouse gas emissions from automobiles. Prior to making this decision you assured the House Oversight and Government Reform Committee, as well as the state of California and many others, that you would make this decision on the merits.

It does not appear that you fulfilled that commitment. Your decision appears to have ignored the evidence before the agency and the requirements of the Clean Air Act. In fact, reports indicate that you overruled the unanimous recommendations of EPA's legal and technical staffs in rejecting California's petition.

Your decision not only has important consequences to our nation, but it raises serious questions about the integrity of the decision-making process. Accordingly, the Committee has begun an investigation into this matter. To assist our Committee in this inquiry, I request that you provide us with all documents relating to the California waiver request, other than those that are available on the public record. This request includes all communications within the agency and all communications between the agency and persons outside the agency, including persons in the White House, related to the California waiver request. And all agency staff should be notified immediately to preserve all documents relating to the California waiver request.

You should produce to the Committee all responsive documents from your office by January 10, 2008. All responsive documents from the Office of Transportation and Air Quality and the Office of General Counsel should be produced by January 17, 2008, and all other responsive documents should be produced by January 23, 2008.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. An attachment to this letter provides additional information about how to respond to the Committee's request.

If you have any questions concerning this request, please have your staff contact Greg Dotson of the Committee staff at (202) 225-4407.

Sincerely,

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

Dotson
Environment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 11 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to the subpoena issued by you on April 9, 2008, which directs the U.S. Environmental Protection Agency (EPA) to provide the Committee with copies of documents related to California's request for a waiver under section 209 of the Clean Air Act. Specifically, the Committee is seeking documents that include communications between EPA and White House offices and entities by today at twelve noon. Administrator Stephen L. Johnson has asked me to respond on his behalf.

Your previous requests, and now the subpoena, seek documents in which there are significant Executive Branch confidentiality interests, including pre-decisional and other materials in which there are substantial White House interests. Let me note that to date EPA has been responsive to the Committee's demands, having provided over 7,000 documents in response to the Committee's demands, and having made the additional accommodation of providing or making available for staff review a substantial number of documents reflecting communications between EPA and White House officials. EPA has consistently communicated to the Committee its willingness to consider accommodations that respect Executive Branch concerns while providing the Committee information necessary to accommodate legitimate oversight needs.

For these reasons, we were disappointed to receive a subpoena from the Committee just one day after our most recent accommodation to the Committee, a meeting in which we made additional responsive material available for review. Nevertheless, in a continuing effort at accommodation, and in view of the fact that the outstanding documents in dispute implicate White House interests, we propose that Committee staff, EPA representatives, and a representative of the White House Counsel's office meet to discuss the remaining documents and attempt to strike a balance that respects the interests of all concerned, while avoiding an unnecessary interbranch conflict. We propose that such a meeting be scheduled for as early as Tuesday of next week, April 15, 2008.

If you have any questions, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 22 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in further response to the subpoena issued by you on April 9, 2008, which directs the U.S. Environmental Protection Agency (EPA) to provide the Committee with copies of documents related to California's request for a waiver under section 209 of the Clean Air Act. Specifically, the Committee is seeking documents that include communications between EPA and White House offices and entities. EPA responded on April 11 by requesting a meeting with your staff and representatives from EPA and the White House Counsel's office. As you know, that meeting occurred on April 15.

As discussed during that meeting, the subpoena seeks documents in which there are significant Executive Branch confidentiality interests, including pre-decisional and other materials in which there are substantial White House interests. We appreciate the Committee's willingness to engage in discussions on how to best reach a mutually agreeable solution that respects Executive Branch concerns while providing the Committee information necessary to accommodate oversight needs. Thus far, EPA has been responsive to the Committee's demands, having provided over 7,000 documents in response to the Committee's demands, and having made the additional accommodation of providing or making available for staff review a substantial number of documents reflecting communications between EPA and White House officials. As further discussed below, EPA is providing the Committee today with an additional 16 White House documents, and making available for staff review an additional 18 White House documents. In total, EPA has now provided or made available over 100 documents implicating White House equities.

We recognize the importance of the Committee's need to inform itself in order to perform its oversight functions, but we remain concerned about disclosure of this information outside of the Executive Branch for a number of reasons. In addition to the chilling effect that would occur if EPA and other government officials believed their frank and honest opinions and analysis were disseminated in a broad setting or dissected

in a Congressional proceeding, EPA is concerned that disclosure of this type of confidential Executive Branch information could jeopardize the Agency's ability to effectively litigate claims related to California's waiver request.

Despite the foregoing concerns, EPA is providing you copies of several documents that involve communications between EPA and White House offices and entities. EPA has copied these documents on paper with a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized to Congress Only for Authorized Purposes." Through this further accommodation, EPA does not waiver any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

If you have any questions, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

May 12, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

I am writing regarding the Committee's pending request to conduct a transcribed interview or deposition with EPA officials who may have knowledge of EPA's deliberations on the denial of California's request for a waiver to reduce greenhouse gas emissions from motor vehicles. I request EPA's cooperation in scheduling an interview or deposition with Jason Burnett on Thursday May 15, 2008, at 9:30 a.m.

At the interview or deposition, Mr. Burnett will also be asked about his knowledge of the new national ambient air quality standards for ozone. According to documents that EPA has provided to the Committee, it appears that Mr. Burnett may have relevant information that will assist the Committee in preparation for the hearing on the ozone standards scheduled for May 20, 2008.

As our staffs have discussed, Mr. Burnett may be represented by personal counsel during the proceeding or by counsel from EPA if there is a certification that the EPA counsel is appearing as counsel for the witness, not as counsel for the agency.

Please let me know by 5:00 p.m. tomorrow whether EPA will make Mr. Burnett available for a voluntary interview or deposition.

Sincerely,

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 15 2008

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter of May 12, 2008 and your subpoena of May 14, 2008 asking the United States Environmental Protection Agency (EPA or Agency) to provide EPA's Associate Deputy Administrator, Jason Burnett, for a transcribed interview or deposition on Thursday, May 15, 2008. The matters of inquiry would include all matters before the Committee.

In a May 13, 2008 letter, EPA confirmed that Mr. Burnett is available for a voluntary interview at the date and time requested in your letter. That letter further stated that, since Mr. Burnett is being asked to provide information in his official capacity about Agency activities, Agency counsel will accompany Mr. Burnett. The need for this representation is clear. EPA has a significant interest in ensuring the confidentiality and integrity of the Agency's ongoing deliberative processes, particularly where, as here, the scope of the testimony may implicate matters ongoing before the Agency. This remains the case.

EPA had hoped we would be able to reach an accommodation acceptable to both EPA and Congress as co-equal branches of government. As such, we were disappointed that the Committee resorted to a compulsory process. Nonetheless, pursuant to your request, EPA appeared with Mr. Burnett before the Committee on May 15, 2008 at 9:30 am at the appointed location. When Mr. Burnett appeared, the Committee informed EPA that Agency counsel would not be permitted to attend in order ensure the interests of the Agency are preserved. We are disappointed that the Committee has dismissed the Agency's efforts to reach a mutually agreeable accommodation that recognizes the important interests of both the Legislative and Executive branches.

EPA continues to have a strong Executive Branch confidentiality interest in the information that is the subject of Mr. Burnett's testimony. Disclosing pre-decisional information at this time could significantly compromise the ability of Agency employees

to independently and objectively make decisions and render advice. Further disclosure of non-public Executive Branch information at preliminary stages of deliberations could raise questions about whether the Agency's decisions are being made or influenced by proceedings in a legislative or public forum rather than through the established administrative processes. Moreover, the Agency is maintaining its claims that any disclosures to Congress as a result of this compulsory process have not waived any privileges that would apply in litigation or other contexts to such information.

If you have any questions, please contact me or your staff may call Tom Dickerson at (202) 564-3638.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

June 13, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

On April 9 and May 5, 2008, the Committee issued subpoenas to you for the production of documents relevant to Committee investigations of Environmental Protection Agency (EPA) actions. You have neither complied with these subpoenas by their returnable date nor asserted any privilege to justify withholding documents from the Committee. In light of your actions, I am writing to inform you that the Committee will meet on June 20 to consider a resolution citing you for contempt of Congress. I strongly urge you to comply with the duly issued subpoenas.

The May 5 Subpoena

On March 12, 2008, you issued revised national ambient air quality standards for ozone. On March 14, I requested documents relating to your decision, including complete and unredacted copies of documents reflecting "communications between EPA and persons in the White House relating to the updated NAAQS for ozone."[1] The deadline for the production of communications with the White House was March 21.

You began to produce documents to the Committee on April 11, and your staff informed Committee staff that the agency hoped to complete the production by April 18.[2] On April 28, EPA staff informed Committee staff that you were withholding approximately 200 EPA documents involving the White House and that the agency was consulting with the White House

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[1] Letter from Rep. Henry A. Waxman to EPA Administrator Stephen L. Johnson (Mar. 14, 2008).

[2] Phone conversation between EPA staff and House Oversight and Government Reform Committee staff (Apr. 11, 2008).

about its production. EPA was unable to provide any estimate of when these documents would be produced.[3]

On May 2, EPA staff informed Committee staff that consultations with the White House regarding the production of documents continued and that they could provide no information about when or whether the documents would be provided.[4] That day, I wrote to you to request that the outstanding EPA documents reflecting communications with the White House be provided by May 5.[5]

On May 5, you did not provide the documents, and there was no assertion of executive privilege. Instead, your staff informed the Committee that it was prepared to provide only 15 of the approximately 200 responsive documents and requested a meeting with the Committee staff and White House counsel to discuss the production of EPA's communications with the White House.[6]

On May 5, I issued a subpoena to you requiring production of the responsive documents by 5 p.m. on May 6. On May 6, Committee staff met with EPA staff and White House counsel, and White House counsel said approximately 35 documents would not be produced to the Committee because they are "indicative of high level" decision-making material.[7]

On May 16, I wrote to you again, stating:

> [T]he Committee has not been provided sufficient access to the information to understand why the President rejected your recommendations regarding the ozone standard. The Clean Air Act specifies the factors that may be permissibly considered in setting air quality standards and those that may not. The record before the Committee does not provide enough insight into the deliberations inside the White House to assess whether the President and other White House officials acted in compliance with the requirements of the law.[8]

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[3] Phone conversation between EPA staff and House Oversight and Government Reform Committee staff (Apr. 28, 2008).

[4] Phone conversation between Oversight and Government Reform Committee staff and EPA staff (May 2, 2008).

[5] Letter from Rep. Henry A. Waxman to EPA Administrator Stephen L. Johnson (May 2, 2008).

[6] Phone conversation between Oversight and Government Reform Committee staff and EPA staff (May 5, 2008).

[7] Meeting between Oversight and Government Reform Committee staff, EPA staff, and White House staff (Apr. 22, 2008).

[8] Letter from Rep. Henry A. Waxman to EPA Administrator Stephen L. Johnson (May 16, 2008).

I also noted that you would be testifying before the Committee on May 20 and advised you:

> Unless the President asserts a valid claim of executive privilege with respect to the documents being withheld by EPA, you will be expected to personally bring the documents to the hearing. The Committee's subpoena was directed to you and you will be in defiance of the subpoena if you appear at the hearing without the documents.[9]

At the May 20 hearing, you did not produce the remaining responsive documents and you testified that the President is not asserting executive privilege.[10] On that same day, your staff confirmed that you were continuing to withhold approximately 35 responsive documents from the Committee without an assertion of executive privilege.[11]

The April 9 Subpoena

On December 19, 2007, you denied California's petition to regulate greenhouse gas emissions from motor vehicles. The next day, I requested documents relating to your decision, other than those that were available on the public record, including "all communications between the agency and persons outside the agency, including persons in the White House, related to the California waiver request."[12] The deadline for this request was no later than January 23, 2008.

On January 18, your staff informed me that the agency would complete production by February 15.[13] However, you failed to complete production by that date. On March 10, 2008, I wrote to you again to request that your staff work with Committee staff to establish by the close of business on March 12, 2008, a mutually agreeable deadline for the production of documents involving the White House.[14] Your staff responded on March 12 that you anticipated providing

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[9] *Id.*

[10] House Oversight and Government Reform Committee, *EPA's New Ozone Standards,* 110th Cong. (May 20, 2008).

[11] Conversation between Oversight and Government Reform Committee staff and EPA staff (May 20, 2008).

[12] Letter from Rep. Henry A. Waxman to EPA Administrator Stephen L. Johnson (Dec. 20, 2007).

[13] Letter from EPA Associate Administrator Christopher Bliley to Rep. Henry A. Waxman (Jan. 18, 2008).

[14] Letter from Rep. Henry A. Waxman to EPA Administrator Stephen L. Johnson (Mar. 10, 2008).

final responses regarding documents involving the White House no later than March 28.[15] On March 24, I wrote to you again and requested the documents involving the White House by noon on March 28.[16]

On March 28, 2008, your staff informed me that the agency would respond by April 3, 2008.[17] On April 4, your staff informed Committee staff that approximately 90 responsive documents would not be made available to the Committee, and there was no assertion of executive privilege.[18]

On April 9, I issued a subpoena to you for the production of the remaining responsive documents. The subpoena required you to produce the responsive documents by April 11.

On April 11, you did not provide the documents. Instead, EPA staff requested a meeting with the Committee staff and White House counsel to discuss the production of EPA's documents reflecting communications with the White House.[19] In response to this request, Committee staff met repeatedly with EPA and White House counsel.

On April 22, White House counsel informed Committee staff that EPA possesses 32 documents that evidence telephone calls or meetings in the White House involving at least one high-ranking EPA official and at least one high-ranking White House official. The White House counsel has described these documents as "indicative of deliberations at the very highest level of government."[20] These responsive documents have not been provided to the Committee, and there has been no assertion of executive privilege.

Conclusion

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[15] Letter from EPA Associate Administrator Christopher Bliley to Rep. Henry A. Waxman (Mar. 12, 2008).

[16] Letter from Rep. Henry A. Waxman to EPA Administrator Stephen L. Johnson (Mar. 24, 2008).

[17] Letter from EPA Associate Administrator Christopher Bliley to Rep. Henry A. Waxman (Mar. 28, 2008).

[18] Phone conversation between Oversight and Government Reform Committee staff and EPA staff (Apr. 4, 2008).

[19] Phone conversation between Oversight and Government Reform Committee staff and EPA staff (Apr. 11, 2008).

[20] Meeting between Oversight and Government Reform Committee staff, EPA staff, and White House staff (Apr. 22, 2008).

You are now more than a month overdue in providing subpoenaed documents relating to the ozone investigation. You are more than two months overdue in providing subpoenaed documents relating to the California motor vehicles standards investigation. You have had ample opportunity to provide the documents, and White House counsel has had ample opportunity to review the withheld documents for executive privilege concerns. Yet you are persisting in withholding responsive documents that the Committee needs to meet its oversight and legislative duties without any assertion of executive privilege by the President.

I regret that your failure to produce responsive documents has created this impasse, but Congress has a constitutional duty to conduct oversight of the executive branch. Therefore, unless the documents are provided to the Committee or a valid assertion of executive privilege is made, the Committee will meet on June 20 to consider a resolution holding you in contempt. I strongly urge you to reconsider your position and comply with the duly issued subpoenas.

Sincerely,

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

June 19, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

On June 18, 2008, I received a letter from EPA's Associate Administrator in the Office of Congressional and Intergovernmental Relations requesting that the Committee not proceed with a resolution of contempt against you. In this letter, the Associate Administrator said EPA would produce "an additional set of documents," but the Associate Administrator did not specify what these documents are or when they would be produced. Attempts by Committee staff to learn what additional documents will be provided and when have been unsuccessful.

On December 19, 2007, you announced that EPA would block California's efforts to reduce greenhouse gas emissions from motor vehicles. The Committee's investigation has developed a record that shows: (1) the career staff at EPA unanimously supported granting California's petition; (2) you also supported granting California's petition at least in part; and (3) you reversed your position after communications with officials in the White House.

In January 2008, you decided how to revise the ozone air quality standards. In several key aspects, your decision reflected the unanimous recommendation of the Clean Air Scientific Advisory Committee. As a result of your decision, EPA staff developed a nearly 350-page regulation. However, Administrator Susan Dudley of the Office of Information and Regulatory Affairs objected to the science-based approach of the secondary standard and the President overruled you. As a result, in the final 24-hours of the rulemaking process, EPA staff rewrote the regulation in conformance with the President's decision.

The Clean Air Act is clear about what can be considered and what cannot be considered when taking these types of actions. The Committee has been attempting to determine whether EPA's final actions were based upon proper considerations. However, your efforts to draw a curtain around the White House are preventing Congress from understanding whether appropriate considerations underlay these decisions. Although I have repeatedly informed you

that you must provide the documents responsive to the April 9 and May 5 subpoenas unless the President asserts a valid claim of executive privilege, you continue to defy the subpoena.

I also note that your defiance of congressional oversight stands in stark contrast to the response of the previous Administration. In 1997, the House also investigated ozone standards established by EPA. Several House committees requested documents from the Administration related to the ozone air quality standards. In the Government Reform and Oversight Committee, Subcommittee Chairman David McIntosh requested extensive documents from both EPA and OMB.[1] With the exception of "two memoranda to the President from senior advisors within the Executive Office of the President," all responsive documents were provided to the Committee.[2]

Throughout this process, I have made accommodations where possible. Your refusal to provide the remaining responsive documents is thwarting the Committee's ability to conduct effective oversight. EPA's offer to produce some unspecified additional documents at some unspecified time does not satisfy our reasonable request.

I regret that your failure to produce the subpoenaed documents has created this impasse, but Congress has a constitutional duty to conduct oversight of the executive branch. Therefore, unless the documents are provided to the Committee or a valid assertion of executive privilege is made, the Committee will meet tomorrow to consider a resolution holding you in contempt. I strongly urge you to reconsider your position and to comply with the duly issued subpoena.

Sincerely,

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

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[1] Letter from Rep. David M. McIntosh, Chairman, National Economic Growth, Natural Resources, and Regulatory Affairs, Committee on Government Reform and Oversight, to Carol Browner, Administrator, Office of U.S. Environmental Protection Agency (Jan. 24, 1997); Letter from Rep. David M. McIntosh, Chairman, National Economic Growth, Natural Resources, and Regulatory Affairs, Committee on Government Reform and Oversight, to Sally Katzen, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (Jan. 17, 1997).

[2] Letter from Sally Katzen, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, to Rep. Tom Bliley, Chairman, House Committee on Commerce (Mar. 7, 1997).