



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

JUN 11 2007

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515-6115

Dear Chairman Dingell:

I am responding to your letters dated June 8, 2007, requesting that the Environmental Protection Agency provide the Director of the Office of Criminal Enforcement, Forensics and Training, Peter Murtha, and an EPA Criminal Investigation Division Special Agent to testify at an Oversight Subcommittee hearing regarding Camp Lejeune scheduled for June 12, 2007, EPA respects your role as Chairman and is committed to providing the Subcommittee the information necessary to satisfy its oversight activities to the extent possible, consistent with Constitutional and statutory obligations. In response to your June 7, 2007 letter requesting criminal investigative materials regarding Camp Lejeune, EPA identified important Executive Branch confidentiality interests, and as an accommodation provided unredacted copies of these materials to you for oversight purposes. EPA also requested that the committee not publicly disclose the unredacted files or information contained therein. Through this accommodation, EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances.

With respect to your request for Mr. Murtha and the Special Agent to appear at a hearing, Mr. Murtha is submitting written testimony for Tuesday's hearing and will appear to answer the Subcommittee's questions regarding EPA's criminal investigation of the drinking water contamination/exposures at Camp Lejeune. EPA has identified important Executive Branch confidentiality interests regarding your request to hear testimony in this matter from its Special Agent and has appreciated the opportunity to discuss our concerns with your staff. As an accommodation to your request for the Special Agent's testimony at the hearing, EPA has made the Special Agent available for extensive briefings in order to provide the Subcommittee with the information necessary to accommodate its oversight interests while protecting the Executive Branch's interests. In this letter, I am outlining our concerns further.

First, EPA generally pursues accommodation to avoid public testimony by its line agents and staff. EPA has a strong institutional interest in ensuring that appropriate supervisory personnel, rather than line employees answer Congressional questions

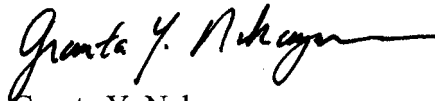
regarding Agency actions. In part, this is based upon our view that supervisory personnel, not line employees, make the decisions that are the subject of your review, and therefore should be the ones to explain those decisions. Moreover, agents must be able to exercise the independent judgment essential to the integrity of law enforcement functions without outside interference. By questioning supervisory personnel, such as Mr. Murtha, Congress can fulfill its oversight responsibilities without undermining the independence of line agents.

Second, EPA has a strong interest in maintaining a low public profile for its law enforcement agents to preserve our capacity to conduct safe and effective undercover investigations. EPA's Criminal Enforcement Division's size precludes it from employing specialized undercover operatives, yet its investigations require the availability of agents who can work without fear of public identification. Moreover, the Special Agent you have asked to appear has participated and may again participate in undercover operations. Rather than publicly identifying a federal agent who has worked -- and may again be needed to work -- in an undercover capacity, EPA can accommodate your need for information from this Special Agent through additional briefings or through the Special Agent's supervisory personnel.

While EPA is unable to agree to the Special Agent testifying at the hearing, as a further accommodation, if the Subcommittee agrees, the Special Agent could be present at the hearing in the front row of the gallery to ensure that Mr. Murtha, who would be testifying, has access to the information needed to efficiently respond to the Subcommittee. This arrangement would accommodate the Subcommittee's oversight needs while preserving important Executive Branch confidentiality interests. By participating in this way, EPA could avoid public identification of the Special Agent and help insure the independence of a line agent.

I look forward to hearing from your staff regarding this offer of accommodation. If you have further questions, your staff may contact Carolyn Levine in the Office of Congressional and Intergovernmental Relations at (202) 564-1859.

Sincerely,



Granta Y. Nakayama