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Select Committee on
Energy Independence and Global Warming
U.S. House of Representatives

April 23, 2008

The Honorable Stephen Johnson
Administrator
Environmental Protection Agency
1300 Pennsylvania Avenue N.W.
Washington, DC

Dear Administrator Johnson:

I am in receipt of your letter of April 16, 2008, responding to the Select Committee's subpoena served on you on April 3, 2008. Your continued refusal to supply the Committee with the requested documents is troubling. You expressly do not rely on executive privilege grounds (*see* Hearing Transcript at pp. 17-18 (Mar. 13, 2008) (responses of Stephen Johnson)), apparently because you have no basis for such a claim. So instead of asserting a claim that has some foundation (without accepting the merits), you continue to stonewall the Committee by inventing a new claim of "chilling effects" on the administrative process—a basis that I am not aware has ever been recognized by any Committee of Congress as lawful grounds to withhold documents within the purview of a Committee's inquiry.

Without accepting as legitimate the stated concerns for refusing to turn over the requested documents, the Committee is willing to consider an accommodation along the following lines. The Agency will provide the Committee with the requested documents within the next three business days, but the information contained in the documents cannot be publicly revealed until the earlier of (i) the date the Advanced Notice of Proposed Rulemaking is released or (ii) June 21, 2008. Once the documents have been provided, but not before, then the subpoena will be withdrawn. The Committee will take all necessary steps to maintain the confidentiality of these documents during that time frame, including but not limited to restricting staff access and holding the documents in a secure place.

I sincerely share your interest in resolving this matter without a vote of contempt, and am willing to consider these reasonable accommodations. Please let me know by close of business (6 pm EDT) on April 25, 2008 if this is acceptable. Otherwise, the Committee is prepared to proceed with all its legal rights.

Sincerely,

A handwritten signature in black ink that reads "Ed Markey". The signature is fluid and cursive, with a long, sweeping tail on the letter "y".

Edward J. Markey

cc: The Honorable F. James Sensenbrenner
Ranking Member