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

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

MAY 28 2002

Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
U.S. House of Representatives
Washington, D.C.

Dear Congressman Waxman:

Thank you for your letter of May 13, 2002 concerning information released pursuant to court order in Judicial Watch v. U.S. Department of Energy, *et al.* The Administrator has asked me to respond to your letter.

The language that you reference on page 001577 was inadvertently released during the massive document production in this litigation. As you are aware, EPA issued a Vaughn index that lists and describes each of its energy task force documents. The Vaughn index has been corrected to reflect accurately the inadvertent release of the deliberative process material on page 001577, and has been submitted to Judicial Watch and will be submitted to the District Court. I have enclosed a copy of the relevant pages from the corrected index. Thank you for pointing out the inconsistency in this matter.

As you can imagine, the search for and production of energy task force records was a considerable undertaking. In response to several Freedom of Information Act requests for energy task force records, including the one at issue in the Judicial Watch case, EPA released more than 800 pages of documents last year, and in response to a court order this spring, we released about 4,000 additional pages. This second release, which the Department of Justice processed, consisted largely of redacted e-mail messages. EPA has delivered to you all documents that were delivered to Judicial Watch via CD-ROM on April 9, 2002. Accordingly, we believe that we have adequately responded to your request for documents.

Further, we must respectfully decline your request for an unredacted copy of the e-mails that were referenced in your letter. Notwithstanding the inadvertent release of deliberative process material, all other deliberative process material that was redacted by EPA was properly

withheld pursuant to the Freedom of Information Act. That material remains privileged and, therefore, EPA is not releasing that information.

If you have any questions, please do not hesitate to call me.

Sincerely,

Ed Krenik

Edward D. Krenik
Associate Administrator

Enclosure

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| 001570 - 001573 | 4 | 05/06/01<br>10:51pm | Karen Knutson, OVP, EOP, White House | Lorie Schmidt, OPAR, OAR, U.S. EPA | Jacob Moss, OAA, OAR, U.S. EPA | E-Mail message – Staff recommendation on issue for consideration by NEPDG for inclusion in NEP report. Draft recommendation by EPA staff.<br><br>Exemption 5:<br>Deliberative Process Privilege: predecisional and deliberative communication. Discussion would chill frank and open discussion; cause public confusion about reason for decision. To the best of our knowledge, this document has not been shared outside of the government.<br><br>Released/Redacted information: Page 001570 – Released in full. Page 001571 – Redact 1 paragraph(s) of substantive deliberative information and editorial comments by EPA staff from top, 3 paragraph(s) of substantive deliberative information and editorial comments by EPA staff from middle of page; release E-mail message metadata and subject line. Page 001572 – Redact 1 sentence from top, 5 paragraph(s) of substantive deliberative information and editorial comments by EPA staff from middle of page; release E-mail message metadata and subject line and contact information. Page 001573 – Redact 2 paragraph(s) of substantive deliberative information and editorial comments by EPA staff from top of page; release E-mail message metadata and subject line, attachment icon. No other segregable information. Disclosure would reveal privileged information. |
| 001574 | 1 | | | | | Blank Page Separator |
| 001575 - 001578 | 4 | 05/06/01<br>07:13pm | Karen Knutson, OVP, EOP, White House | Lorie Schmidt, OPAR, OAR, U.S. EPA | n/a | E-Mail message – Staff recommendation on issue for consideration by NEPDG for inclusion in NEP report.<br><br>Exemption 5:<br>Deliberative Process Privilege: predecisional and deliberative communication. Discussion would chill frank and open discussion; cause public confusion about reason for decision. To the best of our knowledge, this document has not been shared outside of the government.<br><br>Released/Redacted information: Page 001575 – Released in full. Page 001576 – Redact 1 paragraph(s) of substantive deliberative information and editorial comments by EPA staff from top of page, 1 paragraph from middle, 1 paragraph from bottom; release E-mail message metadata and subject line. Page 001577 – Redact 5 paragraph(s) of substantive deliberative information and editorial comments by EPA staff from top of page; release E-mail message metadata and subject line, and contact information; and inadvertently release substantive pre-decisional and deliberative information from bottom of page. Page 001578 – Redact attachment icons (inadvertent – same attachment icons as previous E-mail message strings). No other segregable information. Disclosure would reveal privileged information. |