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ONE HUNDRED TENTH CONGRESS

**U.S. House of Representatives**  
**Committee on Energy and Commerce**  
**Washington, DC 20515-6115**

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October 11, 2007

DENNIS B. FITZGIBBONS, CHIEF OF STAFF  
GREGG A. ROTHSCHILD, CHIEF COUNSEL

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

Dear Administrator Johnson:

A recent article published in the Washington Post on September 30, 2007, entitled, "Bush's EPA is Pursuing Fewer Polluters; Probes and Prosecutions Have Declined Sharply," highlighted three cases in which the Environmental Protection Agency (EPA) purportedly failed to initiate criminal prosecutions, even though they were clearly merited. If these allegations are accurate, it could indicate a serious failure on the part of EPA to carry out its duties.

The Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are investigating the management, operation, and activities of EPA's Office of Enforcement and Compliance Assurance, with a particular focus on the Office of Criminal Enforcement, Forensics, and Training, and the Criminal Investigation Division. The Committee has jurisdiction over environmental protection, public health, interstate and foreign commerce generally, and the homeland security-related aspects of the foregoing.

Our investigation is now being broadened to include all aspects of EPA's enforcement activities and policies. We are particularly concerned that EPA's current management may have erected unnecessary bureaucratic obstacles that deter enforcement of the environmental laws and especially criminal prosecutions.

To aid in our investigation, please provide the following information and records:

1. According to the Washington Post article, "[a] new policy distributed May 25 requires agents to seek prior approval from the head of their division and establishes new paperwork procedures." Please provide a copy of the May 25 policy referenced in the article (which is presumably embodied in a memorandum).

2. The May 25 policy referred to in Item 1 presumably would have been drafted and sent to management for approval, based on an internal analysis showing a need for this change in policy and procedures. Please provide copies of all memoranda, analyses, and other records upon which EPA management relied in adopting the changes embodied in the May 25 policy.
3. The Washington Post article refers to a site in Massachusetts at which a building was demolished and the debris, including asbestos, disposed of in violation of environmental laws. According to the Washington Post, State officials knew about the asbestos, but did not remove it prior to demolition because of the cost. Allegedly, EPA's top New England law enforcement official recommended charging the State agency and some of its workers with environmental crimes, but the U.S. Attorney's office in Boston declined to prosecute. Please identify this case and provide copies of the following records pertaining to the case:
  - a. All case opening documents, including reports, notes, memoranda, and checklists;
  - b. All case closing documents, including reports, notes, memoranda, and explanatory records;
  - c. All requests or referrals for prosecutorial assistance, including any legal analysis of the case, memoranda, notes, and e-mails authored by EPA, the Department of Justice (DOJ), or any other entity;
  - d. All investigative activity reports, summaries, agent's notes, interview notes, and other investigative records similar to Federal Bureau of Investigation (FBI) Form 302;
  - e. All records obtained in the course of the investigation;
  - f. All e-mails or memoranda exchanged between EPA, DOJ, and the U.S. Attorney's office in Massachusetts; and
  - g. All records related to the DOJ decision not to prosecute, including all communications between and among EPA, DOJ, and any other person or entity.
4. The Washington Post article describes a case in which the Justice Department entered into a plea bargain with IMC Shipping Co. in connection with a massive oil spill in the Alaska Maritime National Wildlife Refuge in 2004. According to the Post, prosecutors told the court that they had enough evidence to indict the company for criminal negligence and for making false statements. Under the plea bargain, IMC Shipping agreed to pay a \$10 million fine, and pay cleanup costs. The court may not, however,

have been told that the effect of the plea bargain was to confer an enormous financial benefit on IMC Shipping. By not being convicted of criminal negligence or other crimes, the company was eligible to seek reimbursement for its cleanup costs, estimated to be more than \$100 million, both from a Federal fund and from insurance. Please provide copies of the following records pertaining to the IMC Shipping case:

- a. All case opening documents, including reports, notes, memoranda, and checklists;
  - b. All case closing documents, including reports, notes, memoranda, and explanatory records;
  - c. All requests or referrals for prosecutorial assistance, including any legal analysis of the case, memoranda, notes, and e-mails authored by EPA, DOJ, or any other entity;
  - d. All investigative activity reports, summaries, agent's notes, interview notes, and other investigative records similar to FBI Form 302;
  - e. All records obtained in the course of the investigation;
  - f. All e-mails or memoranda exchanged between EPA, DOJ, and the U.S. Attorney's office in Alaska;
  - g. All records related to the decision not to prosecute for criminal negligence and for making false statements, including all communications between and among EPA, DOJ, and any other person or entity; and
  - h. Any and all records pertaining to IMC Shipping's ability to obtain compensation for its cleanup costs under a Federal fund and/or private insurance.
5. The Washington Post article reports that Mr. James Palmer, "the EPA's Southeast regional administrator, took a day off in 2005 to testify as a private citizen against his own agency as a defense witness for a Mississippi developer accused of environmental violations." According to the Post, the Mississippi developer on whose behalf Mr. Palmer testified was one of his former clients. Please identify the case involving the Mississippi developer and provide copies of the following records:
- a. The name of the Mississippi developer and a summary of the case referred to in the Washington Post article;
  - b. A transcript of Mr. Palmer's testimony (if provided orally), and/or copies of all depositions, affidavits, letters, memoranda, or other written documents that may have been submitted in the case which purport to contain Mr. Palmer's views regarding any aspect of the case;

- c. All records pertaining to actions Mr. Palmer may have taken pertaining to the case;
  - d. All communications between and among Mr. Palmer, EPA, DOJ, and the Mississippi developer involved in the case;
  - e. All requests for advice on the ethics of testifying in the Mississippi case that may have been submitted by Mr. Palmer;
  - f. Any memoranda or other records that may have been provided by EPA or DOJ to Mr. Palmer with regard to his testifying in the case involving the Mississippi developer;
  - g. Copies of any complaints or objections that may have been submitted to EPA with regard to Mr. Palmer's participation in the case;
  - h. All records EPA may have with regard to Mr. Palmer's prior representation of, or relationship to, the Mississippi developer.
6. Please provide a copy of all ethics rules, memoranda, or guidance that apply to EPA officials and employees. If these rules, memoranda, or guidance differ from those that applied at the time Mr. Palmer testified on behalf of the Mississippi developer mentioned in Item 5, please provide copies of those as well.

Please deliver the requested information and unredacted copies of all related records to the Subcommittee on Oversight and Investigations, room 316 Ford House Office Building, by no later than the close of business on Monday, November 5, 2007.

If the Agency elects to assert a privilege or objection to the production of the foregoing records or information, please provide a privilege log fully identifying each record withheld and the legal basis asserted for withholding the record from a Congressional Committee of competent jurisdiction.

In responding to this request, please be advised that the terms "records" and "relating to" are defined in the attachment to this letter.

The Honorable Stephen L. Johnson  
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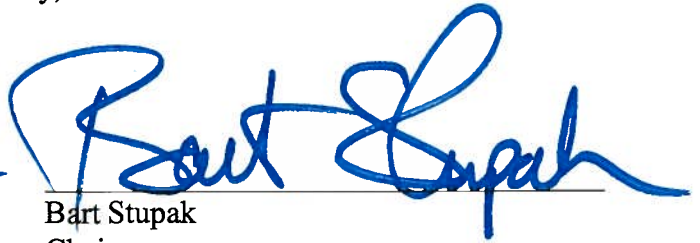
If you have any questions regarding this request, please contact us or have your staff contact John Arlington, Senior Investigative Counsel, with the Committee staff at (202) 226-2424.

Sincerely,



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John D. Dingell  
Chairman



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Bart Stupak  
Chairman  
Subcommittee on Oversight and Investigations

Attachment

cc: The Honorable Joe Barton, Ranking Member  
Committee on Energy and Commerce

The Honorable Ed Whitfield, Ranking Member  
Subcommittee on Oversight and Investigations

## ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
2. The terms "relating," "relate," or "regarding" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.