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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RYAN JACKSON, MAJORITY STAFF DIRECTOR
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March 23, 2015

Mr. W. Neil Eggleston
Counsel to the President
Office the White House Counsel
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. Eggleston:

The U.S. Senate Committee on Environment and Public Works (EPW) has been conducting oversight of the U.S. Environmental Protection Agency's (EPA) proposed climate regulations as part of the President's Climate Action Plan. These proposed rules are based on questionable legal theories and would have a devastating impact on the nation's economy and electricity reliability while doing very little to curb global carbon emissions.

There is concern that key environmental activists have had an outsized influence in developing the rules compared to states and ordinary Americans who will ultimately bear the burden of these actions. The recent news that the White House has hired a senior official from the Environmental Defense Fund (EDF), an environmental group that played an integral role in shaping the rules, to "help push forward the implementation of the President's Climate Action Plan,"¹ is especially alarming.

The official in question, Megan Ceronsky, was EDF's Director of Regulatory Policy and Senior Attorney before she was hired in January 2015 as a senior advisor in the White House Office of Energy and Climate Change.² This appointment is particularly concerning in light of Ms. Ceronsky's representation of EDF in litigation seeking issuance of these very rules, as well as her participation in EPA's development of these rules themselves. Accordingly, your cooperation is requested to better understanding Ms. Ceronsky's appointment and future role to address concerns about Ms. Ceronsky's impartiality and to ensure the utmost level of integrity in the regulatory process being overseen by the White House.

EDF was a party to the initial litigation against EPA over new source performance standards for new and modified power plants (NSPS) and emission guidelines for existing power

¹ "EDF lawyer joins Clean Power Plan team," March 18, 2015, Energy & Environment News, available at: <http://www.eenews.net/eenewspm/2015/03/18/stories/1060015310>.

² "Release of EPA information further expands public outreach, science-based analysis – EDF," October 28, 2014 press release from EDF, available at: <http://www.edf.org/media/release-epa-information-further-expands-public-outreach-science-based-analysis-edf>; see also, <https://www.linkedin.com/pub/megan-ceronsky/0/3b7/261>.

plants (ESPS) under section 111 of the Clean Air Act.³ The parties reached an initial settlement in December 2010⁴ and agreed to a revised settlement in June 2011.⁵ As counsel of record for EDF, Ms. Ceronsky was a signatory to the revised settlement, which required EPA to propose the NSPS by September 30, 2011.⁶ This extension was made without any opportunity for public comment.

EPA failed to meet the revised settlement deadline to propose the NSPS, and documents obtained by the Committee reveal that Ms. Ceronsky, in fact, participated in negotiations with EPA in October 2011 to extend the deadlines and hold the litigation in forbearance.⁷ EPA initially proposed the NSPS on March 27, 2012.⁸ A year later, on March 27, 2013, Ms. Ceronsky sent a notice of intent to sue to the EPA, on behalf of EDF and other environmental groups for not finalizing the NSPS.⁹ Ms. Ceronsky's was also part of a follow-up letter on the same topic sent by another EDF attorney on April 15, 2013.¹⁰

Before EPA finalized the NSPS rule, President Obama released his Climate Action Plan in June 2013,¹¹ and directed EPA to re-propose the NSPS by September 20, 2013, and to finalize it in a timely fashion thereafter.¹² The President also directed EPA to issue a proposal for modified and existing power plants by June 1, 2014, and to finalize that rule within a year.¹³ EPA subsequently re-proposed the NSPS in January 2014¹⁴ and proposed the ESPS in June 2014.¹⁵

Ms. Ceronsky was invited to an August 29, 2013, meeting at EPA headquarters, along with the Natural Resources Defense Council (NRDC), another environmental activist group

³ *State of New York, et al. v. EPA*, No. 06-1322, U.S. Court of Appeals for the D.C. Circuit.

⁴ Available at: <http://www2.epa.gov/sites/production/files/2013-09/documents/boilerghgsettlement.pdf>.

⁵ Available at: <http://www2.epa.gov/sites/production/files/2013-09/documents/20110613ghgsettlementmod.pdf>.

⁶ *Id.* at 15. Available at: <http://www2.epa.gov/sites/production/files/2013-09/documents/20110613ghgsettlementmod.pdf>.

⁷ October 11, 2011 email from David Doniger to David Gunter, Patricia Embrey, Michael Myers, copy to Elliott Zenick, Joanne Spalding, Joseph Goffman, Megan Ceronsky, Morgan Costello, Scott Jordan, Thomas Lorenzen, and Vickie Patton, subject: RE: Boiler NSPS settlement.

⁸ 77 Fed. Reg. 22392 (April 13, 2012).

⁹ March 27, 2013 email from Megan Ceronsky to Bob Perciasepe, Joseph Goffman, Lorie Schmidt, copy to David Doniger, Joanne Spalding, Vickie Patton, subject: Notice re Carbon Pollution Standards for New and Existing Power Plants.

¹⁰ April 15, 2013 email from Tomas Carbonell to Bob Perciasepe, Joseph Goffman, Lorie Schmidt to David Doniger, Joanne Spalding, Ben Longstreth, Vickie Patton, Megan Ceronsky, subject: Notice of Intent Re: Greenhouse Gas Standards for New and Existing EGUs.

¹¹ "The President's Climate Action Plan," June 2013, Available at:

<https://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf>.

¹² "Presidential Memorandum – Power Sector Carbon Pollution Standards," President Obama, June 25, 2013, available at: <https://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards>.

¹³ *Id.*

¹⁴ 79 Fed. Reg. 1430 (January 8, 2014).

¹⁵ 79 Fed. Reg. 34830 (June 18, 2014).

involved in drafting the rules, to discuss outreach for the rules.¹⁶ On December 10, 2013, Ms. Ceronsky sent a white paper advocating EPA's legal authority to require carbon capture and sequestration under the NSPS¹⁷ and a related blog posting to an attorney in the EPA Office of General Counsel.¹⁸ Notably she said: "I wanted to share the attached blog and legal analysis defending the proposed Carbon Pollution Standards for new power plants from the attacks leveled by the House Energy and Commerce leadership, which went up Friday."¹⁹ EPA even cited a second white paper she co-authored with another EDF attorney in the Agency's legal memorandum for the ESPS.²⁰

Moreover, Ms. Ceronsky is included on emails sent between the NRDC and senior EPA officials concerning meeting requests to discuss the ESPS.²¹ At a minimum, we are aware she also participated in meetings on August 26, 2014,²² September 10, 2014,²³ and October 21, 2014,²⁴ and a conference call on October 30, 2014,²⁵ with EPA to discuss the proposed rules.

According to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 2635.502, federal employees are not to participate in particular matters in which the employee previously represented a party in the matter and where a reasonable person would question the employee's impartiality. State bar requirements also address the requirements of an attorney to act on behalf of their clients and the possible need for disqualification to avoid conflicts of interest related to their work for former clients.

It appears highly inappropriate to have Ms. Ceronsky serve in any capacity interacting with EPA or otherwise involved in the development of these rules, considering her prior legal representation and advocacy on behalf of EDF before EPA on these very same matters. It is akin to having the fox watch the henhouse.

¹⁶ Calendar entry for August 29, 2013, 12 noon to 1 pm meeting with Derek Murrow, Joel Beauvais, Joseph Goffman, Megan Ceronsky, Kate Zyla, subject: State and Utility Outreach.

¹⁷ "The Strong Legal Foundation for the Carbon Pollution Standards for New Power Plants: A Response to the House Energy & Commerce Committee's Letter on the Energy Policy Act of 2005 and Carbon Capture and Storage Technology," issued by EDF on December 5, 2013, available at: <http://blogs.edf.org/climate411/files/2013/12/Response-to-House-Committee-Letter-on-EPAAct.pdf>.

¹⁸ December 10, 2013 email from Megan Ceronsky to Steven Silverman, copy to Vickie Patton, subject: EPA's Proposed Carbon Pollution Standards are Legally and Technically Sound.

¹⁹ See, <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0495-0079>.

²⁰ See footnote 54, Legal Memorandum for Proposed Carbon Pollution Emission Guidelines for Existing Electric Utility General Units, available at: <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0602-0419>. See also, <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0602-0426>.

²¹ See, December 20, 2013 email from Derek Murrow to Joseph Goffman, copy to David Doniger, Megan Ceronsky, subject: MISO 111(d) Analysis; February 10, 2014 email from Derek Murrow to Joseph Goffman, copy to Megan Ceronsky, David Doniger, Cynthia Browne, Christine Xu, subject: RE: Contact Us Comment: Carbon Pollution Standards Website.

²² Available at: <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0602-17819>.

²³ Available at: <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0602-20792>.

²⁴ Available at: <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0602-22315>.

²⁵ Available at: <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0602-22318>.

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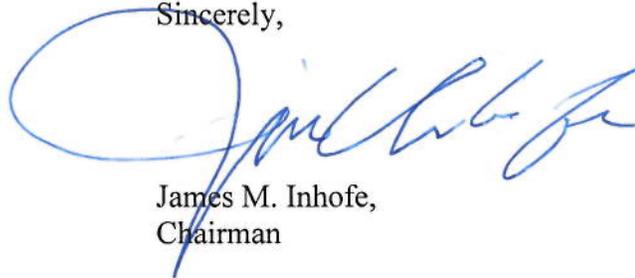
Given these concerns, it is important that Congress and the American people have confidence that Obama Administration officials are acting with impartiality and in the best interest of the American people, in accordance with federal conflict of interest and ethics laws, and not in any way advocating in favor of former employers or clients.

In order to better understand the circumstances surrounding Ms. Ceronsky's work on the Climate Action Plan and her adherence to federal ethics laws, please provide the following information and documents no later than [one week]:

1. A copy of any financial disclosure forms, ethics agreements, screening arrangements, recusals, and/or conflict of interest waivers concerning Ms. Ceronsky; and
2. Copies of all communications between Ms. Ceronsky and the EPA, the Department of Energy, the Department of Justice, and/or the Council on Environmental Quality concerning regulation of new, modified, and existing power plants pursuant to section 111 of the Clean Air Act.

I look forward to your prompt response to this request. Please have your staff contact the Committee on Environment and Public Works at (202) 224-6176 with any questions concerning this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Inhofe", is written over a large, light blue circular scribble.

James M. Inhofe,
Chairman