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June 19, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

On June 18, 2008, I received a letter from EPA's Associate Administrator in the Office of Congressional and Intergovernmental Relations requesting that the Committee not proceed with a resolution of contempt against you. In this letter, the Associate Administrator said EPA would produce "an additional set of documents," but the Associate Administrator did not specify what these documents are or when they would be produced. Attempts by Committee staff to learn what additional documents will be provided and when have been unsuccessful.

On December 19, 2007, you announced that EPA would block California's efforts to reduce greenhouse gas emissions from motor vehicles. The Committee's investigation has developed a record that shows: (1) the career staff at EPA unanimously supported granting California's petition; (2) you also supported granting California's petition at least in part; and (3) you reversed your position after communications with officials in the White House.

In January 2008, you decided how to revise the ozone air quality standards. In several key aspects, your decision reflected the unanimous recommendation of the Clean Air Scientific Advisory Committee. As a result of your decision, EPA staff developed a nearly 350-page regulation. However, Administrator Susan Dudley of the Office of Information and Regulatory Affairs objected to the science-based approach of the secondary standard and the President overruled you. As a result, in the final 24-hours of the rulemaking process, EPA staff rewrote the regulation in conformance with the President's decision.

The Clean Air Act is clear about what can be considered and what cannot be considered when taking these types of actions. The Committee has been attempting to determine whether EPA's final actions were based upon proper considerations. However, your efforts to draw a curtain around the White House are preventing Congress from understanding whether appropriate considerations underlay these decisions. Although I have repeatedly informed you

The Honorable Stephen L. Johnson
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that you must provide the documents responsive to the April 9 and May 5 subpoenas unless the President asserts a valid claim of executive privilege, you continue to defy the subpoena.

I also note that your defiance of congressional oversight stands in stark contrast to the response of the previous Administration. In 1997, the House also investigated ozone standards established by EPA. Several House committees requested documents from the Administration related to the ozone air quality standards. In the Government Reform and Oversight Committee, Subcommittee Chairman David McIntosh requested extensive documents from both EPA and OMB.¹ With the exception of "two memoranda to the President from senior advisors within the Executive Office of the President," all responsive documents were provided to the Committee.²

Throughout this process, I have made accommodations where possible. Your refusal to provide the remaining responsive documents is thwarting the Committee's ability to conduct effective oversight. EPA's offer to produce some unspecified additional documents at some unspecified time does not satisfy our reasonable request.

I regret that your failure to produce the subpoenaed 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 tomorrow to consider a resolution holding you in contempt. I strongly urge you to reconsider your position and to comply with the duly issued subpoena.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

¹ Letter from Rep. David M. McIntosh, Chairman, National Economic Growth, Natural Resources, and Regulatory Affairs, Committee on Government Reform and Oversight, to Carol Browner, Administrator, U.S. Environmental Protection Agency (Jan. 24, 1997); Letter from Rep. David M. McIntosh, Chairman, National Economic Growth, Natural Resources, and Regulatory Affairs, Committee on Government Reform and Oversight, to Sally Katzen, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (Jan. 17, 1997).

² Letter from Sally Katzen, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, to Rep. Tom Bliley, Chairman, House Committee on Commerce (Mar. 7, 1997).