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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR  
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

April 10, 2014



Dear Ms. Wegman:

As you are aware, on December 18, 2013, former senior Environmental Protection Agency (EPA) official and fraudster John Beale was sentenced to federal prison. From the moment the Senate Committee on Environment and Public Works (EPW) minority staff first learned of Beale's fraud, the Committee launched a full investigation into his crimes against the American people as well as the conditions at EPA that permitted his fraud to continue for nearly two decades. This investigation led the Committee to uncover that Beale was responsible for leading EPA's efforts on one of the most controversial rulemakings in the Agency's history: the 1997 National Ambient Air Quality Standards (NAAQS) for ozone and particulate matter. On March 19, 2014, the Committee released a comprehensive report on Beale's role in developing these standards entitled *EPA's Playbook Unveiled: A Story of Fraud, Deceit, and Secret Science*, in which your relationship with Beale and involvement in the 1997 NAAQS are discussed.<sup>1</sup> The Committee's report, along with EPA's current review of the ozone NAAQS, has galvanized public interest in these matters. Given your 30-year tenure at EPA, relationship to Beale, and critical role in the 1997 NAAQS, you are in a position to answer key questions raised by the Committee's review. Accordingly, I respectfully request your cooperation with this inquiry.

You described your working relationship with Beale in a November 25, 2013, letter submitted on his behalf to Judge Huvelle of the United States District Court for the District of Columbia, stating:

In 1996 and 1997, I worked with John on developing revised NAAQS for ozone and particulate matter. This was a major regulatory effort for EPA, as both standards were developed under a very tight court-ordered schedule; EPA had not previously worked on two major air quality standards at the same time. Once again, John took a leadership role in working with OMB, other executive branch agencies, Congressional staff, and outside stakeholders to address their concerns with the draft EPA standards. John worked on a wide range of issues, including health science, legal interpretations, and implementation requirements, among others. His capacity to listen carefully both to his EPA colleagues' concerns and

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<sup>1</sup> S. COMM. ON ENV'T & PUB. WORKS MINORITY STAFF, EPA'S PLAYBOOK UNVEILED: A STORY OF FRAUD, DECEIT, AND SECRET SCIENCE (2014), available at [http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=b90f742e-b797-4a82-a0a3-e6848467832a](http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=b90f742e-b797-4a82-a0a3-e6848467832a).

those of EPA's critics, to work assiduously to understand the complex science and policy issues associated with the standards, to speak knowledgeably and confidently to EPA's critics, and to advocate for EPA with clarity and humor was outstanding.<sup>2</sup>

While the 1997 NAAQS raised a variety of concerns – from the sue-and-settle court-ordered deadline, to questionable cost and benefit calculations, to the unprecedented action of regulating fine particulates – the Committee has learned that questions over the scientific underpinnings of the standards implicated your role. As you may recall, EPA moved forward with the particulate matter standards relying on only two cohort studies, the Harvard “Six Cities” Study<sup>3</sup> and the American Cancer Society “CPS II” Study, despite significant concerns over the validity of the studies.<sup>4</sup> In fact, even in response to Congressional requests, the Agency outright refused to share the data, yet both studies were supported by federal research grants.

After the standards were finalized in July 1997, Congress took legislative action to make the data public. In October 1998, Congress passed the Shelby Amendment, also known as the Data Access Act, as a rider to the Omnibus Appropriations Act for Fiscal Year 1999,<sup>5</sup> which required public access to all federally funded data used in government policy decisions. Pursuant to the Data Access Act, the Office of Management and Budget (OMB) revised Circular A-110 to provide agencies guidance on data access in response to Freedom of Information Act (FOIA) requests.<sup>6</sup>

As expected, one of the first FOIA requests submitted in accordance with the updated Circular A-110 pertained to the Six Cities and CPS II studies. Specifically, on December 9, 1999, the U.S. Chamber of Commerce submitted a FOIA request to EPA for the data underlying both studies.<sup>7</sup> On January 21, 2000, you authored a response to the request and in doing so expanded the Agency's efforts to avoid transparency and to deny access to the data.<sup>8</sup>

Your response denying the request intentionally shielded the institutions at the expense of the public's right to an open and accountable scientific process. You advanced a legal interpretation on behalf of EPA claiming the data was not subject to Circular A-110 because EPA did not solely fund the studies or distinctly fund the collection of data. You further articulated why the Agency could not produce the data, claiming that because EPA relied on the conclusions of the studies, rather than the underlying health data, the Agency had no reason to

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<sup>2</sup> Sentencing Memorandum of John C. Beale, *United States v. Beale*, No. 1:13-cr-00247-ESH (D.D.C. Sept. 27, 2013), Exhibit 7.

<sup>3</sup> Douglas W. Dockery et al., *An Association between Air Pollution and Mortality in Six U.S. Cities*, 329 NEW ENG. J. MED. 1753 (1993).

<sup>4</sup> C. Arden Pope et al., *Particulate Air Pollution As a Predictor of Mortality in a Prospective Study of U.S. Adults*, 151 AM. J. RESPIRATORY & CRITICAL CARE MED. 669 (1995).

<sup>5</sup> Data Access Act, Pub. L. No. 105-277, tit. III, 112 Stat. 2681, 2681-495 (1998).

<sup>6</sup> OFFICE OF MGMT. & BUDGET, *Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Non-Profit Organizations*, 64 Fed. Reg. 54,926 (Oct. 8, 1999).

<sup>7</sup> Letter from Lydia Wegman, Dir., Air Quality Strategy and Standards Div., Env'tl. Prot. Agency, to William Kovaces, Vice President, Env'tl. & Regulatory Affairs, U.S. Chamber of Commerce 2-3 (Jan. 21, 2000), available at [http://insideepa.com/index.php?option=com\\_iwpxfile&file=/iwpxextra/ee00073.pdf](http://insideepa.com/index.php?option=com_iwpxfile&file=/iwpxextra/ee00073.pdf).

<sup>8</sup> *Id.*

possess the studies. Ultimately, you deflected the request to the institutions since “ACS has a protocol for qualified researchers to access these data” and “these data are proprietary” to the institutions.<sup>9</sup>

Since then, EPA has maintained the position you originally developed in denying Congressional requests for the underlying data. To this day the Agency relies on updates from these same two studies<sup>10</sup> to support nearly all of its major rulemakings under the Clean Air Act. In light of the importance of the data, your personal certification of Beale’s critical role in the science and standards, as well as your involvement in crafting the Agency’s position to withhold the data, it has become necessary for the Committee to understand the history behind your crafting EPA’s position to deny access to the underlying data. As such, I request that you provide the Committee complete and thorough responses to the following questions no later than April 24, 2014:

1. Please identify all other EPA officials you collaborated with to develop your January 21, 2000, response to the Chamber’s FOIA request. Your response should include each EPA official’s name and position, and describe the content of their collaboration.
2. Why were you, as opposed to an information officer, the author of the January 21, 2000, response to the Chamber’s FOIA request? At the time, did the Agency have a designated FOIA or information officer? Had you previously responded to FOIA requests?
3. What was your interaction with Harvard and the American Cancer Society at the time of the FOIA request? Did you consult with the institutions prior to finalizing your response? If so, did your position on data access change based on your interactions with the institutions? If so, how did your position change?
4. In your January 21, 2000, letter, you stated that the Agency did not have the underlying data in its possession. To your knowledge, did the Agency ever request the data from the institutions? If so, please identify when and the response the Agency received.
5. Your January 21, 2000, letter deferred decisions on data access to the institutions and explained that ACS allegedly had protocols for “qualified researchers to access these data.” What is the definition of a “qualified researcher?” Is the definition similar to then Administrator Carol Browner’s assertion that only “qualified scientists”<sup>11</sup> would be given access to the underlying data? Did you work with Administrator Browner

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<sup>9</sup> *Id.*

<sup>10</sup> For example, Krewski et al. (2000), Laden et al. (2006), Pope et al. (2002), and Krewski et al. (2009) are updates of the Harvard Six Cities and American Cancer Society studies, which EPA has used in major air regulations. See Krewski et al., HEALTH EFFECTS INST., *Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality* (2000); Laden et al., *Reduction in Fine Particulate Air Pollution and Mortality*, 173 AM. J. RESPIRATORY & CRITICAL CARE MED. (2006); Pope et al., *Lung Cancer, Cardiopulmonary Mortality, and Long-Term Exposure to Fine Particulate Pollution*, 287 JAMA (2002); Krewski et al., HEALTH EFFECTS INST., *Extended follow-up and spatial analysis of the American Cancer Society study linking particulate air pollution and mortality* (2009).

<sup>11</sup> See *EPA’s Particulate Matter and Ozone Rulemaking: Is EPA Above the Law?: Hearing Before the Subcomm. on Nat’l Econ. Growth, Natural Res., & Regulatory Affairs of the H. Comm. on Gov’t Reform & Oversight*, 105th Cong. 401 (Apr. 23, 1997) (statement of Carol Browner, Adm’r, Env’tl. Prot. Agency).

- on developing the definition of “qualified scientists?” Did you work with the institutions to develop a definition of “qualified scientists?” Were you provided any commitments that the institutions would only provide the underlying data to “qualified scientists?” Were you ever told by either institution that that they would, in any form, provide limited access to the data, and if so under what circumstances?
6. Pursuant to the Data Access Act, OMB published its proposed revision to Circular A-110 on February 4, 1999.<sup>12</sup> OMB provided a 60-day comment period and on April 5, 1999, Deputy General Counsel Howard F. Corcoran submitted EPA’s comment, which was against OMB’s proposed revision to Circular A-110.<sup>13</sup> Did you work with Mr. Corcoran on this comment? Did you have any discussions with Mr. Corcoran about this comment?
  7. An August 30, 2013, *GreenWire* article on your retirement characterized you as an EPA scientist.<sup>14</sup> However, the Committee has learned that you are a lawyer by training and had no scientific background prior to joining EPA. The article indicated that you refused to be interviewed, but your title in the article was not corrected even after publication.
    - a. Why did you not correct the article’s characterization of your position as a scientist?
    - b. Did you ever, at any juncture during your career at EPA, represent yourself as a scientist?
    - c. Did anyone at the EPA ever characterize you as a scientist? If so, who and in what context did they characterize you as a scientist?
    - d. Why would anyone mistake you for a scientist?
    - e. Did you ever work on the 1997 particulate matter or ozone NAAQS staff paper? If so, please describe in detail your contribution.
    - f. Please provide a list of all air science research and/or air regulations you were ever involved in while at EPA.

I appreciate your attention to this matter and look forward to your timely response. If you have any questions about this request please contact my Committee staff at (202) 224-6176.

Sincerely,



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David Vitter  
Ranking Member  
Committee on Environment and Public Works

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<sup>12</sup> OFFICE OF MGMT. & BUDGET, *OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Non-Profit Organizations*, Proposed Revision, 64 Fed. Reg. 5684 (Feb. 4, 1999).

<sup>13</sup> Comment by Env'tl. Prot. Agency, Against Proposed Revision to OMB Circular A-110 (Apr. 5, 1999), available at <http://www.thecre.com/ipd/access/agency/1999-04-05f.html>.

<sup>14</sup> Jason Plautz, *Will retirement of 2 senior scientists hinder critical air reviews?*, GREENWIRE (Aug. 30, 2013), <http://www.eenews.net/greenwire/stories/1059986569/search>.