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House of Representatives

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June 13, 2008

The Honorable Susan E. Dudley
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Ms. Dudley:

On April 16, 2008, the Committee issued a subpoena to you for the production of documents relevant to the Committee's investigation of the Environmental Protection Agency's (EPA) revision of the national ambient air quality standards for ozone. You have neither complied with this subpoena by its returnable date nor asserted any privilege to justify withholding documents from the Committee. In light of your actions, I am writing to inform you that the Committee will meet on June 20 to consider a resolution citing you for contempt of Congress. I strongly urge you to comply with the duly issued subpoena before then.

On March 14, 2008, I wrote to request that you provide the Committee with documents relating to EPA's revised national ambient air quality standards for ozone.¹ I requested that you provide these documents by March 26. On March 26, you provided only a partial response. Jeff Rosen, General Counsel for the Office of Management and Budget (OMB), responded by providing copies of a number of responsive documents that were either part of the publicly available docket or were expected to be placed in the docket.² In his letter, Mr. Rosen also stated that you would not be providing an unspecified number of documents responsive to the Committee's request, citing "the confidentiality of the Executive Branch deliberative and consultative process," but did not state that executive privilege had been asserted.³ Although

¹ Letter from Rep. Henry A. Waxman to Susan Dudley, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (Mar. 14, 2008).

² Letter from Jeffrey A. Rosen, General Counsel, Office of Management and Budget, to Rep. Henry A. Waxman (Mar. 26, 2008).

³ *Id.*

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Committee staff and OMB staff communicated repeatedly in the remaining days of March, you did not provide any additional documents.

On April 1, I wrote to you again and explained:

There are two options available to OMB if you wish to cooperate voluntarily with the Committee's request. One is to provide the responsive documents to the Committee by the close of business on April 7, 2008. The other is to bring the responsive documents to the Committee offices for a staff review, the purpose of which would be to assess whether the documents are relevant to the Committee's investigation and need to be produced. If OMB would prefer this alternative approach, then I ask that you provide a mutually agreeable schedule for the staff review by close of business on April 7, 2008.⁴

On April 7, you did not provide any additional documents. OMB staff informed Committee staff that you would provide some additional documents on April 11.⁵

At a meeting between Committee staff and OMB staff on April 11, some additional documents were produced to the Committee. However, despite a hearing being scheduled for April 24, you would not commit to a schedule for producing the remaining documents. Also, OMB staff stated that you would not commit to producing internal OMB communications.⁶

On April 16, I issued a subpoena to you requiring production of the responsive documents by 5 p.m. on April 18. On April 18, you provided some additional documents and your counsel objected to the subpoena on unspecified grounds and requested further discussion on the matter.⁷ In response to this request, Committee staff met repeatedly with OMB staff and White House counsel.

On April 25, OMB staff and White House counsel informed the Committee that you continue to withhold approximately 1,900 pages of responsive documents.⁸ Approximately 275

⁴ Letter from Rep. Henry A. Waxman to Susan Dudley, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (Apr. 1, 2008).

⁵ Phone conversation between Oversight and Government Reform Committee staff and OMB staff (Apr. 7, 2008).

⁶ Meeting between Oversight and Government Reform Committee staff and OMB staff (Apr. 11, 2008).

⁷ Letter from Jeffrey A. Rosen, General Counsel, Office of Management and Budget, to Rep. Henry A. Waxman (Apr. 18, 2008).

⁸ Meeting between Oversight and Government Reform Committee staff, OMB staff and White House counsel (Apr. 25, 2008).

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pages of responsive documents are communications between the Office of Information and Regulatory Affairs (OIRA) and other White House officials outside of OMB.⁹ The remaining 1,625 pages of documents relate to internal OIRA communications about EPA's revised ozone standards.¹⁰ These documents have been completely withheld from the Committee with no assertion of executive privilege.

On May 16, I wrote to you again, stating:

[T]he Committee has not been provided sufficient access to the information to understand why the President rejected the recommendations of EPA Administrator Stephen Johnson. The Clean Air Act specifies the factors that may be permissibly considered in setting air quality standards and those that may not. The record before the Committee does not provide enough insight into the deliberations inside the White House to assess whether the President and other White House officials acted in compliance with the requirements of the law.¹¹

I also noted that you would be testifying before the Committee on May 20, and advised you:

Unless the President asserts a valid claim of executive privilege with respect to the documents being withheld by OMB, you will be expected to personally bring the documents to the hearing. The Committee's subpoena was directed to you and you will be in defiance of the subpoena if you appear at the hearing without the documents.¹²

At the May 20 hearing, you did not produce the remaining documents, nor did the President assert executive privilege.¹³

You are now nearly two months overdue in providing documents responsive to the Committee's subpoena. You have had ample opportunity to provide the documents, and White House counsel has had ample opportunity to review the withheld documents for executive privilege concerns. Yet you are persisting in withholding responsive documents that the

⁹ *Id.*

¹⁰ *Id.*

¹¹ Letter from Rep. Henry A. Waxman to OIRA Administrator Susan E. Dudley (May 16, 2008).

¹² *Id.*

¹³ House Oversight and Government Reform Committee, *EPA's New Ozone Standards*, 110th Cong. (May 20, 2008).

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Committee needs to meet its oversight and legislative duties without any assertion of executive privilege by the President.

I regret that your failure to produce responsive documents has created this impasse, but Congress has a constitutional duty to conduct oversight of the executive branch. Therefore, unless the documents are provided to the Committee or a valid assertion of executive privilege is made, the Committee will meet on June 20 to consider a resolution citing you in contempt. I strongly urge you to reconsider your position and comply with the duly issued subpoena.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member