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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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February 8, 2008

The Honorable David M. Walker  
Comptroller General  
Government Accountability Office  
441 G Street, NW, Room 7125  
Washington, DC 20548

Dear Mr. Walker:

We write to ask you to investigate the process by which the Environmental Protection Agency (EPA) arrived at the decision to deny California's request for a Clean Air Act waiver to enable them to reduce global warming emissions from vehicles.

Congress specifically created a provision in the Clean Air Act that enables California to set air pollution standards that are more stringent than federal standards when certain conditions are met. If the EPA grants a waiver under this process, then other states can choose to adopt California's standards. Fourteen states have adopted or are in the process of adopting California's vehicle emissions standard, and another four are considering to do so. The waiver process has worked well in the past; over the past four decades, California has been granted a waiver more than fifty times. In fact, this decision by the Bush EPA was the first time that the agency has ever outright denied a waiver request.

There are many troubling aspects of this highly unusual decision. In the months leading up to the denial, EPA Administrator Stephen Johnson told the Senate Environment and Public Works Committee that he would make an "independent decision" and would use a "very deliberate process" to review the issues. But internal EPA documents, reviewed by the Committee, and press reports indicate that the overwhelming evidence compiled by the professional staff at EPA with expertise in this matter was essentially ignored. In fact, according to these EPA documents, EPA Administrator Stephen Johnson acted despite warnings from his expert staff that if EPA denied the waiver and was sued by the State of California, EPA would "likely lose the suit". It was also reported on November 2 that Vice President Cheney met with auto executives who "delivered the message that they want the White House to oppose California's request for a waiver under the Clean Air Act..." The EPA Administrator admitted to the Committee at our January 24 hearing that he had discussed this issue with White House officials.

Unfortunately, the Bush Administration has a history of substituting politics and ideology for sound decision-making based on scientific and legal judgments, especially

when it comes to the pressing issue of global warming. The Bush Administration has systematically edited and weakened government scientists' conclusions on global warming and published reports on the environment and air pollution without information on or references to climate change. In a survey of government scientists conducted by the Union of Concerned Scientists, nearly half of all respondents perceived or personally experienced pressure to eliminate the words "climate change," "global warming" and other similar terms for a variety of government communications. A full 87% perceived pressure on government scientists to make changes to their reports that altered the meaning of scientific findings.

This decision is extremely important, and the members of this Committee and the American people deserve answers about how and why it was made. Unfortunately, the Bush Administration presented only a vague and suspect legal justification for its decision. In addition to providing an incomplete and incoherent rationale for rejecting California's request, the Bush Administration has repeated its pattern of failing to provide the Senate Environment and Public Works Committee full access to critical records in accordance with Committee requests. While we will continue to vigorously pursue our investigation, we believe it is important for the Government Accountability Office to complete its own, independent investigation. We ask you to undertake an investigation on this matter and report back to Congress. Specifically, we would like to know:

- What specific facts were before the EPA Administrator personally when he made his December 19 decision that there were no "compelling and extraordinary conditions" supporting California's waiver request?
- The EPA Administrator's December 19, 2007 letter stated that he had decided to deny the waiver, and had "instructed my staff to draft appropriate documents setting forth the rationale for this denial in further detail and to have them ready for my signature as soon as possible." At the time of his December 19 decision, what legal, policy and other advice and analyses were completed in advance of the decision and supplied to the Administrator's office that supported or contradicted the Administrator's decision?
- How does the process used to deny this waiver, including the Administrator's decision to make a public decision to deny and then to ask the staff to develop documents that would justify the decision after the fact, compare to or deviate from standard decision making processes at EPA for such crucial decisions?
- Were verbal or written legal, technical, or policy recommendations from legal and technical program staff provided to the EPA Administrator or his office regarding whether the waiver should be granted? If not, is it a standard EPA practice for the Administrator not to request such recommendations? If line staff recommendations were made, was the Administrator's decision consistent with those recommendations?
- Was the decision to deny the waiver vetted and reviewed in detail by legal and technical line staff in other EPA offices such as EPA Region 9, Office of Air and Radiation technical staff, and Office of General Counsel line staff prior to its issuance on December 19? Was the process of vetting this decision consistent with or did it deviate from usual EPA practice for consultation with technical and legal staff?
- Why did it take the EPA more than two years to decide on this matter?

- Who lobbied Stephen Johnson or other senior staff at the EPA on this issue?
- Were all calls and meetings of the Administrator at which the waiver issue was discussed, including early morning, late evening, and weekend calls reflected in logs and noted for the record?
- Were other officials within the Bush Administration lobbied on this matter, and if so by whom and to what effect?
- Did the White House (including any staff or official in any part of the Executive Office of the President or in the Office of the Vice President) play a role in this decision? If so, at what point in the process did they make any recommendation?

We urge you to undertake this investigation expeditiously and look forward to your reply.

Sincerely,



Barbara Boxer



Hillary Rodham Clinton



Sheldon Whitehouse



Joseph I. Lieberman



Frank R. Lautenberg



Bernard Sanders



Benjamin L. Cardin



Amy Klobuchar