Appendix D

Ozone Standard Correspondence

March 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 to inquire why you have decided to reject the specific recommendations of the Clean Air Scientific Advisory Committee (CASAC) in finalizing an updated national ambient air quality standard (NAAQS) for ozone. Your decision marks the second occasion in less than two years in which you appear to have ignored CASAC's expert advice in updating a NAAQS.

Section 109 of the Clean Air Act provides that the Administrator of the Environmental Protection Agency is to establish NAAQS "requisite to protect the public health" and "allowing an adequate margin of safety."[1] As the Supreme Court has held, your decision on setting NAAQS is to be based solely on the pollutant's impacts on public health, a matter of science — not consideration of the potential costs of implementation of the standard.[2]

CASAC is mandated by Congress, through the Clean Air Act Amendments of 1977, to provide the EPA Administrator with independent advice on the technical bases for NAAQS.[3] CASAC is comprised of some of the nation's leading experts on the health and environmental effects of air pollution and has conscientiously fulfilled its duty in providing its best scientific advice and recommendations to EPA Administrators for nearly 30 years.[4]

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[1] Clean Air Act § 109(b)(1) (2005).

[2] *Whitman v. American Trucking Assns.*, 531 US 457 (2001).

[3] Environmental Protection Agency, Clean Air Scientific Advisory Committee, Home Page (online at http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC) (accessed Mar. 10, 2008).

[4] Congressional Research Service, *Air Quality Standards and Sound Science: What Role for CASAC?* (Sept. 18, 2007) (RL33807)

Last year, CASAC informed you that its Ozone Review Panel was "unanimous in recommending that the level of the current primary ozone standard should be lowered from 0.080 ppm to no greater than 0.070 ppm."[5] CASAC based this recommendation on "overwhelming scientific evidence," including "EPA's own findings in the Ozone Air Quality Criteria Document (AQCD) and the Final Ozone Staff Paper."[6] Despite CASAC's unanimous recommendation for a standard no greater than 0.070 ppm and the overwhelming scientific evidence supporting it, press accounts report you are setting the primary ozone standard at 0.075 ppm.[7]

This decision is remarkably similar to a decision you made in 2006 when reviewing the air quality standards for particulate matter. In that case, you ignored the scientific advice of CASAC by not lowering the level of the annual primary fine particle ($PM_{2.5}$) standard, not establishing a new coarse particle ($PM_{10-2.5}$) standard, and not setting a separate secondary $PM_{2.5}$ standard.[8] These decisions led CASAC to send you a rare public rebuke, stating, "we question whether you have appropriately given full consideration to CASAC's expert scientific advice — obtained through open, public processes — in your final decisions on the PM NAAQS."[9]

Your actions on the NAAQS for ozone and particulate matter over the past two years appear to ignore recommendations designed to protect public health and public welfare and suggest that science is not the primary basis for your decisions. Until 2006, EPA Administrators had "always accepted" CASAC's "scientific advice with regard to final NAAQS designation."[10]

Given the impact these decisions have on public health and public welfare, I request that you explain the rationale for disregarding CASAC's advice in establishing the NAAQS for both ozone and particulate matter.

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[5] Letter from Dr. Rogene Henderson, Chair of the Clean Air Scientific Advisory Committee, to EPA Administrator Stephen L Johnson (Mar. 26, 2007).

[6] *Id.*

[7] *EPA Sets New Ozone Standard, Overrides Advisers*, Washington Post (online at http://www.washingtonpost.com/wp-dyn/content/article/2008/03/12/AR2008031202362.html?hpid=topnews) (accessed on Mar. 12, 2008).

[8] Letter from Dr. Rogene Henderson, Chair of the Clean Air Scientific Advisory Committee, to EPA Administrator Stephen L Johnson (Sept. 29, 2006) (online at http://yosemite.epa.gov/sab/sabproduct.nsf/1C69E987731CB775852571FC00499A10/$File/casac-ltr-06-003.pdf) (accessed on Mar. 12, 2008).

[9] *Id.*

[10] *Id.*

If you have any questions concerning this request, please have your staff contact Greg Dotson or Erik Jones of the Committee staff at (202) 225-4407. I respectfully request a reply by March 28, 2008.

Sincerely,

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

March 14, 2008

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

Dear Administrator Johnson:

On March 12, 2008, you rejected the specific recommendations of the Clean Air Scientific Advisory Committee (CASAC) in finalizing an updated national ambient air quality standard (NAAQS) for ozone. Despite CASAC's unanimous recommendation for a primary ozone standard no greater than 0.070 parts per million, you opted to set the standard at 0.075 parts per million. Moreover, according to press accounts and EPA staff, President Bush personally intervened to overrule EPA's efforts to establish a science-based secondary standard to protect forests, crops, and other plants from the damaging effects of ozone.[1]

The Oversight and Government Reform Committee will be investigating the decision to reject the advice of EPA's scientific advisors and the role of the White House in setting the ozone standards. The Committee requests your testimony at a hearing to examine these issues on Thursday, April 10, 2008, at 10:00 a.m. in Room 2154, Rayburn House Office Building.

To assist the Committee's investigation into this matter, I request that you provide the Committee with complete and unredacted copies of (a) communications between EPA and persons in the White House relating to the updated NAAQS for ozone, and (b) internal EPA communications relating to the updated NAAQS for ozone made on or after February 22, 2008.

I also ask that you provide the Committee with a mutually agreeable schedule for document production by noon on March 19, 2008. This schedule should provide for production of the communications with the White House by March 21, 2008, and the

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[1] *See, e.g., EPA Chief Lowers Smog Limit*, Los Angeles Times (Mar. 13, 2008).

production of the remaining documents by March 28, 2008. If you anticipate withholding any documents from the Committee, I request that you inform the Committee of your intention to do so by noon on March 19, 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. Information for witnesses appearing before the Committee is contained in the enclosed Witness Information Sheet.

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

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

Witness Information Sheet

The following is a summary of some of the pertinent rules and procedures applicable to witnesses testifying before the Committee on Oversight and Government Reform:

- Witnesses should provide 100 copies of their written testimony to Earley Green, Chief Clerk, 2157 Rayburn House Office Building, no later than 10:00 am two business days prior to the hearing. Witnesses should also provide their statement by this date in electronic format, either as a CD or via email to earley.green@mail.house.gov.

- At the hearing, each witness will be asked to summarize his or her written testimony in five minutes or less in order to maximize the time available for discussion and questions.

- House Rule XI clause 2(g)(4) requires that witnesses appearing in a nongovernmental capacity submit to the Committee in advance of the hearing "a curriculum vitae and a disclosure of the amount and source (by agency and program) of *each* Federal grant (or subgrant thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness."

- The Committee does not provide financial reimbursement for witness travel or accommodations. Witnesses with extenuating circumstances, however, may submit a written request for such reimbursements to Robin Butler, Financial Administrator, 2157 Rayburn House Office Building, at least one week prior to the hearing. Reimbursements will not be made without prior approval.

- Witnesses with disabilities should contact Committee staff to arrange any necessary accommodations.

- The Committee on Oversight and Government Reform is the principal oversight committee in the U.S. House of Representatives. In addition, the Committee has legislative jurisdiction over a number of subjects affecting the management of government operations and activities. The specific jurisdiction of the Committee is set forth in House Rule X clauses 1(m), 2, 3(i), and 4(c).

- The Committee rules governing this hearing are online at www.oversight.house.gov/rules/.

For inquiries regarding these rules and procedures, please contact the Committee on Oversight and Government Reform at (202) 225-5051.

Responding to Oversight Committee Document Requests

In responding to the document request from the Committee on Oversight and Government Reform, please apply the instructions and definitions set forth below.

Instructions

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

2. Documents responsive to the request should 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 request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.

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

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

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

7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should 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 requested 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 should consult with Committee staff to determine the appropriate format in which to produce the information.

10. The Committee accepts electronic documents in lieu of paper productions. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Electronic document productions should be prepared according to the following standards:

(a) The production should consist of single page TIF files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

(b) Document numbers in the load file should match document Bates Numbers and TIF file names.

(c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

11. In the event that a responsive document is withheld on any basis, you should 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.

12. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should 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.

13. If a date or other descriptive detail set forth in this request 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 request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. This request 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 should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be bates-stamped sequentially and produced sequentially. In the cover letter, you should include a total page count for the entire production, including both hard copy and electronic documents.

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

17. Upon completion of the document production, you should 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.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, 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.

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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.

March 14, 2008

The Honorable Susan E. Dudley
Administrator
Office of Information and Regulatory Affairs
725 17th Street, NW
Washington, DC 20503

Dear Ms. Dudley:

On March 12, 2008, EPA Administrator Stephen Johnson rejected the specific recommendations of the Clean Air Scientific Advisory Committee (CASAC) in finalizing an updated national ambient air quality standard (NAAQS) for ozone. Despite CASAC's unanimous recommendation for a primary ozone standard no greater than 0.070 parts per million, he opted to set the standard at 0.075 parts per million. Moreover, according to press accounts and EPA staff, President Bush personally intervened to overrule EPA's efforts to establish a science-based secondary standard to protect forests, crops, and other plants from the damaging effects of ozone.[1]

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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.

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

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

MAR 19 2008

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 14, 2008 in which you request that the U.S. Environmental Protection Agency (EPA or Agency) provide you with copies of (a) communications between EPA and persons in the White House relating to the updated NAAQS for ozone by March 21, 2008, and (b) internal EPA communications, made on or after February 22, 2008, relating to the updated NAAQS for ozone by March 28, 2008. Your letter requested that EPA provide the Committee with a mutually agreeable schedule for document production by noon on March 19, 2008, and notification of any intent to withhold documents.

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. Please be assured that your request is a top priority for the Agency and we are working hard to respond as quickly as possible. As we told your staff yesterday, the Agency has commenced the document collection process by asking relevant personnel in the Office of Air and Radiation, the Office of the Administrator, and the Office of General Counsel to conduct a search for potentially responsive documents.

Your letter also requested that Administrator Stephen L. Johnson appear before the Committee at a hearing on April 10, 2008. As we told your staff, Administrator Johnson is unavailable on that date due to previously existing travel obligations. We are checking his availability and expect to offer some alternate dates soon. As we agreed this morning, once a hearing date is scheduled, we can have further discussions about a mutually agreeable schedule for production of documents.

If you have any questions, please contact me or have your staff call Reynold Meni in my office at (202) 564-3669.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

GENERAL COUNSEL

March 26, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

This letter responds to your letter dated March 14, 2008, to Susan Dudley, the Administrator of the Office of Information and Regulatory Affairs ("OIRA") at the Office of Management and Budget, asking for "copies of communications relating to the updated NAAQS for ozone made on or after February 22, 2008." You have also asked that Susan Dudley, the Administrator of OIRA, make herself available to testify on April 10, 2008. I am responding on OIRA's behalf.

While OIRA does not agree with some of the characterizations and requests in your letter, we are providing with this response 1,552 pages of documents, to accommodate your interest in this topic. In addition, as OIRA has communicated to your staff, Susan Dudley is available to testify about the National Ambient Air Quality Standards ("NAAQS") for ozone on April 10, 2008, although we understand that the Committee may want to consider a later date.

As you may be aware, the process for review of regulations within the Executive Branch is set forth in Executive Order No. 12866, as amended, which was first issued by President Clinton on September 30, 1993. Presidents of both parties long have relied upon a centralized review process to ensure that the regulatory decisions throughout the Executive branch are carefully considered, supported by the facts before the agency, and are consistent with applicable law. Section 6(b) of Executive Order No. 12866 sets out transparency requirements for this process, to provide for appropriate levels of openness and accountability in the regulatory process. These requirements establish an appropriate balance between the confidentiality needs of the Executive Branch in the deliberative process and the ability of Congress and the public to monitor the functioning of centralized review. (For your convenience, we are attaching a copy of the Executive Order, as amended, to facilitate any questions you may have about what information is available.) OIRA would be available to discuss this longstanding regulatory review process further with the Committee or your staff if it would be helpful.

I would also note that the Clean Air Act includes an unusual statutory provision that provides additional transparency for the regulatory review of EPA rules by OIRA. After publication of an EPA rulemaking under the Clean Air Act, the agency provides a public docket of additional deliberative documents. These documents include drafts of proposed and final regulations submitted by the Administrator of EPA to OIRA for interagency review, all

documents accompanying such drafts, all written comments on such drafts, and all written responses to these written comments. This docket is now available to the public at www.regulations.gov, and the Committee may review these additional communications in order to understand the interagency review process for this rule. We would be pleased to work with your Committee and the EPA to facilitate access to the documents available pursuant to this provision.

Except as set forth above, however, OIRA is not in a position to provide additional documents or information, and must respect and preserve the confidentiality of the Executive Branch deliberative and consultative process. There is a careful balance between accommodating disclosure requests and the importance of preserving candid, confidential deliberations among Executive Branch officials. Because the Executive Order and current law already provide for the disclosure of a significant amount of pre-decisional inter-agency material, and thereby define a reasonable balance, it would be inappropriate to intrude further into these deliberations beyond the significant material that OIRA has made available to your committee with this letter, and similar cautions will apply when Ms. Dudley testifies before the Committee.

I hope that you find this information helpful. If you have any questions about this response, please feel free to have your staff contact OMB through Shannon O'Keefe at (202) 395-4790, or OMB's Deputy General Counsel John G. Knepper or me at (202) 395-5044.

Sincerely,

Jeffrey A. Rosen
General Counsel

Enclosures:
As stated.

cc: The Honorable Tom Davis
Ranking Minority Member

April 1, 2008

The Honorable Susan E. Dudley
Administrator
Office of Information and Regulatory Affairs
725 17th Street, NW
Washington, DC 20503

Dear Ms. Dudley:

I am writing to reiterate my request that the Office of Management and Budget (OMB) cooperate voluntarily with the Committee's investigation into the new air quality standard for ozone.

On March 12, 2008, EPA Administrator Stephen Johnson rejected the specific recommendations of the Clean Air Scientific Advisory Committee (CASAC) in finalizing an updated national ambient air quality standard (NAAQS) for ozone. Despite CASAC's unanimous recommendation for a primary ozone standard no greater than 0.070 parts per million, he opted to set the standard at 0.075 parts per million. Moreover, according to press accounts and EPA staff, White House officials intervened to overrule EPA's efforts to establish a science-based secondary standard to protect forests, crops, and other plants from the damaging effects of ozone.[1]

On March 14, 2008, I wrote to request that you provide the Committee with complete and unredacted copies of communications relating to the updated NAAQS for ozone made on or after February 22, 2008.[2] Jeffrey A. Rosen, General Counsel for the Office of Management and Budget, responded on March 26, 2008, by providing copies of a number of responsive documents, including two versions of the proposed rule, three pieces of correspondence between EPA and OMB, and records of two OMB meetings with outside parties. All of the documents provided by OMB are either part of the publicly available docket or are expected to be placed in the docket. In his letter, Mr. Rosen also stated that OMB would not be providing an unspecified

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[1] *See, e.g., EPA Chief Lowers Smog Limit*, Los Angeles Times (Mar. 13, 2008).

[2] Letter from Chairman Henry A. Waxman to Ms. Susan Dudley, Administrator, Office of Information and Regulatory Affairs (Mar. 14, 2008).

number of documents responsive to the Committee's request, citing "the confidentiality of the Executive Branch deliberative and consultative process."[3]

Mr. Rosen's response does not meet the Committee's needs, unfortunately. Unless the President intends to assert a valid claim of executive privilege over the withheld documents, the Committee is entitled to the documents responsive to its oversight request.

There are two options available to OMB if you wish to cooperate voluntarily with the Committee's request. One is to provide the responsive documents to the Committee by the close of business on April 7, 2008. The other is to bring the responsive documents to the Committee offices for a staff review, the purpose of which would be to assess whether the documents are relevant to the Committee's investigation and need to be produced. If OMB would prefer this alternative approach, then I ask that you provide a mutually agreeable schedule for the staff review by close of business on April 7, 2008.

I hope you will reevaluate your position and cooperate with the Committee.

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

Sincerely,

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

[3] Letter from Jeffrey A. Rosen, General Counsel, Office of Management and Budget, to Chairman Henry A. Waxman (Mar. 26, 2008).

April 3, 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 confirm your appearance at a hearing held by the Committee on Oversight and Government Reform on Thursday, April 24, 2008, at 10:00 a.m. in Room 2154, Rayburn House Office Building. The hearing will examine the process the Environmental Protection Agency used in setting the new ozone national ambient air quality standards.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives, with broad investigative jurisdiction as set forth in House Rule X. Information for witnesses appearing before the Committee is contained in the enclosed Witness Information Sheet.

If you have any questions, please contact Greg Dotson or Erik Jones of the Committee staff at (202) 225-4407. We look forward to your testimony.

Sincerely,

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

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

Witness Information Sheet

The following is a summary of some of the pertinent rules and procedures applicable to witnesses testifying before the Committee on Oversight and Government Reform:

- Witnesses should provide 100 copies of their written testimony to Earley Green, Chief Clerk, 2157 Rayburn House Office Building, no later than 10:00 a.m. two business days prior to the hearing. Witnesses should also provide their statement by this date in electronic format, either as a CD or via email to earley.green@mail.house.gov.

- At the hearing, each witness will be asked to summarize his or her written testimony in five minutes or less in order to maximize the time available for discussion and questions.

- House Rule XI clause 2(g)(4) requires that witnesses appearing in a nongovernmental capacity submit to the Committee in advance of the hearing "a curriculum vitae and a disclosure of the amount and source (by agency and program) of *each* Federal grant (or subgrant thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness."

- The Committee does not provide financial reimbursement for witness travel or accommodations. Witnesses with extenuating circumstances, however, may submit a written request for such reimbursements to Robin Butler, Financial Administrator, 2157 Rayburn House Office Building, at least one week prior to the hearing. Reimbursements will not be made without prior approval.

- Witnesses with disabilities should contact Committee staff to arrange any necessary accommodations.

- The Committee on Oversight and Government Reform is the principal oversight committee in the U.S. House of Representatives. In addition, the Committee has legislative jurisdiction over a number of subjects affecting the management of government operations and activities. The specific jurisdiction of the Committee is set forth in House Rule X clauses 1(m), 2, 3(i), and 4(c).

- The Committee rules governing this hearing are online at www.oversight.house.gov/rules/.

For inquiries regarding these rules and procedures, please contact the Committee on Oversight and Government Reform at (202) 225-5051.

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

APR 1 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 supplements our March 19, 2008 response to your letter of March 14, 2008, in which you request the U.S. Environmental Protection Agency (EPA) to provide you with copies of specified records relating to the updated National Ambient Air Quality Standard (NAAQS) for ozone.

At this time, we have identified a number of 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.

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 the updated NAAQS for ozone. We recognize the importance of the Committee's need to obtain information necessary 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 were to be disclosed in a broad setting. The inability of policy makers to obtain a broad range of advice and recommendations from staff would have a negative effect on the Agency's overall deliberative process and ultimately would impair the Agency's ability to properly execute its programs. Second, further disclosure could result in needless public confusion about the Administrator's decision on the ozone standard. Many of the documents are pre-decisional and do not reflect the Agency's full and complete thinking on the matter, which is set forth in the final rule published in the Federal Register on March 27, 2008. Some of these documents also contain privileged and confidential attorney-client communications and attorney work product.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. In order to identify specific documents in which EPA has a confidentiality interest, we have copied those documents on paper with a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized Only to Congress 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 the Committee and staff 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.

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 accordance with our established procedures for processing documents in response to Congressional oversight requests, we are also consulting with other Executive Branch agencies and offices about any documents that may concern their interests.

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

Enclosures

cc: The Honorable Tom Davis
Ranking Minority Member

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 11, 2008

GENERAL COUNSEL

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

This letter responds to your letter dated April 1, 2008 to Susan Dudley, the Administrator of the Office of Information and Regulatory Affairs ("OIRA") at the Office of Management and Budget in the Executive Office of the President, and as follow-up to the requests in your letter to Administrator Dudley dated March 14, 2008. As noted below, we are continuing to make documents available in response to the Committee's request.

On March 26, 2008, we provided the Committee with more than 1500 pages of responsive OIRA documents, and offered to work further with the Committee to the extent helpful. The documents provided included the actual correspondence between the Administrator of OIRA and the Administrator and Deputy Administrator of EPA relating to the new ozone NAAQS regulation, and also included the actual text of what EPA had submitted to OIRA and the final draft of the regulation at the conclusion of interagency review, as well as records from meetings OIRA had held with parties outside of the Executive Branch. In addition, Administrator Dudley agreed to make herself available to testify at a Committee hearing you had proposed for April 10, 2008.

The ozone NAAQS regulation was issued by EPA less than one month ago. We understand that the Committee has asked EPA itself for documents relating to the ozone NAAQS. However, we are advised that because of other oversight requests the Committee has made to EPA, the Committee thus far has not yet received any documents regarding the ozone NAAQS from EPA, but expects to receive them next week. As indicated in my earlier letter of March 26, 2008, it is our hope that when you receive those documents in addition to those we have provided they will in significant measure satisfy the Committee's inquiry.

Nonetheless, since the OIRA Administrator's receipt of your April 1 letter, on behalf of OIRA, I and others have spoken with members of your staff to clarify the Committee's perceived needs, and agreed to provide additional documents. Per those discussions, today an additional box of 3,559 pages of documents was delivered to the Committee. In addition, we anticipate that additional documents will be provided to the Committee by the end of next week, April 18, and we have offered to apprise your staff on a daily basis of the progress of our review.

We have emphasized to your staff, and will repeat here for the Committee, that Administrator Dudley aims to cooperate with the Committee's review of the EPA ozone NAAQS rulemaking.

As noted in my earlier letter, we are prepared to consult further with the Committee and your staff to the extent helpful, so please feel free to have your staff contact OMB through Shannon O'Keefe at (202) 395-4790 or my office at 202-395-5044.

Sincerely,

Jeffrey A. Rosen
General Counsel

Cc: The Honorable Tom Davis
Ranking Minority Member

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

APR 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 supplements our March 19, 2008 and April 11, 2008 responses to your letter of March 14, 2008, in which you request the U.S. Environmental Protection Agency (EPA) to provide you with copies of specified records relating to the updated National Ambient Air Quality Standard (NAAQS) for ozone.

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.

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 the updated NAAQS for ozone. We recognize the importance of the Committee's need to obtain information necessary 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 were to be disclosed in a broad setting. The inability of policy makers to obtain a broad range of advice and recommendations from staff would have a negative effect on the Agency's overall deliberative process and ultimately would impair the Agency's ability to properly execute its programs. Second, further disclosure could result in needless public confusion about the Administrator's decision on the ozone standard. Many of the documents are pre-decisional and do not reflect the Agency's full and complete thinking on the matter, which is set forth in the final rule published in the Federal Register on March 27, 2008. Some of these documents also contain privileged and confidential attorney-client communications and attorney work product.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. In order to identify specific documents in which EPA has a confidentiality interest, we have copied those documents on paper with a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized Only to Congress 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 the Committee and staff 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.

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 accordance with our established procedures for processing documents in response to Congressional oversight requests, we are also consulting with other Executive Branch agencies and offices about any documents that may concern their interests.

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

Enclosures

cc: The Honorable Tom Davis
Ranking Minority Member

April 15, 2008

The Honorable Jim Nussle
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Nussle:

The Committee on Oversight and Government Reform will hold a hearing on Thursday, April 24, 2008, at 10:00 a.m. in Room 2154, Rayburn House Office Building to examine the process the Environmental Protection Agency used in setting the new ozone national ambient air quality standards. I am writing to request your testimony at the hearing, or the testimony of an appropriate designee familiar with the process.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives, with broad investigative jurisdiction as set forth in House Rule X. Information for witnesses appearing before the Committee is contained in the enclosed Witness Information Sheet.

If you have any questions, please contact Greg Dotson or Erik Jones of the Committee staff at (202) 225-4407. We look forward to your testimony.

Sincerely,

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

Witness Information Sheet

The following is a summary of some of the pertinent rules and procedures applicable to witnesses testifying before the Committee on Oversight and Government Reform:

- Witnesses should provide 100 copies of their written testimony to Earley Green, Chief Clerk, 2157 Rayburn House Office Building, no later than 10:00 am two business days prior to the hearing. Witnesses should also provide their statement by this date in electronic format, either as a CD or via email to earley.green@mail.house.gov.

- At the hearing, each witness will be asked to summarize his or her written testimony in five minutes or less in order to maximize the time available for discussion and questions.

- House Rule XI clause 2(g)(4) requires that witnesses appearing in a nongovernmental capacity submit to the Committee in advance of the hearing "a curriculum vitae and a disclosure of the amount and source (by agency and program) of *each* Federal grant (or subgrant thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness."

- The Committee does not provide financial reimbursement for witness travel or accommodations. Witnesses with extenuating circumstances, however, may submit a written request for such reimbursements to Robin Butler, Financial Administrator, 2157 Rayburn House Office Building, at least one week prior to the hearing. Reimbursements will not be made without prior approval.

- Witnesses with disabilities should contact Committee staff to arrange any necessary accommodations.

- The Committee on Oversight and Government Reform is the principal oversight committee in the U.S. House of Representatives. In addition, the Committee has legislative jurisdiction over a number of subjects affecting the management of government operations and activities. The specific jurisdiction of the Committee is set forth in House Rule X clauses 1(m), 2, 3(i), and 4(c).

- The Committee rules governing this hearing are online at www.oversight.house.gov/rules/.

For inquiries regarding these rules and procedures, please contact the Committee on Oversight and Government Reform at (202) 225-5051.

Dotson
Baran
Jones
Environment

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

GENERAL COUNSEL

April 15, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

This letter further responds to your letter dated April 1, 2008 to Susan Dudley, the Administrator of the Office of Information and Regulatory Affairs ("OIRA") at the Office of Management and Budget in the Executive Office of the President, and your letter to Administrator Dudley dated March 14, 2008. Today we have made additional documents available in response to the Committee's request, and we anticipate that we will have some additional documents later this week.

On March 26, 2008, we provided the Committee with more than 1500 pages of responsive OIRA documents, and offered to work further with the Committee to the extent feasible. The documents provided included the actual correspondence between the Administrator of OIRA and the Administrator and Deputy Administrator of EPA relating to the new ozone NAAQS regulation, and also included the actual text of what EPA had submitted to OIRA and the final draft of the regulation at the conclusion of interagency review, as well as records from meetings OIRA had held with parties outside of the Executive Branch.

On April 11, 2008, we provided the Committee with another 3,559 pages of documents in response to your requests. Among other things, these documents included communications directly between OIRA and EPA officials.

Today's additional transmittal of 1,361 pages of documents brings the total from OIRA to 6,474 thus far. We hope the Committee recognizes this as a significant effort to accommodate its needs and interests in this topic, especially since the ozone NAAQS regulation was issued by EPA only one month ago. As indicated in my earlier letters of March 26, 2008 and April 11, 2008, it is our hope that when you receive and review EPA's documents in addition to those we have provided the combined materials will satisfy the Committee's inquiry.

1

As I have noted before, Administrator Dudley is fully cooperating with the Committee's review of the EPA ozone NAAQS rulemaking. (As you know, Administrator Dudley also had agreed to make herself available to testify at a Committee hearing you had proposed for April 10, 2008.) As noted in my earlier letters, we have had a continuing dialogue with your staff, and we are prepared to consult further with the Committee and your staff, so please feel free to have your staff contact OMB through Shannon O'Keefe at (202) 395-4790 or my office at 202-395-5044.

Sincerely,

Jeffrey A. Rosen
General Counsel

cc: The Honorable Tom Davis
Ranking Minority Member

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

APR 17 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 supplements our March 28, April 11, and April 15, 2008 responses to your letter of March 14, 2008, in which you request the U.S. Environmental Protection Agency (EPA) to provide you with copies of specified records relating to the updated National Ambient Air Quality Standard (NAAQS) for ozone.

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.

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 the updated NAAQS for ozone. We recognize the importance of the Committee's need to obtain information necessary 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 were to be disclosed in a broad setting. The inability of policy makers to obtain a broad range of advice and recommendations from staff would have a negative effect on the Agency's overall deliberative process and ultimately would impair the Agency's ability to properly execute its programs. Second, further disclosure could result in needless public confusion about the Administrator's decision on the ozone standard. Many of the documents are pre-decisional and do not reflect the Agency's full and complete thinking on the matter, which is set forth in the final rule published in the Federal Register on March 27, 2008. Some of these documents also contain privileged and confidential attorney-client communications and attorney work product.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. In order to identify specific documents in which EPA has a confidentiality interest, we have copied those documents on paper with a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized Only to Congress 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 the Committee and staff 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.

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 accordance with our established procedures for processing documents in response to Congressional oversight requests, we are also consulting with other Executive Branch agencies and offices about any documents that may concern their interests.

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

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 Susan E. Dudley, Administrator, Office of Information and Regulatory Affairs; Serve: Jeff Rosen, General Counsel, Office of Management and Budget

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 18, 2008 Time: 5:00 p.m.

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 16th day of April, 2008.

Henry A. Waxman
Chairman or Authorized Member

Attest: Lorraine C. Miller
Clerk

PROOF OF SERVICE

Subpoena for Susan E. Dudley, Administrator, Office of Information and Regulatory Affairs; Serve: Jeff Rosen, General Counsel, Office of Management and Budget

Address 725 17th Street, NW, Washington DC 20503

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 & GOV'T REFORM

Manner of service fax (by previous agreement) (202-395-7289)

Date 4/16/08

Signature of Server Kristin Amerling

Address 2157 RAYBURN HOUSE OFFICE BUILDING, US HOUSE OF REPRESENTATIVES, WASHINGTON, DC 20515

SCHEDULE

1. Unredacted and complete copies (including any attachments) of all documents relating to the updated national ambient air quality standards for ozone that include or consist of communications made on or after February 22, 2008, that were requested in Chairman Waxman's letter of March 14, 2008, to Office of Information and Regulatory Affairs Administrator Susan Dudley, (attached), except documents that have previously been provided to the Committee in complete and unredacted form in response to Chairman Waxman's letter of March 14, 2008.

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.

7. The term "updated national ambient air quality standards for ozone" means the national ambient air quality standards for ozone that were finalized by EPA on March 12. 2008.

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 14, 2008

The Honorable Susan E. Dudley
Administrator
Office of Information and Regulatory Affairs
725 17th Street, NW
Washington, DC 20503

Dear Ms. Dudley:

On March 12, 2008, EPA Administrator Stephen Johnson rejected the specific recommendations of the Clean Air Scientific Advisory Committee (CASAC) in finalizing an updated national ambient air quality standard (NAAQS) for ozone. Despite CASAC's unanimous recommendation for a primary ozone standard no greater than 0.070 parts per million, he opted to set the standard at 0.075 parts per million. Moreover, according to press accounts and EPA staff, President Bush personally intervened to overrule EPA's efforts to establish a science-based secondary standard to protect forests, crops, and other plants from the damaging effects of ozone.[1]

The Oversight and Government Reform Committee will be investigating the decision to reject the advice of EPA's scientific advisors and the role of the White House in setting the ozone standards. The Committee requests your testimony at a hearing to examine these issues on Thursday, April 10, 2008, at 10:00 a.m. in Room 2154, Rayburn House Office Building.

To assist the Committee's investigation into this matter, I request that you provide the Committee with complete and unredacted copies of communications relating to the updated NAAQS for ozone made on or after February 22, 2008.

I also ask that you provide the Committee with a mutually agreeable schedule for document production by noon on March 19, 2008. This schedule should provide for production of the documents by March 26, 2008. If you anticipate withholding any documents from the Committee, I request that you inform the Committee of your intention to do so by noon on March 19, 2008.

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[1] *See, e.g., EPA Chief Lowers Smog Limit*, Los Angeles Times (Mar. 13, 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. Information for witnesses appearing before the Committee is contained in the enclosed Witness Information Sheet.

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

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

APR 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 supplements our March 19, March 28, April 11, April 15, and April 17, 2008 responses to your letter of March 14, 2008, in which you request the U.S. Environmental Protection Agency (EPA) to provide you with copies of specified records relating to the updated National Ambient Air Quality Standard (NAAQS) for ozone.

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.

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 the updated NAAQS for ozone. We recognize the importance of the Committee's need to obtain information necessary 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 were to be disclosed in a broad setting. The inability of policy makers to obtain a broad range of advice and recommendations from staff would have a negative effect on the Agency's overall deliberative process and ultimately would impair the Agency's ability to properly execute its programs. Second, further disclosure could result in needless public confusion about the Administrator's decision on the ozone standard. Many of the documents are pre-decisional and do not reflect the Agency's full and complete thinking on the matter, which is set forth in the final rule published in the Federal Register on March 27, 2008. Some of these documents also contain privileged and confidential attorney-client communications and attorney work product.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. In order to identify specific documents in which EPA has a confidentiality interest, we have copied those documents on paper with a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized Only to Congress 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 the Committee and staff 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.

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 accordance with our established procedures for processing documents in response to Congressional oversight requests, we are also consulting with other Executive Branch agencies and offices about any documents that may concern their interests.

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

Enclosures

cc: The Honorable Tom Davis
Ranking Minority Member

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

APR 18 2008

THE ADMINISTRATOR

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

Dear Mr. Chairman:

Thank you for your letter of March 12, 2008, regarding the U.S. Environmental Protection Agency's (EPA) final decision to revise the National Ambient Air Quality Standards (NAAQS) for ground-level ozone.

On March 12, 2008, I signed a final rule that significantly strengthened the ozone NAAQS, establishing the most protective 8-hour ozone standards in U.S. history. This rule revises both the primary (health-based) and secondary (welfare-based) ozone standards to a level of 0.075 parts per million (ppm). EPA revised the ozone standards after completing an extensive review of thousands of scientific studies on the impact of ground-level ozone on public health and the environment. We also carefully considered input from five public hearings and nearly 90,000 written public comments on the proposal, as well as comments from EPA's Clean Air Scientific Advisory Committee (CASAC).

The duties prescribed to CASAC under the Clean Air Act (CAA) indicate that CASAC is intended to fulfill a special advisory role to the Administrator in the process of reviewing the NAAQS. Under section 109(d) of the CAA, CASAC is charged with reviewing both the air quality criteria published under section 108 of the CAA, and the national primary and secondary ambient air quality standards promulgated under section 109 of the CAA, and recommending to the Administrator any new standards and revisions of existing criteria and standards as may be appropriate. Because of this statutorily defined role for CASAC, I place great importance on the Committee's advice in making decisions about the NAAQS. However, the CAA also clearly establishes that the ultimate decisions about whether to revise a NAAQS, including decisions about the appropriate form and level of the standard, must be made by the Administrator. In making this judgment, I must weigh numerous other factors in addition to CASAC's advice. Thus, though I place great weight on CASAC's advice, I cannot automatically accept and am not required to follow their recommendations in making the necessary policy decisions. In those instances where my decisions on the NAAQS deviate from the Committee's advice, I have always taken special care in explaining the rationale for my decision to identify the points of departure from CASAC's recommendations, as required by CAA section 307(d)(3).

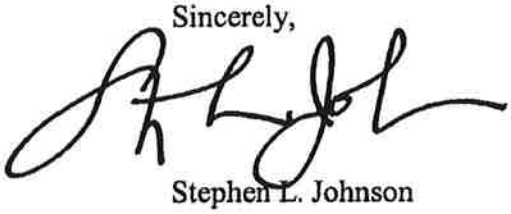
In making the final decision to revise the ozone NAAQS, I fully agreed with CASAC that the 1997 standards were not adequate to protect public health and welfare and needed to be revised. However, I drew different conclusions than CASAC as to the most appropriate level for the revised ozone NAAQS. Because current research does not provide evidence of a "bright line" clearly directing the choice of level, I was required to make a public health judgment as to the appropriate standard based on the information available. In making that decision, I placed relatively less weight on the role of evidence from certain clinical studies conducted by Adams and the results of the ozone exposure and risk assessment conducted by EPA. With regard to the Adams studies, I found the evidence of effects at the 0.060 ppm exposure level to be too limited to support a primary focus at this level, though the CASAC Ozone Panel appeared to place greater weight on this evidence. The CASAC Panel also appeared to place greater weight on the results of the risk assessment as the basis for its recommended range of 0.060 to 0.070 ppm, while in my judgment the uncertainties associated with the quantitative human exposure and risk assessments made it inappropriate to use the results of these assessments as a basis for adopting a standard at or below 0.070 ppm.

After fully evaluating the available information in the record, I concluded that a standard set at 0.075 ppm is requisite to protect public health with an adequate margin of safety, including the health of sensitive subpopulations, and that a lower standard is not needed to provide this protection. The preamble to the final rule provides a more detailed explanation of the rationale underlying my decisions, and can be found on EPA's website at: http://www.epa.gov/groundlevelozone.html.

In the 2006 review of the particulate matter (PM) NAAQS, the preamble to the final rule clearly identifies the rationale underlying my decision for retaining the annual $PM_{2.5}$ standard at 15 $\mu g/m^3$. In this case, though CASAC expressed the view that the evidence supported a tightening of the annual standard, the Committee did not provide any specific information as to what studies it felt provided such evidence nor the considerations that played a role in its interpretation of the studies. Lacking such specific statements, I could not discern a clear line of scientific reasoning that would lead me to conclude that it was appropriate to tighten the annual standard. In my judgment, a standard of 15 $\mu g/m^3$ met the requirements of the CAA in being neither more nor less stringent than necessary to protect public health with an adequate margin of safety. The preamble to the final PM NAAQS rule provides a more detailed explanation of the rationale underlying my decision regarding the annual $PM_{2.5}$ standard, and can be found on EPA's website at http://www.epa.gov/particles.

Again, thank you for your continued interest in this issue. I look forward to appearing before your Committee on April 24, to discuss this and other matters with you. If you have further questions, please contact me or your staff may contact Cheryl Mackay in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2023.

Sincerely,



Stephen L. Johnson

cc: The Honorable Tom Davis
Ranking Member

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

GENERAL COUNSEL

April 18, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

This letter is to respond to the subpoena that you issued to Susan E. Dudley, Administrator of the Office of Information and Regulatory Affairs (OIRA), at the Office of Management and Budget within the Executive Office of the President (EOP). We received the subpoena by fax on Wednesday, April 16, 2008 at 3:16 p.m., calling for documents by 5:00 p.m. on Friday, April 18, 2008.

We were disappointed to receive this subpoena because OIRA has cooperated extensively with the Committee, has provided a very substantial number of documents to the Committee, and has offered to continue working to accommodate the Committee's needs. To date, we have provided 6,734 pages of documents in four installments on March 29, April 11, April 15, and April 18. That is an expeditious response by any measure, particularly given that the regulation itself was only issued one month ago and that we have very limited resources for responding to such requests. Moreover, the documents provided to date include the communications between OIRA and EPA at all levels, including those between the Administrator of OIRA and the Administrator of EPA, and they directly show the text of the regulation that EPA originally submitted to OIRA and the text of the final draft of the regulation at the conclusion of OIRA's interagency review process. We assume the Committee is genuinely interested in oversight of the EPA rulemaking process, and we have cooperated with that, so it is difficult to understand why the documents provided would not satisfy that perceived need without infringing unnecessarily on the internal deliberations of an office within the EOP.

More importantly, issuance of a subpoena at this time is inconsistent with how the process of mutual accommodation and respect between the Congress and the Executive Branch should function. As we understand it, the Committee has sought and received a production of documents from OIRA that has outpaced that sought and received from EPA itself, even though it is an EPA rulemaking that is the subject of your inquiry. Moreover, the documents that we have provided directly address the issue of a Presidential role in the 2008 ozone NAAQS regulation, and the Committee is certainly aware of such a Presidential role in the prior 1997

ozone NAAQS rulemaking from the Committee's own review of the 1997 rulemaking at that time. It is questionable whether the Presidential role could be the subject of legislation, and no such legislation is presently proposed. In our view, a proper process of mutual accommodation between the Branches of government should focus on a balance between the Congress' actual needs for information and the legitimate need for confidential deliberation within the Executive Branch.

By separate letter today, we have provided the Committee with additional documents, bringing the total to date to 6,734 pages of material from OIRA. There are certain other documents that are not being delivered, for reasons referenced previously, that relate to concerns as to the effective functioning of the Executive Branch decisionmaking process and concerns rooted in the separation of powers between the President and the Congress. We propose to discuss these issues further, including what Committee information needs may remain after its review of the extensive materials that have been provided, and to consider alternative ways in which OIRA could accommodate such needs. We are prepared to meet as early as Monday for that purpose.

As a formal matter, we would like to note for the record certain objections to other aspects of the subpoena, including objections to the request for a response within two days of its issuance, to the instructions and definitions, to the scope of the request, and to the applicability of any House rules to a separate Branch of government. Also, with regard to attachments to the documents provided, the Committee's staff had accepted the approach that those were not being sought except by subsequent request to see what was attached to a particular email or other document.

We want to underscore that it remains Administrator Dudley's desire to cooperate with the Committee in a manner that satisfies the important interests involved. We have sought to be respectful of the Congress, and will continue to do so. We respectfully request that we discuss this matter further, to seek a mutually acceptable resolution. We can be reached through OMB's Legislative Affairs office (Shannon O'Keefe) at (202) 395-4790 or through my office at 202-395-5044.

Respectfully submitted,

Jeffrey A. Rosen
General Counsel

Cc: The Honorable Tom Davis
Ranking Minority Member

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 18, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

This letter further responds to your letter dated April 1, 2008 to Susan Dudley, the Administrator of the Office of Information and Regulatory Affairs ("OIRA") at the Office of Management and Budget in the Executive Office of the President, and your letter to Administrator Dudley dated March 14, 2008. With this letter, we are providing an additional 260 pages of documents in response to the Committee's request.

Although it has only been one month since EPA issued the ozone NAAQS regulation about which you have inquired, we have now provided extensive documents to the Committee on a prompt rolling basis in four installments. On March 26, 2008, we provided the Committee with more than 1500 pages of responsive OIRA documents, which included the actual correspondence between the Administrator of OIRA and the Administrator and Deputy Administrator of the EPA relating to the new National Ambient Air Quality Standard for ozone, and this production also included the actual text of what EPA had submitted to OIRA and the final draft of the regulation at the conclusion of interagency review, as well as records from meetings OIRA had held with parties outside of the Executive Branch.

On April 11, 2008, we provided the Committee with another 3,559 pages of documents in response to your requests. Among other things, these documents included the communications directly between OIRA and EPA officials. To the extent the Committee is conducting oversight of EPA's rulemaking, those would seem to be the main documents at issue.

On April 15, 2008, we provided the Committee with an additional 1,361 pages of documents, and today we have provided an additional 260 pages, which brings the total from OIRA to 6,734 documents produced thus far. We also understand that the Committee is receiving significant numbers of documents from EPA as well.

Administrator Dudley has been making every effort to accommodate the Committee's review of the EPA ozone NAAQS rulemaking. In that spirit, we are continuing to assess whether additional documents can be provided, and I anticipate that additional documents will be provided on Monday. In addition, I have previously raised with the Committee's staff the possibility that we discuss alternative ways to reach further accommodations—in a manner that would respect both the Committee's needs and important Executive Branch considerations.

My colleagues and I have had a continuing and ongoing dialogue with your staff—almost daily-- and we are prepared to consult further, so please feel free to have your staff contact OMB through Shannon O'Keefe at (202) 395-4790 or my office at 202-395-5044.

Sincerely,

Jeffrey A. Rosen
General Counsel

Cc: The Honorable Tom Davis
Ranking Minority Member

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

APR 2 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 supplements our March 19, March 28, April 11, April 15, and April 17, and April 18, 2008 responses to your letter of March 14, 2008, in which you request the U.S. Environmental Protection Agency (EPA) to provide you with copies of specified records relating to the updated National Ambient Air Quality Standard (NAAQS) for ozone.

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.

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 the updated NAAQS for ozone. We recognize the importance of the Committee's need to obtain information necessary 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 were to be disclosed in a broad setting. The inability of policy makers to obtain a broad range of advice and recommendations from staff would have a negative effect on the Agency's overall deliberative process and ultimately would impair the Agency's ability to properly execute its programs. Second, further disclosure could result in needless public confusion about the Administrator's decision on the ozone standard. Many of the documents are pre-decisional and do not reflect the Agency's full and complete thinking on the matter, which is set forth in the final rule published in the Federal Register on March 27, 2008. Some of these documents also contain privileged and confidential attorney-client communications and attorney work product.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. In order to identify specific documents in which EPA has a confidentiality interest, we have copied those documents on paper with a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized Only to Congress 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 the Committee and staff 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.

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 accordance with our established procedures for processing documents in response to Congressional oversight requests, we are also consulting with other Executive Branch agencies and offices about any documents that may concern their interests.

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

Enclosures

cc: The Honorable Tom Davis
Ranking Minority Member

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

GENERAL COUNSEL

April 21, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

This letter further responds to your letter dated April 1, 2008 to Susan Dudley, the Administrator of the Office of Information and Regulatory Affairs ("OIRA") at the Office of Management and Budget in the Executive Office of the President, and your letter to Administrator Dudley dated March 14, 2008. With this letter, we are providing an additional 144 pages of documents in response to the Committee's request.

Although it has only been one month since EPA issued the ozone NAAQS regulation about which you have inquired, we have now provided extensive documents to the Committee on a prompt rolling basis in five installments. On March 26, 2008, we provided the Committee with more than 1,552 pages of responsive OIRA documents, which included the actual correspondence between the Administrator of OIRA and the Administrator and Deputy Administrator of the EPA relating to the new National Ambient Air Quality Standard for ozone, and this production also included the actual text of what EPA had submitted to OIRA and the final draft of the regulation at the conclusion of interagency review, as well as records from meetings OIRA had held with parties outside of the Executive Branch.

On April 11, 2008, we provided the Committee with another 3,559 pages of documents in response to your requests. Among other things, these documents included the communications directly between OIRA and EPA officials. To the extent the Committee is conducting oversight of EPA's rulemaking, those would seem to be the main documents at issue.

On April 15, 2008, we provided the Committee with an additional 1,361 pages of documents. On April 18, 2008 we provided an additional 260 pages, and today we have provided an additional 144 pages of documents, which brings the total from OIRA to 6,878 pages of documents produced thus far. We also understand that the Committee is receiving significant numbers of documents from EPA as well.

Administrator Dudley has been making every effort to accommodate the Committee's review of the EPA ozone NAAQS rulemaking. In that spirit, we hope to discuss with the Committee's staff whether there are now alternative ways to reach further accommodations—in a manner that would respect both the Committee's needs and important Executive Branch considerations.

My colleagues and I have had a continuing and ongoing dialogue with your staff—almost daily—and we are prepared to consult further, so please feel free to have your staff contact OMB through Shannon O'Keefe at (202) 395-4790 or my office at 202-395-5044.

Sincerely,

Jeffrey A. Rosen
General Counsel

cc: The Honorable Tom Davis
Ranking Minority Member

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 21, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

This letter is in response to your April 15, 2008 request for testimony from me or from an appropriate designee familiar with the process the Environmental Protection Agency (EPA) used in setting the new ozone national ambient air quality standards for a hearing on April 24, 2008.

The Committee submitted a similar request on March 14, 2008 for Susan Dudley, the Administrator of the Office of Information and Regulatory Affairs ("OIRA") at the Office of Management and Budget (OMB) in the Executive Office of the President to appear on April 10, 2008 on the same matter. Ms Dudley was available to testify on that date but we were informed that the EPA Administrator was not available to testify on that date so your staff requested another date for the hearing.

On March 19, 2008, we received word the EPA Administrator would be available to testify before your Committee on April 24, 2008. Our Legislative Affairs Office contacted your staff to inform them the only time in April Ms. Dudley would not be able to testify was the week of April 21st, when she would be leading the U.S. delegation to the High Level Regulatory Cooperation Forum with the European Union. Your staff then asked if she would be available to testify on April 17th or during the first two weeks of May and we indicated that she would be available at these times. We're disappointed that the Committee scheduled the hearing for the 24th, despite the fact that we offered several alternative dates, including ones that would have occurred earlier in April.

Administrator Dudley is the most appropriate OMB witness for this hearing due to her expertise and direct involvement in this matter. It is our understanding that Administrator Dudley and Administrator Johnson are available on May 5, 2008 to provide testimony on this matter. I respectfully ask that the Committee reconsider the date for the hearing in order to have Ms. Dudley appear on the matter.

Sincerely,

Jim Nussle
Director, OMB

Cc: The Honorable Tom Davis
Ranking Minority Member

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

APR 2 2 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 supplements our March 19, March 28, April 11, April 15, April 17, April 18, and April 21, 2008 responses to your letter of March 14, 2008, in which you request the U.S. Environmental Protection Agency (EPA) to provide you with copies of specified records relating to the updated National Ambient Air Quality Standard (NAAQS) for ozone.

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.

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 the updated NAAQS for ozone. We recognize the importance of the Committee's need to obtain information necessary 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 were to be disclosed in a broad setting. The inability of policy makers to obtain a broad range of advice and recommendations from staff would have a negative effect on the Agency's overall deliberative process and ultimately would impair the Agency's ability to properly execute its programs. Second, further disclosure could result in needless public confusion about the Administrator's decision on the ozone standard. Many of the documents are pre-decisional and do not reflect the Agency's full and complete thinking on the matter, which is set forth in the final rule published in the Federal Register on March 27, 2008. Some of these documents also contain privileged and confidential attorney-client communications and attorney work product.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. In order to identify specific documents in which EPA has a confidentiality interest, we have copied those documents on paper with a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized Only to Congress 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 the Committee and staff 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.

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 accordance with our established procedures for processing documents in response to Congressional oversight requests, we are also consulting with other Executive Branch agencies and offices about any documents that may concern their interests.

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

Enclosures

cc: The Honorable Tom Davis
Ranking Minority Member

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

APR 23 2008

THE ADMINISTRATOR

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 the Committee's invitation for me to testify before the Committee about my decision to significantly strengthen the national ambient air quality standard (NAAQS) for ground-level ozone. This is an important issue, and I look forward to sharing with you information about this positive step forward for the environment. However, I was disappointed to learn that the Committee is contemplating issuing a subpoena to compel my appearance before the Committee, particularly since my staff has consistently communicated my willingness to appear voluntarily.

My staff has been working with your staff for several weeks in order to make arrangements for my appearance before the Committee, which was originally scheduled for this Thursday, April 24. My staff has provided the Committee with documents it requested in order to assist with the hearing. At this time, EPA has submitted over 33,000 pages of material. As my staff has indicated, I am willing and prepared to testify on Thursday, April 24, in accordance with long-standing Congressional practice regarding testimony of Executive Branch agency heads.

Unfortunately, we were informed only this week that the structure of the hearing would no longer allow me to appear and still fulfill other outstanding obligations of which your staff had been informed. In an effort to accommodate the Committee's desire to schedule other witnesses, my staff also conveyed my agreement to appear on a federal government panel the week of May 5. Again, we were disappointed to learn only this week that the structure of a May 5 hearing would also likely deviate from long-standing Congressional practice for Executive Branch agency heads' testimony.

In light of my staff's consistent efforts to accommodate the Committee's scheduling requests for my testimony, I am puzzled and disappointed that the Committee is contemplating compelling me to appear when I have already made it clear I am willing to do so voluntarily in accordance with long-standing practice. I believe the contemplated action

represents an unnecessary escalation of this issue, particularly where EPA has been working with the Committee in good faith. I would like to take this opportunity to reiterate my willingness to testify voluntarily on a federal government panel at a hearing on this important matter during the week of May 5.

If you have any questions, please contact me or Chris Bliley, Associate Administrator, Office of Congressional and Intergovernmental Relations at 202-564-5200.

Sincerely,

Stephen L. Johnson

cc: The Honorable Tom Davis,
Ranking Minority Member

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

APR 23 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 supplements our March 19, March 28, April 11, April 15, April 17, April 18, April 21, and April 22, 2008 responses to your letter of March 14, 2008, in which you request the U.S. Environmental Protection Agency (EPA) to provide you with copies of specified records relating to the updated National Ambient Air Quality Standard (NAAQS) for ozone.

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.

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 the updated NAAQS for ozone. We recognize the importance of the Committee's need to obtain information necessary 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 were to be disclosed in a broad setting. The inability of policy makers to obtain a broad range of advice and recommendations from staff would have a negative effect on the Agency's overall deliberative process and ultimately would impair the Agency's ability to properly execute its programs. Second, further disclosure could result in needless public confusion about the Administrator's decision on the ozone standard. Many of the documents are pre-decisional and do not reflect the Agency's full and complete thinking on the matter, which is set forth in the final rule published in the Federal Register on March 27, 2008. Some of these documents also contain privileged and confidential attorney-client communications and attorney work product.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. In order to identify specific documents in which EPA has a confidentiality interest, we have copied those documents on paper with a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized Only to Congress 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 the Committee and staff 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.

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 accordance with our established procedures for processing documents in response to Congressional oversight requests, we are also consulting with other Executive Branch agencies and offices about any documents that may concern their interests.

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

Enclosures

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

April 24, 2008

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

Dear Administrator Johnson:

Thank you for your letter of April 23, 2008. I am pleased to learn that you will appear before the Committee voluntarily.

The Committee has rescheduled the hearing to 10:00 a.m. on May 8, 2008. You will be testifying on the first panel with two other federal witnesses: Susan Dudley, who will be appearing in her capacity as Administrator of the federal Office of Information and Regulatory Affairs, and Dr. Rogene Henderson, who will be appearing in her capacity as Chair of the federal Clean Air Scientific Advisory Committee, which advises you regarding scientific matters pursuant to section 109(d)(2) of the Clean Air Act.

I look forward to your testimony.

Sincerely,

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

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

APR 2 4 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 supplements our prior responses[1] to your letter of March 14, 2008, in which you request the U.S. Environmental Protection Agency (EPA) provide you with copies of specified records relating to the updated National Ambient Air Quality Standard (NAAQS) for ozone.

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. For a small number of documents, 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 the updated NAAQS for ozone. We recognize the importance of the Committee's need to obtain information necessary 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 were to be disclosed in a broad setting. The inability of policy makers to obtain a broad range of advice and recommendations from staff would have a negative effect on the Agency's overall deliberative process and ultimately would impair the Agency's ability to properly execute its programs. Second, further disclosure could result in needless public confusion about the Administrator's decision on the ozone standard. Many of the documents are pre-decisional and do not reflect the Agency's full and complete thinking on the matter, which is set forth in the final rule published in the

[1] EPA provided earlier responses on March 19, March 28, April 11, April 15, April 17, April 18, April 21, and April 22, and April 23, 2008.

Federal Register on March 27, 2008. Some of these documents also contain privileged and confidential attorney-client communications and attorney work product.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. In order to identify specific documents in which EPA has a confidentiality interest, we have copied those documents on paper with a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized Only to Congress 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 the Committee and staff 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, 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 relatively small number of additional EPA documents. We hope to be able to provide a final response on those documents by the end of next week. 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.

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

Enclosures

cc: The Honorable Tom Davis
Ranking Minority Member

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

APR 30 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 supplements our prior responses[1] to your letter of March 14, 2008, in which you request the U.S. Environmental Protection Agency (EPA) provide you with copies of specified records relating to the updated National Ambient Air Quality Standard (NAAQS) for ozone.

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. For a small number of documents, 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 completes EPA's response concerning its documents; however, as we have 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 these documents because they reflect internal deliberations and/or attorney-client communications regarding the updated NAAQS for ozone. We recognize the importance of the Committee's need to obtain information necessary 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

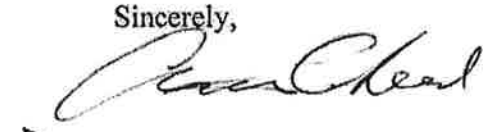
[1] EPA provided earlier responses to the Committee on March 19, March 28, April 11, April 15, April 17, April 18, April 21, April 22, April 23, and April 24, 2008. EPA also provided a small number of documents containing privileged attorney work product or attorney-client communications for inspection by the Committee on April 29, 2008.

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 were to be disclosed in a broad setting. The inability of policy makers to obtain a broad range of advice and recommendations from staff would have a negative effect on the Agency's overall deliberative process and ultimately would impair the Agency's ability to properly execute its programs. Second, further disclosure could result in needless public confusion about the Administrator's decision on the ozone standard. Many of the documents are pre-decisional and do not reflect the Agency's full and complete thinking on the matter, which is set forth in the final rule published in the Federal Register on March 27, 2008. Some of these documents also contain privileged and confidential attorney-client communications and attorney work product.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. In order to identify specific documents in which EPA has a confidentiality interest, we have copied those documents on paper with a legend that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized Only to Congress 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 the Committee and staff 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 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

Enclosures

cc: The Honorable Tom Davis
Ranking Minority Member

May 2, 2008

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

Dear Administrator Johnson:

On March 14, 2008, I wrote to request that you provide the Committee with documents relating to EPA's revised national ambient air quality standards for ozone. In response to this request, EPA produced documents to the Committee throughout April 2008. However, EPA continues to withhold hundreds of documents from the Committee.

According to your staff, the agency is withholding "several hundred" documents relating to communications with the Office of Management and Budget. Additionally, EPA is withholding approximately two hundred documents relating to communications with other offices within the White House. EPA has provided the Committee with no date by which these documents will be provided, nor has EPA indicated that these documents will ever be provided to the Committee. If EPA does not produce these documents by noon on Monday, May 5, I anticipate taking steps to require production of the documents.

EPA also has withheld a relatively small number of documents on the grounds that they were "more sensitive attorney-client communications." 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 the withheld documents and determined that eight documents are necessary for the Committee's investigation. I am requesting that you provide unredacted versions of the eight documents identified in Appendix A to the Committee by noon on Monday, May 5, 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

2839
4383
4385
4388
4390
4471
4514
Unnumbered document in redline form entitled, "Key Legal Comments Received on Secondary O3 NAAQS Review."

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: May 6, 2008 Time: 5:00 p.m.

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 5th day of May, 2008.

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) Erik Jones

Title Counsel, House Committee on Oversight + Gov't Reform

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

Date 05/05/08

Signature of Server Erik Jones

Address B372 Rayburn House Office Building, US House of Representatives, Washington, DC 20515

SCHEDULE

1. Unredacted and complete copies (including any attachments) of any and all documents that include or consist of communications between the U.S. Environmental Protection Agency (EPA) and White House persons relating to the updated national ambient air quality standards for ozone made on or after January 1, 2008. Unredacted and complete copies of documents previously provided to the Committee in response to Chairman Waxman's letter of March 14, 2008, to EPA Administrator Stephen Johnson (attached) need not be produced.

2. Unredacted and complete copies of the following documents, which were specifically requested in Chairman Waxman's letter of May 2, 2008, to EPA Administrator Stephen Johnson (attached):

a. Documents with the following EPA Bates Numbers:

2839
4383
4385
4388
4390
4471

b. Unnumbered document in redline form entitled, "Key Legal Comments Received on Secondary O3 NAAQS 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.

7. The term "updated national ambient air quality standards for ozone" means the national ambient air quality standards for ozone that were finalized by EPA on March 12, 2008.

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 14, 2008

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

Dear Administrator Johnson:

On March 12, 2008, you rejected the specific recommendations of the Clean Air Scientific Advisory Committee (CASAC) in finalizing an updated national ambient air quality standard (NAAQS) for ozone. Despite CASAC's unanimous recommendation for a primary ozone standard no greater than 0.070 parts per million, you opted to set the standard at 0.075 parts per million. Moreover, according to press accounts and EPA staff, President Bush personally intervened to overrule EPA's efforts to establish a science-based secondary standard to protect forests, crops, and other plants from the damaging effects of ozone.[1]

The Oversight and Government Reform Committee will be investigating the decision to reject the advice of EPA's scientific advisors and the role of the White House in setting the ozone standards. The Committee requests your testimony at a hearing to examine these issues on Thursday, April 10, 2008, at 10:00 a.m. in Room 2154, Rayburn House Office Building.

To assist the Committee's investigation into this matter, I request that you provide the Committee with complete and unredacted copies of (a) communications between EPA and persons in the White House relating to the updated NAAQS for ozone, and (b) internal EPA communications relating to the updated NAAQS for ozone made on or after February 22, 2008.

I also ask that you provide the Committee with a mutually agreeable schedule for document production by noon on March 19, 2008. This schedule should provide for production of the communications with the White House by March 21, 2008, and the

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[1] *See, e.g., EPA Chief Lowers Smog Limit*, Los Angeles Times (Mar. 13, 2008).

production of the remaining documents by March 28, 2008. If you anticipate withholding any documents from the Committee, I request that you inform the Committee of your intention to do so by noon on March 19, 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. Information for witnesses appearing before the Committee is contained in the enclosed Witness Information Sheet.

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

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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WASHINGTON, DC 20515–6143

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

www.oversight.house.gov

May 2, 2008

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

Dear Administrator Johnson:

On March 14, 2008, I wrote to request that you provide the Committee with documents relating to EPA's revised national ambient air quality standards for ozone. In response to this request, EPA produced documents to the Committee throughout April 2008. However, EPA continues to withhold hundreds of documents from the Committee.

According to your staff, the agency is withholding "several hundred" documents relating to communications with the Office of Management and Budget. Additionally, EPA is withholding approximately two hundred documents relating to communications with other offices within the White House. EPA has provided the Committee with no date by which these documents will be provided, nor has EPA indicated that these documents will ever be provided to the Committee. If EPA does not produce these documents by noon on Monday, May 5, I anticipate taking steps to require production of the documents.

EPA also has withheld a relatively small number of documents on the grounds that they were "more sensitive attorney-client communications." 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 the withheld documents and determined that eight documents are necessary for the Committee's investigation. I am requesting that you provide unredacted versions of the eight documents identified in Appendix A to the Committee by noon on Monday, May 5, 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

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Unnumbered document in redline form entitled, "Key Legal Comments Received on Secondary O3 NAAQS Review."

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

MAY - 5 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 May 2, 2008 in which you request that the U.S. Environmental Protection Agency (EPA or Agency) provide you with copies of eight documents relating to EPA's revised National Ambient Air Quality Standards for ozone by noon today. Your letter also requests copies of communications involving the Office of Management and Budget (OMB) and the White House by noon today. Your requests are addressed separately below.

Request for Eight Documents

As you know, EPA has already provided the Committee with over 35,000 pages of documents related to the revised ozone standard, and devoted significant staff time to your request in order to accommodate the Committee's desire to have documents prior to its hearing. EPA has identified important Executive Branch confidentiality interests in many of the responsive documents because they reflect internal deliberations and/or attorney client communications regarding the revised ozone standard. Despite these interests, only a small number of documents containing sensitive attorney work product or attorney-client communications have not been provided to the Committee. In the interest of transparency, EPA provided the Committee with the opportunity to inspect these documents on April 29, and we understand your staff took considerable notes regarding their contents. Your letter of May 2 now seeks unredacted copies of eight of those documents.

EPA has made available the full contents of these documents to the Committee in order to promote transparency. We recognize 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. These 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 these types of privileged communications or information 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 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 the deliberative process related to the ozone standard 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 any future 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 provide the Committee with a copy of document 4514, which has been copied 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 accommodation, EPA does not waive any confidentiality interests in this document or similar documents in other circumstances. EPA respectfully requests that the Committee protect the document and the information contained in it 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.

Beyond the accommodation already offered by the Agency with respect to the remaining seven documents, the Committee at this time has not articulated why physical copies of these documents are necessary to fulfill its legislative and oversight interests. In light of a lack of 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.

Request for White House/OMB Documents

As you know, 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.

As a result of these consultations, the agencies have identified both White House and OMB documents that may be released to you. Those documents are being copied and will be provided to the Committee by noon tomorrow under a separate letter. With

that production, EPA will have provided to the Committee almost all of the documents involving OMB interests. For the remaining documents implicating White House equities, we propose that Committee staff, EPA representatives, and a representative of the White House Counsel's office meet to discuss the remaining documents. We propose that such a meeting be scheduled for tomorrow, May 6, 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

Enclosure

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

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May 6, 2008

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

Dear Administrator Johnson:

Yesterday, I issued a subpoena for documents relating to the Environmental Protection Agency's (EPA) revised national ambient air quality standards for ozone that EPA has failed to provide to the Committee. The subpoena required production of the documents by 5:00 p.m. today. In light of the postponement of the Committee's May 8, 2008, hearing on the revised ozone standards, I am extending the deadline for compliance with the subpoena to 5:00 p.m. on May 8, 2008.

If you have any questions concerning this extension, 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

MAY - 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 as a follow-up to the meeting on May 6, 2008 with your staff and representatives from the U.S. Environmental Protection Agency (EPA or Agency) and the White House Counsel's office, and in further response to your May 2, 2008 request and subsequent subpoena for copies of documents relating to the EPA revised National Ambient Air Quality Standards for ozone. Your subpoena seeks seven specified documents, as well as copies of all communications between EPA and White House persons.

In our prior correspondence, we noted that your previous request, and now the subpoena, seeks documents in which there are significant Executive Branch confidentiality interests, including attorney work product and attorney-client communications, as well as pre-decisional and other materials in which there are substantial White House interests. Nevertheless, EPA has been responsive to the Committee's demands, having provided over 4,000 documents in response to the Committee's requests, including all of the documents reflecting communications between EPA and the Office of Management and Budget (OMB). Of the small number of EPA documents not provided in hard copy to the Committee, all were made available for inspection by your staff.

At the May 6th meeting, in a continuing effort at accommodation, we (along with representatives from the White House Counsel's office) met with your staff to discuss the remaining documents. We appreciated the opportunity to further discuss your request, and as communicated in that meeting, we have identified almost 100 White House documents that we are releasing to you. EPA is providing you with copies of these documents and the seven documents specifically identified in the subpoena.

EPA has identified an important Executive Branch confidentiality interest in these documents because they contain non-public, internal deliberative, attorney-client and

attorney work product information. 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 and other Executive Branch 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 documents in order to accommodate the Committee's oversight interest in this matter. EPA has copied these documents on paper with 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 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,

for Christopher P. Bliley
Associate Administrator

Enclosures

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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May 16, 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 advise you that when you appear before the Committee on May 20, 2008, you should appear with documents.

On March 14, 2008, I wrote to request that you provide the Committee with documents relating to EPA's revised national ambient air quality standards for ozone. In response to this request, EPA produced documents to the Committee throughout April 2008. However, EPA continues to withhold documents from the Committee.

According to your staff and the special counsel to the President, the agency is withholding more than 30 documents relating to communications with offices in the White House other than the Office of Management and Budget. The White House counsel has indicated that you do not intend to provide these documents to the Committee.

On May 5, I issued a subpoena for the withheld documents described above. However, you have failed to produce them.

The Committee has a track record of seeking to reach reasonable accommodations with the White House on access to White House records. My consistent approach has been to get the information that the Committee needs to fulfill its oversight responsibilities, not to provoke avoidable conflicts over access to documents. As part of this accommodation process, the Committee has obtained access in other investigations to internal communications among senior officials in the Bush White House, such as communications to and from Assistants to the

President and the office of the White House counsel, as well as draft communications between cabinet secretaries and the President.[1]

In this case, the 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.

I do not question the good faith with which you and White House counsel have sought to respond to the Committee's inquiries, but we have reached a point where you are withholding documents that the Committee needs to complete its oversight. In this circumstance, the Committee and House precedents are clear. You must provide the documents to the Committee unless they are subject to a valid claim of executive privilege. As Ranking Member Davis and I wrote to James Connaughton last summer, you have "two basic options for each of the documents: provide the document to the Committee or assert executive privilege with respect to the document."[2]

The chairmen who preceded me on this Committee have consistently taken this same position. When Dan Burton was Chairman, his counsel wrote White House counsel: "[T]he only privilege under which the President may withhold subpoenaed documents is executive privilege."[3] When he was Chairman, Tom Davis wrote Mr. Connaughton: "Congress does not recognize deliberative process as a basis for withholding information and could not provide effective oversight without access to deliberative materials."[4]

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[1] During the Clinton Administration, the Committee routinely received access to internal White House documents. Among the types of materials that were produced to the Committee were communications between the Vice President and his staff and confidential communications involving White House counsel. *See* Minority Staff Report, House Committee on Government Reform, *Congressional Oversight of the Clinton Administration* (Jan. 17, 2006).

[2] Letter from Chairman Henry A. Waxman and Ranking Member Tom Davis to James L. Connaughton, Chairman of the White House Council on Environmental Quality (July 27, 2007).

[3] Letter from John Rowley, Chief Counsel to Chairman Dan Burton, to Lanny Breuer, Special Counsel to the President (Apr. 18, 1997).

[4] Letter from Chairman Davis to James L. Connaughton, Chairman, White House Council on Environmental Quality (Sept. 20, 2006).

You will be testifying before the Committee on Tuesday, May 20, 2008, regarding the revised national ambient air quality standards for ozone. 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.

Sincerely,

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

Congress of the United States

House of Representatives

May 16, 2008

The Honorable Susan E. Dudley
Administrator
Office of Information and Regulatory Affairs
725 17th Street, NW
Washington, DC 20503

Dear Ms. Dudley:

I am writing to advise you that when you appear before the Committee on May 20, 2008, you should appear with documents.

On March 14, 2008, I wrote to request that you provide the Committee with documents relating to EPA's revised national ambient air quality standards for ozone. Jeff Rosen, General Counsel for the Office of Management and Budget, responded on March 26, 2008, by providing copies of a number of responsive documents, including two versions of the proposed rule, three pieces of correspondence between EPA and OMB, and records of two OMB meetings with outside parties. All of the documents provided by OMB were either part of the publicly available docket or were expected to be placed in the docket. In his letter, Mr. Rosen also stated that OMB would not be providing an unspecified number of documents responsive to the Committee's request, citing "the confidentiality of the Executive Branch deliberative and consultative process."[1]

On April 16, 2008, the Committee issued a subpoena for the responsive documents that you had failed to produce voluntarily.

Since that time, you have produced additional documents to the Committee, which I appreciate. However, you continue to withhold approximately 1,900 pages of documents. According to OMB staff and the White House counsel, approximately 275 pages of documents are communications between the Office of Information and Regulatory Affairs (OIRA) and other White House officials outside of OMB. The remaining 1,625 pages of documents relate to internal OIRA communications about EPA's revised ozone standards. These documents have

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[1] Letter from Jeffrey A. Rosen, General Counsel, Office of Management and Budget, to Chairman Henry A. Waxman (Mar. 26, 2008).

been completely withheld from the Committee. You have given the Committee no date by which these documents will be provided, nor have you indicated that these documents will ever be provided to the Committee.

The Committee has a track record of seeking to reach reasonable accommodations with the White House on access to White House records. My consistent approach has been to get the information that the Committee needs to fulfill its oversight responsibilities, not to provoke avoidable conflicts over access to documents. As part of this accommodation process, the Committee has obtained access in other investigations to internal communications among senior officials in the Bush White House, such as communications to and from Assistants to the President and the office of the White House counsel, as well as draft communications between cabinet secretaries and the President.[2]

In this case, the Committee has not been provided sufficient access to the information to understand why the President rejected the recommendations of EPA Administrator Stephen Johnson. 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.

I do not question the good faith with which you and White House counsel have sought to respond to the Committee's inquiries, but we have reached a point where you are withholding documents that the Committee needs to complete its oversight. In this circumstance, the Committee and House precedents are clear. You must provide the documents to the Committee unless they are subject to a valid claim of executive privilege. As Ranking Member Davis and I wrote to James Connaughton last summer, you have "two basic options for each of the documents: provide the document to the Committee or assert executive privilege with respect to the document."[3]

The chairmen who preceded me on this Committee have consistently taken this same position. When Dan Burton was Chairman, his counsel wrote White House counsel: "[T]he only privilege under which the President may withhold subpoenaed documents is executive

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[2] During the Clinton Administration, the Committee routinely received access to internal White House documents. Among the types of materials that were produced to the Committee were communications between the Vice President and his staff and confidential communications involving White House counsel. *See* Minority Staff Report, House Committee on Government Reform, *Congressional Oversight of the Clinton Administration* (Jan. 17, 2006).

[3] Letter from Chairman Henry A. Waxman and Ranking Member Tom Davis to James L. Connaughton, Chairman of the White House Council on Environmental Quality (July 27, 2007).

privilege."[4] When he was Chairman, Tom Davis wrote Mr. Connaughton: "Congress does not recognize deliberative process as a basis for withholding information and could not provide effective oversight without access to deliberative materials."[5]

You will be testifying before the Committee on Tuesday, May 20, 2008, regarding the revised national ambient air quality standards for ozone. Unless the President asserts a valid claim of executive privilege with respect to the documents being withheld by OMB, 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.

Sincerely,

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

[4] Letter from John Rowley, Chief Counsel to Chairman Dan Burton, to Lanny Breuer, Special Counsel to the President (Apr. 18, 1997).

[5] Letter from Chairman Davis to James L. Connaughton, Chairman, White House Council on Environmental Quality (Sept. 20, 2006).

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

MAY 20 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 May 16, 2008 letter and in further response to your March 14, 2008 and May 2, 2008 requests and subsequent subpoena for copies of documents relating to the EPA revised National Ambient Air Quality Standards for ozone. Your subpoena seeks copies of all communications between EPA and White House persons.

In our prior correspondence, we noted that your previous request and the subpoena seek documents in which there are significant Executive Branch confidentiality interests, including attorney work product and attorney-client communications, as well as pre-decisional and other materials in which there are substantial White House interests. At a May 6th meeting, in a continuing effort at accommodation, we (along with representatives from the White House Counsel's office) met with your staff to discuss the remaining documents. EPA then provided you with copies of approximately 100 White House documents and the seven documents specifically identified in the subpoena.

Today, as a further accommodation, EPA is providing an additional 34 documents in which EPA continues to identify significant Executive Branch confidentiality interests, including substantial White House interests. EPA has identified an important Executive Branch confidentiality interest in these documents because they contain non-public, internal deliberative, attorney-client and attorney work product information. 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 and other Executive Branch 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 documents in order to accommodate the Committee's oversight interest in this matter. EPA has copied these documents on paper with 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 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

Enclosures

cc: The Honorable Tom Davis
Ranking Minority Member

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 20, 2008

GENERAL COUNSEL

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

This letter responds to your letter of May 16, 2008 to Susan Dudley, the Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget within the Executive Office of the President. I am writing to ensure that the Committee has a more complete picture of our extensive and ongoing efforts to achieve a mutual accommodation of the interests of our two separate branches of government.

As you are aware, OIRA has provided the Committee with access to 7,558 pages of documents. Among other things, these include communications between OIRA and EPA at all levels, including directly between Administrators Dudley and Johnson. That represents an extraordinary level of disclosure, and is the information that directly addresses EPA's promulgation of the ozone NAAQS regulation. Moreover, the communications between Administrators Dudley and Johnson were made public at the outset by OIRA and by EPA.

Contrary to the suggestion in your letter, the vast majority of the 7,558 documents we provided to the Committee were provided on March 26, April 11, and April 15, *before* you sent a subpoena to Ms. Dudley. Specifically, you were provided with 1,552 pages on March 26, with 3,559 pages on April 11, and 1,361 pages on April 15. My letter of April 18, 2008 expressed our disappointment that on April 16 you elected to send a subpoena, notwithstanding the very substantial cooperation that had occurred and was even then continuing.

The subpoena that you issued purported to call for additional documents to be provided by April 18, 2008. Although certain internal deliberative documents have been appropriately maintained as confidential, it would be wrong and unfair to characterize OIRA's posture in this regard as one of "defiance." To the contrary, counsel for OIRA and counsel for the Committee have had continuing discussions about ways to accommodate our mutual concerns and interests. As a result, OIRA provided the Committee with 260 additional pages of documents on April 18, and 144 additional pages of documents on April 21. Then, on May 2, 2008, we agreed upon an extraordinary accommodation to enable the Committee's staff to review 680 additional pages of documents that related to OIRA consultations with other agencies during the inter-agency review process.

The Executive Branch is continuing its substantial accommodation of the Committee's information needs by making Administrators Dudley and Johnson available for testimony at today's Committee hearing. As we have previously indicated, we remain open to further discussion and ideas as to ways to meet any legitimate Committee needs while preserving the important Executive Branch interests that are involved. We suggest that you evaluate whether the Committee needs any further information from OIRA after you receive the testimony today from Administrators Dudley and Johnson. Given the substantial Executive Office of the President confidentiality interests implicated by the requests to OIRA, and the availability of very extensive information from EPA itself, should you after the hearing determine you need more documents from OIRA, it will be reasonable for us to ask the Committee to specify in detail why the additional documents are legitimately needed, and for what legitimate legislative purpose. Under the accommodation process, "each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation." *United States v. AT&T*, 567 F.2d 121, 127 (D.C. Cir. 1977). Only after that occurs could it become necessary to work out arrangements for identifying a genuine impasse. As the Supreme Court has said: "These 'occasion[s] for constitutional confrontation between [two coequal branches]' should be avoided whenever possible." *Cheney v. U.S. District Court*, 542 U.S. 367, 389-90 (2004).

We appreciate the professional manner in which our discussions with the Committee's staff have occurred to date, and we likewise have sought to cooperate with the Committee in a professional and productive manner. It remains our desire to have a mutually acceptable resolution, so please feel free to have your staff contact OMB through Shannon O'Keefe at (202) 395-4790, or OMB's Deputy General Counsel John G. Knepper or me at (202) 395-5044, or to communicate directly with the office of the Counsel to the President, through Emmet T. Flood, at (202) 456-1019.

Sincerely,

Jeffrey A. Rosen
General Counsel

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

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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 13, 2008

The Honorable Susan E. Dudley
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Ms. Dudley:

On April 16, 2008, the Committee issued a subpoena to you for the production of documents relevant to the Committee's investigation of the Environmental Protection Agency's (EPA) revision of the national ambient air quality standards for ozone. You have neither complied with this subpoena by its 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 subpoena before then.

On March 14, 2008, I wrote to request that you provide the Committee with documents relating to EPA's revised national ambient air quality standards for ozone.[1] I requested that you provide these documents by March 26. On March 26, you provided only a partial response. Jeff Rosen, General Counsel for the Office of Management and Budget (OMB), responded by providing copies of a number of responsive documents that were either part of the publicly available docket or were expected to be placed in the docket.[2] In his letter, Mr. Rosen also stated that you would not be providing an unspecified number of documents responsive to the Committee's request, citing "the confidentiality of the Executive Branch deliberative and consultative process," but did not state that executive privilege had been asserted[3] Although

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[1] Letter from Rep. Henry A. Waxman to Susan Dudley, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (Mar. 14, 2008).

[2] Letter from Jeffrey A. Rosen, General Counsel, Office of Management and Budget, to Rep. Henry A. Waxman (Mar. 26, 2008).

[3] *Id.*

Committee staff and OMB staff communicated repeatedly in the remaining days of March, you did not provide any additional documents.

On April 1, I wrote to you again and explained:

> There are two options available to OMB if you wish to cooperate voluntarily with the Committee's request. One is to provide the responsive documents to the Committee by the close of business on April 7, 2008. The other is to bring the responsive documents to the Committee offices for a staff review, the purpose of which would be to assess whether the documents are relevant to the Committee's investigation and need to be produced. If OMB would prefer this alternative approach, then I ask that you provide a mutually agreeable schedule for the staff review by close of business on April 7, 2008.[4]

On April 7, you did not provide any additional documents. OMB staff informed Committee staff that you would provide some additional documents on April 11.[5]

At a meeting between Committee staff and OMB staff on April 11, some additional documents were produced to the Committee. However, despite a hearing being scheduled for April 24, you would not commit to a schedule for producing the remaining documents. Also, OMB staff stated that you would not commit to producing internal OMB communications.[6]

On April 16, I issued a subpoena to you requiring production of the responsive documents by 5 p.m. on April 18. On April 18, you provided some additional documents and your counsel objected to the subpoena on unspecified grounds and requested further discussion on the matter.[7] In response to this request, Committee staff met repeatedly with OMB staff and White House counsel.

On April 25, OMB staff and White House counsel informed the Committee that you continue to withhold approximately 1,900 pages of responsive documents.[8] Approximately 275

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[4] Letter from Rep. Henry A. Waxman to Susan Dudley, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (Apr. 1, 2008).

[5] Phone conversation between Oversight and Government Reform Committee staff and OMB staff (Apr. 7, 2008).

[6] Meeting between Oversight and Government Reform Committee staff and OMB staff (Apr. 11, 2008).

[7] Letter from Jeffrey A. Rosen, General Counsel, Office of Management and Budget, to Rep. Henry A. Waxman (Apr. 18, 2008).

[8] Meeting between Oversight and Government Reform Committee staff, OMB staff and White House counsel (Apr. 25, 2008).

pages of responsive documents are communications between the Office of Information and Regulatory Affairs (OIRA) and other White House officials outside of OMB.[9] The remaining 1,625 pages of documents relate to internal OIRA communications about EPA's revised ozone standards.[10] These documents have been completely withheld from the Committee with no assertion of executive privilege.

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 the recommendations of EPA Administrator Stephen Johnson. 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.[11]

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 OMB, 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.[12]

At the May 20 hearing, you did not produce the remaining documents, nor did the President assert executive privilege.[13]

You are now nearly two months overdue in providing documents responsive to the Committee's subpoena. 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

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[9] *Id.*

[10] *Id.*

[11] Letter from Rep. Henry A. Waxman to OIRA Administrator Susan E. Dudley (May 16, 2008).

[12] *Id.*

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

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 citing you in contempt. I strongly urge you to reconsider your position and comply with the duly issued subpoena.

Sincerely,

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

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

JUN 18 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 responds to your letter of June 13, 2008 to U.S. Environmental Protection Agency (EPA or Agency) Administrator Stephen L. Johnson, in which you demand immediate production of documents related to California's request for a waiver under section 209 of the Clean Air Act and EPA's revised National Ambient Air Quality Standard (NAAQS) for ozone.

I am writing to express the Agency's disappointment about the Committee's decision to unnecessarily escalate this issue despite the Agency's substantial efforts to accommodate the Committee's stated interests, as well as your inaccurate characterization of those extensive efforts aimed to achieve a mutually agreeable solution that respects the interests of both branches of government. EPA has devoted significant staff resources to respond to the Committee's investigation into these matters, both in an effort to be transparent in its decision making and to provide the Committee with the information it seeks. EPA has provided the Committee with thousands of documents on both of these issues and has made significant compromises by disclosing many documents which implicate significant Executive Branch confidentiality interests. Your June 13 letter does not accurately portray the Agency's numerous attempts at accommodation, nor does it recognize the Agency's legitimate interests in seeking an accommodation that adequately protects the confidentiality interests at stake.

In response to the Committee's request for documents related to the California waiver decision, EPA provided the Committee with over 7,000 documents, devoting more than 2,200 staff hours to process the Committee's request. Of the approximately 150 documents implicating White House equities, EPA has provided or shown the vast majority (approximately 100) of them to the Committee, both before and in response to the subpoena issued on April 9, 2008. Prior to issuance of the subpoena on April 9, EPA had provided or made available for staff review over 60 documents implicating White House equities, and an additional 34 documents were provided or made available for staff review on April 22. On April 15 and 22, representatives from EPA and White House

Counsel's office met with Committee staff in order to explain our concerns over disclosure of these documents and in an attempt to find a mutually agreeable accommodation. At those meetings, your staff indicated that the Committee shared EPA's desire to avoid a constitutional confrontation. Moreover, to further accommodate the Committee, during the April 22 meeting Committee staff was provided with a detailed overview of the remaining documents you currently seek. In response to Committee concerns over redaction of documents previously provided or shown, EPA staff provided another briefing on April 29 to describe the content of the redacted material. Additionally, Administrator Johnson has appeared before the Committee and answered questions on this issue on two separate occasions. Again, in light of these extensive efforts at accommodation, we were surprised and disappointed to learn the Committee is considering a contempt resolution, particularly since the Committee had not followed up to continue discussions after the overview of remaining documents provided to Committee staff during our April 22 meeting.

EPA similarly made extensive efforts to respond to the Committee's request for information on the revised NAAQS for ozone. In response to the Committee's request for documents related to the ozone decision, EPA provided the Committee with over 4,000 documents totaling over 35,000 pages, including a substantial number of highly deliberative communications within EPA and all of the communications between EPA and OMB. During a telephone call with Committee staff on May 5, we offered to discuss possible accommodations with staff for the 162 total documents implicating White House equities. Later that day, and before the meeting had occurred, the Committee issued a subpoena demanding immediate production of all White House related documents by May 6, 2008. Representatives from EPA and White House Counsel's office met with Committee staff on May 6, at which time we indicated our intent to provide the Committee with the vast majority (approximately 128) of the documents. During that meeting, we also provided the Committee with a detailed overview of the remaining documents.

On May 8, we provided the Committee with copies of 93 documents of the 162 White House related documents. On May 16, the Committee issued another demand for the outstanding documents, and stated that Administrator Johnson must provide the documents at the Committee's hearing on May 20 absent an assertion of executive privilege. At the hearing on May 20, EPA provided the Committee with an additional 35 documents, and Administrator Johnson reiterated his desire for the Committee and EPA to reach a mutually agreeable accommodation which accounts for the best interests of both the legislative and executive branches. Administrator Johnson also provided testimony to the Committee and answered questions about the Agency's decision. We believe these offers of accommodation fully satisfy the Committee's needs, and underscore the good faith of the Agency on this issue.

Given the Agency's extensive efforts thus far, and our interest in continuing a dialogue, we urge the Committee to reconsider its consideration of a contempt resolution. Indeed, we have conducted yet another review of both sets of remaining documents and expect to provide an additional set of documents to the Committee. The record clearly

demonstrates that the Agency has gone to extraordinary lengths to embrace the Supreme Court's direction that "'constitutional confrontation between [two coequal branches]' should be avoided whenever possible." *Cheney v. U.S. District Court*, 542 U.S. 367, 389-90 (2004). Under the oversight accommodation process, "each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation." *United States v. AT&T*, 567 F.2d 121, 127 (D.C. Cir. 1977). The Agency has recognized this constitutional mandate, and asks that the Committee do the same.

It is imperative for the legislative and executive branches to work together and avoid any unnecessary escalation. In light of the extensive accommodations and the spirit of cooperation demonstrated by EPA, this escalation is indeed unwarranted, and we ask the Committee to reevaluate its decision to consider a contempt resolution.

Sincerely,

Christopher P. Bliley
Associate Administrator

cc: The Honorable Tom Davis
Ranking Minority Member

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

GENERAL COUNSEL

June 18, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

This letter responds to your letter of June 13, 2008 to Susan Dudley, the Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget within the Executive Office of the President.

We were surprised and disappointed to receive your letter. I am writing because your letter fails to provide a complete picture of our extensive and ongoing efforts to achieve a mutual accommodation of the interests of our two separate branches of government. In reality, our communications *before* the Committee's May 20 hearing, *at* the May 20 hearing, *immediately following* the May 20 hearing, and in *the month after* the May 20 hearing all demonstrate that there is no legitimate reason to pursue a resolution of contempt, as I will detail below. We instead urge the Committee to recognize the benefit of the extraordinary cooperation that has occurred to date, and that with the hearing and the Committee's reports now completed there is no valid reason for moving from mutual cooperation to unilateral confrontation.

First, as to the events *before* the May 20, 2008 Committee hearing, OIRA went to great lengths to accommodate the Committee; we met regularly with your staff, and provided voluminous documents on an expedited basis. As you are aware, OIRA provided the Committee with access to 7,558 pages of documents. Among other things, these include communications between OIRA and EPA at all levels, including directly between Administrators Dudley and Johnson. That represents an extraordinary level of disclosure, and is the information that directly addresses EPA's promulgation of the ozone NAAQS regulation. Moreover, the communications between Administrators Dudley and Johnson were made public at the outset by OIRA and by EPA.

It bears note that the vast majority of the 7,558 pages of documents we made available to the Committee were provided on March 26, April 11, and April 15, *before* you sent a subpoena to Ms. Dudley. Specifically, you were provided with 1,552 pages on March 26, with 3,559 pages on April 11, and 1,361 pages on April 15. My letter of April 18, 2008 expressed our

disappointment that on April 16 you elected to send a subpoena, notwithstanding the very substantial cooperation that had occurred and was even then continuing. Nonetheless, OIRA provided the Committee with 260 additional pages of documents on April 18, and 144 additional pages of documents on April 21. Then, on May 2, 2008, we agreed upon an extraordinary accommodation to enable the Committee's staff to review 680 additional pages of documents that related to OIRA consultations with other agencies during the inter-agency review process.

Second, *at* the May 20 hearing itself, OIRA continued its substantial accommodation of the Committee's information needs by making Administrator Dudley available for testimony. At that hearing, the Committee had the opportunity to question Ms. Dudley about OIRA's role in the process leading to the ozone regulation, but elected not to do so. In a hearing that lasted almost three hours, Ms. Dudley was asked only four questions (two from Rep. Sarbanes, one from Rep. Issa, and one from you). Not one of these related to OIRA's internal deliberations; not one question raised any legitimate need for additional documents, or for information that Ms. Dudley could not herself provide at the hearing.

Third, *immediately after* the May 20 hearing, neither you nor any other Member of the Committee raised additional questions or identified a specific legislative need for additional documents from OIRA. You will recall that my letter of May 18, 2008 suggested that you "evaluate whether the Committee needs any further information from OIRA after you receive the testimony today from Administrators Dudley and Johnson. Given the substantial Executive Office of the President confidentiality interests implicated by the requests to OIRA, and the availability of very extensive information from EPA itself, should you after the hearing determine you need more documents from OIRA, it will be reasonable for us to ask the Committee to specify in detail why the additional documents are legitimately needed, and for what legitimate legislative purpose." We received no response.

Fourth, in the *four weeks after* the May 20 hearing, we heard nothing further from the Committee or your staff, and certainly nothing detailing reasons that the information provided at the hearing or in the more than 7500 pages of documents provided was insufficient to address questions that you had. In light of the hearing itself, it is obvious why that was so: the facts involving the ozone rule are available, and the Committee has not demonstrated any legitimate need for going beyond the extensive information that was provided.

Accordingly, under the oversight accommodation process, "each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation." *United States v. AT&T*, 567 F.2d 121, 127 (D.C. Cir. 1977). As the Supreme Court has said: "These 'occasion[s] for constitutional confrontation between [two coequal branches]' should be avoided whenever possible." *Cheney v. U.S. District Court*, 542 U.S. 367, 389-90 (2004).

In view of the foregoing, we believe that the present state of affairs does not justify the sudden, significant escalation that your June 13 letter portends. You have received extensive information through document production and you have conducted a hearing at which Administrator Dudley was asked only four questions – none of them directly related to OIRA's internal deliberations. To escalate this issue to a contempt proceeding at this point would be

inconsistent with the respectful and cooperative manner in which OIRA, the Committee and its staff have worked together to provide information to the Committee. We, therefore, earnestly urge the Committee not to proceed with such a resolution of contempt.

Sincerely,

Jeffrey A. Rosen
General Counsel

cc: The Honorable Tom Davis
Ranking Minority Member

June 19, 2008

The Honorable Susan E. Dudley
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Ms. Dudley:

On June 18, 2008, I received a letter from the General Counsel of the Office of Management and Budget requesting that the Committee not proceed with a resolution of contempt against you. In this letter, OMB once again failed to commit to producing subpoenaed documents or to assert a valid claim of executive privilege with respect to the documents the Committee has sought in its investigation of the issuance of new ozone air quality standards by Stephen Johnson, Administrator of the Environmental Protection Agency (EPA).

Administrator Johnson made a decision on the ozone air quality standard revision in January 2008. In several key aspects, his decision reflected the unanimous recommendation of the Clean Air Scientific Advisory Committee. Following his decision, EPA staff developed a nearly 350-page regulation. However, you objected to the science-based approach of the secondary standard and the President overruled Mr. Johnson. 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 in revising the ozone air quality standard and what cannot be considered. The Committee has been attempting to determine whether the final revision is based upon proper considerations. However, your efforts to draw a curtain around the White House are preventing Congress from understanding whether appropriate considerations underlay this decision. Although I have repeatedly informed you that you must provide the documents responsive to the April 16 subpoena 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 that OMB "produce all records related to OIRA's review of the proposed rules."[1] Over a period of less than two months and without the issuance of a subpoena, OMB produced thousands of pages of documents, including internal White House communications, and withheld only "two memoranda to the President from senior advisors within the Executive Office of the President."[2]

In light of prior practice, your effort to shield the Administration's decision-making process from appropriate congressional oversight is remarkable. Throughout this process, I have made accommodations wherever possible. Your refusal to provide the remaining 1,900 responsive documents is thwarting the Committee's ability to conduct effective oversight.

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 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).

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).