

Congress of the United States
Washington, DC 20515

July 23, 2008

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

Dear Administrator Johnson:

On July 7, 2008, we wrote to request that you provide our Committees with documents relating to an internal EPA memorandum discussing the agency's faltering Clean Water Act enforcement program. We also asked you to provide information in response to several questions relating to this issue. We established a deadline of July 14 for a subset of the documents and a deadline of July 21 for the remaining documents and responses to our questions.

We appreciate the efforts EPA is taking to collect responsive documents, but we are concerned about the failure of the agency to meet the Committees' deadlines. To date, EPA has not produced any documents. Nor has the agency offered a schedule for producing all responsive documents.

We are also concerned that EPA has unnecessarily delayed production by interpreting the scope of our document request in an unjustifiably narrow way. According to your staff, EPA interpreted our request for communications "relating to the data collected and referenced in the March 4, 2008, memorandum" as applying only to communications made subsequent to the issuance of the memorandum.¹ That interpretation was not justified by the plain language of our request. Because EPA did not gather any documents originating before March 4, 2008, the agency must now send a second instruction to agency employees who may have responsive documents to search for and produce those documents. Please provide to the Committees a copy of these instructions no later than close of business on July 24, 2008.

Moreover, an EPA attorney reportedly indicated that information related to the enforcement actions at issue could be "privileged and enforcement-confidential."² Although your staff has not asserted such a privilege with respect to our request, this press account raises concerns that the agency may further delay production by doing so. We also note that EPA has attempted to withhold similar information relating to Clean Water Act enforcement actions from Congress citing "Executive Branch confidentiality interests."³ These would not be valid bases for withholding information from our Committees.

¹ Conference call between EPA staff and Committee staffs (July 21, 2008).

² *Did EPA Cut Enforcement of Clean Water Act*, Nogales International (July 15, 2008).

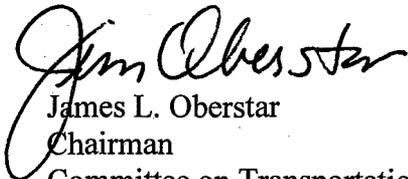
³ Letter from Christopher P. Bliley, EPA, to Rep. James Oberstar (May 15, 2008).

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In an effort to accommodate the agency without unduly delaying the Committees' investigation, we ask that your staff work with Committee staff to establish by the close of business on July 28 mutually agreeable deadlines for producing documents and information to the Committees. We also ask that your staff confirm by that time that you will not be withholding documents on the grounds that they are "enforcement-confidential." If EPA fails to reach agreement on a schedule, we anticipate moving forward with compulsory process to obtain the responsive documents.

If you have any questions concerning this request, please have your staff contact Greg Dotson of the Committee on Oversight and Government Reform staff at (202) 225-4407 or Ryan C. Seiger of the Committee on Transportation and Infrastructure staff at (202) 225-0060.

Sincerely,


James L. Oberstar
Chairman
Committee on Transportation
and Infrastructure


Henry A. Waxman
Chairman
Committee on Oversight
and Government Reform

cc: John L. Mica
Ranking Minority Member
Committee on Transportation
and Infrastructure

Tom Davis
Ranking Minority Member
Committee on Oversight
and Government Reform