

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE AND TECHNOLOGY

SUITE 2320 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
(202) 225-6375
TTY: (202) 226-4410
<http://science.house.gov>

July 13, 2009

Dr. John Holdren
Director
Office of Science and Technology Policy
725 17th St., NW, Room 5228
Washington, DC 20502

Dear Dr. Holdren:

As you know, on March 9, 2009 the President issued an executive memorandum on scientific integrity that illustrated many of the same principles he espoused during his campaign. In this memorandum, the President tasked the Director of the Office of Science and Technology Policy (OSTP) to develop recommendations within 120 days to guarantee scientific integrity throughout the executive branch.¹ Similarly, in one of his first acts, President Obama on January 21, 2009 issued an executive memorandum outlining his principles to achieve “an unprecedented level of openness in government” and calling for recommendations for an Open Government Directive within 120 days.²

While I commend the President for taking proactive steps to ensure scientific integrity and transparency in the federal government, recent incidents at several agencies paint a different picture of how this Administration may view these issues. Viewed individually, each of these cases is cause enough for concern, but when viewed together, I fear they reveal a troubling pattern that warrants immediate attention. Accordingly, I ask that you review and respond to the following comments and questions by no later than July 17, 2009.

The Environmental Protection Agency’s (EPA) Greenhouse Gas Endangerment Finding

Recent press reports revealed that important comments from career EPA analysts on the agency’s greenhouse gas endangerment finding were suppressed by a senior agency official. These press reports include emails that indicated that the Director of the EPA’s National Center for Environmental Economics (NCEE) refused to include the comments, not because of a lack of scientific merit, but according to the official, because “the

¹ White House Memorandum, Subject: Scientific Integrity, March 9, 2009

² White House Memorandum, Subject: Transparency and Open Government, January 21, 2009

administration [had] decided to move forward on endangerment,” and the “comments [did] not help the legal or policy case for this decision.” In seeking to have his report included in the proceeding, the analyst wrote, “They are significant because they present information critical to the justification (or lack thereof) for the proposed endangerment finding. They are valid because they explain much of the observational data that have been collected which cannot be explained by the [International Panel on Climate Change] models.” After muzzling the report, the Director stated, “With the endangerment finding nearly final, you need to move on to other issues and subjects. I don’t want you to spend any additional EPA time on climate change. No papers, no research etc.”³ I find it hard to reconcile these actions with the President’s direction, or the EPA Administrators own word when she promised “Political appointees will not compromise the integrity of EPA’s technical experts to advance particular regulatory outcomes,” and “EPA’s addressing of scientific decisions should reflect the expert judgment of the Agency’s career scientists and independent advisers.”⁴

1. Is the NCEE Director’s exclusion of the staff report on the grounds that it did not advance the “policy case” for the endangerment finding consistent with President Obama’s guidance that “facts drive scientific decisions—not the other way around?”⁵ How will the Administration handle issues such as this going forward?

Interagency Deliberations on EPA’s Greenhouse Gas Endangerment Finding

These reports of questionable interference into science-related policymaking extend beyond EPA. An interagency report marked “Deliberative/Attorney-Client Privilege” leaked last month indicated that regulating greenhouse gases under the Clean Air Act “is likely to have serious economic consequences for regulated entities throughout the U.S. economy, including small businesses and small communities.” The memo went on to state that:

“In the absence of a strong statement of the standards being applied in this decision, there is a concern that EPA is making a finding based on (1) ‘harm’ from substances that have no demonstrated direct health effects, such as respiratory or toxic effects, (2) available scientific data that purports to conclusively establish the nature and extent of the adverse public health and welfare impacts are almost exclusively from non-EPA sources, and (3) applying a dramatically expanded precautionary principle.”⁶

³ Robin Bravender, “Two EPA Staffers Question Science Behind Climate ‘Endangerment’ Proposal,” *The New York Times*, June 26, 2009, Business Section.

⁴ Tom Avril and John Sullivan, “EPA Nominee Vows to Follow Science,” *The Philadelphia Inquirer*, January 15, 2009.

⁵ Remarks by the President at the National Academy of Sciences Annual Meeting, April 27, 2009.

⁶ <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&o=0900006480965abd>

It seems as though one of the most important and far-reaching decisions made by the EPA was forced through the interagency review process with little regard for appropriate rules, procedures, scientific integrity, or transparency. This is particularly troubling given the recent direction in the President's March 9, 2009 memorandum that "each agency should make available to the public the scientific or technological findings or conclusions considered or relied on in policy decisions."⁷ After this memo was revealed, an Administration official quickly attempted to publicly discredit and "out" a long-time civil servant as a "Bush Administration hold-over" – despite the fact that press reports indicated that employee entered government service during the Clinton Administration, and prior to that served on the staff of a Democratic Member of Congress.⁸ Retaliation against employees because they provide findings that inconveniently contradict political goals is unacceptable.

2. Does the attempt to discredit a government employee and his or her associated comments in the interagency review process violate the letter or spirit of subsection (1)(f) of the President's memorandum on scientific integrity regarding whistleblower protections as they relate to agency decision-making processes? If not, why? If so, how is this being addressed?

The Climate Czar's "Vow of Silence"

In developing new fuel economy standards for passenger vehicles and light trucks, it seems as though the Administration also practiced doublespeak. While the Administration promised unprecedented levels of transparency, Carol Browner, the President's "Climate Czar" actively engaged in limiting the public's access to these deliberations. On May 20, 2009 the *New York Times* reported that the White House held a series of secret meetings with select special interest groups as they were crafting the new standards. In that same report, Mary Nichols, the head of the California Air Resources Board (CARB) stated that "Browner quietly orchestrated private discussions from the White House with auto industry officials," and that "[we] put nothing in writing, ever."⁹ Initial review of these directives point to a clear attempt to subvert the Presidential Records Act, which directs the President to take "all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as presidential records."¹⁰ If these reports are true, it is hard to imagine how this would promote the President's pledge to "creat[e] an unprecedented level of openness in government."¹¹

⁷ White House Memorandum, Subject: Scientific Integrity, March 9, 2009

⁸ Robin Bravender, "Murky Reg-Review Process Sets Stage for Frenzy Over OMB Climate Memo," *The New York Times*, May 14, 2009, Business Section.

⁹ Colin Sullivan, "Vow of Silence Key to House-Calif. Fuel Economy Talks," *The New York Times*, May 20, 2009, Business Section.

¹⁰ 44 U.S.C. § 2203

¹¹ White House Memorandum, Subject: Transparency and Open Government, January 21, 2009

Secret White House Meetings

Following the same opaque and exclusive process that produced new fuel economy standards, the White House continues to block Freedom of Information Act (FOIA) requests and general inquiries into coal executives' and lobbyists' secret meetings with the White House regarding the development of the Administration's "clean coal" policies.¹² FOIA requests for White House visitor logs by MSNBC and the Citizens for Responsibility and Ethics in Washington (CREW) were rejected despite the President's declaration of transparency and openness.^{13,14} The Administration's refusal to work in the light of day is particularly perplexing given the President's admonishments as a candidate of the previous Administration's Energy Task Force meetings.¹⁵

3. Are the above actions consistent with the principle in the President's executive memorandum on transparency that the Administration "will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use." Further, are they consistent with section (1)(d) of the memorandum on scientific integrity stating that agencies "should make available to the public the scientific or technological findings or conclusions considered or relied upon in policy decisions?" Last, are they consistent with the letter and spirit of the Presidential Records Act? If not, why? If so, how is this issue being addressed?

Climate Change Science Program

On June 16, 2009 the U.S. Global Change Research Program released a report titled "Global Climate Change Impacts in the United States." Following the report's release, you stated that it "integrates the most up-to-date scientific findings into a comprehensive picture."¹⁶ Despite this declaration, several criticisms have been leveled against the report for systemically misrepresenting the best science on the issues of climate change and natural disasters. Specifically in question is the exclusion of a large body of recent peer-reviewed scientific literature on natural disasters in favor of inclusion of non-peer-reviewed scientific research that might strengthen the Administration's stated policy goal of greenhouse gas regulation.¹⁷

4. Was the decision to exclude peer-reviewed data in favor of non-peer reviewed information consistent with section (1)(c) of the President's memorandum on scientific integrity stating that "when scientific or technological information is

¹² Michael Isikoff, "Obama Closes Doors on Openness," *Newsweek*, June 29, 2009.

¹³ Bill Dedman, "Obama Blocks List of Visitors to White House," MSNBC Online, June 16, 2009.

¹⁴ CREW, "CREW v. U.S. Department of Homeland Security (White House Visitor Logs – Coal Execs)," Citizens for Responsibility and Ethics in Washington, <http://www.citizensforethics.org/node/40129>.

¹⁵ Organizing for America, "Remarks of Senator Obama at the Lobbying Reform Summit," Barack Obama Online, http://www.barackobama.com/2006/01/26/remarks_of_senator_barack_obam_6.php

¹⁶ Office of Science and Technology Policy, "New Report Provides Authoritative Assessment of National, Regional Impacts of Global Climate Change," Press Release, 16 June 2009.

¹⁷ John Tierney, "U.S. Climate Report Assailed," *The New York Times*, June 18, 2009, Science Section.

considered in policy decisions, the information should be subject to well-established scientific processes, including peer review where appropriate, and each agency should appropriately and accurately reflect that information in complying with and applying relevant statutory standards.” If so, how is it consistent? If not, what is being done to address the issue?

Astute observers will recognize that the underlying issues relating to suppression, censoring, and retribution are not purely scientific in nature, and therefore are not germane to the President’s memorandum on science integrity. Previous investigations into the censoring of scientists focused not on whether their research findings were suppressed, but on whether they were prevented from communicating their findings and opinions. A NASA Inspector General investigation found that the ability of Dr. James Hansen to communicate his findings was impaired despite giving over 1,400 on-the-job interviews.¹⁸ More importantly, it also found “no evidence indicating that NASA blocked or interfered with the actual research.”¹⁹ Issues surrounding Dr. Hansen focused on his ability to communicate with the media regarding policy decisions. Unlike the Hansen incident, evidence in these cases clearly point to Administration officials directly impeding scientific work with unambiguous directives such as “No papers, no research etc.”²⁰ Therefore, I find these new incidents even more troubling than previous events.

I am also concerned that these are not isolated instances. The importance of these underlying issues being addressed is far-reaching and will impact the lives of every American. Consequently, the public deserves more than rhetoric. Because of this apparent pattern of muzzling experts, limiting access, retaliating against dissent, and systematically misrepresenting science, we respectfully request that you respond with:

5. A plan to reconcile the above listed discrepancies with the Administration’s principles of scientific integrity and transparency outlined in the President’s January 21 and March 9, 2009 memoranda.
6. A description of the steps taken by your office to ensure that negative employment actions will not be taken against individuals who present information contrary to the Administration’s policy goals.
7. A plan to ensure that employees’ work and media access is not restricted by Administration or Agency officials because of policy goals.
8. An explanation of whether or not OSTP decided to maintain and advance the principles outlined by the previous Administration in Dr. Marburger’s May

¹⁸ Investigative Summary: Regarding the Allegations that NASA Suppressed Climate Change Science and Denied Media Access to Dr. James E. Hansen, a NASA Scientist, NASA, Office of the inspector General, June 2, 2008.

¹⁹ *Id.*

²⁰ Robin Bravender, “Two EPA Staffers Question Science Behind Climate ‘Endangerment’ Proposal,” *The New York Times*, June 26, 2009, Business Section.

28, 2008 memorandum on "Principles for the Release of Scientific Research Results."²¹

I look forward to working with you to ensure that scientific integrity and transparency are priorities in the new Administration. Please respond to these requests no later than July 24, 2009. If you have any questions, please contact Mr. Tom Hammond, professional staff member, Subcommittee on Investigations and Oversight, Committee on Science and Technology at 202-225-6371.

Sincerely,



REP. PAUL BROUN, M.D.
Ranking Member
Subcommittee on Investigations
and Oversight

cc: REP. BRAD MILLER
Chairman
Subcommittee on Investigations & Oversight

²¹ Office of Science and Technology Policy Memorandum, Subject: Principles for Release of Scientific Research Results, May 28, 2008