

**STENOGRAPHIC MINUTES
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HEARING ON EPA'S NEW OZONE STANDARDS

Tuesday, May 20, 2008,

House of Representatives,

Committee on Oversight and

Government Reform,

Washington, D.C.

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Committee Hearings

of the

U.S. HOUSE OF REPRESENTATIVES



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9 | The committee met, pursuant to call, at 1:46 p.m., in
10 | Room 2154, Rayburn House Office Building, the Honorable Henry
11 | A. Waxman [chairman of the committee] presiding.

12 | Present: Representatives Waxman, Cummings, Kucinich,
13 | Tierney, Watson, Higgins, Hodes, Sarbanes, Welch, Platts,
14 | Cannon, Issa, Bilbray, and Sali.

15 | Staff Present: Phil Barnett, Staff Director and Chief
16 | Counsel; Kristin Amerling, General Counsel; Karen Lightfoot,
17 | Communications Director and Senior Policy Advisor; Greg
18 | Dotson, Chief Environmental Counselor; John Williams, Deputy
19 | Chief Investigative Counsel; Alexander Teitz, Senior
20 | Environmental Counsel; Jeff Baran, Counsel; Erik Jones,

21 Counsel; Jen Berenholz, Deputy Clerk; Matt Siegler, Special
22 Assistant; Caren Auchman, Press Assistant; Leneal Scott,
23 Information Systems Manager; Rob Cobbs, Staff Assistant;
24 William Ragland, Staff Assistant; Miriam Edelman, Staff
25 Assistant; Larry Halloran, Staff Director; Jennifer
26 Safavian, Chief Counsel for Oversight and Investigations;
27 Keith Ausbrook, General Counsel; A. Brooke Bennett, Counsel;
28 Ashley Callen, Counsel; Kristina Husar, Counsel; John
29 Cuaderes, Senior Investigator and Policy Advisor; Larry
30 Brady, Senior Investigator and Policy Advisor; Patrick Lyden,
31 Parliamentarian & Member Services Coordinator; Benjamin
32 Chance, Professional Staff Member; Ali Ahmad, Deputy Press
33 Secretary; and John Ohly, Staff Assistant.

34 Chairman WAXMAN. The Committee will please come to
35 order. Today's hearing will focus on several recent
36 decisions that are of fundamental importance to our health
37 and the environment.

38 I have worked on health and environmental issues for
39 decades, and I know that regulatory decisions in these areas
40 can be very complex. But the law is clear: While all of us
41 may have views as to how we may want the outcome to be in any
42 rulemaking, we don't get the outcome we want, particularly;
43 we are not entitled to specific results, but what we are all
44 entitled to is a fair process that is based on the science,
45 the facts, and the law.

46 That impartial and rigorous system is one of the
47 critical pillars of our Government.

48 Unfortunately, President Bush seems to believe these
49 rules don't apply to him. On key issues, this Administration
50 has pushed ahead with its agenda despite the evidence and the
51 law. We know that is what happened on the decisions to
52 launch the Iraq War; it happened again on decisions
53 authorizing torture; and it happened when the White House
54 fired independent and nonpartisan Justice Department
55 officials.

56 For months this Committee has been investigating recent
57 Environmental Protection Agency decisions relating to both
58 global warming and the new air quality standards, and after

59 reviewing nearly 60 thousands of pages of internal documents
60 and interviewing officials involved in the rulemakings, we
61 have found evidence that the White House often ignored the
62 facts and the law.

63 The first rulemaking was a response to California's
64 petition to regulate greenhouse gas emissions from cars and
65 light-duty trucks. Under the Clean Air Act, EPA must approve
66 California's request unless it finds the proposal is
67 arbitrary, isn't technically feasible, or isn't justified by
68 compelling and extraordinary conditions.

69 The record is overwhelming that EPA's experts and career
70 staff all supported granting the California petition. In one
71 internal document, EPA's own lawyer said: ``We don't believe
72 that there are any good arguments against granting the
73 waiver. All of the arguments are likely to lose in court if
74 we are sued.''

75 Administrator Johnson apparently listened to his own
76 staff people. The Committee has learned that before
77 communicating with the White House, the Administrator
78 supported granting a partial approval to California's
79 request, but then the White House intervened. In December,
80 after secret communications with White House officials,
81 Administrator Johnson ignored the law and the evidence and
82 denied California's petition.

83 The second EPA rulemaking revised the air quality

84 standards for ozone air pollution to protect both human
85 health and the environment.

86 In this case, EPA's exert advisory committee, the Clean
87 Air Scientific Advisory Committee, unanimously recommended a
88 new standard for protecting the environment. After
89 considering all of the alternatives, Administrator Johnson
90 agreed with this new approach, which is called a seasonal
91 standard. In a submission to the White House, he described
92 the case for the new standard as ``compelling,`` and he said
93 that there was no evidence from the perspective of biological
94 impact supporting the alternative standard favored by
95 industry.

96 But once again the White House intervened. On the
97 evening before the final rule was released, President Bush
98 rejected the unanimous recommendation of both EPA's
99 scientific experts, lawyers, and Administrator Johnson and
100 instructed EPA to abandon the new standard.

101 The Committee's investigation reveals that EPA officials
102 were astounded by the President's decision and said it wasn't
103 supported by either the science or the law. One official
104 wrote: ``I have been working on National Ambient Air Quality
105 Standards for over 30 years and have yet to see anything like
106 this.``

107 Another wrote: ``We could be in a position of having to
108 fend off contempt proceedings. The obligation to promulgate

109 | a rule, arguably, means to promulgate one that is nominally
110 | defensible.''

111 | And an EPA Associate Director observed: ``This looks
112 | like pure politics.''

113 | The same thing happened in a third critical rulemaking.
114 | Last April the Supreme Court directed EPA to determine
115 | whether CO2 emissions endanger health and the environment and
116 | must be regulated under the Clean Air Act. This is a Supreme
117 | Court decision, and under Administrator Johnson EPA assembled
118 | a team of over 60 career officials to work this hugely
119 | important regulation. The staff determined that CO2 did
120 | endanger the environment and drafted proposed rules to reduce
121 | tailpipe emissions.

122 | To his credit, Administrator Johnson listened to his
123 | staff and sent an official ``endangerment finding'' to the
124 | White House. That endangerment finding means that the
125 | regulation should go forward. Jason Burned, the Associate
126 | Deputy Administrator, told the Committee that he personally
127 | transmitted the Administrator's determination to the White
128 | House in December.

129 | Yet once again the White House ignored the law, the
130 | science, and Administrator Johnson. Two months ago EPA was
131 | forced to announce that the agency would go back to square
132 | one and start the rulemaking process all over again.

133 | In each of these rulemakings, the pattern is the same:

134 The President apparently insisted on his judgment and
135 overrode the unanimous recommendations of EPA's scientific
136 and legal experts.

137 Now, our investigation has not been able to find any
138 evidence that the President based his decisions on the
139 science, the record, or the law. Indeed, there is virtually
140 no credible record of any kind in support of the decisions.

141 I recognize and support the broad powers our
142 Constitution vests with the President of the United States.
143 But the President does not have absolute power, and he is not
144 above the law. The President may have a personal opinion
145 about the new ozone standards, California's regulations
146 standards, and regulating CO2, but he is not allowed to
147 elevate his views above the requirements of the law.

148 This is an important hearing, and I look forward to
149 learning more from our witnesses.

150 [Prepared statement of Chairman Waxman follows:]

151 ***** INSERT *****

152 Chairman WAXMAN. Before we proceed with hearing the
153 witnesses, I want to recognize Mr. Issa, who is sitting in
154 for Tom Davis, the Ranking Member of the Committee, with an
155 opening statement.

156 Mr. ISSA. Thank you, Mr. Chairman, and thank you for
157 expressing the Majority position extremely well. As we often
158 say here in Washington, we are all entitled to our opinions,
159 just not our facts.

160 The appropriate role of the President was established in
161 the Constitution and has been revisited on numerous occasions
162 by all three branches of Government. Presidents of both
163 parties have asserted the right to oversee and direct the
164 actions and decisions of regulatory agencies. President
165 Clinton offered a prime example of an aggressive executive
166 who was constantly involved in directing regulatory actions.
167 Indeed, the Executive Order that gave rise to today's hearing
168 was issued by President Clinton in 1997.

169 I say this to remind the Chairman that the goal of this
170 hearing is to investigate whether or not the President
171 provided his opinions to EPA Administrator Stephen Johnson.
172 On the issue of National Ambient Air Quality Standards, or
173 NAAQS, for ozone, it is pretty open and shut. He did.

174 The President makes no pretense that he did not, as
175 might have been implied by the other opening statement. We
176 knew that on March 12th, 2008, a memo sent from Susan Dudley

177 | informing Administrator Johnson of the President's judgment
178 | on the secondary NAAQS standard. That memorandum is part of
179 | EPA's public docket on the ruling and has been available to
180 | staff since the initiation of the ozone investigation. In
181 | fact, the smoking gun is on the Website.

182 | Moreover, the President's involvement in the ozone NAAQS
183 | discussion does not reflect any unusual or improper action.
184 | His involvement was pursuant to a process established by the
185 | Clinton Executive Order. That order openly declares the
186 | President's role in major rulemakings, namely, that the
187 | President will resolve disagreements between an agency and
188 | the Office of Management and Budgets Office of Information
189 | Regulatory Affairs, or OIRA.

190 | Accordingly, according to the record, the President
191 | himself accepted OIRA's conclusions; therefore, the President
192 | carried out his constitutional responsibility consistent with
193 | the precedent an applicable Executive Order and the Clean Air
194 | Act.

195 | I would also like to remind members of this Committee
196 | that a difference over policy outcomes does not necessarily
197 | make a policy outcome fatally flawed, meaning that in fact we
198 | can disagree but at the end of the day law is discretionary
199 | in this case, and when followed, as it was by the President
200 | or any president, he may choose among a variety of policy
201 | options.

202 It should not be surprising that the policy opinion
203 chosen by a President of one party differs from the policy
204 opinion that a member of Congress from another party would
205 have chosen, nor should it be a reason to cast blameless
206 aspersions or discredit the deliberative process used to
207 arrive at that decision. From the beginning EPA had proposed
208 the option of either setting a secondary standard equal to
209 the primary standard or alternately adopting a more
210 biologically relevant standard, the so-called W-126 standard
211 of 21 parts per million per hour.

212 Given the legitimate role of the President in this
213 decision and the legitimate choices before him, it appears
214 this kind of oversight simply seeks to bully the President
215 into making a decision supported by some members of the
216 Congress. This is raw politics. The Majority supposes that
217 the unwelcome decision is an unlawful one. The President
218 concluded within his discretion, the ozone standard should be
219 set at .075 because of the uncertainty of any benefit at a
220 lower level.

221 Democrats can have a different judgment about the
222 uncertainties and their benefits, but that does not make the
223 President's decision improper in any way. If some Democrats
224 want a stricter ozone standard, they could pass legislation
225 to impose one. They have not done this and do not appear to
226 be ready to do so, at least in part because some members of

227 | their party disagree.

228 | Finally, with respect to the proper role of the Clean
229 | Air Scientific Advisory Board, in plain language the Clean
230 | Air Act expressly states that CASAC is advisory, not a
231 | standard-setting panel and not a policy-making panel. Under
232 | no circumstances does the Clean Air Act require the
233 | Administrator to simply rubber-stamp CASAC's findings. The
234 | Advisory Committee is directed to review the science and make
235 | recommendations to the Administrator.

236 | By definition, ``recommendations`` can be rejected.
237 | With respect to the ozone NAAQS standard in particular, there
238 | is no bright line in the science today regardless of those
239 | who would like to seek one that shows that above-level ozone
240 | is unhealthy and below the level it is somehow of no danger.

241 | Accordingly, setting the NAAQS level for ozone is
242 | necessarily a policy judgment entrusted to the Administrator
243 | and claiming that science dictates a certain outcome is
244 | contrary to both science and law. It is worth noting the EPA
245 | has spent over 3,200 staff hours in producing over 65
246 | thousand pages of documents in their effort to comply with
247 | the Committee's demands.

248 | OIRA has been similarly responsive, turning over
249 | somewhere between 6,800 and 7,900 document pages, and
250 | participated in half a dozen in-person meetings in conference
251 | calls in support of accommodating this Committee's needs.

252 Throughout the process the majority has praised the EPA in
253 their efforts to accommodate the Committee's demanding
254 production schedule and acknowledge the logistical
255 difficulties involved in such a voluminous document
256 production.

257 Finally, I understand the Committee has recently
258 released a memorandum summarizing the Majority's findings
259 with respect to both ozone investigation as well as the
260 California waiver investigation. The Minority has also
261 drafted a separate memorandum based on our own independent
262 evaluation of the facts. I ask that the Minority documents
263 be inserted into the record at this time.

264 Chairman WAXMAN. Without objection, all of the memoranda
265 provided by the Majority and Minority staff will be made part
266 of the record.

267 [The information follows:]

268 ***** COMMITTEE INSERT *****

269 Mr. ISSA. Thank you very much, Mr. Chairman. I look
270 forward to this fact-finding hearing. I believe it is
271 appropriate to ask when there are differences in opinions,
272 because I believe Congress has an oversight role, but as I
273 said in my opening statement, it is very clear the President
274 was within his discretion in this case, based on the facts
275 presently available.

276 With that, I yield back.

277 Chairman WAXMAN. Thank you, Mr. Issa.

278 We are pleased to welcome three participants in our
279 panel. We will hear from Stephen Johnson, who has served as
280 the Administrator of the Environmental Protection Agency
281 since May, 2005. He has been working at EPA in different
282 capacities for the past 27 years.

283 Susan Dudley was appointed as Administrator of the
284 Office of Information and Regulatory Affairs in the White
285 House's Office of Management and Budget since April 2007.
286 Prior to her current position, Ms. Dudley worked at the
287 Mercatus Center at George Mason University and as a
288 consultant at Economists, Incorporated.

289 Dr. Rogene Henderson is currently the Chair of EPA's
290 Clean Air Scientific Advisory Committee and is a Senior
291 Scientist Emeritus at the Lovelace Respiratory Research
292 Institute. She is an expert on air quality and has had a
293 distinguished career serving on multiple boards and

294 | committees related to the topic. I would like to extend a
295 | special thank you to Dr. Henderson for the accommodations she
296 | has made to make herself available for this hearing. Thank
297 | you very much.

298 | This hearing has been postponed twice, and each time Dr.
299 | Henderson rescheduled her flight and canceled her plans to
300 | make sure she was available. I believe she even canceled a
301 | vacation which I am sorry to hear about. Thank you very much
302 | for being here.

303 | It is the policy of this Committee that all witnesses
304 | that testify before us do so under oath, so if the three of
305 | you would please stand and raise your hand I would appreciate
306 | it.

307 | [Witnesses sworn.]

308 | Chairman WAXMAN. The record will indicate that each of
309 | the witnesses answered in the affirmative.

310 | Mr. Johnson, or all three of you, your prepared
311 | statements that you have submitted to us in advance will be
312 | made part of the record. We would like to call on you for
313 | your oral presentation. We usually like to keep that within
314 | around five minutes, if possible. We will have a clock
315 | running. It will be green, and then the last minute will be
316 | yellow, and then when the time has expired, it will be read.

317 | I will not cut off any of you from your presentation,
318 | but if you are mindful that the time has expired, we would

319 | like you to keep that in mind and try to summarize.

320 | STATEMENTS OF STEPHEN L. JOHNSON, ADMINISTRATOR, U.S.
321 | ENVIRONMENTAL PROTECTION AGENCY; SUSAN E. DUDLEY,
322 | ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS;
323 | AND ROGENE F. HENDERSON, CHAIR, CLEAN AIR SCIENTIFIC ADVISORY
324 | COMMITTEE

325 | STATEMENT OF STEPHEN L. JOHNSON

326 | Mr. JOHNSON. Good afternoon, Chairman Waxman, and
327 | members of the Committee. I am pleased to be here to discuss
328 | EPA's decision to significantly strengthen the National
329 | Ambient Air Quality Standard, or NAAQS, for ground-level
330 | ozone.

331 | It is also a pleasure to appear alongside Dr. Rogene
332 | Henderson, Chair of EPA's Clean Air Scientific Advisory
333 | Committee, or CASAC, as it is known. Former EPA
334 | Administrator Levitt appointed Dr. Henderson to this position
335 | in 2004 and in 2006 I invited her to continue serving in this
336 | important role.

337 | Since 1980, ozone levels have been cut nation-wide by
338 | more than 20 percent, even while our economy has more than
339 | doubled. As many of the Bush Administration's recent rules
340 | to reduce air pollution take effect, we expect that trend to

341 | continue.

342 | While air quality has been improving so has our
343 | scientific knowledge of the relationship between pollution,
344 | public health, and our planet. As we learn more, science and
345 | the law require that we make changes. That is what we have
346 | done with regard to ozone.

347 | This afternoon, I would like to describe my decisions on
348 | the ozone standards, first for the primary standard designed
349 | to protect public health, and, second, for the secondary
350 | standard designed to protect public welfare. Since EPA last
351 | updated ozone standards in 1997, more than 1,700 new studies
352 | have been published about ozone's effects on human health.
353 | Many of these studies strengthen the linkages between ozone
354 | exposure and effects such as reduced lung function or
355 | aggravated asthma.

356 | In a large number of new studies showed that ozone is
357 | both more damaging and harmful at lower concentrations than
358 | scientists understood. After evaluating the results of these
359 | studies, along with recommendations of staff, my Clean Air
360 | Scientific Advisory Committee and public comments, I
361 | concluded that the 1997 standard no longer met the Clean Air
362 | Act requirement to protect public health with an adequate
363 | margin of safety. To provide that protection at a level that
364 | is requisite to protect public health, I selected a level of
365 | 0.075 parts per million for the primary standard as the most

366 stringent eight-hour standard for ozone in our Nation's
367 history, it will provide significant public health benefits
368 to millions of Americans.

369 Advances in science also provided significant new
370 evidence about ozone's impact on the environment,
371 particularly on sensitive plants and trees. When I proposed
372 the standards last June, I presented two options: one,
373 setting the standard identical to the primary as has been the
374 practice for many years; or, two, setting a three-month
375 standard to address the cumulative effects of plant exposure
376 to ozone over the growing season. Each of these alternatives
377 had strengths and also had weaknesses.

378 Selecting a secondary standard was difficult, as the
379 record of this rulemaking shows. In making the decision, I
380 reviewed the 1997 NAAQS decision and the scientific evidence
381 available since then. I considered recommendations from
382 CASAC and my staff. I read comments from the public, and as
383 a matter of good government and as required by Executive
384 Order 12866, I coordinated with others in the Executive
385 Branch about the two options before me. I weighed all of
386 this information in making my final decision, which was to
387 set the standard identical to the primary standard at 0.075
388 per million.

389 This stronger standard will provide significantly
390 increased protection for plants and trees. In my three years

391 as Administrator, I have strengthened two air quality
392 standards, one for particulate matter and one for ozone.
393 Earlier this month, I proposed to strengthen our Nation's air
394 quality standards for lead. This is the first time in 30
395 years.

396 In the process of navigating the requirements of the
397 Clean Air Act, I have come to see both the strengths and
398 limitations of this law, and, I believe, the need to change
399 it for the better. I believe it is time to modernize the
400 Clean Air Act to improve public health. When I announced the
401 revisals on standards March the 12th, I also announced four
402 principles upon which the Administration will seek proposals
403 to modernize the Clean Air Act. Congress has adopted these
404 principles and other environmental statutes such as the Safe
405 Drinking Water Act

406 The Clean Water Act is an important act for us to
407 review. The Clean Air Act is not a relic to be displayed in
408 the Smithsonian but a living document that must be
409 refurbished to continue realizing results I look forward to
410 working with you in our efforts to improve this important law
411 and to continue our progress toward clear air across the
412 Nation.

413 Thank you, Mr. Chairman. I would be happy to answer any
414 questions.

415 [Prepared statement of Mr. Johnson follows:]

416

***** INSERT *****

417 | Chairman WAXMAN. Thank you very much, Mr. Johnson.

418 | Ms. Dudley?

419 STATEMENT OF SUSAN E. DUDLEY

420 Ms. DUDLEY. Chairman Waxman, and Ranking Member Issa,
421 and distinguished members of the Committee, thank you for
422 inviting me and giving me the opportunity to testify today
423 regarding the role of the Executive Office of the President,
424 NEPA's ozone NAAQS rulemaking.

425 In the interest of public transparency, both OMB and EPA
426 placed in the correspondence related to this rulemaking in
427 the public record to ensure clear presentation of the issues
428 involved, Pursuant to Executive Order 12866 issued in 1993
429 by President Clinton, OIRA oversees the regulatory process
430 for the Executive Branch by coordinating interagency review
431 of significant regulatory actions. In most cases OIRA is
432 able to work with the regulatory agency to resolve any issues
433 that arise during the interagency review process. For those
434 rare circumstances when such resolution is not possible, the
435 Executive Order provides a process for conflict resolution by
436 the President with the assistance of the Chief of Staff.

437 EPA's ozone NAAQS is a significant regulation under E.O.
438 12866 and such was submitted to OIRA on February 22nd, 2008.
439 In the course of interagency review, concerns were raised
440 with the secondary, the welfare-based standard. These
441 concerns focused on the form of the standard, not the level.

442 EPA's proposed rule had sought comment on two alternative
443 forms. Both were scientifically and legally valid, one set
444 equal to the primary standard and another based on measured
445 ozone levels over a season. The draft final rule would have
446 relied on the seasonal form of the secondary standard.

447 Establishing a separate seasonal standard would have
448 deviated from EPA's past practice which has been to set the
449 secondary ozone NAAQS equal to the primary NAAQS. The draft
450 initially submitted for review did not clearly support a
451 conclusion that a secondary standard was requisite to protect
452 the public welfare. First, as EPA observed in the preamble
453 to the 2007 proposed rules, a secondary standard set at a
454 level identical to the proposed new primary standard would
455 provide a significant degree of additional protection for
456 vegetation as compared to the current standard established in
457 1997.

458 Second, EPA's analysis indicated that the draft
459 secondary standard accumulated over a season would not be
460 more protective of vegetation than one set equal to the
461 primary public health based standard. On the contrary, EPA
462 recognized the seasonal standard in the final draft was
463 generally less stringent than the primary standard.

464 Given the public interest in this regulatory proceeding,
465 I wanted to ensure that these concerns were laid out clearly
466 to avoid misunderstandings, so I conveyed them to

467 Administrator Johnson in memorandum dated March 6th. On
468 March 7th, EPA Deputy Administrator Peacock responded in
469 writing. Then, pursuant to the appeals procedure, the
470 Executive Order, EPA sought further consideration of this
471 disagreement regarding the form of the secondary standard.

472 Following the established Presidential Review process,
473 the President concluded that, consistent with Administration
474 policy, added protection should be afforded to the public
475 welfare by strengthening the secondary ozone standard and
476 setting it equal to the new primary standard.

477 On March 12th, I sent a memorandum to Administrator
478 Johnson memorializing this process. As the preamble to the
479 fine rule states: ``While the Administrator fully considered
480 the President's views, the Administrator's decision and the
481 reason for it are based on and supported by the record in
482 this rulemaking.``

483 So, in summary, let me reiterate three key points.
484 First, in the course of interagency review of EPA's final
485 ozone, both OMB and EPA have been forthright in making key
486 correspondence regarding initial disagreements over the form
487 of the secondary standard available to the public.

488 Second, the focus of my correspondence with EPA was not
489 the primary health-based standard, but the secondary,
490 welfare-based standard. No changes were made to the level or
491 form of the health-based standard.

492 Third, discussions regarding the secondary standard
493 related exclusively to the form of the secondary standard and
494 did not affect the level of protection from ozone exposure
495 provided to vegetation. Contrary to some media accounts, the
496 eight-hour form ultimately selected by the EPA Administrator
497 is not lower or less protective than the alternative seasonal
498 form of the standard.

499 Thank you for the opportunity to testify.

500 [Prepared statement of Ms. Dudley follows:]

501 ***** INSERT *****

502

Chairman WAXMAN. Dr. Henderson?

503 STATEMENT OF ROGENE F. HENDERSON

504 Ms. HENDERSON. Thank you for asking me to testify before
505 this Committee. I am testifying as the current Chair of the
506 USEPA's Clean Air Scientific Advisory Committee, or CASAC,
507 which is a Congressionally-mandated committee that advises
508 and makes recommendations to the EPA Administrator concerning
509 the scientific basis for setting air quality standards. The
510 CASAC ozone panel included 25 members, all of whom were
511 carefully vetted for their scientific qualifications and for
512 any potential conflicts of interest.

513 The questions addressed by the ozone panel was the same
514 as for any criteria pollutants. In light of newly available
515 information, are the existing standards adequate to protect
516 public health with a margin of safety in terms of the primary
517 standard or to protect public welfare in terms of the
518 secondary standard.

519 The ozone panel met with EPA staff in public meetings
520 seven times to review eight documents over a two-year period.
521 Public comments were solicited at each of our meetings.
522 Highly productive discussions were held between EPA staff,
523 the public and CASAC in our efforts to develop the best
524 scientific advice to provide the Administrator.

525 A major product of these extended discussions was the

526 unanimous recommendation that the primary standard should be
527 lowered from a level of 84 parts per billion to a level
528 between 60 and 70 parts per billion. Note that the
529 recommendation was in terms of a range. There is enough
530 uncertainty at this low a concentration of ozone that CASAC
531 can only recommend a range of values they consider to be
532 protective of public health. It is a policy decision for the
533 Administrator to determine where within that range to set the
534 standard.

535 Our scientific advice was not accepted. The primary
536 standard was lowered but only to 75 parts per billion. The
537 CASAC panel does not endorse the new primary standard as
538 being sufficient protective of public health with a margin of
539 safety as explicitly required by the Clean Air Act.

540 Moving on to the secondary standard, which includes
541 protecting our ecology, the panel was in unanimous agreement
542 that we now have enough information to be able to set a
543 cumulative seasonal secondary standard rather than having to
544 default to using the primary standard. It is both common
545 sense and fully justified scientifically to set a secondary
546 standard separate from the primary standard, since, unlike
547 humans, vegetation is affected by cumulative exposures to
548 ozone during the growing season and during daylight hours.

549 It is also in agreement with the National Research
550 Council's 2004 Report on Managing Air Quality in the United

551 States in which they strongly recommend that the EPA move
552 away from having identical primary and secondary standards to
553 setting a reasonable secondary standard because there is
554 growing evidence that some vegetation is more sensitive to
555 pollutants than are humans.

556 Nevertheless, in March, Ms. Dudley of the OMB sent a
557 memo to Administrator Johnson saying the form of the
558 secondary standard should not be changed. This memo was
559 clearly refused in a knowledgeable, well-written reply from
560 Deputy Administrator Marcus Peacock. In reply, Ms. Dudley
561 stated that President Bush had decided against having a
562 secondary standard that was different from a primary
563 standard. In defense of this decision, the White House said
564 the decision was based on following the law. There is no law
565 against having a different standards, as evidenced by the
566 precedent set in 1971 when separate secondary standards were
567 set for both particulate matter and sulfur oxides.

568 Equally perplexing is the fact that the OMB objections
569 were to the proposed form of the secondary standard, which is
570 a scientific matter and not to the level of the proposed
571 standard, which includes policy decisions. CASAC has been
572 accused of wandering from scientific issues into policy. In
573 this case, policymakers wandered into scientific issues, and
574 they did not do it well. Wilful ignorance triumphed over
575 sound science.

576 | Certainly the Administrator is the one who decides what
577 | standard to set, and CASAC's role is only advisory in nature.
578 | However, if the Administrator sets the standard outside the
579 | range recommended by his Science Advisory Committee, a strong
580 | reason for doing so should be given. The Administrator has
581 | said his decision was based on his own judgment.

582 | Congress may want to ask, on whose advice is the
583 | Administrator basing his judgments? The Clean Air Act
584 | mandates that one source be the CASAC whose work is done
585 | transparently in public by vetted members. By contract, the
586 | advice that appears to be trumping the CASAC advice is not
587 | transparent. The OMB and the White House set the secondary
588 | standard in effect rather than the EPA Administrator.

589 | In closing, I would like to quote from Dr. Paul Gilman,
590 | who is the former Assistant Administrator for Research and a
591 | Science Advisor for the EPA, in a statement he made before a
592 | recent hearing of the Senate Committee on Environment and
593 | Public Works. "Our best insurance that the science, the
594 | scientific judgment, and policy-making are as good as they
595 | can be is that the process is transparent, participatory,
596 | peer-reviewed, and followed with informed oversight. Setting
597 | the standards by fiat behind closed doors is not in our best
598 | interest."

599 | Thank you.

600 | [Prepared statement of Dr. Henderson follows:]

601

***** INSERT *****

602 Chairman WAXMAN. Thank you very much, Dr. Henderson.

603 We will now proceed to questions and, by agreement with
604 the Minority, we will have 12 minutes on each side to begin,
605 12 controlled by the Chairman and 12 controlled by Mr. Issa.
606 Then we will proceed to the five-minute rule. Without
607 objection that will be the order.

608 Let me start off, Administrator Johnson. My concern is
609 that the decisions at EPA are not being based on the science
610 and they are not being based on the law. They are being made
611 at the White House, and they are being made for political
612 reasons. My concern is that this is happening over and over
613 again. It appears to be what happened on the ozone rule. It
614 appears to be what happened when you rejected California's
615 efforts to regulate carbon dioxide from vehicles, and it
616 appears to be what happened when EPA tried to regulate carbon
617 dioxide itself after the Supreme Court decision.

618 Dr. Henderson, let me start with you. You are the Chair
619 of the Clean Air Scientific Advisory Committee, and you
620 reviewed the new ozone standards that were recently announced
621 by EPA. Are the standards that Administrator Johnson set
622 consistent with the science?

623 Ms. HENDERSON. It is not consistent with the CASAC's
624 recommendations which are based on science.

625 Chairman WAXMAN. Well, did CASAC give a range so that
626 there was some discretion left that you thought would fit

627 | with the science that you knew?

628 | Ms. HENDERSON. Yes. The CASAC always recommends a
629 | range, never a bright line. We know that there is
630 | uncertainty at these low levels of ozone, so with careful
631 | consideration of the uncertainties and what we know from the
632 | scientific work that has been done since the last ozone
633 | standard was set, we recommend a range within which the
634 | Administrator could set a level that would be protective of
635 | public health with a margin of safety.

636 | Chairman WAXMAN. And did the Administrator select within
637 | the range recommended by the Scientific Advisory Committee?

638 | Ms. HENDERSON. No, he did not.

639 | Chairman WAXMAN. Now, in essence, you are saying that
640 | Administrator Johnson did not follow the science, is that
641 | correct?

642 | Ms. HENDERSON. That is correct.

643 | Chairman WAXMAN. Now, Administrator Johnson, I want to
644 | give you a change to respond. Dr. Henderson says you didn't
645 | follow the science. Do you agree with that?

646 | Mr. JOHNSON. Well, I would respectfully disagree with
647 | that characterization. One is that I did agree with our
648 | CASAC that the current standard was not requisite to protect
649 | public health with an adequate margin of safety, hence we
650 | were in agreement together. I should note that not all
651 | comments agreed with that conclusion.

652 Second is that not only do I have the advice--and I
653 appreciate and certainly respect the advice of CASAC and Dr.
654 Henderson's role as the Chair--but also I have the
655 responsibility to listen to what my staff say and, of course,
656 evaluate all of the public comments after all the comments
657 are in. I made the decision based upon all of the science
658 before me that .075 was requisite to protect public health
659 with an adequate margin of safety.

660 Chairman WAXMAN. Excuse me, you answered my question.
661 You think you set it within the protection of the science.

662 Mr. JOHNSON. Absolutely.

663 Chairman WAXMAN. Okay. Now, the record shows your views
664 about the science and the law were constantly being reversed
665 by the White House. Your professional views may be
666 scientifically and legally correct, but they are not the ones
667 that are prevailing comments to the White House that the
668 secondary standard for ozone, the one that protects the
669 environment, be set based on cumulative seasonal exposure,
670 isn't that right?

671 Mr. JOHNSON. Well, more accurately, Mr. Chairman, would
672 be that there are two options. There was one that the Agency
673 preferred as part of the deliberation, and it was clear that
674 there were others in the Administration who felt the other
675 was a preferred option. Of course, as I believe good
676 government, we went through the process as outlined by

677 | President Clinton's Executive Order, and the President
678 | provided input. Ultimately, I made the decision, and made the
679 | decision to set a secondary standard that is the most
680 | protective secondary standard in our Nation's history.

681 | Chairman WAXMAN. You, as the head of EPA, recommended a
682 | proposal. OMB and the White House looked at that proposal
683 | and said to you, we don't want that proposal. Then you made
684 | the decision that they recommended.

685 | When you sent your draft final rule to the White House
686 | in February, it said that the evidence for seasonal standard
687 | was compelling and that a seasonal standard was necessary to
688 | ensure the requisite degree of protection. But the White
689 | House then objected to that proposal, and you changed it. Is
690 | that what happened?

691 | Mr. JOHNSON. Well, I think, more accurately, was is that
692 | certainly it agreed with CASAC that a cumulative seasonal
693 | metric is the me most biologically-relevant form for
694 | vegetation; however, at the time we certainly noticed--

695 | Chairman WAXMAN. I really want a direct answer to the
696 | question. You submitted a rule to the White House, and the
697 | White House said they wanted a different rule, and then you
698 | decided what the White House suggested to you.

699 | Mr. JOHNSON. Well, there was a difference of opinion
700 | between two--

701 | Chairman WAXMAN. No, no. Yes or no. Yes or no?

702 Mr. JOHNSON. Well, I don't believe it is a yes or no
703 question, sir.

704 Chairman WAXMAN. Well, you gave them one option and they
705 gave you the other, and the one you accepted was theirs.

706 Mr. JOHNSON. We had two options on the table. There was
707 one that was preferred by EPA, one that was preferred by OMB
708 and perhaps others, and it went through an Executive Order
709 process. I think that is good government.

710 Chairman WAXMAN. Okay. Well, this is not a minor
711 change; it was a major reversal that I believe was not
712 supported by the record. Your own staff said it was pure
713 politics and that they have never seen anything like it in 30
714 years of working on air quality standards.

715 An agency lawyer worried that the final decision was not
716 even nominally defensible, and this wasn't the only time you
717 have been reversed by the White House. It seems to be
718 happening over and over again.

719 Your Deputy Associate Administrator, Jason Burnett, told
720 the Committee that last fall you supported granting
721 California's petition to regulate carbon dioxide emissions
722 from vehicles. According to Mr. Burnett, you changed your
723 position after you talked with the White House. Is that
724 accurate?

725 Mr. JOHNSON. I don't believe that that is a fair
726 characterization, Mr. Chairman. I think, certainly, as you

727 | look through the thousands and thousands of pages, including
728 | his deposition, that shows a very deliberate process going
729 | through where I evaluated all options from moving from a full
730 | approval to denial and options in between.

731 | Chairman WAXMAN. And you recommended be in between. You
732 | didn't agree that there should be a complete granting of what
733 | California wanted, which was a waiver to do exactly what they
734 | wanted. You wanted a partial waiver so that it would go into
735 | effect through a period of time, and that was sent to the
736 | White House.

737 | Mr. Burnett told us under oath that he thought a partial
738 | grant--he, meaning you--thought that a partial grant of the
739 | California was the best course of action.

740 | Well, that is what happened in this instance. The same
741 | thing happened the third time. According to your staff, you
742 | decided last fall that EPA should issue its own greenhouse
743 | gas rules, and you submitted a proposing endangerment finding
744 | to the White House. You also circulated a proposal to other
745 | agencies to regulate tailpipe emissions of carbon dioxide.
746 | Is that accurate?

747 | Mr. JOHNSON. It is true that we have a draft of
748 | endangerment finding that was part of the rule-making process
749 | before the Energy Independence and Security Act was passed.

750 | Chairman WAXMAN. And you also recommended that other
751 | agencies regulate tailpipe emissions of carbon dioxide.

752 Mr. JOHNSON. Well, that was part of a draft decision
753 that has not gone through interagency process.

754 Chairman WAXMAN. But you recommended it to the
755 Department of Transportation.

756 Mr. JOHNSON. Well, again, it was so deliberative and
757 they had not reviewed it, and again, it was before the Energy
758 Independence and Security Act, which then changed the course
759 of action for EPA, and that is writing a regulation for
760 renewable fuel standard.

761 Chairman WAXMAN. We interviewed--

762 Mr. JOHNSON. Excuse me. I am just working, as required,
763 working with the Department of Transportation as they
764 updated--

765 Chairman WAXMAN. Well, we interviewed seven senior
766 career EPA officials earlier this year, and they all told us
767 the same thing. You supported Federal regulations for carbon
768 dioxide emissions and submitted an endangerment finding to
769 the White House. They said the proposal was sent to the
770 White House in the first or second week of December. They
771 told us that after you submitted your recommendations to the
772 White House, they were told to stop all work on the
773 regulations. This policy reversal became official in March
774 when you announced that EPA was going to start the regulatory
775 process all over again.

776 My concern, Administrator Johnson, is that you become

777 | essentially a figurehead. Three times in the last six months
778 | you have recommended to the White House that EPA take the
779 | steps to address climate change and protect the environment.
780 | In each case, your positions were taken.

781 | Now, your positions were right on the science and the
782 | law, yet in each case you backed down. You received your
783 | instructions from the White House. Now that is not how our
784 | Government is supposed to work. Congress passes the laws and
785 | the Executive Branch is supposed to faithfully administer
786 | them.

787 | But what we see happening at EPA is that when you try to
788 | follow the law and the science, you are overridden. The
789 | attitude in the White House seems to be that President Bush
790 | can ignore the environmental laws that Congress wrote and do
791 | whatever he pleases.

792 | Now, my questions are about the process and the results.
793 | Let's go to this ozone decision. EPA is require under the
794 | law to set an ozone standard to protect public health and a
795 | secondary ozone standard to protect crops, forest, and other
796 | aspects of public, and we just went over that very briefly.

797 | After years of scientific review, you sent the draft
798 | final ozone standard to the White House for review. To
799 | protect the environment your draft recommended that EPA
800 | establish a new standard, one that would protect plants from
801 | cumulative exposure over growing season. The document to the

802 White House stated that you found the evidence for the new
803 standard to be compelling and necessary. You also wrote that
804 you found no evidence to support the alternative standard
805 favored by industry.

806 When the final rule was issued on March 12th, you made a
807 complete reversal on the environmental standard, you
808 abandoned the seasonal approach, and you adopted the
809 short-term approach that industry favored. These changes
810 were made at the last minute pursuant to instructions from
811 White House. According to the record, they were personally
812 directed by the President.

813 Administrator Johnson, your statement that there was
814 compelling evidence in support of the seasonal standard was
815 dropped in the final rule. So was your statement that there
816 was no biological evidence supporting the industry standard.
817 Why were these statements deleted from the rule?

818 Mr. JOHNSON. Well, Mr. Chairman, as we prepared for
819 making a decision--as I prepared making a decision on the
820 secondary standard, again, we proposed two options, and I
821 think the important point to note is it was not an issue of a
822 level of protectiveness. Either form provided additional
823 level of protectiveness for public welfare.

824 Chairman WAXMAN. Did the White House provide you with
825 new scientific evidence to change your mind?

826 Mr. JOHNSON. Well, Mr. Chairman, certainly during the

827 review, it was part of the Executive Order. OMB certainly
828 issued a concern and, in fact, I quote: ``The draft is not
829 adequate to support such a decision.'' And as I evaluated
830 their comments and, certainly, the President's comment and
831 reviewed it, I made the decision to establish the secondary
832 standard--

833 Chairman WAXMAN. I understand you made that decision.

834 Mr. JOHNSON.--after I made the primary standard.

835 Chairman WAXMAN. But the Clean Air Act is clear in
836 setting ozone standards. The Agency is required to use the
837 best science and set a standard that protects health and
838 environment.

839 Did the White House do this? Did the Administration
840 listen to the scientists, or did they reject the science and
841 set standards that will not protect health and the
842 environment?

843 Mr. JOHNSON. No. Again, as I said, both forms were
844 protective of the environment. The question is, what is the
845 form? It is not the standard. And, in fact, for the
846 secondary standard, some of the issues that I was facing in
847 terms of uncertainty with adopting a separate standard, a
848 cumulative three-months so-called W-126 form, was, for
849 example, crop yield data was derived largely from data
850 generated 20 years ago.

851 In addition, the degree of risk attributable to varying

852 | levels of ozone exposure, there were uncertainties. Degree
853 | of protection that any specific cumulative seasonal standard
854 | would produce and associated potential for error in
855 | determining the standard and what would be providing a
856 | requisite degree of protection, all of those were among the
857 | uncertainties that, certainly, as I factored into my decision
858 | played a role. That is why I chose the primary form with
859 | input in this case from the President.

860 | I am very proud of the process. It has been a very
861 | transparent process where Susan's memo, Marcus' memo, and in
862 | fact a letter citing what the President's input to me is a
863 | final decision. I think that is good government, and I think
864 | that is the way we ought to operate.

865 | Chairman WAXMAN. Thank you very much, Mr. Johnson.

866 | Mr. Issa?

867 | Mr. ISSA. Thank you, Mr. Chairman. I will continue
868 | where the Chairman left off because I think it is a good line
869 | of questioning.

870 | Administrator Johnson, you, if I understand correctly,
871 | are a career professional, is that right?

872 | Mr. JOHNSON. That is correct.

873 | Mr. ISSA. When did you join the EPA?

874 | Mr. JOHNSON. In 1980.

875 | Mr. ISSA. In 1980.

876 | Mr. JOHNSON. Well, actually, I came to EPA, left and

877 then came back, but my service computation date is 1980.

878 Mr. ISSA. Longer than some of the staff behind me have
879 been alive, so we will say you have been there a long time,
880 and you are not a political appointee. I mean, even though
881 you sit now in an appointed position, you are a career
882 professional, is that right?

883 Mr. JOHNSON. I am a career professional who also is a
884 political appointee, and I am proud of both of those mantles.

885 Mr. ISSA. But you were selected because of your long
886 tenure with the EPA, clearly.

887 Mr. JOHNSON. I believe the President, in fact, it was
888 said that he wanted the most experienced, best person for the
889 job, and I am honored to be serving our Nation and the
890 President in that capacity.

891 Mr. ISSA. Well, let's run through a little of that
892 experience. First of all, I assume you were at the EPA when
893 California asked for a waiver from the need for MTBE or other
894 oxygenates and try to use things that wouldn't destroy our
895 water or wood corrosive, Do you remember that?

896 Mr. JOHNSON. I do remember that, yes, sir.

897 Mr. ISSA. Do you remember that that was denied by the
898 Clinton Administration?

899 Mr. JOHNSON. I do.

900 Mr. ISSA. So when it came to California meeting its own
901 high clean air standards and not being at the back of the

902 ethanol lobby, the Administration under President Clinton was
903 not willing to grant that waiver, right?

904 Mr. JOHNSON. Well, I must say that that is tangential
905 because I was not in the Air Office or working on air issues,
906 but I am aware of that fact.

907 Mr. ISSA. And California's request for a waiver was,
908 they were going to comply with all of the standards; they
909 simply weren't going to use things that poisoned our water or
910 required that corn farmers in the Midwest get a special
911 benefit.

912 So the strange thing is, you know, today we are asking
913 about a reduction, and I want to go into that. I am trying
914 to figure out what good deed can possibly go unpunished. Let
915 me run you through that.

916 You were also there in--and I apologize, I said 1997--it
917 was a typo. The Executive Order of President Clinton's was
918 at the beginning of his administration in 1993, isn't that
919 true?

920 Mr. JOHNSON. That is correct.

921 Mr. ISSA. And didn't he essentially assign that to Vice
922 President Al Gore as sort of the go-to on air quality, if you
923 remember?

924 Mr. JOHNSON. I don't remember, sir.

925 Mr. ISSA. I don't forget on that one. But I certainly
926 think that is within the Administration's right. In this

927 case, President Bush has kept that to himself.

928 But in 1993, if I understand correctly, the ozone level
929 was 1.0 or 120 parts where today it is going to be 75. That
930 was the air quality prior to the 1997 ruling, is that right?

931 Mr. JOHNSON. Yes.

932 Mr. ISSA. And so in 1997 it was reduced from 120 to 84.
933 Since 1997 when it was reduced to .084, has Mr. Waxman's
934 district ever been in compliance? Does Hollywood or L.A.
935 meet that .084?

936 Mr. JOHNSON. No, sir, not.

937 Mr. ISSA. Okay. So we have had a standard, and many
938 parts of California have never reached that standard. Many
939 parts of America have never reached that standard, is that
940 correct?

941 Mr. JOHNSON. There are a number of parts of America that
942 have not, that is correct.

943 Mr. ISSA. And doesn't it make the science a little
944 inexact to figure out where the safety level is if, in fact,
945 people are above the existing standard and you are going to
946 lower it even further? Isn't that one of the variables you
947 have to deal with?

948 Mr. JOHNSON. Well, the law actually prohibits me from
949 considering costs or considering whether or not the standard
950 is actually able to be implemented. Of course, that is one
951 of the reasons why, among a number of reasons why, that I

952 think that it is worthy of congressional debate.

953 I believe there is an opportunity to improve the Clean
954 Air Act. I think that it is unconscionable that we have a
955 standard that we have gone through years of scientific
956 evaluation to say this is protective of public health and
957 then communities not even being in compliance with that for
958 20 or plus years. I think it is worthy of Congressional
959 debate, and I believe that there are other approaches that
960 could achieve public health protection sooner.

961 Mr. ISSA. So, particularly, when it comes to CO2, if I
962 understand your recommendation, it is time for Congress to
963 act to create a more responsive law that would allow for
964 compliance, offsets, things to deal, to be honest with the
965 Chairman and myself as Californians, the fact that we have
966 some containment areas that just simply never complied.

967 Mr. JOHNSON. Well, sir, I wholeheartedly agree. My
968 experience in 27 years with a very complex statute as the
969 Clean Air Act is, dealing with global air pollutant with
970 many, many, many issues, my experience says that a
971 legislative fix is the more efficient and effective way
972 because, my experience says, with these complex laws subject
973 to years and years of litigation.

974 I believe that global climate change needs to be
975 addressed. I believe the greenhouse gas emissions need to be
976 addressed, and I think the most efficient and effective way

977 | is through a legislative fix. Having said that, I am
978 | initiating the rulemaking process by issuing an advance
979 | notice of proposed rulemaking of, later this spring.

980 | Mr. ISSA. Well, I appreciate that. Just to finish on my
981 | numbers game here a little bit, you mentioned in your opening
982 | statement we are down about 20 percent over several decades,
983 | most of your career. If I do the numbers, coming from 120
984 | parts to 84 parts, it was about 33 percent reduction. So if
985 | we are down 20 percent, we obviously didn't hit--we didn't go
986 | from the 120 to the 84.

987 | Now if I understand correctly, going to .75 is about an
988 | 11 percent reduction, and going to .070 would be about a 16
989 | percent. So today we appear to be having a hearing about
990 | whether a reduction of 11 percent is somehow anti people's
991 | breathing versus a reduction of 16 percent would somehow make
992 | it okay. Is that pretty much what I should be understanding
993 | today?

994 | Mr. JOHNSON. Well, that is certainly a view. Again,
995 | ultimately, when I made the decision on both the primary and
996 | the secondary both in regard to the primary, public health, I
997 | determined that the existing standard was not protective. It
998 | was not requisite to protect public health with an adequate
999 | margin of safety and wholeheartedly agreed with CASAC that it
1000 | needed to be reduced.

1001 | I made the decision to reduce it and to make it more

1002 health protective. In fact, again this is the Nation's most
1003 health-protective eight-hours ozone standard in the history
1004 of the Nation, and that shouldn't go unnoticed.

1005 Mr. ISSA. I appreciate that, and I agree. If I
1006 understand correctly, though, basically, if two, three, four
1007 years from now after we have achieved a portion of this 11
1008 percent reduction that is presently being ordered, there is
1009 nothing that stops this process, with Dr. Henderson's help
1010 and so on, from seeing that there is an even lower level
1011 bolstering the science and ordering a lower level. There is
1012 nothing whatsoever stopping it from happening at any time, is
1013 that correct?

1014 Mr. JOHNSON. Well, it is not only not stopping it, we
1015 are actually directed by law and it is part of the 77
1016 amendments to the Clean Air Act, we are required every five
1017 years to review each and every one of these standards.

1018 Of course, one of the challenges for the Agency since
1019 that amendment in 1977, the Agency has never met the
1020 five-year requirement, and, of course, that is why we believe
1021 that there are changes and improvements in the way we
1022 actually go through the NAAQS process: to preserve science as
1023 well as to improve the timeliness of what we are doing.

1024 So we are required to make these evaluations and keep up
1025 with what the current state of the science is.

1026 Mr. ISSA. I appreciate it. I would like to yield for a

1027 | few minutes to Mr. Bilbray, as he needs it.

1028 | Mr. BILBRAY. Thank you.

1029 | Mr. Johnson, I don't come from a business background,
1030 | and I don't come as a lawyer. I come from the regulatory
1031 | background. I served on Air Resources Board in California, I
1032 | served in the air district, San Diego, on the few--in fact
1033 | the only--air district I know in California that has actually
1034 | had its standards dropped recently, I mean its category
1035 | dropped because we were so successful.

1036 | You talked about since 1980 a 20 per cent reduction in
1037 | emissions just in California during that time with 20 percent
1038 | reduction, and I think our California numbers will be less, I
1039 | think more of a drop. We have had a 50 percent increase in
1040 | population. And that is one thing I hope that when we talk
1041 | about the threat to the public health, we think about the
1042 | fact that sheer population has been ignored from the entire
1043 | environmental impact of those sheer numbers and that that has
1044 | to be considered.

1045 | Doctor, you serve on one of the most critical bodies
1046 | when it comes to environmental strategies, and I was very
1047 | happy to work with our scientific body at ARB. California's
1048 | program has been very successful because of the use of
1049 | science.

1050 | Back in the 1990s when California petitioned a waiver
1051 | from the oxygen mandate, the mandate that we put ethanol or

1052 MTB into our gasoline, was your committee review that
1053 mandate?

1054 Ms. HENDERSON. No, because we an air committee, so we
1055 did not.

1056 Mr. BILBRAY. Well, this was an air committee. This was
1057 coming from the--

1058 Ms. HENDERSON. This was from the Air Board?

1059 Mr. BILBRAY. This was coming from the Air Resources
1060 Board.

1061 Ms. HENDERSON. I became chair of this committee back in
1062 2004, so it did not occur during my chairmanship.

1063 Mr. BILBRAY. Okay. Let me just tell you something. By
1064 1994, California had recognized and our scientists had
1065 recognized that ethanol and methanol in our gasoline was not
1066 only not beneficial but was an environmental detriment, not
1067 just for water but air pollution.

1068 We formally requested this in 1994. I, for one,
1069 authored the bill that every Californian except one signed
1070 onto, to allow us to burn a cleaner, cheaper fuel for
1071 California. But we were blocked.

1072 Mr. Johnson, what was the rationale of the Clinton
1073 Administration for blocking the request for a waiver for
1074 cleaner fuel for the consumers of California and for the
1075 environment of California? What was their justification
1076 requiring us to put MTBE in our fuel and ethanol in our fuel

1077 | when the best scientists in air pollution that reviewed the
1078 | process said there was no scientific reason to do it?

1079 | Mr. JOHNSON. Well, sir, I am with Dr. Rogene, it was
1080 | actually before my time, but certainly I know I have staff
1081 | and can get back for the record to respond to that.

1082 | Mr. BILBRAY. Well, I will tell you, now that we have
1083 | people that are administrators of EPA at that time who was
1084 | over at California.

1085 | And, Mr. Chairman, I am just telling you, I was outraged
1086 | at that time that the Clinton Administration, in my opinion,
1087 | was bending to political pressure that was influenced by
1088 | contributions at that time, and I think that we ought to
1089 | recognize that, yes, there is undue influence on
1090 | administrations.

1091 | But no one Administration has a monopoly there, and I
1092 | wish that both Republicans and Democrats could have stood up
1093 | for the environment against the political pressure, not only
1094 | in the White House but here in the legislative body. To this
1095 | day for us to point fingers at one Administration when we
1096 | went for almost a decade requesting a waiver based on the
1097 | environment, and it was denied by Washington to the people of
1098 | the State of California who, I think we all admit, have done
1099 | extraordinary things to protect the environment.

1100 | Thank you very much.

1101 | Mr. ISSA. Administrator Dudley, continuing on, let me

1102 ask you a question. Could you explain to the Committee why
1103 the regulations of carbon dioxide is such a unique pollutant
1104 that it requires a new regulatory paradigm and doesn't fit
1105 into the old regulatory structures of the Clean Air Act?

1106 Ms. DUDLEY. I think that Administrator Johnson mentioned
1107 this a bit in his previous remarks, too. CO2 is a global
1108 pollutant. It doesn't matter where it is emitted, the
1109 effects will be felt regardless of whether it is emitted here
1110 or in China. In order to achieve the reductions that we
1111 think we need requires new technology, so massive incentives
1112 for new technology.

1113 So the Clean Air Act, which was mostly recently updated
1114 in 1990, just was never designed for it and really isn't
1115 well-suited to it.

1116 Chairman WAXMAN. Thank you, Mr. Issa.

1117 Mr. ISSA. Could we ask that Administrator Johnson also
1118 answer it, if you don't mind, Chairman? He has something.

1119 Mr. JOHNSON. Yes. I would just say that one of the, I
1120 think, important reasons for the advanced notice of proposed
1121 rulemaking is that the Massachusetts versus EPA decision was
1122 in the context of automobiles and light trucks. The way the
1123 Clean Air Act operates is that that decision in endangerment
1124 not only affects that narrow area of mobile sources but all
1125 mobile sources and, in fact, spills over into Title I and all
1126 stationary sources as well.

1127 So when I moved forward with an advanced notice for
1128 proposed rulemaking, it is actually expanding and looking at
1129 the entire, all sources, potential sources, of carbon dioxide
1130 and other greenhouse gases. I think that it is important for
1131 us as an agency, to understand all of those issues, and I
1132 think it will also help Congress, you, as you debate this
1133 very important issue.

1134 As I have said I believe, given my experience, a
1135 legislative approach is a much better approach than working
1136 through the intricacies of the Clean Air Act, and with the
1137 likely litigation that would ensue.

1138 Chairman WAXMAN. You might prefer another law, but there
1139 was a law. There is a law, the Clean Air Act adopted by
1140 Congress, and the U.S. Supreme Court said that EPA is
1141 supposed to regulate carbon emissions under that law. Even
1142 if you would like another law, you have to enforce the law
1143 that is there.

1144 Mr. JOHNSON. Well, and that is why I am proceeding with
1145 an advanced notice of proposed rulemaking, which is the first
1146 step in the regulatory process.

1147 Chairman WAXMAN. Mr. Tierney?

1148 Mr. TIERNEY. Thank you, Mr. Chairman.

1149 Dr. Henderson, in your written testimony you address the
1150 decision to set an environmental standard for ozone that is
1151 higher than the standard that scientific experts recommended.

1152 | You stated, ``Wilful ignorance triumphed over sound
1153 | science.``

1154 | Those are strong words. Would you explain for us?

1155 | Ms. HENDERSON. I was referring, really, to the secondary
1156 | standard because in the case of the secondary standard, we
1157 | were really excited that we now have enough information to
1158 | use a different form for the secondary standard. In the
1159 | past, we have had to default to the primary standard because
1160 | we didn't have the right information.

1161 | Then, to get so close to having the form changed and
1162 | then at the last minute, with no explanation, really, of why
1163 | it was done, that form was squelched. The new form was
1164 | squelched by the White House because President Bush said we
1165 | couldn't have a different secondary standard from the primary
1166 | standard.

1167 | Now, that is ignorance to me. That is wilful ignorance
1168 | because I do not think the OMB really hadn't read the Clean
1169 | Air Act to know that you can set that. I don't think the OMP
1170 | really hadn't read the EPA staff documents that carefully
1171 | explained why we were focusing on vegetation as the welfare
1172 | effect of concern.

1173 | So that is what my ``wilful ignorance`` meant. It
1174 | bothers me, with all the hard work that went into this by the
1175 | EPA staff and by CASAC to develop this different form for a
1176 | secondary standard that someone can just, for no transparent

1177 | reason, say, no, can't do that. That is what I meant by
1178 | wilful ignorance.

1179 | Mr. TIERNEY. Thank you very much.

1180 | Mr. Johnson, do you want to respond?

1181 | Mr. JOHNSON. Well, again, the record clearly indicates
1182 | that this was a difficult decision and that these were two,
1183 | both viable, options. Again, an important piece is that the
1184 | level of protectiveness was essentially equivalent whether a
1185 | W-126 form or identical to the eight-hour ozone--

1186 | Mr. TIERNEY. That is interesting you should say that
1187 | because what I see is there was no new evidence--at least you
1188 | couldn't give an answer to Mr. Waxman--no new evidence from
1189 | the White House at all on that issue. Before you had found
1190 | evidence to be compelling, in your own words, and necessary,
1191 | in your own words, and, in your own words, found no evidence
1192 | to support the alternative standard that was favored by
1193 | industry.

1194 | So, Mr. Johnson, you say that the final decision was
1195 | justified, but looking at your own words--and let's look at
1196 | some of the words of your own staff, what they had to say
1197 | about it. If you look through the documents that were
1198 | provided by EPA as part of the investigation, and it is
1199 | stunning; stunning to see how EPA staff reacted to the
1200 | rejection of the seasonal standard recommended by Dr.
1201 | Henderson.

1202 An EPA Associate Director comments, ``Looks like pure
1203 politics.''

1204 An EPA lawyer wrote, ``We could be in a position of
1205 having to fend off contempt proceedings. The obligation to
1206 promulgate a rule arguably means to promulgate one that is
1207 nominally defensible.''

1208 One EPA manager told his colleagues that he offered
1209 ``sympathies to all for all the work that went down the
1210 drain.''

1211 Another career official stated, ``I have been working on
1212 NAAQS for over 30 years and have yet to see anything like
1213 this.''

1214 Yet another Agency official responded by saying, ``I
1215 know how incredibly frustrating and disgusted we all are at
1216 the moment.''

1217 So, Mr. Johnson, I think what is happening with the EPA
1218 is pretty unacceptable. It is the Administrator's job to
1219 implement our Nation's environmental laws and to protect the
1220 public health and welfare. It has to be based on the best
1221 evidence, By your own words, the evidence was compelling, it
1222 was necessary that the standard be different and the new form
1223 be instituted. So it looked to me that by your own words and
1224 by your staff's words, you are not doing your job.

1225 Recently, the Union of Concerned Scientists released the
1226 results of a survey of nearly 1,600 EPA scientists. The

1227 survey revealed that EPA scientists face significant
1228 political interference with their work. Nearly 1,000 EPA
1229 scientists said they personally experienced at least one
1230 incident of political interference during the past five
1231 years. Over 500 EPA scientists knew of many or some cases
1232 where the EPA political appointees had inappropriately
1233 involved themselves in scientific decisions.

1234 Mr. Johnson, are you concerned at all that hundreds of
1235 EPA scientists are reporting incidences of political
1236 interference with their work?

1237 Mr. JOHNSON. Well, sir, I am proud of the fact that EPA
1238 has consistently ranked in the top 10 places for Federal
1239 employment. As a career--

1240 Mr. TIERNEY. Are you concerned, as my question was, are
1241 you concerned that hundreds of EPA scientists are reporting
1242 political interference in their work?

1243 Mr. JOHNSON. Well, I would like to quote to you, if I
1244 may, a quote from Dr. Paul Gilman, who just recently
1245 testified. Let me just give you a quote: ``EPA has become
1246 too politicized in its actions, too eager to pursue narrow
1247 political goals and too willing to ignore congressional
1248 intent. At least a dozen former EPA officials who played
1249 roles in setting policy now work as industry consultants,
1250 or``--this is also quoted, Orlando Sentinel--``Science is as
1251 politicized in America as it was in the Soviet Union and Nazi

1252 Germany, and EPA is a prime example.''

1253 He then goes to say, ''I want to make this point that
1254 these headlines all came prior to the current Administration
1255 and pertained to the previous administration.''

1256 So, sir--

1257 Mr. TIERNEY. So that is just an excellent defense, Mr.
1258 Johnson.

1259 Mr. JOHNSON. So, sir--

1260 Mr. TIERNEY. So apparently because you think something
1261 was politicized in a previous Administration, politicizing in
1262 this administration is laudable.

1263 Mr. JOHNSON. No, that is an inappropriate conclusion,
1264 sir.

1265 Mr. TIERNEY. My question to you was, are you proud of
1266 the fact, or are you concerned of the fact that hundreds of
1267 EPA scientists are reporting political interference with the
1268 work now, not in the past administration--we can have a
1269 hearing on that some other time. Are you proud of what is
1270 going on now?

1271 Mr. JOHNSON. I am very proud of the work of the Agency
1272 and all the thousands of scientists that we have and includes
1273 17,000 employees at EPA.

1274 Mr. TIERNEY. Well, I take it some--

1275 Mr. JOHNSON. And, Mr. Tierney, I will say just I will
1276 share my experience as a scientist growing up in the Agency

1277 | that there are those times that scientists agree with the
1278 | ultimate decision; there are times that they don't, and I
1279 | understand that.

1280 | As my role as Administrator is to evaluate the science
1281 | and evaluate the policy under what the law directs me to do
1282 | and make the best decision, that is what I have been doing,
1283 | and that is what I continue to do.

1284 | Mr. TIERNEY. Clearly, that is not what happened here,
1285 | Mr. Johnson.

1286 | Chairman WAXMAN. The gentleman's time has--

1287 | Mr. TIERNEY. By your own admission.

1288 | Chairman WAXMAN. Time has expired.

1289 | Mr. Bilbray?

1290 | Mr. BILBRAY. Yes, Mr. Chairman. I have to say--let me
1291 | just follow up on this issue of a survey by scientists that
1292 | there was an undue political influence here.

1293 | Mr. Johnson, is it fair for me to say that there were 55
1294 | requests for comment sent out by the Union of Concerned
1295 | Scientists?

1296 | Mr. JOHNSON. I don't--

1297 | Mr. BILBRAY. Fifty-five hundred. Fifty-five hundred, I
1298 | am sorry.

1299 | Mr. JOHNSON. Yes. I don't know the numbers of what was
1300 | done or what wasn't. I am aware that, in fact, the survey
1301 | was received by political appointees and non-scientists, so I

1302 | have no idea what criteria they used for sending the survey
1303 | out.

1304 | Mr. BILBRAY. That I have, sir. Fifty-five hundred out
1305 | there. About 1,500 came in, and of that we are looking at
1306 | maybe half of them had concerns, and there might have
1307 | been--my concern was that for this to be used in this hearing
1308 | as some kind of scientific document, and I say anybody who
1309 | would like to take a look at this and said it is not a
1310 | scientific document, it doesn't just--no pollster in the
1311 | world would accept this. Any elected official that would
1312 | accept it as being a standard, I think, would be appalled by
1313 | it, but we will talk about with the next panel.

1314 | Doctor, my question to you is, in your analysis, you
1315 | know, you talked about the vegetation and the ecosystem. Was
1316 | there a consideration of economic value considered in that
1317 | standard?

1318 | Ms. HENDERSON. CASAC is not allowed to consider economic
1319 | issues, and what we are asked to do is give advice and
1320 | recommendations on what will be protective of vegetation and
1321 | the welfare without regard to the costs or the ease of
1322 | implementation.

1323 | So what we did consider was what was biologically
1324 | relevant and what was recommended by the National Research
1325 | Council. Also, I have a concern for the effect of ozone on
1326 | vegetation as well as on people. When you continually

1327 | emphasize the primary standard, where do you monitor? You
1328 | monitor where the people are in urban areas. But we are
1329 | neglecting the rural areas where our food crops and plants
1330 | are grown, and when you need to have information, well, how
1331 | does ozone affect those crops, and how protective do we need
1332 | to be for that?

1333 | Mr. BILBRAY. Doctor, how long have you been chairman of
1334 | this body?

1335 | Ms. HENDERSON. I am in my fourth year. I go off in
1336 | October.

1337 | Mr. BILBRAY. Okay. I am concerned because when I talk
1338 | about economic value, you went immediately to a defensive
1339 | based on the cost of implementing strategies. You didn't
1340 | talk about the economic value of the crops that might have
1341 | been destroyed.

1342 | Ms. HENDERSON. Well, I--forgive me.

1343 | Mr. BILBRAY. You shifted and went way off of where I was
1344 | talking about, and I have to understand that, you know, that
1345 | economic value is something regulatory agencies do all the
1346 | time.

1347 | Ms. HENDERSON. Certainly, and there is a, I
1348 | believe--what do they call it--a regulatory impact assessment
1349 | done after our assessment.

1350 | Mr. BILBRAY. My question to you, then, if you did not
1351 | make that, what criteria did you use to set that on the

1352 impacts?

1353 Ms. HENDERSON. To set the form?

1354 Mr. BILBRAY. Yes. What standards have you used?

1355 Ms. HENDERSON. The form was purely a scientific issue. I
1356 am not an ecologist, but we have very good ecologists on our
1357 panel, and they are the ones who develop the form.

1358 I mentioned Ellis Kelling [phonetically], a member of
1359 the National Academy of Sciences and others. They know what
1360 they are doing, so they developed the form.

1361 Mr. BILBRAY. Okay. I am just concerned that, you know,
1362 Ms. Dudley and Johnson, this issue of economic values both in
1363 the impact of not doing something and--I am sorry, the doctor
1364 went off just worried about enforcement, but also
1365 enforcement--isn't there a consideration if you have an
1366 economic value impact from both sides: first of all, lack of
1367 action and action?

1368 Mr. JOHNSON. Well, again, under the Clean Air Act and
1369 under establishing NAAQS, I am not allowed to consider costs
1370 or whether in fact it can be implemented or not. So I have
1371 to base my decisions based upon what the science says. Of
1372 course, I think it is also important to note that with all
1373 science there are uncertainties, and there is a range of
1374 uncertainties. So, then, science, policy, and then
1375 ultimately judgment needs to be exercised to make an
1376 appropriate decision.

1377 Mr. BILBRAY. Well, isn't, in the statute, the term
1378 ``economic value'' actually integrated right into the
1379 statute? Isn't there a reference there?

1380 Ms. DUDLEY. I have it in front of me.

1381 Mr. BILBRAY. Go ahead, ma'am.

1382 Ms. DUDLEY. It says, ``Welfare includes but is not
1383 limited to effects on soils, water, crops, vegetation,
1384 man-made materials, animals, wildlife, weather, visibility
1385 and climate, damage to and deterioration of property, hazards
1386 to transportation, as well as effects on economic values and
1387 on personal comfort and well-being.''

1388 Mr. BILBRAY. Well, let me just say that that is a
1389 consideration with setting standards. I sure wish we would
1390 set the same standard before we start putting poison in our
1391 field, too.

1392 Chairman WAXMAN. Thank you, Mr. Bilbray.

1393 Mr. Higgins?

1394 Mr. HIGGINS. Thank you, Mr. Chairman. I would like to
1395 focus on the primary standard and health impacts. I think
1396 this is really important because it affects lives, health,
1397 and the well-being of people across the Nation.

1398 There are health risks we have some control over, but
1399 unhealthy air affects each and every one of us. Breathing in
1400 this life is not an option. Ozone is a dangerous pollutant.
1401 It hurts our lungs, worsens coughs and asthma, and makes us

1402 | more vulnerable to colds and flu. When ozone layers are
1403 | high, more people go to the hospital, more children miss
1404 | school, and more adults miss work, and more people die.

1405 | Dr. Henderson, will the standards set by EPA adequately
1406 | protect Americans from ozone pollution?

1407 | Ms. HENDERSON. The CASAC panel does not agree that the
1408 | standard that was set is sufficiently protective of public
1409 | health, particularly in regard to a margin of safety. Our
1410 | concern is for particularly asthmatic children whose asthma
1411 | is aggravated by the higher ozone levels and for what you--

1412 | Mr. HIGGINS. So the answer is no?

1413 | Ms. HENDERSON. The answer is no. I should be more
1414 | succinct. No.

1415 | Mr. HIGGINS. Administrator Johnson, how do you respond
1416 | to Dr. Henderson's concerns?

1417 | Mr. JOHNSON. Well, I disagree that I set the standard
1418 | that is requisite to protect public health with an inadequate
1419 | margin of safety. That is the statutory requirement, and
1420 | that is what the science in my judgment indicates.

1421 | I think it is also, and as you can read in our final
1422 | agency decision document, and we go in great detail, and in
1423 | fact we--I think it is a good idea and we are also required
1424 | to respond to CASAC's recommendations.

1425 | There was one study that was a pivotal study, a clinical
1426 | study conducted by Dr. Adams, and that his study he was the

1427 | only one that had gone and studied to the level of .060,
1428 | which was at the lower end of the CASAC range. Dr. Adams
1429 | actually wrote to the Agency twice questioning the use of his
1430 | study in saying that we were misusing his study, that there
1431 | were too many scientific uncertainties at that level.

1432 | So that, and for other reasons which are documented in
1433 | our decision document, I disagreed with CASAC on the actual
1434 | level and agreed--but I did agree that the current standard
1435 | was not requisite to protect public health, and that is why I
1436 | reduced it from 0.084 to .075.

1437 | Mr. HIGGINS. Well, look, yes, I want to address an
1438 | inconsistency within EPA's analysis. I believe there is a
1439 | major inconsistency here. EPA developed a regulatory impact
1440 | analysis comparing the standard you chose to the standard
1441 | recommended by Dr. Henderson. EPA projected that your weaker
1442 | standard will produce the following results each year:
1443 | Between 500 and 3,500 premature deaths, 1,400 non-fatal heart
1444 | attacks, almost 10,000 asthma attacks or asthma symptoms,
1445 | 7,500 emergency room and hospital visits, 67,000 lost work
1446 | days, and almost a million lost school days.

1447 | Mr. Johnson, why didn't you listen to your own staff and
1448 | set a more stringent standard to avoid these harms?

1449 | Mr. JOHNSON. Again, the Clean Air Act does not require a
1450 | primary standard to be set at zero risk, and to achieve that
1451 | which you are referring would have to be set at a zero,

1452 | probably zero level. The Clean Air Act does not require
1453 | that.

1454 | The standard of the law is requisite to protect public
1455 | health within an adequate margin of safety, and through court
1456 | decisions, that standard is neither more or less stringent
1457 | than necessary.

1458 | Mr. HIGGINS. Yes.

1459 | Mr. JOHNSON. And then that is my judgment, and I made
1460 | the judgment that we needed to strengthen the standard, and I
1461 | strengthened the standard which is the Nation's most
1462 | health-protective eight-hour ozone standard in our history.
1463 | And I am very proud of that.

1464 | Mr. HIGGINS. The public health experts aren't uncertain
1465 | about the harm from ozone. The most eminent public health
1466 | organizations in America agreed upon the Science Advisory
1467 | Committee's recommendations, and this included the American
1468 | Academy of Pediatrics, the American Medical Association, the
1469 | American Heart Association, among others.

1470 | I have a letter from the American Lung Association to
1471 | this Committee strongly critiquing EPA's rule, and I ask
1472 | unanimous consent to enter it into the record.

1473 | Chairman WAXMAN. Without objection that will be ordered.

1474 | [The referenced material follows:]

1475 | ***** COMMITTEE INSERT *****

1476 Mr. HIGGINS. The American Lung Association says, ``If
1477 EPA had followed the law, we could have cut the risk of
1478 life-threatening pollution to millions of Americans
1479 nationwide.

1480 Administrator Johnson, last question. Your decision
1481 seems to be inconsistent with the mainstream thinking. It
1482 rejects the recommendations of your expert panel, your own
1483 staff, the outside public health organizations. It is just
1484 not credible to argue that your decision is based on science.

1485 Mr. JOHNSON. Well, I disagree with that, and we
1486 certainly have in excess of 400 pages of document that goes
1487 in great detail describing the science behind my decision,
1488 and that it is the most health protective standard in the
1489 Nation's history.

1490 I might add, as I met with all the public health
1491 officials, and I met with others so that I could have their
1492 input, and I think that is important as part of the process
1493 in me making a decision.

1494 As I mentioned in my oral testimony, I have just
1495 proposed a new health protective standard for lead, and I
1496 have taken it a step further because CASAC recommended a
1497 particular range. But as part of the evaluation the Centers
1498 for Disease Control have said that there is no safe level of
1499 lead. So CASAC did not recommend, but I felt it was
1500 important as a public health official to ask the question:

1501 | Should we be setting the standard for lead at zero?

1502 | Chairman WAXMAN. Mr. Higgins, your--

1503 | Mr. JOHNSON. So those are the kinds of decisions that I
1504 | have to make, and I see input. Again, I appreciate the
1505 | Council of CASAC, my staff, the notice and comment, the
1506 | public hearings all of which, but, ultimately, I need to make
1507 | a tough decision.

1508 | Mr. HIGGINS. I yield back, Mr. Chairman.

1509 | Chairman WAXMAN. The gentleman's time has expired.

1510 | Mr. Platts?

1511 | Mr. PLATTS. Thank you, Mr. Chairman. I appreciate you
1512 | holding this hearing, and I apologize that a scheduling
1513 | conflict prevents me from remaining, but I would like to
1514 | yield the balance of my time to the gentleman from
1515 | California, Mr. Issa.

1516 | Mr. ISSA. I thank the gentleman.

1517 | You know, if we could put the map up on the board, I
1518 | think we have--

1519 | Chairman WAXMAN. Mr. Platts?

1520 | Mr. ISSA. Oh, would you ask Todd to stay for a few
1521 | minutes?

1522 | Chairman WAXMAN. Mr. Platts is yielding his time. He
1523 | must stay here. Go ahead.

1524 | Mr. ISSA. Okay. If you could put the map up on the
1525 | board, and this will primarily concern, I think, most both

1526 Administrator Dudley and Administrator Johnson, but if you
1527 will look at the chart, these are counties with monitor
1528 violations in 2008, primary ozone at the .75 parts per
1529 million, and secondary standard of .21.

1530 Now, my understanding is that every area that is dark,
1531 which includes, unfortunately, most of California. There is
1532 no effective difference whether you set the standard for
1533 secondary higher or lower, is that correct? That basically,
1534 the ones that are in compliance will be in compliance at
1535 either level; the ones that are not in compliance will not be
1536 in compliance at either level. Is that roughly true, based
1537 on the map you see up there, if you are familiar with it?

1538 Mr. JOHNSON. Based upon analysis that our staff did that
1539 whether the form was the W-126 form or the following
1540 identical to the eight-hours ozone standard, based upon the
1541 decision that I made to be protective that it didn't matter
1542 either way.

1543 Mr. ISSA. Okay, following up on that--

1544 Mr. JOHNSON. But, clearly--excuse me, sir.

1545 Mr. ISSA. Yes.

1546 Mr. JOHNSON. But clearly, for the primary standard there
1547 were many counties based upon monitoring data that would be
1548 out of compliance within the new primary health protective
1549 standard.

1550 Mr. ISSA. I realize that and, of course, if California's

1551 out of compliance, in such a large area they are going to be
1552 in either case.

1553 I would note that the food basket of California appears
1554 to be producing a tremendous amount of crops for us with
1555 already noncompliant ozone layers.

1556 Dr. Henderson, can you explain, essentially, why
1557 productivity has increased dramatically in most of America,
1558 whether it is corn, wheat, rice, or the vegetables grown in
1559 California during a time in which ozone levels were far above
1560 what you are saying you would like them to be?

1561 Ms. HENDERSON. Well, it would be a mistake for me to try
1562 to calculate all the factors that go into food production.

1563 What I was trying to mention was we could do a better
1564 job of air quality management in rural areas if we had some
1565 kind of handle on what the ozone levels are and if they are
1566 at a level that can affect the foliage.

1567 Mr. ISSA. Okay, but back to Administrator Johnson, you
1568 didn't find that setting a different standard would have made
1569 any difference. In other words, the economic value that you
1570 are required by statute to--and, Administrator Dudley, you,
1571 too--you are required to look at this economic value. If I
1572 read this map correctly, there is not economic value to the
1573 different standard because it doesn't, in fact, change the
1574 compliance. Is that correct?

1575 Mr. JOHNSON. You have to be very precise. Based upon

1576 | the data sets analyzed between 2003 to 2005, and then 2004 to
1577 | 2006 from currently monitored counties, no additional
1578 | counties would have been out of attainment under the seasonal
1579 | secondary standard initially proposed by EPA.

1580 | Mr. ISSA. Okay. Could we put the chart up that comes
1581 | next? This is the chart of levels for the 12-hour standard,
1582 | the so-called W-126 standard. I think all of you are
1583 | familiar with this.

1584 | When I read it, looking at the difference between the
1585 | .075 and the .070, under the 126 standard, 21 parts per
1586 | million, I see no change again. Is that essentially a more
1587 | graphic way to show that, in fact, there would have been no
1588 | benefit had we implemented the lower standard? The secondary
1589 | standard.

1590 | Mr. JOHNSON. Yes.

1591 | Mr. ISSA. So, Dr. Henderson, if I accept science--and I
1592 | do--and that your conclusions are well-intended but without
1593 | the economic value consideration, would you agree, based on
1594 | no counties changing, the 126, that in fact it was within the
1595 | Administrator's purview to judge that and to come up with at
1596 | least the standard for now of .075?

1597 | Ms. HENDERSON. I am mixing whether you are talking about
1598 | the secondary standard or the primary standard.

1599 | Mr. ISSA. Well, I am going to the secondary standard,
1600 | but let me put it another way. Your advisory role is for the

1601 Administrator to accept or reject that, in fact, it is
1602 advisory even though it is scientific based, and you have
1603 standards different than he does. You said yourself you do
1604 not evaluate this economic value where he does. Is that
1605 correct?

1606 Ms. HENDERSON. It is certainly within his purview. He
1607 is the one who decides. We are advisory only. In the case
1608 of the secondary standard, I think the decider was President
1609 Bush. And that is within his purview, I mean.

1610 Mr. ISSA. Thank you. Thank you for allowing me to clear
1611 up the difference in scope, Mr. Chairman.

1612 Chairman WAXMAN. Mr. Hodes?

1613 Mr. HODES. Thank you, Mr. Chairman. The law is very
1614 clear that EPA may not consider costs in setting a National
1615 Air Quality Standard to protect the environment. The Supreme
1616 Court specifically addressed the issue in 2001. The Court
1617 wrote that if EPA established a standard by ``secretly
1618 considering the costs without telling anyone,`` it would be
1619 grounds for throwing out the standard because the
1620 Administrator had not followed the law.

1621 I am concerned that this is exactly what happened in
1622 this case. The record before this committee shows that the
1623 unanimous recommendation of the Clean Air Scientific Advisory
1624 Committee was rejected by you, Mr. Johnson, apparently on the
1625 basis of White House opinion or desire to which you

1626 | apparently exceeded, given the change in your position from
1627 | February 22nd to March 12th, for which is there is no
1628 | explanation that is reasonable other than what the White
1629 | House told you to do, and much weaker standards were finally
1630 | selected.

1631 | I want to know, Mr. Johnson, during the Agency's
1632 | consultation with the White House, did White House officials
1633 | express concerns about the costs of implementing the ozone
1634 | standards?

1635 | Mr. JOHNSON. Sir, are you referring to the primary or
1636 | the secondary standard?

1637 | Mr. HODES. Either one. Did they express concerns about
1638 | the costs of implementing the ozone standards with respect to
1639 | either primary or secondary? And I will just point out for
1640 | you that your Administrator, Mr. Peacock, said that it is
1641 | clear that the prohibition extends even to secondary
1642 | standards.

1643 | Mr. JOHNSON. That is my belief, and that is the way I
1644 | operated in my decision-making.

1645 | Mr. HODES. Did the White House express concerns about
1646 | the costs of implementing either the primary or secondary
1647 | standards in your consultations with the White House?

1648 | Mr. JOHNSON. As I said, for making a decision, it is my
1649 | decision and my decision alone, made independently, and I
1650 | cannot consider and did not consider costs nor whether it was

1651 | implementable.

1652 | Chairman WAXMAN. Mr. Hodes, I don't think he has
1653 | answered your question.

1654 | Mr. HODES. I know. I am sorry, Mr. Johnson. Here is my
1655 | question: Not what you consider, I am asking you, Mr.
1656 | Johnson, during the consultations you had with the White
1657 | House, did the White House officials express concerns to you
1658 | or your agency about the costs of implementing the ozone
1659 | standards.

1660 | Mr. JOHNSON. Well, if I did recall, I am not sure that
1661 | it would be appropriate for me to get into what--who said
1662 | what at what point in time. In fact, I believe that it is
1663 | important for me and others, future administrators, to be
1664 | able to have candid discussions with members of the Executive
1665 | Branch, and, as I said, I made the decision. I made the
1666 | decision without consideration of cost, and that is the
1667 | important--

1668 | Mr. HODES. Let's stop there because I want to pursue
1669 | this, and I want an answer to my question. When I hear a
1670 | witness start talking to me about "if I did recall," I
1671 | wonder whether or not the witness is being evasive. Do you
1672 | recall having discussions with the White House concerning
1673 | costs of implementing the standards?

1674 | Mr. JOHNSON. I have routine conversations with members
1675 | of the Executive Branch.

1676 Mr. HODES. Sir, it is a simple yes or no answer. Do you
1677 recall?

1678 Mr. JOHNSON. It is not a simple yes or no answer because
1679 I have routine conversations on a multitude of issues, and I
1680 am saying is that with, on this issue, I made the decision.
1681 I understand what the law directs me to do, and that is not
1682 consider costs and I did not consider costs.

1683 Mr. HODES. Let me go back. Do you recall, sir--search
1684 your memory--having conversations with the White House about
1685 costs in implementing the standards?

1686 Mr. JOHNSON. If I did recall, it would not be
1687 appropriate for me to discuss the nature of those
1688 conversations.

1689 Mr. HODES. So you won't tell me whether you do or do not
1690 recall?

1691 Mr. JOHNSON. As I said, it was not part of my
1692 decision-making.

1693 Mr. HODES. That is not my--

1694 Mr. JOHNSON. That is the important piece, sir.

1695 Mr. HODES. With all due respect, I am asking the
1696 questions and you are answering them.

1697 Mr. JOHNSON. I am answering and you don't like the
1698 answers.

1699 Mr. HODES. No. What I want to know is, do you recall or
1700 don't you recall?

1701 Mr. JOHNSON. I said even if I did recall, it is not
1702 appropriate for me to get into the nature of discussions I
1703 have within the Executive Branch.

1704 Mr. HODES. And the basis of your refusal to answer the
1705 question, is it your lack of recollection or some assertion
1706 of privilege?

1707 Mr. JOHNSON. I am not asserting any privilege at this
1708 time, but I think that it is important, and I think that it
1709 is important that I and future administrators have the
1710 ability to had candid conversations. I also believe that
1711 that is important, and certainly as the Agency deliberates on
1712 issues that are before us, and I think that that is an
1713 important privilege, and also I think that it is an important
1714 principle that I need to maintain for me and for future
1715 administrators.

1716 Mr. HODES. I will try this one last time. You
1717 understand, sir, you are under oath before this Committee?

1718 Mr. JOHNSON. Oh, I understand that, sir.

1719 Mr. HODES. Do you or don't you recall having
1720 conversations with the White House about whether or not costs
1721 were considered by the White House?

1722 Mr. JOHNSON. As I said, that whether or not I recall or
1723 don't recall, I don't believe that it is appropriate for me
1724 to discuss the nature of those conversations. I believe it
1725 is appropriate for me to be able to have candid

1726 | conversations, and I also said under oath that I did not
1727 | consider costs in making my decisions.

1728 | Chairman WAXMAN. Thank you, Mr. Hodes. Your time has
1729 | expired.

1730 | Mr. Sarbanes?

1731 | Mr. SARBANES. Thank you, Mr. Chairman.

1732 | Ms. Dudley, I am going to give you some equal time here.
1733 | I was intrigued by your memo that came, let me see if I can
1734 | find it, on March 6th, which was six days before this
1735 | deadline, you sent a memo to EPA where you said, ``The draft
1736 | does not provide``--this is the draft EPA report--``does not
1737 | provide any evidence that a separate secondary standard would
1738 | be more protective than one set equal to the draft primary
1739 | standard.`` Explain that.

1740 | Ms. DUDLEY. The air quality that would be achieved by
1741 | setting the secondary standard based on that seasonal form
1742 | averaging it over three months or setting it equal to the
1743 | primary, the level of air quality is the same. I think it
1744 | gets back to the maps that were up there.

1745 | But what we care about is air quality, and the air
1746 | quality that vegetation and humans are exposed to, the two
1747 | standards from all the analysis that EPA did would have the
1748 | same effect.

1749 | Mr. SARBANES. I am incredulous that you could claim
1750 | there wasn't any evidence when in the draft, original draft,

1751 | the Administrator indicated that he found evidence compelling
1752 | that ozone-related effects on vegetation are best
1753 | characterized by an exposure index that is cumulative and
1754 | seasonal in nature, and that that conclusion on the part of
1755 | the Administrator was reflective of what the expert panel had
1756 | concluded, and what months if not years of research and work
1757 | on the part of the EPA staff had concluded.

1758 | So again, I mean I could see you asserting perhaps that
1759 | it does not provide adequate evidence or sufficient evidence,
1760 | but to suggest that it didn't provide any evidence, that
1761 | there was no evidence that this secondary standard that was
1762 | originally being ut forward would be the appropriate one
1763 | doesn't seem to jibe with all of the other testimony and
1764 | documentation that we have.

1765 | Ms. DUDLEY. There are two different issues here. One is
1766 | that whether vegetation responds over a season rather than
1767 | over a day, and EPA did present evidence to that. EPA also
1768 | presented evidence that the current standards--or the
1769 | previous standard may not be protective of vegetation.

1770 | But at the end of the day, regardless of which form you
1771 | used, air quality would be reduced so that that vegetation
1772 | would be exposed to the same air quality. That is the bottom
1773 | line, so that the form of the standard will not affect the
1774 | air quality. It won't affect what people have to do to come
1775 | into compliance with the standard, and it won't affect the

1776 | air quality in those counties that are affected by the
1777 | standard.

1778 | Mr. SARBANES. Well, what you are saying strikes me as
1779 | double-talk in the context of what we heard in the original
1780 | draft from the Administrator, and certainly the reaction of
1781 | the staff and the experts to the ultimate decision to abandon
1782 | the more cumulative standard in favor of the same standard as
1783 | the primary was intense, and it was lamented at all levels
1784 | within the staff which to me suggests that there was
1785 | sufficient evidence. Certainly, there was evidence that that
1786 | would be the most appropriate route to take.

1787 | Administrator Johnson, I just want to say to you that I
1788 | am offended--and I am not trying to be facetious here, I
1789 | actually mean this--I am offended on your behalf by the White
1790 | House's handling of this matter, because right up to the end
1791 | you were going with the science. In fact, I commend you for
1792 | the fact that after you started to see the writing on the
1793 | wall on March 6th, you nevertheless, and then at that point,
1794 | had the ability, I guess, to begin regrouping. You
1795 | nevertheless pushed forward right up to the point of the
1796 | deadline when the rug was essentially pulled out from under
1797 | you, or you received this countermand, this final countermand
1798 | or overwrite from the White House.

1799 | I am going to ask you a question which again I don't
1800 | mean to be facetious. You are somebody who was in the Agency

1801 | for many years, you had this opportunity to take the top spot
1802 | there. I am curious, when you did that, did the President in
1803 | speaking with you about taking this job, or the White House
1804 | in speaking with you about it, did they indicate to you that
1805 | there would be times when the science would be overridden for
1806 | political purposes? And you would essentially have to carry
1807 | that water for the White House? How clear were they about
1808 | these instances occurring.

1809 | Mr. JOHNSON. Sir, my charge and certainly my oath of
1810 | office was to carry out the mandates and the laws that I am
1811 | responsible for under the Environmental Protection Agency.
1812 | That was the charge. The President sent further and said,
1813 | Steve, I want you to accelerate the pace of environmental
1814 | protection while you help maintain the Nation's economic
1815 | competitiveness. That was the charge that was given. I have
1816 | certainly been very public about that.

1817 | I have been carrying out those duties to the best of my
1818 | ability, looking at sound science, and, as I said, science
1819 | isn't pure. There are many uncertainties and science
1820 | requires policy judgments and, of course, then there are a
1821 | variety of other issues that come into play depending upon
1822 | the statute.

1823 | Mr. SARBANES. Well, with all due respect, I can't
1824 | imagine a clearer example of where your charge to carry out
1825 | the law in respect to science could come into conflict with

1826 | what the President's and White House's edict was in this
1827 | particular matter.

1828 | I yield back.

1829 | Chairman WAXMAN. The gentleman's time has expired.

1830 | Mr. Welch?

1831 | Mr. WELCH. Thank you, Mr. Chairman.

1832 | Mr. Johnson, my understanding is Jason Burnett is a
1833 | senior member of the EPA.

1834 | Mr. JOHNSON. Yes.

1835 | Mr. WELCH. And he is a trusted and respected advisor, is
1836 | that right?

1837 | Mr. JOHNSON. Yes.

1838 | Mr. WELCH. A person on whom you had confidence, have
1839 | confidence?

1840 | Mr. JOHNSON. Yes.

1841 | Mr. WELCH. Is that correct? He, as you know, has been
1842 | deposed, and he testified that, according to him in his
1843 | testimony, you favored granting this California waiver in
1844 | full in August and September. Is Mr. Burnett correct?

1845 | Mr. JOHNSON. Well, I think that he is correct in
1846 | characterizing that over time, as I was briefed--

1847 | Mr. WELCH. Let's keep it simple. I mean, I understand
1848 | this is a process. My question, and I am really going to try
1849 | to frame a question that is clear, that allows you to answer
1850 | it as clearly and as succinctly as possible. I do appreciate

1851 | that this is a process, and you have many things that come in
1852 | so what happens today isn't necessarily what is the wise
1853 | decision tomorrow, okay?

1854 | But is he correct in his recollection, according to his
1855 | testimony, that in August and September, you were leaning
1856 | towards a full waiver?

1857 | Mr. JOHNSON. Well, I don't recall the August and
1858 | September time frame, but I can say with confidence that I
1859 | was considering all options, including a full grant and also
1860 | a full denial, and options in between. And I think my
1861 | recollection is, as I read the transcript last night, and I
1862 | think he also states that as well.

1863 | Mr. WELCH. Mr. Burnett said--it was very clearly--that
1864 | in August and September you were favoring granting a waiver
1865 | in full.

1866 | We have to move on here. I only have five minutes, so
1867 | you read it last night. That is what he said.

1868 | Chairman WAXMAN. Well, the issue isn't what Mr. Burnett
1869 | said; the issue is whether it is accurate or not.

1870 | Mr. JOHNSON. Well, as I said, is that I considered each
1871 | one of the options.

1872 | Mr. WELCH. All right, let me go through this.

1873 | Mr. JOHNSON. I don't recall the particular time, but I
1874 | did consider--

1875 | Mr. WELCH. But that is obvious. It is obvious that you

1876 | did. Here is what he said. I think you have more or less
1877 | acknowledged that in August and September he was correct, you
1878 | were leaning towards a full waiver. He said that over time
1879 | you began to think of a partial grant. Is he right there?

1880 | Mr. JOHNSON. I considered a partial grant, that is
1881 | correct.

1882 | Mr. WELCH. All right. Then on December 19th you issued
1883 | a denial.

1884 | Mr. JOHNSON. Yes.

1885 | Mr. WELCH. Was that after you had been to the White
1886 | House to have conversations about this issue?

1887 | Mr. JOHNSON. Well, again, I have routine conversations
1888 | with the White House throughout the calendar. Again, this
1889 | was my--

1890 | Mr. WELCH. Did you have any--

1891 | Mr. JOHNSON. This was the decision.

1892 | Mr. WELCH. Did you have anything--

1893 | Mr. JOHNSON. I understand--

1894 | Chairman WAXMAN. Mr. Johnson, we would appreciate it if
1895 | you answer the questions.

1896 | Mr. JOHNSON. Yes, I am trying.

1897 | Mr. WELCH. Did you have a meeting with the President
1898 | about this?

1899 | Mr. JOHNSON. I have routine meetings with the Executive
1900 | Branch, including the President.

1901 Mr. WELCH. Okay. What part of my question don't you
1902 understand? Did you have a meeting with the President about
1903 this issue of the EPA waiver?

1904 Mr. JOHNSON. When and where and if I have meetings with
1905 the President are--I said I have routine meetings with
1906 members of the Executive Branch. Those meetings I believe
1907 are in confidence.

1908 Mr. WELCH. Is there something--

1909 Mr. JOHNSON. And as I said, I made the decision. It was
1910 my decision alone.

1911 Mr. WELCH. Mr. Johnson, you described this process is
1912 transparent and open, correct?

1913 Mr. JOHNSON. Yes.

1914 Mr. WELCH. And you are proud of the process?

1915 Mr. JOHNSON. I am. This was an excellent process. As
1916 you can see from the thousands of pages.

1917 Mr. WELCH. Does transparent mean if we can't know
1918 whether you, in fact, met with the President and discussed
1919 with him this issue?

1920 Mr. JOHNSON. I believe that as Administrator that I need
1921 to have the ability to have private meetings with the
1922 President and members of the Executive Branch.

1923 Mr. WELCH. Did I just ask you what the content was of
1924 your meeting with the President?

1925 Mr. JOHNSON. I said I have already acknowledged that I

1926 | have routine meetings with the President and members of the
1927 | Executive Branch. I think that is good government.

1928 | Mr. WELCH. Yes, but a few things: In your September 12th
1929 | briefing, there were slides that were presented that included
1930 | a statement from our staff that the clearest and most
1931 | defensible option would be to grant the waiver. Is that
1932 | true?

1933 | Mr. JOHNSON. I don't recall that particular slide. I
1934 | know that there was a wide range of options and that they
1935 | were all legally defensible.

1936 | Mr. WELCH. There were staff evaluations at the September
1937 | meeting--this is all in the record. This is not disputable.

1938 | Mr. JOHNSON. I said I don't remember that particular
1939 | document.

1940 | Mr. WELCH. So we can pretend to the people listening
1941 | that this is an established fact, but let's--

1942 | Mr. JOHNSON. Sir, there were how many thousands of pages
1943 | of documents that were submitted to you?

1944 | Mr. WELCH. --September 12th briefing it said California
1945 | has extraordinary ozone conditions, that greenhouse gas
1946 | standards are reasonably viewed as necessary to address
1947 | climate change, and opponents to the waiver have not met
1948 | their burden of showing the California standards won't
1949 | benefit climate change and ozone conditions.

1950 | Are you aware that in these evaluations they originally

1951 contained those remarks in writing until they were removed at
1952 the insistence of Mr. Meyers?

1953 Mr. JOHNSON. I don't recall that situation, and I don't
1954 necessarily see documents that are drafted by individual
1955 staffs.

1956 Mr. WELCH. But you were at the meeting.

1957 Mr. JOHNSON. Oh, I don't necessarily see all the
1958 workings of drafting and redrafting before that it reaches my
1959 desk. That is the point.

1960 Mr. WELCH. This is sounding like some of the meetings
1961 you were at you were present, and some of the meetings you
1962 are at, you are not. September 20th and 21st briefing, this
1963 is your briefing. I mean, it is not somebody else's.

1964 Did the EPA staff make it clear that the statutory
1965 criteria for granting the waiver had been met? That is a
1966 threshold question, correct?

1967 Mr. JOHNSON. There were a wide range of options, and
1968 there were opinions that were provided to me that as part of
1969 the record. As I said--

1970 Mr. WELCH. It is a little frustrating.

1971 Mr. JOHNSON. Well, it shouldn't be frustrating--

1972 Mr. WELCH. Well, it is.

1973 Mr. JOHNSON. --because there is a 50-page document--

1974 Mr. WELCH. No, no, it is a simple--

1975 Mr. JOHNSON. --describing my decision and the scientific

1976 | basis on what the law requires me to decide, which I decided.
1977 | Chairman WAXMAN. Mr. Welch, your time has expired.
1978 | Mr. Johnson, you admitted you had a conversation with
1979 | the President on the California waiver. That wasn't an
1980 | issue.
1981 | Now, you are refusing to say whether you had a
1982 | conversation with the President on the ozone waiver. What is
1983 | the difference?
1984 | Mr. JOHNSON. As I said, I have routine conversations
1985 | with the President as well as members of the Executive
1986 | Branch, and I believe that those--
1987 | Chairman WAXMAN. Let me get the record straight.
1988 | Mr. ISSA. Could we have regular order?
1989 | Chairman WAXMAN. The Chairman is pursuing regular order.
1990 | You said for the record that you had a conversation with the
1991 | President on the ozone layer?
1992 | Mr. JOHNSON. I don't recall making that--
1993 | Chairman WAXMAN. On the ozone ruling?
1994 | Mr. JOHNSON. I don't recall making that comment myself.
1995 | Chairman WAXMAN. Do you recall making a comment that you
1996 | have had a conversation with the President on any of these
1997 | three rules that we have been looking at?
1998 | Mr. JOHNSON. As I said, what I do recall and I believe
1999 | is an accurate reflection of what I have said, is that I have
2000 | routine conversations with members of the Executive Branch,

2001 | including the President on a wide range of issues.

2002 | Chairman WAXMAN. Okay, I am not going to pursue this
2003 | because I will have another opportunity, but it seems to me
2004 | you are being awfully evasive, and I don't know why you
2005 | cannot tell this Committee whether you in fact had a
2006 | discussion about this rule or that rule or the other rule.
2007 | We are only talking about three different rules. Either you
2008 | did or you didn't. I don't know why you cannot tell us that
2009 | information.

2010 | No one is asking you what was said. We are just asking
2011 | you whether you had a conversation, and the answer is not
2012 | acceptable to say, I have had conversations with the
2013 | President and others on a routine basis, and I am not going
2014 | to tell you whether I had a conversation on these subjects.
2015 | What else do you talk to him about?

2016 | Mr. JOHNSON. As I have said, I have routine
2017 | conversations on--

2018 | Chairman WAXMAN. In those routine conversations, did you
2019 | talk about the ozone--

2020 | Mr. JOHNSON. --on a wide range of topics.

2021 | Mr. ISSA. Mr. Chairman, I must insist that we go to
2022 | regular order.

2023 | Chairman WAXMAN. The gentleman is not in order at this
2024 | time.

2025 | Mr. ISSA. Mr. Chairman, the rules of the House--

2026 Chairman WAXMAN. The gentleman will cease.

2027 Mr. ISSA. The rules of the House call for an alternating
2028 five minutes on--

2029 Chairman WAXMAN. The gentleman will cease.

2030 Mr. ISSA. --on what time does the Chairman speak. The
2031 point of order, Mr. Chairman, on what time does the Chairman
2032 speak and ask these questions.

2033 Chairman WAXMAN. The Chair has the prerogative to pursue
2034 for the record a clarification and I am pursuing it.

2035 Mr. ISSA. Mr. Chairman, where in the rules is that
2036 stated? Could I see a copy of the rules that allow it,
2037 because as I said, the rules of the House, Mr. Chairman--

2038 Chairman WAXMAN. We will furnish you with a copy at the
2039 appropriate time.

2040 Mr. ISSA. Mr. Chairman, there are multiple members that
2041 could yield to you time. I would ask that you--

2042 Chairman WAXMAN. I will have you physically removed from
2043 this meeting if you don't stop. I want to know an answer to
2044 the question.

2045 Did you have a discussion with the President on any one
2046 of these three rules?

2047 Mr. JOHNSON. Mr. Chairman, as I said, I have routine
2048 conversations with the President and the Executive Branch on
2049 all, on many matters before the Agency of particular
2050 importance. I don't believe that it is appropriate for me to

2051 | get into the details of what those conversations are or are
2052 | not. I think that is an important privilege that and
2053 | opportunity that we have.

2054 | Chairman WAXMAN. Are you asserting executive privilege?

2055 | Mr. JOHNSON. Not at this time, sir.

2056 | Chairman WAXMAN. Okay, Ms. Watson is now recognized.

2057 | Ms. WATSON. Thank you, and let me try this: Mr.

2058 | Johnson, in December of 2007, you announced that EPA would

2059 | deny California's petition--and I am a Californian--for a

2060 | Clean Air Act waiver to enforce its standards to reduce

2061 | greenhouse gas pollution from cars and trucks. In our

2062 | previous investigations of the White House's manipulation of

2063 | climate change science, we learned that the Office of the

2064 | Vice President was involved in these activities.

2065 | Because the California waiver directly relates to

2066 | climate change, I would like to ask you about the Vice

2067 | President's role in the California waiver decision. It is

2068 | very important to me. Was the Vice President's Office

2069 | involved with the deliberations on the California waiver?

2070 | Mr. JOHNSON. Not to my knowledge, no.

2071 | Ms. WATSON. Your answer is no, okay. According to press

2072 | accounts, the Vice President was involved in the issue and

2073 | the Press has reported that the CEO of Ford and Chrysler met

2074 | with Vice President Cheney prior to the denial and urged the

2075 | Administration to reject the waiver. Did the Vice President

2076 | or his staff put any pressure on you or your staff to deny
2077 | the California waiver request?

2078 | Mr. JOHNSON. No.

2079 | Ms. WATSON. Did the Vice President or his staff tell you
2080 | they opposed the California waiver?

2081 | Mr. JOHNSON. Not that I recall.

2082 | Ms. WATSON. Mr. Johnson, we are looking at a mysterious,
2083 | last-minute reversal of your position on the California
2084 | waiver. We need to fully understand the reasons for that
2085 | sudden change of course. Transparency is what we are trying
2086 | to get to, and it would be fundamentally wrong if you
2087 | reversed your decision because of the meeting the Vice
2088 | President had with the auto industry. It would violate the
2089 | Clean Air Act if a denial resulted from any pressure from the
2090 | Vice President's office.

2091 | But the Committee won't know the truth if you do not
2092 | tell us and, in terms of being transparent, we want to know
2093 | why there was a reversal. We asked for the waiver because
2094 | living in California, having worked for 20 years in the
2095 | legislature, we did a lot to clean up our air. In fact, it
2096 | took us 14 years for the smoking policies that stopped
2097 | smoking on airplanes in California air space, and now it is
2098 | the practice around the globe.

2099 | So we kind of know what we are doing when we ask for a
2100 | waiver. So if you could be transparent, was there any

2101 | pressure put on you at all to change your own
2102 | recommendations, to reverse your own recommendations.

2103 | Mr. JOHNSON. Well, then I would with due respect beg to
2104 | differ with your characterization. I didn't reverse any
2105 | decision; I made the decision, and the decision was
2106 | documented in the letter of what I intended to do--to the
2107 | Governor--in December, and later on then, as I said, the
2108 | approximately 50-page document goes into great detail on my
2109 | decision.

2110 | It was my decision, it was mine alone, and as I note in
2111 | the document that climate change is a problem that is not
2112 | unique to California. My decision is grounded in the law and
2113 | the facts that were before me.

2114 | Ms. WATSON. We have your words down in the record, but
2115 | was there any input from the White House that influenced your
2116 | final decision to deny us a request for a waiver?

2117 | Mr. JOHNSON. Again, my decision was based upon the law
2118 | and the facts in Section 209.

2119 | Ms. WATSON. No, let me clarify and speak real clearly.

2120 | Mr. JOHNSON. Please.

2121 | Ms. WATSON. So you can answer me directly, was there any
2122 | input from the White House, either the President or Vice
2123 | President, that influenced your decision?

2124 | Mr. JOHNSON. Again, I have routine conversations with
2125 | the Executive Branch and--

2126 Ms. WATSON. All right, you will not answer--

2127 Mr. JOHNSON. --and I made the decision--

2128 Ms. WATSON. Hold on. Hold on, I am asking some
2129 questions. I have gone through this for the last hour. Yes
2130 or no.

2131 Mr. JOHNSON. As I said, I have routine conversations--

2132 Ms. WATSON. No. That doesn't--

2133 Mr. JOHNSON. Well, again--

2134 Ms. WATSON. Right, we are talking about transparency.

2135 Mr. JOHNSON. As I said--

2136 Ms. WATSON. Yes or no?

2137 Mr. JOHNSON. The answer is no, they did not make the
2138 decision. The answer is yes, I made the decision.

2139 Ms. WATSON. I didn't ask did you do that. Maybe my
2140 English is not clear. Let me see if I can restate it.

2141 Mr. JOHNSON. Please.

2142 Ms. WATSON. Yes. You have these routine conversations.

2143 Mr. JOHNSON. Yes.

2144 Ms. WATSON. Was there anything--you don't have to give
2145 me the content--was there anything in the conversation, any
2146 input from either the President or the Vice President--and
2147 the Vice President in particular, because we do have a record
2148 of conversations with an industry that adds to the pollution
2149 in the air, was there any input from the Vice President that
2150 impacted on your decision to deny California its waiver?

2151 Mr. JOHNSON. Specifically, for the Vice President I
2152 don't recall any.

2153 Ms. WATSON. Your answer is that you don't recall.

2154 Mr. JOHNSON. I said no, I don't recall any.

2155 Ms. WATSON. Okay, thank you. Thank you very much.

2156 Chairman WAXMAN. Mr. Issa expressed that I was being
2157 unfair by taking additional time out of order, and I, in
2158 order to be fair, will yield him at the point three minutes
2159 so he could pursue further questions.

2160 Mr. ISSA. Thank you, Mr. Chairman, and I appreciate the
2161 balance.

2162 In a nutshell, Administrator Johnson, you are aware that
2163 members of Congress enjoy the speeches and debate
2164 exemption--it is been well documented--that what we do and
2165 say in order to make our decisions and how we come to the
2166 Floor is protected from, basically, discovery by your branch.
2167 So it probably shouldn't come as a surprise, or should come
2168 as a surprise to you that we are surprised that you are not
2169 going to tell us whether or not there were conversations
2170 within the Executive Branch that led to your independent
2171 decision.

2172 So I hope you will take that as an
2173 I-understand-it-even-if-others-don't.

2174 In a nutshell, you serve at the pleasure of the
2175 President, is that correct?

2176 Mr. JOHNSON. That is correct.

2177 Mr. ISSA. But the President doesn't have the right to
2178 order you; he only has the right to either accept what you
2179 do, statutorily, make independent judgment if he has
2180 statutory, or fire you. Isn't that essentially correct?

2181 Mr. JOHNSON. Essentially, that is--

2182 Mr. ISSA. Okay, so you have independent authority
2183 subject to that portion of the pleasure, and you have
2184 asserted that in order to make your decision.

2185 I would like to quote a well-known gentleman, Chairman
2186 Dingell, who declared that this regulation of CO2 was a
2187 glorious mess. Do you agree with Chairman Dingell that under
2188 the current law taking a common material that is going to be
2189 everywhere and diffuses quickly, and regulating it under the
2190 existing Clean Air Act, will be a glorious mess?

2191 Mr. JOHNSON. I believe that there are many intricacies
2192 and complications with the Clean Air Act, and my personal
2193 opinion is that, given the likely years and years of
2194 litigation that would ensue, I prefer a legislative approach.
2195 However, as the Chairman duly noted, I had responsibilities
2196 to administer the Clean Air Act, and that is what I am doing
2197 by beginning with an advance notice of proposed rulemaking,
2198 which will certainly help the Agency as it sorts through the
2199 intricacies of the Clean Air Act and, I trust, will also help
2200 members of Congress.

2201 Mr. ISSA. Now, in your consideration of granting a
2202 waiver to California, did it occur to you at least as to CO2
2203 that when you haven't yet set levels on something you have
2204 just now been told through the courts you have the ability to
2205 set a level on, an independent request would be premature and
2206 inappropriate.

2207 Is that part of your consideration in how do you grant a
2208 waiver before you have even determined what the basis? You
2209 might, in fact, regulate to a level much lower than what
2210 California would?

2211 Mr. JOHNSON. Well, actually, the Section 209 of the
2212 Clean Air Act actually identifies three very specific
2213 criteria, and that has to be the sole basis of my evaluation
2214 of any waiver petition. In my judgment, California did not
2215 need the second criteria, which is a compelling and
2216 extraordinary conditions. I go into great detail describing
2217 why I do not believe, in my judgment, they met those
2218 conditions.

2219 Chairman WAXMAN. Mr. Cummings?

2220 Mr. CUMMINGS. Thank you very much, Mr. Chairman.

2221 Administrator, let me ask you this: I found it
2222 interesting that when the Chairman was asking you about
2223 meetings with the President, you did not provide a direct
2224 answer. You talked about all these wonderful times that you
2225 have, and then when Ms. Watson asked you about the Vice

2226 President, you did answer and say that you didn't have
2227 meetings with regard to the California standards.

2228 I just want to make sure I understand why it sounds like
2229 there was a different standard there for you.

2230 Mr. JOHNSON. It is not a different standard, sir, but,
2231 as I said, I have routine meetings with the Executive Branch,
2232 including the President. Asked specifically about the Vice
2233 President, and to best of my recall I did not have any
2234 conversations with him. I was just trying to respond to--

2235 Mr. CUMMINGS. And all with regard to this, is that
2236 right?

2237 Mr. JOHNSON. With regard to the California waiver, that
2238 is correct. So I was just trying to clear that up.

2239 Mr. CUMMINGS. Yes. Well, I am glad you did. I just,
2240 you know, one of the things, this stuff is personal for me
2241 because I have asthma. In my district in Baltimore, we have
2242 a high rate of asthma, and the taxpayers pay you. They pay
2243 you as they pay us. We, in Maryland, are anxious to adopt
2244 the same standards that California has, and so, you know, we
2245 are curious as to how our Administrator, our man in the EPA,
2246 how he makes his decisions.

2247 So, you know, during the time that the EPA, as
2248 Administrator many of your decisions have provoked widespread
2249 public criticism and even outrage. In response, you have
2250 said, "It is not a popularity contest," and you said, "In

2251 | the end, it is the judgment, and each of these decisions is
2252 | my decision and my decision alone.'" Do you remember saying
2253 | that?

2254 | Mr. JOHNSON. I do remember saying that, and I agree with
2255 | that.

2256 | Mr. CUMMINGS. But you don't get to decide whatever you
2257 | want. You must base your decisions on the scientific data
2258 | and the criteria that Congress established in law. The final
2259 | decisions are made by the courts to determine whether your
2260 | decision is conformed to the law. All too frequently their
2261 | answer has been no.

2262 | Chairman Waxman asked you recently about EPA, as to EPA
2263 | for the full litigation record on the Clean Air Act decisions
2264 | issued by this Administration. It is not a pretty picture.
2265 | Out of the 26 cases decided by the D.C. Circuit, EPA lost
2266 | two-thirds in whole or in part.

2267 | Did you know that?

2268 | Mr. JOHNSON. Yes, I do, and our then General Counsel
2269 | Roger Martella sent, I believe, a letter to the Chairman
2270 | detailing all of the court cases which do not reflect that
2271 | kind of percentage. So, yes, I am concerned when we lose
2272 | cases, and that is why I am going my very best job to make
2273 | sure that not only are our decisions, my decisions, based
2274 | upon sound science but on good laws as well.

2275 | Mr. CUMMINGS. Well, I am glad you said that, because

2276 | these losses include some of this Administration's highest
2277 | profile environmental rules. In 11 cases, the court said
2278 | that the EPA's position was barred by the plain language of
2279 | the law, which is the legal equivalent of a shutout.

2280 | To date, the D.C. Circuit has reviewed eight of your
2281 | decisions and has entirely or partially rejected half. Does
2282 | this track record concern you?

2283 | Mr. JOHNSON. Yes. Any time that the Agency loses a
2284 | lawsuit, I think that that is important, and that is of
2285 | concern to me.

2286 | Mr. CUMMINGS. And I know EPA has fine lawyers. My
2287 | concern is whether you and the White House are listening to
2288 | them.

2289 | Mr. JOHNSON. Well, sir, I listen to all of my staff,
2290 | including a great legal staff. As I said, I base my
2291 | decisions on science and on the law and on the facts that are
2292 | before me.

2293 | Mr. CUMMINGS. Now, the Committee's investigation of your
2294 | denial of the California waiver decision revealed that legal
2295 | staff warned that a denial would likely--that you would
2296 | likely lose, but you disregarded their advice even when EPA
2297 | has lost in court the first time. That hasn't stopped the
2298 | Administration from trying again.

2299 | This summer EPA plans to issue a third New Source Review
2300 | rule, which would allow dirty power plants to upgrade and

2301 | increase air pollution without installing pollution control
2302 | equipment. The D.C. Circuit overturned the Administration's
2303 | second New Source Review rule as well as part of the first,
2304 | and the Supreme Court has already rejected the legal theory
2305 | EPA is relying on.

2306 | Has your legal staff warned you that this rule would be
2307 | highly vulnerable to legal challenge?

2308 | Mr. JOHNSON. Well, since the rule is pending before the
2309 | Agency, that is an important issue that we are currently
2310 | debating.

2311 | Mr. CUMMINGS. Thank you, Mr. Chairman.

2312 | Chairman WAXMAN. Thank you, Mr. Cummings.

2313 | Mr. Cannon?

2314 | Mr. CANNON. Thank you, Mr. Chairman. This has been an
2315 | interesting and relatively intense hearing. I would like to
2316 | give Mr. Johnson the opportunity just to sort of respond to
2317 | some questions that he has time to respond to, so we can
2318 | actually make some sense out of those.

2319 | On December 19th, Mr. Johnson, of 2007 you announced
2320 | that you would be denying California's waiver request, and on
2321 | February 29th, 2008, you released the complete decision
2322 | document explaining the decision. Were you advised that the
2323 | decision to deny California's waiver request was supported by
2324 | the law?

2325 | Mr. JOHNSON. Yes.

2326 Mr. CANNON. Would you like to elaborate on that a little
2327 bit?

2328 Mr. JOHNSON. Well, the staff presented me a wide range
2329 of options. We went through each of those options, and each
2330 one, those that were not defensible, were eliminated, and the
2331 ones that were presented, options were presented to me,
2332 including denial were presented, and ultimately that is the
2333 decision that I made.

2334 Mr. CANNON. So there were some options perhaps out there
2335 that didn't make it to you because they were not legally
2336 justifiable.

2337 Mr. JOHNSON. Again, I don't know which ones were or were
2338 not, but certainly the ones that were presented to me were
2339 legally defensible, including a denial.

2340 Mr. CANNON. Were you advised that the decision to deny
2341 the waiver we requested was supported by the facts of the
2342 record as well as the law?

2343 Mr. JOHNSON. Yes. In fact we have an approximately
2344 50-page decision document that goes into great detail,
2345 detailing my decision and based upon all of the facts.

2346 Mr. CANNON. So you were presented with options that were
2347 justified by the law and the facts, and then you made a
2348 decision, and that decision was then substantiated by the law
2349 and the facts in your decision?

2350 Mr. JOHNSON. Yes.

2351 Mr. CANNON. Was denying California's waiver request one
2352 of the options that was included as one of the options
2353 included by your staff?

2354 Mr. JOHNSON. That is correct.

2355 Mr. CANNON. Do you have any reason to believe your staff
2356 would present you with an option that was not supported by
2357 the law or the facts of the record?

2358 Mr. JOHNSON. I do not.

2359 Mr. CANNON. Is there anything else you would like to say
2360 about this issue since you have been hectored to

2361 Mr. JOHNSON. Well, sir, I know that the Chairman and
2362 other members of the Committee disagree with my decision, and
2363 I understand that. These decisions are not easy decisions,
2364 but I made the right decision. I made the decision based
2365 upon the facts, based upon the law, what the law directs me
2366 to, and I stand by that. It was my decision and my decision
2367 alone.

2368 Mr. CANNON. Thank you. You just answered the next
2369 question I was about to ask. It was your decision. Do you
2370 stand by that decision today?

2371 Mr. JOHNSON. Absolutely.

2372 Mr. CANNON. You know, I personally have some bona fides.
2373 I worked in the Reagan Administration after the Surface
2374 Mining Law had been passed, and the first of the regulations
2375 had been done under the Carter Administration. The second had

2376 | been done under Secretary Jim Watt, and both were probably
2377 | extreme. It is very difficult to find a middle path that
2378 | actually works, works for industry and works for the American
2379 | people and works for the environment.

2380 | I just want you to understand that some of us understand
2381 | how difficult these things are, especially difficult when the
2382 | world changes and technology has changed the world around us.
2383 | It has changed the world in which we can regulate and manage
2384 | regulation. And to suggest that we could never do anything
2385 | new, whether you are Democrat or Republican, would bind us,
2386 | tie us up in a way that would not make any sense at all. In
2387 | fact, I would hope that in America we would start looking at
2388 | how we can actually move away from Federal, centralized
2389 | regulation to more local regulation throughout the country.

2390 | I think our information technology gives us that
2391 | opportunity. Our understanding that the science of pollution
2392 | and what is harmful to our bodies, what is harmful to the
2393 | environment, is moving rapidly forward, and I would hope that
2394 | the hectoring that you have felt today will not be
2395 | perpetuated in the future by whoever replaces you and others
2396 | but, rather, is a thoughtful review of what happens so that
2397 | we can help guide these sort of bumpers instead of being
2398 | sledge hammers about it.

2399 | Mr. JOHNSON. Well, sir, I appreciate that, and I also
2400 | respect the role of Congress and important role in oversight,

2401 and I am very supportive of oversight responsibility, and I
2402 am also supportive of transparency. But, as you can well
2403 imagine, I have to also be supportive of the ability to have
2404 candid conversations, have advice so that I can make
2405 decisions that are independent decisions, whether that be
2406 independent decisions from Congress or independent decisions,
2407 again under the law, or independent decisions from the White
2408 House, or anybody else.

2409 I do respect the oversight responsibility, and I believe
2410 that the thousands of pages and the depositions and all the
2411 rest demonstrate to me that I went through a very thoughtful,
2412 I went through excruciating number of briefings and details
2413 so that I could be best equipped to make the most informed
2414 decision.

2415 So again, I appreciate the opportunity to be here, Mr.
2416 Chairman, and thank you for those remarks.

2417 Mr. CANNON. Thank you, Mr. Chairman. I assume my time
2418 has expired.

2419 May I just thank Ms. Dudley for being here? Her office
2420 is also under the jurisdiction of the Committee that I am the
2421 Ranking Member of on Judiciary. We have spent some time
2422 together. I appreciate her being here, and perhaps some
2423 other time we can ask more questions of you, Ms. Dudley.

2424 I thank you, Mr. Chairman. I yield back.

2425 Chairman WAXMAN. Thank you, Mr. Cannon.

2426 Ms. WATSON. Mr. Chairman, a question to you.

2427 Chairman WAXMAN. Yes?

2428 Ms. WATSON. Is it possible for us to get a copy? Mr.
2429 Johnson has spoken of the 50-page report, and I think it is
2430 in the public domain. Can we access a copy of that?

2431 Chairman WAXMAN. We will make it available to you.

2432 Ms. WATSON. All right. Thank you very much.

2433 Chairman WAXMAN. I would like to recognize myself. The
2434 Constitution is clear. Congress passes the laws and the
2435 Executive Branch must faithfully execute them.

2436 Administrator Johnson, we knew what your professional
2437 positions were as the head of EPA. You had a record. You
2438 heard from an advisory committee, you heard from your staff,
2439 you got input from all sorts of groups, environmentalists and
2440 industry. That is all appropriate that you get all this
2441 input in to make the decisions.

2442 We knew what your decision was on three areas: ozone,
2443 the California waiver, and the greenhouse gas question. Or
2444 at least we know what you sent to the White House.

2445 And then you reversed yourself after you had a candid
2446 conversation with the White House that would indicate you are
2447 getting input from the President, which you may think is
2448 important. But it also may indicate that the President is
2449 really making the decisions. What we need to do our
2450 oversight job is to find out on what basis he is telling you

2451 that you ought to make a different decision than what you
2452 initially proposed.

2453 Now, in the case of ozone the Clean Air Act clearly
2454 states that air quality standards must be set by you using
2455 your best judgment based on the latest scientific
2456 information. The law does not provide that it is the
2457 President's decision; it says that it is your decision.

2458 Now, I understand some constitutional scholars would say
2459 when Congress grants an agency authority, the President is
2460 granted that authority as well. Other scholars disagree. We
2461 don't have to resolve that issue, but in the setting of ozone
2462 standards, the science and staff work all pointed in one
2463 direction: Set a secondary standard that uses a seasonal
2464 form.

2465 EPA's record is clear, but in literally the last hours
2466 of the rulemaking process when you faced the deadline in
2467 which you have to come out with a rule, the President helped
2468 you see that you ought to reverse what EPA and what you had
2469 suggested, and the record does not explain how the President
2470 made his decision.

2471 Now, we issued a subpoena both to Administrator Johnson
2472 and Administrator Dudley to provide documents that will help
2473 the Committee understand how this decision was made.

2474 Ms. Dudley, the subpoena required you to produce the
2475 documents by April 18th.

2476 | Mr. Johnson, you were required to produce the documents
2477 | by May 6th. Unfortunately, you both continued to withhold
2478 | documents.

2479 | I wrote to both of you on Friday. I informed you that
2480 | unless there is an assertion of executive privilege, you must
2481 | produce the documents at this hearing today. Administrator
2482 | Johnson, has the President asserted executive privilege over
2483 | the documents responsive to the subpoena?

2484 | Mr. JOHNSON. My understanding, sir, that executive
2485 | privilege is not something to be invoked lightly, and that
2486 | constitutional confrontations between the legislative and
2487 | executive branches should be avoided whenever possible.

2488 | At this time I am not making an assertion of executive
2489 | privilege today. Instead, I am committing that to you that
2490 | my staff remains available and willing to continue our
2491 | discussions about how to reach a mutually agreeable
2492 | resolution regarding the remaining documents.

2493 | My staff earlier, right before the hearing, delivered a
2494 | number of additional documents on the ozone max.

2495 | Chairman WAXMAN. Administrator Dudley, has the President
2496 | asserted executive privilege over the documents that we
2497 | requested of you pursuant to a subpoena?

2498 | Ms. DUDLEY. I know that our lawyers have been discussing
2499 | the documents. We have produced over 7,000 pages and, in
2500 | fact, I have a letter delivered to you from OMB General

2501 Counsel today which, with permission, I would like to put on
2502 the record.

2503 Chairman WAXMAN. Without objection, we will have it in
2504 the record.

2505 [The referenced material follows:]

2506 ***** COMMITTEE INSERT *****

2507 Chairman WAXMAN. Well, during my 10-year tenure as
2508 chairman of this Committee, we have established a track
2509 record of making reasonable accommodations to Executive
2510 Branch interests that have arisen in committee
2511 investigations. In this case, you are trying to shield the
2512 White House from reasonable oversight, and that is not a
2513 reasonable position or an accepted one.

2514 The precedents are clear: Unless there is a valid claim
2515 of executive privilege, you need to turn over the documents.
2516 As Chairman Burton recognized when he was chairman: "The
2517 only privilege under which the President may withhold
2518 subpoena documents is an executive privilege."

2519 Ranking Member Davis took the same position. In this
2520 investigation there has been no assertion of executive
2521 privilege, and the documents the Committee seeks are central
2522 to understanding whether the President has complied with the
2523 law. This is a serious issue, and your defiance of the
2524 subpoena is a serious matter that the Committee is going to
2525 have to address.

2526 As an example of this is whether, in establishing the
2527 ozone rule whether costs were taken into consideration in a
2528 surreptitious way, and we know what the Supreme Court has to
2529 say about that matter, and we also know that Ms. Dudley has a
2530 March 6th memo from the White House that was sent to EPA
2531 where she criticized EPA for failing to respond to economic

2532 values in setting the environmental standard.

2533 One of her objections seems to be the EPA proposal would
2534 be too costly to industry. We want to know more about that.
2535 We want to know on what basis that position is reached and
2536 others. So what I am telling you both, that unless you
2537 assert executive privilege, this Committee has always stood
2538 by the fact that we expect the compliance with the subpoena.

2539 Mr. Issa?

2540 Mr. ISSA. Thank you, Mr. Chairman.

2541 Chairman WAXMAN. I have taken five minutes and 41
2542 seconds. The minute will be given five minutes and--

2543 Mr. ISSA. Thank you, Mr. Chairman.

2544 I would like to follow up on that. The President's
2545 involvement in the ozone proceeding, as I understand it, is
2546 not only allowed, and it is not improper influence but, in
2547 fact, is consistent with President Clinton's even greater
2548 involvement in setting the 1997 standard, isn't that correct?

2549 Mr. JOHNSON. That is correct.

2550 Mr. ISSA. And I wasn't here in 1997, but I don't believe
2551 that the deliberative process between the Agency, that
2552 internal process, was ever demanded that it be exposed. Do
2553 any of you know if there was a record under one of the
2554 previous chairmen where they demanded to know everything that
2555 led to President Clinton assisting in the decision-making
2556 process finally made by the EPA but his input into that

2557 | standard in 1997?

2558 | Mr. JOHNSON. I don't know.

2559 | Mr. ISSA. I don't think there was, and I think we may be
2560 | working with slightly different standards of what is
2561 | appropriate.

2562 | Chairman WAXMAN. Will, the gentleman yield?

2563 | Mr. ISSA. Of course, Mr. Chairman.

2564 | Chairman WAXMAN. Well, I do want to indicate that these
2565 | standards that you are talking about were exhaustively
2566 | examined by Congress. In the 105th Congress, there were
2567 | approximately 30 days of hearings and at least 10 committees
2568 | on this topic. EPA Administrator Carol Browner personally
2569 | testified over a dozen times regarding the standards. Our
2570 | own Committee conducted an investigation about the matter as
2571 | well.

2572 | Mr. McIntosh, who was the subcommittee chairman,
2573 | requested OMB produce all records related to OIRA's view of
2574 | the proposed rules in response to this and other requests.
2575 | OMB produced thousands of pages in documents, including
2576 | internal White House communications, and apparently withheld
2577 | only two memoranda to the President from senior advisors
2578 | within the Executive Branch of the President.

2579 | So this record demonstrates that Congress, especially
2580 | our Committee, spared no effort in conducting oversight over
2581 | the Clinton rulemaking. It also shows that the Clinton

2582 Administration was extraordinarily responsive to our
2583 Committee's extensive demands for interviews and documents.

2584 Mr. ISSA. Well, and I appreciate the reclaiming of my
2585 time. It certainly shows that we have a long tradition of
2586 looking into it and that we also have a long tradition of
2587 recognizing that the President has a role to set, to
2588 participate in the standard-setting, both President Clinton
2589 and now President Bush.

2590 I would like to get to one closing matter, because I
2591 think we have sort of made the point with the inclusions of
2592 these graphs and so on that the difference in the secondary
2593 standard would have made no difference. So I think we will
2594 go on to out of ozone and on to CO2.

2595 Administrator Johnson, if you were to have granted
2596 California's waiver request, and if California went into
2597 global cap-and-trade, and if California reduced its CO2,
2598 assuming that China and India continue to produce new coal
2599 facilities that have absolutely no scrubbers, that are just
2600 putting out CO2, would it really be all that significant when
2601 you look at the present level in California reduced by, let's
2602 say, 20 or 30 percent versus the new coal plants being put up
2603 on a weekly basis in China?

2604 Mr. JOHNSON. Well, if I may, those are not the criteria
2605 on which I had to base the California waiver.

2606 Mr. ISSA. No, no, I understand that, but you are

2607 obviously--

2608 Mr. JOHNSON. So I based that on were there the criteria
2609 that were in the law.

2610 Now, asking the other question, the challenge that we
2611 have as a Nation and as we have across all the States,
2612 including my home State of Maryland, is that all contributes
2613 to global climate change. So, in fact, what is happening in
2614 Maryland over what is happening in Florida or New York or
2615 wherever, is all contributing to--

2616 Mr. ISSA. Okay. And I want to focus on that because,
2617 although it is not the primary portion of this hearing, I
2618 think as we close this hearing as to this panel, I think it
2619 is important. We have to get down the amount of CO2 going
2620 into the atmosphere on a worldwide basis if we are going to
2621 be effective in reducing CO2 worldwide, thus assuming that
2622 the scientists' predictions are right that if we continuing
2623 putting more CO2 in, we will, by definition, be contributing
2624 to global warming.

2625 We make that assumption. This Committee has studied it,
2626 extensively. Based on that assumption, isn't it a global
2627 issue, one that requires treaties and a reduction on a global
2628 basis if we are going to be effective?

2629 Mr. JOHNSON. I believe it requires that each of the
2630 nations, whether you are a rapidly-developing economy like
2631 China or India, or the United States or European Union, to be

2632 | leaders and to move forward, and that each situation is
2633 | different. Fifty percent of our electricity comes from coal;
2634 | Australia it is 82 percent; France is much less than that, it
2635 | is less than 10 percent.

2636 | Mr. ISSA. One final question, because I think we have
2637 | made that point. You have a responsibility as a Federal
2638 | officer to all Americans, and if I understand the standard
2639 | under which you rejected California's waiver, part of that is
2640 | an equal protection, that States are not allowed to
2641 | arbitrarily have separate standards without need because in
2642 | fact you are protecting all of us and our commerce against
2643 | arbitrary changes in standards by States.

2644 | Isn't that true?

2645 | Mr. JOHNSON. Well, again, the three criteria that focus
2646 | specifically on California, other States are not allowed to
2647 | take any other action themselves unless the waiver was
2648 | granted, and then they can adopt what the California standard
2649 | is.

2650 | The issue that was before me was, was there compelling
2651 | and extraordinary conditions, and my decision--again part of
2652 | those 50 pages--clearly shows, and the science clearly shows,
2653 | whether it is sea level rise--sea level rise is more of a
2654 | problem for the East Coast than it is for the West Coast.
2655 | Acceleration of temperature or higher temperatures, yes,
2656 | California experiences higher temperatures but there are

2657 other parts of the Country that make it worse.

2658 And so, as looked at, the criteria, particularly
2659 compelling and extraordinary, in my judgment based upon the
2660 science, did not meet the standard.

2661 Mr. ISSA. Thank you, and thank you for this hearing, Mr.
2662 Chairman. I yield back.

2663 Chairman WAXMAN. Thank you, Mr. Issa.

2664 We have another panel of four witnesses. If members
2665 would permit, I would like to move on to the next panel.

2666 Mr. Bilbray?

2667 Mr. BILBRAY. Mr. Chairman, can I just follow up, just
2668 quickly, on one item?

2669 The standard that we are complaining about with the
2670 ozone standard, the Science Committee was saying it should be
2671 at .07, right, minimum? Or maximum?

2672 Ms. HENDERSON. Maximum, but we gave a range of .06 to
2673 .07.

2674 Mr. BILBRAY. California's standard, Mr. Johnson, is
2675 sitting at the maximum that it was recommended. Now,
2676 traditionally, has there been ever a time--and I am trying to
2677 remember it my 30 years of involvement in this issue--has
2678 there ever really been too many regulations where the Federal
2679 standard has been more, you know, more stringent than the
2680 California standard?

2681 Mr. JOHNSON. I don't recall.

2682 Mr. BILBRAY. I just want to say, when we argue about
2683 this, we are talking 5 to 7 percent. But I think we admit
2684 that--I know you are going to get sick and tired of hearing
2685 me talk about California, and when we get to greenhouse, I
2686 will beat our breast about importing all the electricity but
2687 not wanting to have the coal plants. But what I am saying,
2688 it is in all fairness, we are so close on this issue it is
2689 not the huge element, and I would ask our toxicologist how
2690 many deaths per million are we talking about here which we
2691 usually talk about.

2692 So I yield. Mr. Chairman, I just want to say that there
2693 are some big issues out there, and I wish that we would be
2694 setting some standards here like stop burning coal here in
2695 the capital or buying coal electricity for the capital here.
2696 And I hope that we can work together at getting a waiver for
2697 California on the greenhouse and the fuel mixture and work on
2698 making the capital truly greenhouse neutral, CO2 neutral,
2699 rather than these phony offsets, and I look forward to
2700 working with it, Mr. Chairman. With your extensive
2701 background on it, I think we have some great opportunities if
2702 we just work together on this.

2703 So thank you very much for the added time.

2704 Chairman WAXMAN. Thank you, Mr. Bilbray.

2705 Ms. Watson, I understand you wanted an equal amount of
2706 time. Would two minutes that we will yield to you, if you

2707 wish to pursue it with some documents for the record?

2708 Ms. WATSON. Yes, because my State is involved, and we
2709 have tried to address pollution there, the largest State, 38
2710 million people and all their cars. I think every family has
2711 13 cars. So this is really important to me, and I am taking
2712 it personally, too.

2713 When EPA makes decisions that don't meet the law and
2714 loses in court, environmental protection is delayed and the
2715 public indeed is hurt. These aren't the only cause to
2716 problems. A State must adopt each new Federal requirement
2717 into State law, and those efforts are wasted as well.

2718 Now I have their letters that are addressed to the
2719 Chairman from Leo Drozdoff, the Administrator of the Division
2720 of Environmental Protection for the State of Nevada. Now,
2721 this isn't a partisan issue for Nevada has a Republican
2722 Governor. Administrator Drozdoff says, ''We appreciate your
2723 efforts to identify and quantify the impact of EPA's failed
2724 rulemaking attempts. Every time we are forced to develop
2725 programs that are clearly in conflict with the Federal
2726 environmental law, it is an opportunity wasted and
2727 environmental protections delayed. The resource implications
2728 to a small State like ours and the negative effect on our
2729 relationship with the EPA are enormous. These impacts will
2730 be felt for years and years to come.''

2731 This is an extraordinary protest from a State Energy

2732 Policy Act, and, Mr. Chairman, I would like to have unanimous
2733 consent to enter this letter into the record.

2734 Chairman WAXMAN. Without objection, that will be the
2735 order.

2736 [The referenced material follows:]

2737 ***** COMMITTEE INSERT *****

2738 Chairman WAXMAN. The gentlelady's time has expired.

2739 Mr. Cannon requested time as well.

2740 Mr. CANNON. Thank you, Mr. Chairman. First of all, let
2741 me just point out that you made the comment that on the ozone
2742 rule that you wondered if costs were taken into account in a
2743 surreptitious or inappropriate way. I think that is vitally
2744 important. That is the work of this Committee is to oversee
2745 those kinds of things. I would hope that we would be able to
2746 find those problems, not just suggest the existence of such
2747 problems.

2748 Just finally, Mr. Johnson, suppose California had been
2749 allowed to have their CO2 lower standard, had the waiver
2750 granted, would that have made any difference as to CO2 in
2751 California or in the Country? Any significant difference?

2752 Mr. JOHNSON. Well, it is an issue of debate, but
2753 certainly based upon what we know is that we have both a
2754 national and a global problem, and so automobiles and
2755 improving efficiency there certainly help, but since it is a
2756 global air pollutant, it is highly questionable how much
2757 effect it would really have. So again I have to say for the
2758 record, those are not the criteria.

2759 Mr. CANNON. Right.

2760 Mr. JOHNSON. The criteria I had to look at were, are
2761 there compelling and extraordinary conditions in California.

2762 Mr. CANNON. But the request for the waiver had to be

2763 | more symbolic than substantive?

2764 | Mr. JOHNSON. Well, again, it was a formal waiver
2765 | request, and certainly we did due diligence and held two
2766 | hearings. I had many, many briefings and certainly having a
2767 | 50-page, or approximately 50-page, decision document on
2768 | waiver is unusual, if nothing else, in its size and all of
2769 | the issues that are there.

2770 | Mr. CANNON. Thank you, Mr. Chairman. I yield back.

2771 | Chairman WAXMAN. Thank you.

2772 | Mr. Johnson, as we end your participation at this
2773 | hearing, I want to tell you something very clearly. This
2774 | hearing isn't about what you decide, it is about how you
2775 | decide and the integrity of the process. I don't think you
2776 | ought to leave this room satisfied that you have deflected
2777 | questions and avoided to tell us information that we are
2778 | entitled to have.

2779 | Judging by some of the responses I think you have given
2780 | us today, I expect you to regard this part of the process
2781 | with derision from many of us. We walk away from this
2782 | hearing astounded that you, as a career EPA employee, are
2783 | willing to be part of a process that makes a mockery of the
2784 | rulemaking process, and that you are willing to come here and
2785 | pretend that what really happened didn't happen.

2786 | In this case, we have the record to guide us. It tell
2787 | us how EPA's best legal and scientific experts supported

2788 | granting California's petition and adopting a new ozone
2789 | standard for the environment. The record tells us you
2790 | ultimately agreed with EPA's experts and gave those
2791 | recommendations to the White House, and we know the White
2792 | House overruled you.

2793 | Yet your testimony pretends that none of this happened,
2794 | and it pretends you have reached the ultimate decisions
2795 | independently and with a scientific and legal basis. Your
2796 | staff knows this isn't true, and we know that it isn't true.
2797 | As someone who has long fought for EPA and strong
2798 | environmental protections, I can't adequately express how
2799 | deeply this saddens me and how poorly it reflects on the EPA.

2800 | I thank the three of you for being here, and we are
2801 | going to move on to our next witnesses. I call forward
2802 | our second panel, Dr. Francesca Grifo. Dr. Grifo is a Senior
2803 | Scientist and Director of the Union of Concerned Scientists,
2804 | Scientific Integrity Program. She has over 20 years of
2805 | experience directing science based projects and programs.
2806 | She holds a Ph.D. in Botany from Cornell University.

2807 | Michael Goo is the Climate Legislative Director for the
2808 | Natural Resources Defense Council. He has previously served
2809 | as Majority Counsel for the Senate Committee on Environment
2810 | and Public Works, Minority Counsel for the House Energy and
2811 | Commerce Committee, and is Acting Assistant General Counsel
2812 | at EPA.

2813 | Dr. Roger McClellan currently advises public and private
2814 | organizations on issues related to air quality. He has
2815 | previously served as Chair of EPA's Clean Air Scientific
2816 | Advisory Committee and as President of the Chemical Industry
2817 | Institute of Technology.

2818 | Alan Raul is a Partner with Sidley Austin, and is Chair
2819 | of the firm's Information, Law, and Privacy Practice Group,
2820 | and he is also a member of the firm's Government and Internal
2821 | Investigations Group and Appellate Group as well.

2822 | I welcome you to our hearing. It is the practice of
2823 | this Committee that all witnesses testify under oath, so I
2824 | would like to ask each of you to please stand while I ask you
2825 | to raise your right hand.

2826 | [Witnesses sworn.]

2827 | Chairman WAXMAN. The record will indicate each of the
2828 | witnesses answered in the affirmative.

2829 | Dr. Grifo, we want to call on you first.

2830 | For all of you, your prepared statements are in the
2831 | record in full. We would like to ask you to try to limit
2832 | your oral presentations to five minutes. The clock will
2833 | indicate when it is red that the five minutes have expired.
2834 | Please go ahead.

2835 | STATEMENTS OF FRANCESCA GRIFO, SENIOR SCIENTIST, UNION OF
2836 | CONCERNED SCIENTISTS; MICHAEL GOO, CLIMATE LEGISLATIVE
2837 | DIRECTOR, NATURAL RESOURCES DEFENSE COUNCIL; ROGER O.
2838 | MCCLELLAN, ADVISOR, TOXICOLOGY AND HUMAN HEALTH RISK
2839 | ANALYSIS; AND ALAN CHARLES RAUL, PARTNER, SIDLEY AUSTIN LLP.

2840 | STATEMENT OF FRANCESCA GRIFO

2841 | Ms. GRIFO. Good afternoon, and thank you, Mr. Chairman,
2842 | and thank you to the Committee. I am a Senior Scientist, as
2843 | you said, and Director of the Scientific Integrity Program as
2844 | the Union of Concerned Scientists, a leading science-based
2845 | non-profit working for a healthy environment and a safer
2846 | world.

2847 | I would like to thank the Committee for the opportunity
2848 | to speak to you this afternoon about the problem of political
2849 | interference in the work of Federal Government scientists.
2850 | The United States has enjoyed prosperity and health in large
2851 | part because of its strong and sustained commitment to
2852 | independent science.

2853 | As the Nation faces new challenges at home and growing
2854 | competitiveness abroad, the need for a robust Federal
2855 | scientific enterprise remains critical. Unfortunately, an

2856 epidemic of political interference in Federal science
2857 threatens this legacy. Political interference in EPA's
2858 decision regarding the air quality standard for ground-level
2859 ozone is emblematic of the problem of manipulation,
2860 suppression, and distortion of science at the EPA.

2861 You have already heard that EPA Administrator Stephen
2862 Johnson issued the final ozone standard at an arbitrary level
2863 inconsistent with the analysis of EPA scientists and
2864 independent science advisors and, ultimately, not
2865 sufficiently protective of public health. You have heard
2866 that the White House pressured the EPA to consider economic
2867 costs associated with tightening the ozone standard. The
2868 law, as affirmed by a 2001 Supreme Court decision requires
2869 the standard be based solely on best available science. EPA
2870 leadership failed to meet that objective.

2871 The White House's interference or meddling in the ozone
2872 decision is not a stand-alone incident. Time and time again
2873 White House officials or EPA political appointees have
2874 stepped in to second guess, manipulate, or suppress the work
2875 of EPA scientists, threatening the Agency's ability to
2876 protect human health and the environment.

2877 In our investigation of EPA scientists, our survey
2878 conducted by Iowa State University together with us, hundreds
2879 of scientists report direct interference in their scientific
2880 work, fears of retaliation and systemic disregard for the

2881 expertise of EPA's Advisory Committee. Our survey found that
2882 889 scientists reported personally experiencing one of these
2883 events in the last five years. In essay responses, nearly
2884 100 EPA scientists self-identified OMB, Office of Management
2885 and Budget, as the primary culprit in this interference. It
2886 is important to note that we didn't ask them about OMB. The
2887 question was much broader; they volunteered that.

2888 Two hundred and thirty-two scientists had personally
2889 experienced frequent or occasional changes or edits during
2890 review that changed the meaning of scientific findings, not
2891 just routine edits but those that change the meaning. Two
2892 hundred and eighty-five scientists had personally experienced
2893 frequent or occasional selective or incomplete use of data to
2894 justify a specific regulatory outcome.

2895 A hundred and fifty-three scientists had personally
2896 experienced frequent or occasional pressure to ignore impacts
2897 of a regulation on sensitive populations. Five hundred and
2898 thirty-six scientists felt that the Agency occasionally,
2899 seldom, or never heeds advice from independent scientific
2900 advisory committees. This result was markedly worse at the
2901 Office of Air Quality Planning and Standards which works
2902 closely with the advisory committees to set the NAAQS. Half
2903 of these respondents felt the EPA did not heed the advice of
2904 the advisory committees.

2905 The White House has rewritten EPA's scientific documents

2906 concerning climate change, pressured EPA scientists to
2907 support predetermined conclusions regarding the health
2908 effects of toxic mercury pollution, and pushed for rules that
2909 politicize the scientific findings contained in the OIRA's
2910 toxic database. Science has been mis-used on air pollution,
2911 asbestos, fuel efficiency, mountaintop removal mining, oil
2912 extraction, pesticides, plywood plant pollution, toxic
2913 selenium contamination, and on and on.

2914 Fortunately, this is not a problem without a solution.
2915 A suite of reforms are detailed in our report Interference at
2916 the EPA, but here are the most timely. The House and Senate
2917 overwhelmingly approved by partisan legislation to strengthen
2918 whistleblower protections for Federal employees. It is
2919 crucial that the final legislation now in Conference
2920 Committee contains specific protections for scientists who
2921 expose efforts to suppress or alter Federal research.

2922 The EPA should increase openness in its decision-making
2923 process. If research results in analysis by EPA scientists
2924 are made public before they drop into, as the GAO put it, the
2925 black box of OMB, attempts to distort science will be
2926 exposed. The expanded breadth of the OMB must be pushed back.
2927 Questioning the scientific consensus of Agency experts is not
2928 OMB's proper role.

2929 EPA should adopt media communication and scientific
2930 publication policies that ensure taxpayer-funded scientists

2931 | and their research are accessible to Congress and the public,
2932 | and scientists need to be made proactively aware of these
2933 | rights.

2934 | Finally, there are two actions that can take place
2935 | immediately: Administrator Johnson should send a clear
2936 | message to all political appointees that he will not tolerate
2937 | any attempts to alter or suppress Federal Research just as
2938 | EPA Administrator William Ruckelshaus did 25 years ago.
2939 | Administrator Johnson should pledge to operate EPA in a fish
2940 | bowl.

2941 | We would welcome a dialogue with Administrator Johnson,
2942 | although as of this morning he has not responded to repeated
2943 | requests to begin that conversation. We look forward to
2944 | continuing our work with the 110th Congress to restore
2945 | scientific integrity to Federal policymaking.

2946 | Thank you.

2947 | [Prepared statement of Dr. Grifo follows:]

2948 | ***** INSERT *****

2949 | Ms. WATSON. [Presiding] Thank you, Dr. Grifo.

2950 | Mr. Michael Goo.

2951 STATEMENT OF MICHAEL GOO

2952 Mr. GOO. Thank you, Chairman Waxman, and Ranking Member
2953 Davis and Mr. Issa for the opportunity for the opportunity to
2954 testify here regarding EPA's new National Ambient Air Quality
2955 Standards for Ozone.

2956 My name is Michael Goo. I am the Climate Legislative
2957 Director for the Natural Resources Defense Council. NRDC is
2958 a national non-profit organization of scientists, lawyers,
2959 and environmental specialists dedicated to protecting public
2960 health and the environment.

2961 Before I turn to my scripted statement, I just wanted to
2962 make a couple of points here about some of what we have heard
2963 today. And Mr. Johnson won't admit talking to the White
2964 House about the ozone decision, but we have the EPA talking
2965 points from the meeting with the President, and they say that
2966 the seasonal form is the most scientifically defensible, and
2967 they say that the seasonal form is the most legally
2968 defensible.

2969 And the question that we have is, what caused the
2970 Administrator to change his mind, quite literally overnight,
2971 so that the EPA staff had to scramble around to change the
2972 document within 24 hours?

2973 And then just to also respond to a point, a chart was

2974 put up. Administrator Dudley said that there would be no
2975 more attainment areas with the secondary standard set the
2976 same as a primary standard, but it is not just the form that
2977 regulates the stringency of the standard, it is also the
2978 level.

2979 The CASAC--and I am not quite sure, Dr. Henderson didn't
2980 have the opportunity to comment on this--but the CASAC said
2981 that the level should be between 15 and 17, and the level was
2982 actually set at 21. Of course, therefore, it wasn't as much
2983 more protective than the primary standard.

2984 Now let me turn to my prepared remarks. The first I
2985 just want to make with regard to ozone is that we now know
2986 that ozone kills people. We say that ozone results in excess
2987 or premature mortality. That is a fancy way of saying that
2988 smog kills people. Ozone pollution, also, so it is a host of
2989 other health effects--susceptibility to infection, asthma
2990 attacks, school absences, emergency room visits, and even
2991 overnight admission into the hospital--and these are real
2992 effects with real consequences for us, for our children, for
2993 our elderly, and our infirm.

2994 The second point I wish to emphasize is that ozone
2995 pollution is ubiquitous. According to EPA, approximately 140
2996 million Americans live in areas that violate the 1997
2997 eight-hour standard, including more than 16 million children,
2998 more than 6 million people age 75 and older, and more than 9

2999 | million people who suffer from asthma.

3000 | Putting these two facts together, it is clear that ozone
3001 | is a major public health problem in the United States.

3002 | In my testimony, I have characterized the decision of
3003 | the Administrator as a shameful distortion of the scientific
3004 | and regulatory process for setting National Ambient Air
3005 | Quality Standards. I say that from my vantage point as a
3006 | former EPA attorney who spent more than four years developing
3007 | and defending the standards set forth in the Clinton
3008 | Administration, which were ultimately upheld by the United
3009 | States Supreme Court.

3010 | Prior to this Administration in an unbroken line of
3011 | cases extending back nearly 40 years, these standards were
3012 | repeatedly upheld by the courts, and since its creation in
3013 | 1977, nearly every Administrator prior to this one has made
3014 | decisions regarding the National Ambient Air Quality
3015 | Standards within the scientific boundaries set by the Clean
3016 | Air Scientific Advisory Committee.

3017 | This Administrator, despite very clear recommendations
3018 | from CASAC, chose to disregard its advice. The Administrator
3019 | had before him an enormous opportunity to advance the cause
3020 | of public health protection in the United States. He had a
3021 | voluminous scientific record documenting health effects at
3022 | levels below the existing standard.

3023 | He had a unanimous recommendation from CASAC, and he has

3024 a very clear directive from the Congress and the courts that
3025 he must set the standard to protect public health with an
3026 adequate margin of safety, erring on the side of caution. In
3027 short, he had all the elements that he needed to set a highly
3028 defensible standard that would have protected public health
3029 with an adequate margin of safety, and it distresses me to
3030 report that the Administrator squandered that opportunity.

3031 The record is clear. The Administrator's decision is
3032 not based on the latest scientific evidence; it is not based
3033 on the recommendations of CASAC; it does not protect public
3034 health; and it does not include a margin of safety.

3035 Somebody tried to defend this decision as a reasonable
3036 policy decision or attempt to justify the decision on the
3037 basis of vague notions of uncertainty, but to say something
3038 is a policy judgment, or to say that a decision is based on
3039 uncertainty has little by way of actual rationale.

3040 The question is, what is the policy, and in what
3041 direction does any alleged uncertainty cut? Is the policy to
3042 honor the latest scientific evidence and the recommendation
3043 of CASAC erring on the side of safety? I would submit that
3044 the record before us makes clear the answers to those
3045 questions.

3046 In the end, these standards will be replaced by ones
3047 that reflect the science and the law, but in the meantime our
3048 citizens' lungs and their health will suffer as a result.

3049 Chairman Waxman, I commend your efforts and the efforts
3050 of your staff to bring this deplorable situation into the
3051 light of day. Thank you.

3052 [Prepared statement of Mr. Goo follows:]

3053 ***** INSERT *****

3054 | Chairman WAXMAN. [Presiding] Thank you very much.

3055 | Dr. McClellan?

3056 STATEMENT OF ROGER MC CLELLAN

3057 Mr. MCCLELLAN. Good afternoon, Mr. Chairman, and
3058 distinguished members of the Committee. I am Roger
3059 McClellan, an independent advisor in air quality issues. My
3060 home is in Albuquerque, New Mexico. I appreciate the
3061 invitation to present my views on EPA's recent review and
3062 revision of the National Ambient Air Quality Standards for
3063 ozone. I ask that my written testimony be entered in the
3064 record as though read in its entirety.

3065 Let me summarize. For more than four decades I have
3066 been contributing to the development of science needed to
3067 address important societal issues concerned with air quality.

3068 I am proud to have served on many EPA scientific advisory
3069 committees from the origin of the agency to the present time
3070 under administrations of both parties.

3071 This included service on the Clean Air Scientific
3072 Advisory Committee, which I chaired 1988-1992, and on panels
3073 that have considered all the criteria air pollutants. I
3074 served on the Ozone Panel that advised a 1997 standard. I
3075 did not serve on the most recent Ozone Panel, however, I have
3076 closely followed the standard-setting process that led to the
3077 final rule announced by Administrator Johnson on March 12th,
3078 2008, focusing on the primary or health-based standard.

3079 As you know, every standard has four interrelated
3080 elements: an indicator, an averaging time, a numerical level,
3081 and a statistical form. It is important that these always be
3082 considered in their entirety.

3083 Throughout the review process leading up to the final
3084 rule, there has been debate over the numerical level of the
3085 eight-hour or averaging time standard with ozone as the
3086 indicator. In my opinion, much of the debate was premature
3087 and focused on the outcome desired by some parties, a
3088 lowering of the standard even before the review of the
3089 science was complete. This resulted in a blurring of the
3090 boundary between the role of science and judgment in the
3091 setting of the standard.

3092 With publication of the proposed rule for the ozone
3093 standard, the debate intensified. That included repeated
3094 reference to the CASAC recommendation the primary standard be
3095 set within a specific narrow numerical range, 0.060 to 0.070
3096 ppm. In my opinion, the CASAC panel moved from the science
3097 arena into the policy arena with its strident advocacy of an
3098 upper bright line value of 0.070 ppm for the primary
3099 standard.

3100 CASAC's selection of this narrow range and an upper
3101 bright line value followed the template that CASAC had been
3102 used, used with the pm 2.5 standard. In that case CASAC, the
3103 panel I served on, advocated setting the pm 2.5 annual

3104 standard setting at 13 to 14 micrograms per cubic meter--a
3105 view that I dissented from--and the 24-hour standard at 25 to
3106 35 micrograms per cubic meter.

3107 The Administrator made policy judgments in setting the
3108 24-hour standard at a level of 35 micrograms per cubic meter,
3109 a drastic reduction from the previous, and reaffirmation of
3110 the annual standard at a level of 15 micrograms per cubic
3111 meter.

3112 CASAC argued, with the exception of myself or another,
3113 that he had made a political choice and ignored the science.
3114 In the case of ozone, Administrator Johnson made a policy
3115 judgment. set the ozone standard at 0.075 ppm average over
3116 eight hours. The value was actually consistent with the
3117 original advice of his own staff, 0.075 ppm up to a level
3118 slightly below the current standard which we know was 0.080,
3119 but with rounding could have been up to 0.084.

3120 Again, CASAC argued he made a political decision and
3121 ignored the science In my view, the CASAC panels have not
3122 fully understood nor communicated the extent to which the
3123 recommendations they communicated to the Administrator
3124 represented their interpretation of the science and their
3125 personal policy preferences on the numerical level of the
3126 standard.

3127 Even before the final rule for ozone was announced,
3128 CASAC scheduled the teleconference to develop unsolicited

3129 | advice to the Administrator. This clearly moved CASAC from
3130 | the scientific advisory arena into the political arena. This
3131 | was evidenced by panel members noting the importance of
3132 | getting the record right for the courts and the suggestion
3133 | that the Administrator should have resigned rather than
3134 | cooperate with OMB and the White House.

3135 | The panel's letter on that teleconference continues to
3136 | suggest that somehow science and scientists alone can
3137 | establish the appropriate standard or, at a minimum, dictate
3138 | the upper bound acceptable for a policy decision. The Clean
3139 | Air Act does not call for a standard-setting committee with
3140 | the Administrator merely serving as a rubber stamp for the
3141 | committee's judgments. The Clean Air Act wisely calls for a
3142 | Clean Air Scientific Advisory Committee to provide advice to
3143 | the Administrator on policy judgments that under the Clean
3144 | Air Act are the exclusive responsibility of the
3145 | Administrator.

3146 | In my opinion, the Administrator has appropriately
3147 | exercised his authority in making policy judgments on both
3148 | the revised pm 2.5 and ozone standards, making selections
3149 | from among an array of scient-based options. The basis for
3150 | his policy decisions are well documented in both final rules,
3151 | including consideration of both the science and personal
3152 | judgments of CASAC. They are also consistent with the
3153 | Supreme Court's interpretation of the Clean Air Act.

3154 He did not consider cost, however, he did exercise
3155 judgment appropriately in deciding how low is low enough in
3156 setting the numerical level of both standards from among an
3157 array of science-based options. There is no scientific
3158 methodology that can be used as a substitute for the
3159 Administrator's judgment.

3160 I welcome the opportunity to address any questions you
3161 may have.

3162 [Prepared statement of Mr. McClellan follows:]

3163 ***** INSERT *****

3164 | Chairman WAXMAN. Thank you, Mr. McClellan.

3165 | Mr. Raul?

3166 | STATEMENT OF ALAN CHARLES RAUL

3167 | Mr. RAUL. Mr. Chairman, Mr. Issa, members of the
3168 | Committee, thank you for inviting me to testify today to
3169 | provide my views on the authority of the President to
3170 | influence the decisions of his subordinates in the Executive
3171 | Branch. It is an honor to appear before you.

3172 | I am testifying today in a personal capacity based on my
3173 | interest and background in administrative and constitutional
3174 | Law. I am currently engaged in private law practice and have
3175 | previously served as General Counsel of the U.S. Department
3176 | of Agriculture, General Counsel of the Office of Management
3177 | and Budget, and as Associate Counsel to the President.

3178 | Until recently, I also served in a part-time capacity as
3179 | Vice Chairman of the Privacy and Civil Liberties Oversight
3180 | Board.

3181 | My views here are focused only on the general issue of
3182 | presidential authority to influence and direct the regulatory
3183 | actions and decisions of the Executive Branch under Article
3184 | II of the Constitution. It is my view that the President is
3185 | and should be in control of the Executive Branch, but,
3186 | importantly, this does not derogate or diminish Congress'
3187 | power to set policy by legislation and to oversee the
3188 | Executive's execution of the laws.

3189 Rather, the unitary Executive means that it must be the
3190 President and not some relatively unknown subordinate, narrow
3191 agency, or obscure technical committee who is responsible to
3192 the public to take care that the laws are well and faithfully
3193 executed. In short, the unitary executive concept promotes
3194 more effective rulemaking by bringing a broader perspective
3195 to bear on important regulatory decisions and enhances
3196 democratic accountability for regulatory decision-making by
3197 pinning responsibility on the President to answer to the
3198 public for important regulatory actions taken by his or her
3199 Administration.

3200 Setting standards requisite to protect public health and
3201 welfare is inherently a policy exercise because Congress and
3202 the courts acknowledge that government regulations cannot,
3203 and need not, achieve zero risk. Indeed, it is the
3204 President's responsibility, not just his right, to ensure
3205 that Executive Branch regulatory decisions, to the extent
3206 Congress has left the Executive with some discretion, reflect
3207 the President's own policy judgments. That way the public
3208 can hold the President accountable for important regulatory
3209 judgments or, alternatively, look to Congress for stronger,
3210 smarter, or more specific laws.

3211 If the EPA Administrator does not agree with the
3212 President, he or she may resign or be replaced, but there are
3213 no grounds to complain that the President's position is undue

3214 interference. The reasons why the Constitution established a
3215 powerful president are well known. In short, the framers
3216 were acutely conscious of the debilitating weaknesses that
3217 resulted from Executive by Committee during the Revolutionary
3218 War and under the Articles of Confederation. They clearly
3219 understood that putting one person in charge of the Executive
3220 Branch would promote accountability.

3221 The Constitution adopted a unitary Executive in order
3222 that the American people would know exactly whom to credit or
3223 whom to blame if the laws were not faithfully and effectively
3224 discharged. If responsibility is diffused, then the ability
3225 of the public to influence and choose their government is
3226 diluted, and presidents of both parties have asserted the
3227 right to oversee and direct the actions and decisions of
3228 their regulatory agencies.

3229 Former Chief Judge of the D.C. Circuit, Patricia Wald,
3230 who served as Assistant Attorney General for Legislative
3231 Affairs in the Carter Administration and was appointed to the
3232 D.C. Circuit by President Carter, strongly supported the
3233 power of the President to direct his or her subordinates in
3234 the Executive Branch. In 1981, she offered the leading
3235 opinion on Presidential Control over Rulemaking, *Sierra Club*
3236 *v. Cassel*. Interestingly, Judge Wald was joined in that
3237 opinion by then Judge, now Justice Ruth Bader Ginsburg.

3238 Judge Wald addressed arguments advanced by environmental

3239 | plaintiffs who claimed that President Carter had improperly
3240 | interfered with EPA rulemaking in order to impose weaker
3241 | pollution controls than the technical staff at EPA desired.
3242 | She categorically rejected this criticism of President
3243 | Carter's decisive role. Echoing Alexander Hamilton, Judge
3244 | Wald opined that preserving the President's flexibility to
3245 | direct his or her subordinates was so important that it was
3246 | not legally required for the Executive Branch to publicly
3247 | disclose the details of White House and Presidential
3248 | contacts.

3249 | Similarly, President Clinton further codified and
3250 | solidified the process and desirability of Presidential
3251 | control over Executive Branch rulemaking, and you have heard
3252 | testimony earlier today about Executive Order 12866, which
3253 | required that Agency regulations be consistent be consistent
3254 | with the President's priorities and the principles set forth
3255 | in the Executive Order.

3256 | As you heard also, President Clinton, himself, was
3257 | personally involved in improving the 1997 ozone standard that
3258 | was a precursor of the standard involved today, and just as
3259 | is the case with the current ozone rule, as was the case with
3260 | President Carter's sulfur and particulate matter rules that
3261 | Judge Wald addressed, EPA ultimately chose in 1997 a
3262 | pollution standard that was more lenient than the one favored
3263 | by Agency staff and recommended by the CASAC Committee of

3264 Scientific Advisors.

3265 I would submit that it makes sense as a matter of public
3266 policy to acknowledge and respect the President's ultimate
3267 dominion over the Executive Branch. If Federal Regulations
3268 do not serve the public well, either because they are too
3269 restrictive or too permissive, or simply not well designed,
3270 the President and Congress, of course, should take the blame.
3271 If the regulations are reasonable and accomplish the public's
3272 goals efficiently, then the President and Congress should
3273 receive the credit.

3274 Technical advisors are essential to the rulemaking
3275 process, but the buck has to stop with the person who answers
3276 to the people. That is the President.

3277 Thank you for considering my views.

3278 [Prepared statement of Mr. Raul follows:]

3279 ***** INSERT *****

3280 Chairman WAXMAN. Thank you very much, Mr. Raul.

3281 We will now proceed to questions, and to start off the
3282 questioning, I want to recognize Ms. Watson.

3283 Ms. WATSON. Thank you so much, Mr. Chairman. And, Mr.
3284 Goo, I felt your passion in your testimony. I am very
3285 passionate, too, because my grandfather, in coming here--once
3286 into California I am speaking of--and once he got here he
3287 found he had to go over and live in Arizona. When he came
3288 back, he fell dead in the streets leaving a widow with seven
3289 children. The oldest is my mother. So that was before we
3290 had the Clean Air Act.

3291 I spent 17 years as the Chair of Health and Human
3292 Services in the California State Senate. We fought viciously
3293 with those who did not want to clean up the air because they
3294 felt it would impact on, I guess, their profits.

3295 So you have expressed grave concerns that Administrator
3296 Johnson's decisions on the new ozone standards were not based
3297 on science and the law. In your view, is this failure to
3298 base an EPA decision on science and the law an isolated
3299 incident? And could you put this in context in terms of this
3300 Administration's overall record of implementing the Clean Air
3301 Act?

3302 Mr. GOO. I would be glad to, Congresswoman Watson. This
3303 is not an isolated instance at all, far from it. What we
3304 have seen in the past eight years is a concerted attempt to

3305 | effectively dismantle the Clean Air Act through
3306 | implementation and enforcement, and we have seen it in a
3307 | number of instances from new source review to Mercury
3308 | pollution, to the National Ambient Air Quality Standards and
3309 | their position on greenhouse gases.

3310 | As I mentioned and as you note, air pollution is very
3311 | serious business here in the United States. More Americans
3312 | die from air pollution than die from drunk driving and
3313 | HIV/AIDS put together, and most of that is from particulate
3314 | air pollution, which I would mention as a good example of the
3315 | same kind of decision-making that we have seen where the
3316 | Administrator chose to disregard the clear advice of the
3317 | Clean Air Scientific Advisory Committee.

3318 | The very next decision that we will be seeing in the
3319 | National Ambient Air Quality Standards area will be with
3320 | regard to lead and known toxic air pollutants. We are
3321 | concerned that the next decision with regards to lead may
3322 | resemble the past two National Ambient Air Quality Standards.

3323 | Ms. WATSON. Let me just ask you this. Have you seen
3324 | this disregard for the scientific input as a problem for the
3325 | Agency over a period of time?

3326 | Mr. GOO. I think over the last eight years, this has
3327 | been a very difficult time for people at the Agency. If you
3328 | look at the depositions and you look at the record that
3329 | Chairman Waxman has compiled, you see that any number of

3330 staff, career staff attorneys, were saying things like, I
3331 have never seen this in the last 30 years. It has been
3332 extremely distressing.

3333 The career staff at EP are extremely dedicated, and they
3334 are dedicated to the science and to public health protection.
3335 They have not been well served in this Administration.

3336 Ms. WATSON. Well, I want to thank you very much. I feel
3337 the same exact way. California is my State, and I want to
3338 thank you. The Clean Air Act says that the EPA must use its
3339 understanding of science to protect people's health and lives
3340 from air pollution. Disregarding the law and the science
3341 subjects people in our environment to grave harm.

3342 My family was affected by the fact that we didn't have
3343 these standards, and I lost a grandfather whom I never knew.
3344 So the rejection of our request in California hit us very,
3345 very hard.

3346 Thank you very much, Mr. Chairman, for this time.

3347 Chairman WAXMAN. Thank you, Ms. Watson.

3348 Mr. Cannon?

3349 Mr. CANNON. Thank you, Mr. Chairman. Mr. Goo, how many
3350 people die of AIDS each year?

3351 Mr. GOO. I don't have the precise figure, but I will get
3352 it for you. More than 45,000 people die of particulate
3353 matter pollution from power plants alone in the United States
3354 each year.

3355 Mr. CANNON. We are going on with a very short number of
3356 minutes, sir, two minutes each, so if you don't mind, I am
3357 just going to ask some pretty quick and clear questions.

3358 Dr. Grifo, how many members are there in the Union of
3359 Concerned Scientists?

3360 Ms. GRIFO. We have members who are citizens and
3361 scientists from across the Country, roughly 200,000 that work
3362 actively with us.

3363 Mr. CANNON. How many of those are scientists, have a
3364 Ph.D. in science?

3365 Ms. GRIFO. I can tell you that for our particular issue,
3366 the scientific integrity issue, we have an activist list of
3367 15,000 scientists from across the Country. The broader one,
3368 I can get you that exact number.

3369 Mr. CANNON. I would actually appreciate that, and how
3370 many of the members, broader membership of UCS, are
3371 Government employees?

3372 Ms. GRIFO. I don't know, but I can potentially find that
3373 out.

3374 Mr. CANNON. I would appreciate that. And of those who
3375 are active scientists but not Government employees, do you
3376 have any idea how many receive Government contracts?

3377 Ms. GRIFO. I am sorry?

3378 Mr. CANNON. How many receive contracts or money from the
3379 Federal Government to do research?

3380 Ms. GRIFO. I don't have any way of knowing that, sir. We
3381 do not take any Government money at the Union of Concerned
3382 Scientists.

3383 Mr. CANNON. I know you don't, but many of your
3384 scientists do. Let me just point out that when you have a
3385 taxpayer-funded research, and priorities change because times
3386 change, you are going to have complaints from scientists.

3387 Are you familiar with the Congressional Research
3388 Service's review of the study that you quoted in your
3389 testimony?

3390 Ms. GRIFO. I got it about 15 minutes ago.

3391 Mr. CANNON. You should read it, because I think it
3392 points out that your study is--

3393 Ms. GRIFO. I did read it, and I am happy to respond to
3394 anything in it. It is all completely refutable.

3395 Mr. CANNON. Pardon me?

3396 Ms. GRIFO. I have. I am happy to respond to any of
3397 this.

3398 Mr. CANNON. It would be hard for you to respond. I have
3399 too short a time, but you are talking about 5,810 people that
3400 were surveyed, were asked questions that were EPA scientists.

3401 You had about almost 1,600 respondents and 700 complaints.

3402 I think that this whole--you should look at that, because I
3403 think it deeply undermines the credibility of your

3404 statistical inclusions about this Administration and the

3405 integrity of science, which I think is largely driven by
3406 financial interests, and the transition that is happening in
3407 society, and the change priorities that we have in America.

3408 Thank you, and, Mr. Chairman, I yield back.

3409 Ms. GRIFO. If I may respond. I would like to direct you
3410 to page 5 of the CRS Report where it says, "Consequently,
3411 there are no issues related to sampling errors as there was
3412 no probability sample." Page 6 of the CRS Report where it
3413 says, "This is not an issue here, however, this is not a
3414 sample survey but a census." And page 7 of the CRS Report
3415 where it says, "The UCS Report does provide sufficient
3416 information for any analyst to examine it and highlight some
3417 of those limitations."

3418 Chairman WAXMAN. Mr. Bilbray?

3419 Mr. BILBRAY. Thank you, Mr. Chairman. Mr. Chairman, let
3420 me first point out that I support the waiver for greenhouse
3421 gases for California, and I look forward to working with you
3422 at offering some legislation that will authorize that and the
3423 Clean Fuel Strategies of California and exempt us from the
3424 Federal restrictions.

3425 But I think we need to recognize that a lot of
3426 people--this would be the first time a State would have the
3427 ability to regulate outside of its jurisdiction because in
3428 our California strategies, we are talking about restricting
3429 the importation of certain electricity across the State

3430 boundary, which is absolutely new, and we need to take a look
3431 at that.

3432 Now the Concerned Scientists. I want to pose a question
3433 here. There were 71 issues that you took with decisions that
3434 the Administration had, and you feel that there was undue
3435 political influence on these decisions?

3436 Ms. GRIFO. I am sorry, what are you referring to?

3437 Mr. BILBRAY. You listed 71 different times that you felt
3438 there was undue political influence and some political agenda
3439 pushed by the Administration in their decisions, in your
3440 testimony.

3441 Ms. GRIFO. Seventy-one? I don't think I used the number
3442 71.

3443 Mr. BILBRAY. Well, there's a list on your testimony. My
3444 question is, in all of this, have the Concerned Scientists
3445 taken a position about the use of ethanol in our fuel stream
3446 and its environmental and health risk?

3447 Ms. GRIFO. Sir, that is a different program at the Union
3448 of Concerned Scientists, and I can certainly put you in touch
3449 with them.

3450 Mr. BILBRAY. Well, ma'am, let me just tell you
3451 something. I have 71 here that has been given to me by your
3452 testimony. There is--

3453 Ms. GRIFO. Can you point what the 71 is?

3454 Mr. BILBRAY. Page 25.

3455 Ms. GRIFO. Oh, in the A to Z. It is actually almost 90
3456 now, yes.

3457 Mr. BILBRAY. Okay, 90. In that list, I don't see
3458 ethanol and its environmental damage that the largest State
3459 in the Union is trying to outlaw, eliminate, and you guys
3460 have sort of walked away from it, but in the same population
3461 issue I see, you know, four or five issues on abortion or
3462 birth control in here. I have to be frank with you--as how
3463 you walk away something that is as much of an environmental
3464 problem as ethanol, but then talk about the morning-after
3465 pill, or abstinence programs as being your major concern.

3466 I will challenge you to abandon your political
3467 prepositions and work with us at addressing real science and
3468 threat issues. But this testimony here, this and what I
3469 would say was the lack of scientific way of approaching your
3470 so-called survey, wouldn't you agree that if you were doing
3471 this kind of survey, you would, from a scientific point of
3472 view, there is no way an environmental regulatory agency
3473 would accept that survey as being a substantive document.

3474 Ms. GRIFO. First of all, I think the CRS did accept it
3475 as a substantive document. That is the thrust of what is
3476 said here, and each of the pieces in here--well, we can go
3477 through them one by one, and I am happy to talk about them.

3478 But the point of the A to Z guide is, if you have
3479 documentation of political interference in science, I would

3480 | love to see it. Everything in the A to Z guide has primary
3481 | documentation. If you have it, we will analyze it, and we
3482 | will put it up there.

3483 | Mr. BILBRAY. Well, then, I would ask that over almost 20
3484 | years a group that claims to be scientific, where do you
3485 | stand on forcing the State of California continue to burn
3486 | ethanol as fuel when the science says it is bad?

3487 | Ms. GRIFO. That is not the issue of this hearing, I am
3488 | sorry.

3489 | Chairman WAXMAN. Mr. Issa?

3490 | Mr. ISSA. Thank you, Mr. Chairman, and I will be brief.
3491 | I would ask unanimous consent that the--I know it is in the
3492 | record, but at this point in the record, the Congressional
3493 | Research Service Report be, in fact, put into the record.

3494 | Chairman WAXMAN. Without objection, that will be the
3495 | order.

3496 | [The information follows.]

3497 | ***** COMMITTEE INSERT *****

3498 Mr. ISSA. And I, for one, will take CRS's independent
3499 study and certainly would welcome the Union of Concerned
3500 Scientists to submit to us where they think that somehow it
3501 is factually wrong. However, I would suggest in the future
3502 that if you want to do a survey, do a survey, but if you want
3503 to do polling, that there are science practices that would
3504 allow for it.

3505 Really, I would just like to take this limited amount of
3506 time and say to Dr. McClellan, you are here--and to Mr.
3507 Raul--you are both here on your own dime, you are both
3508 experts, and, historically, can you give us, briefly, in the
3509 remaining time a contrast between today and the period of
3510 time in which you served. because, quite candidly, I wasn't
3511 here during the Clinton Administration and then a Republican
3512 majority.

3513 But I would like to have a contrast because I would like
3514 to understand, do you believe that there is somehow a rabid
3515 change in the way the Administration works with your former
3516 agencies, or is it substantially the same, and we are simply
3517 seeing it different because we see it through different eyes?

3518 Mr. MCCLELLAN. Thank you for the question. I would be
3519 very pleased to address that.

3520 As I noted in my opening remarks, I have been associated
3521 with the EPA and its advisory structure from the beginning of
3522 the Agency. At the time the Agency was created, I was chair

3523 of a committee, which was Advisory to the U.S. Public Health
3524 Service. That function was brought into EPA, and thus I
3525 became a part of the Science Advisory Board at its beginning.

3526 I will have to say that controversy has been a part of
3527 the fabric of the EPA since its origins, and it has been a
3528 part since the passage of the Clean Air Act, which preceded
3529 the Agency. Indeed, one of the first activities I
3530 participated in was a visit to Research Triangle Park in the
3531 early 1970s as we were putting in place the first Air Quality
3532 Standards. We went there based on concerns that came to the
3533 surface with a headline story in the L.A. Times about the
3534 question of whether scientists were being pressured to come
3535 to a particular viewpoint.

3536 Periodically, over time we have seen these
3537 controversies. It is natural because you have science, and
3538 scientists are not without their own emotions and their own
3539 judgment. We are passionate about the use of our science.

3540 Mr. ISSA. I appreciate, and--

3541 Mr. MCCLELLAN. I don't see a big spike.

3542 Mr. ISSA. Thank you. And Mr. Raul, just very briefly so
3543 we can go to a vote, I am afraid.

3544 Mr. RAUL. Well, I think there has not been as much
3545 change as it may appear, listening to only one hearing. I
3546 think President George W. Bush has not been a potted plant
3547 with respect to environmental rulemaking in his

3548 Administration, nor have his predecessor presidents been
3549 potted plants. President Clinton was very involved,
3550 President Reagan, President Carter, all very involved in
3551 rulemaking.

3552 President Reagan, of course--

3553 Chairman WAXMAN. We are going to have to--

3554 Mr. RAUL. Sure.

3555 Chairman WAXMAN. I think if you would put the rest in
3556 for the record, I would very much appreciate it.

3557 [The information follows.]

3558 ***** COMMITTEE INSERT *****

3559 Mr. ISSA. Thank you very much, Mr. Chairman.

3560 Chairman WAXMAN. Mr. Raul, even though you assert that
3561 the President can direct the Administrator's decision, do you
3562 agree that the President must follow the law?

3563 Mr. RAUL. Absolutely, Mr. Chairman.

3564 Chairman WAXMAN. And so when the President intervenes
3565 and makes a decision on the secondary--or when he intervened
3566 and made a decision on the secondary ozone standard, does the
3567 decision still have to meet the requirements of the Clean Air
3568 Act?

3569 Mr. RAUL. Absolutely.

3570 Chairman WAXMAN. And the Clean Air Act requires EPA
3571 Administrator to identify the level of air quality requisite
3572 to protect the public welfare from any known or anticipated
3573 adverse effects associated with the presence of such air
3574 pollutants in the ambient air.

3575 Mr. Goo, is it your position that scientific evidence
3576 available to the Administrator and the President that the
3577 secondary ozone standard was set at a level requisite to
3578 protect the public welfare?

3579 Mr. GOO. No, it is not my opinion. The unanimous
3580 recommendation of CASAC was that the form of the standard,
3581 not the eight-hour standard, the basic point here is that
3582 plants and foliage respond differently than human lungs do.
3583 The eight-hour standard was set to protect human lungs and

3584 human respiratory function. The secondary standard--

3585 Chairman WAXMAN. Well, whoever set that standard,
3586 whether it was in fact the President or the Administrator,
3587 you don't think it fits with the science?

3588 Mr. GOO. That is correct, Mr. Chairman.

3589 Chairman WAXMAN. And therefore the Clean Air Act.

3590 Mr. GOO. Right.

3591 Chairman WAXMAN. And, Dr. Grifo, your survey is
3592 important because it provides us with a big picture of
3593 political interference with the work of scientists at EPA.
3594 Almost 1,600 EPA scientists filled out survey questionnaires
3595 and sent them to the Union of Concerned Scientists, and the
3596 cases were EPA political appointees and inappropriately
3597 involved themselves in scientific decisions, or interference
3598 with political appointees from other parts of the
3599 Administration like the White House and EPA scientists, who
3600 were directed to inappropriately exclude or alter technical
3601 information from EPA scientific documents.

3602 This survey shows that there has been a serious problem
3603 of political interference with the working EPA scientists
3604 under the Bush Administration. That I think is unacceptable
3605 and has to stop.

3606 I thank the four of you very much for your testimony,
3607 and we will keep the record open in case there are other
3608 thoughts you want to submit to us for the record, or

3609 | questions that members may seek to ask.

3610 | That concludes our hearing. We stand adjourned.

3611 | [Whereupon, at 4:58 p.m., the committee was adjourned.]