

Attachment to the 10-17-07 E-Mail

From Staff at EPA's Office of Transportation and Air Quality

Talking Points

- I know you are under extraordinary pressure to make the California waiver decision, and I don't mean to add to it
- But this likely to be among the two biggest decisions you get to make in the job (along with the greenhouse gas rule you are working on)
- **The eyes of the world are on you and the marvelous institution you and I have had the privilege of leading; clearly the stakes are huge, especially with respect to future climate work**
- I understand the history and the legal standards for this decision—I made a number of them myself while I was there, including the waiver for the LEV program, which these standards would be a part of.
- **From what I have read and the people I have talked to, it is obvious to me that there is no legal or technical justification for denying this. The law is very specific about what you are allowed to consider, and even if you adopt the alternative interpretations that have been suggested by the automakers, you still wind up in the same place**
- But I think there must be a win-win here, and you should find it and seize it.....for the sake of the environment and the integrity of the agency
- Word is out about the option to grant the waiver for the first three years and then defer the subsequent years. I don't have the details, but this sounds like the seed for a "grand bargain", and would put and the agency in the driver's seat to craft a national solution: something that my automaker contacts and California both say they want.
- **You have to find a way to get this done. If you cannot, you will face a pretty big personal decision about whether you are able to stay in the job under those circumstances. This is a choice only you can make, but I ask you to think about the history and the future of the agency in making it. If you are asked to deny this waiver, I fear the credibility of the agency that we both love will be irreparably damaged.**

From: Bill Wehrum
To: Staff at EPA Office of
Transportation and Air Quality
and the Office of Air and
Radiation
CC: Staff at EPA's Office of General
Counsel
Date: 3/15/2006 4:45 PM
Subject: CA Vehicle GHG Regulations

... -- I took another look at the briefing materials from late January. **I think we should assert the existence of preemption and propose to deny the waiver based on the absence of compelling and extraordinary conditions...we will need to consult with our interagency breatheren before going forward with a Fed. Reg. notice. I'll get this started once we've touched base with Marcus.**

From: EPA's Climate Change Division Staff
To: EPA Climate Change Division Staff
CC:
Date: 10/31/2007 12:54 PM
Subject: Fw: Outcome of yesterday's CA
waiver meeting with Johnson

...

On compelling and extraordinary conditions, I got to chime in again. In addition to the argument that climate change may exacerbate CA's tropospheric ozone problem --- for which CA has historically demonstrated compelling and extraordinary conditions --- I think Johnson now better appreciates that there are additional conditions in CA that make them vulnerable to climate change: water resources (we spent time talking about this); wildfires (the recent news I think is helping to push him); long coast line; largest population; largest economy; largest ag sector...

EPA Staff E-mail on Administrator Johnson's Meeting at the White House, May 1, 2007

Subject: 05.01.07 Briefing Materials for the Administrator
Date: 04/30/2007 6:25 PM

Briefing Materials for:
Stephen L. Johnson, EPA Administrator

Tuesday May 1, 2007

Time	Appointment/Title(s) & Documents
------	-------------------------------------

11:00:00 AM – 11:45:00 AM	Brfg CA Vehicle [Attach: Calif.Waiver-5-1-07v6.ppt – Already printed]
02:15:00 PM – 02:30:00 PM	Depart for White House
02:30:00 PM – 03:30:00 PM	Attd Principals Mtg

Redacted portion of May 1, 2007 Power Point Briefing for Administrator Johnson

Application of Waiver Criteria – Compelling and Extraordinary Conditions

- EPA traditionally looks broadly at whether CA conditions such that it still needs its own motor vehicle emission program. We have not examined the need and conditions for specific standards or specific air pollution problem
- Congress wanted CA to be afforded “the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare”
 - This allowed CA’s CO standards to be less stringent than EPA standards, to facilitate NOx standards that were more stringent than the federal.
- CA has submitted an extensive record concerning the impact of climatic conditions on CA, including: coastal resources and erosion, saltwater intrusion on delta areas, levee collapse and flooding, decrease in winter snow pack reducing spring and summer runoff for municipal and agricultural uses.
- CA has submitted justifications based on impact on high ozone.