March 12, 2013

The Honorable Gina McCarthy
Assistant Administrator
Office of Air and Radiation
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Assistant Administrator McCarthy:

As you are aware, the Senate Environment and Public Works Committee has been investigating the highly questionable tactics employed by former Environmental Protection Agency (EPA) Region 6 Administrator, Dr. Al Armendariz. Dr. Armendariz resigned his position in April 2012, soon after the public learned of his controversial statement that the "general philosophy" of EPA's enforcement policy should be to "crucify" oil and natural-gas companies.[1] At the time, the White House and EPA distanced themselves from Dr. Armendariz stating that "[Armendariz's] comments are inaccurate as a representation or characterization of the way the EPA has operated under President Obama."[2] Moreover, the President ran on a pledge to support an "all of the above" energy strategy – which deploys our abundant oil, gas, and coal resources.[3] However, the Committee has recently obtained documents that demonstrate Dr. Armendariz was not a rogue actor, out of step with EPA leadership. Rather, evidence has emerged that indicates Dr. Armendariz's controversial tactics were, in fact, part of a broader effort at EPA to coerce the States and to constrain the domestic fossil fuel industry with layers of bureaucratic red tape and intimidation tactics.

The Committee has learned that prior to his resignation, Dr. Armendariz emailed senior-level EPA officials and outlined numerous EPA efforts during his tenure that were designed to restrain domestic fossil fuel production, as proof that his mission at EPA had been accomplished. Dr. Armendariz expressly highlights your new air regulations, as the "icing on the cake." The email stated the following:

> Thanks Bob. But don't worry about me personally. Because of our collective work (rules, enforcement, science, *soft power*) we have dozens of states (including Texas) with brand new disclosure requirements for fracking fluid chemicals, new state rules specific to hydrofracking regulation, new state well cement/casing requirements, and more state resources to conduct air emission

[1] Amy Harder, *Sierra Club Hires EPA Official Felled by 'Crucify' Comments*, NATIONAL JOURNAL, Jun. 29, 2012, http://www.nationaljournal.com/domesticpolicy/sierra-club-hires-epa-official-felled-by-crucify-comments-20120629.
[2] Lesa Jansen & Todd Sperry, *EPA Official Resigns over 'Crucify' Remarks*, CNN, Apr. 30, 2012, http://www.cnn.com/2012/04/30/us/epa-crucify.
[3] WhiteHouseOnline, *Obama on US Energy*, YOUTUBE, Mar. 9, 2012, http://www.youtube.com/watch?v=hfKwJuayplM *at* 05:30 min.

> inspections. Add to that tighter federal rules for gulf-off shore NPDES discharges, GHG reporting for fugitive methane and engaging USGS and state geo surveys to take seismic activity seriously.
>
> None of this would [have] happened had the 2008 election gone the other way. None.
>
> We have set things in motion, including empowering and shaming the states, to clean up the oil/gas sector. Further progress is inevitable. I am extremely proud of the work that we have done collectively. Gina's new air rules will soon be the icing on the cake, on an issue I worked on years before my current job. (emphasis added).[4]

This email is alarming for a number of different reasons. In the first instance, it appears that there is a collective strategy at the EPA aimed at reining in domestic natural gas production. This strategy includes not just EPA's foiled attempts to punish natural gas producers[5] but also includes an effort towards "shaming the states."[6] EPA's actions against Range Resources have been highlighted as an example of Armendariz's overly zealous persecution of the oil and gas industry. The EPA issued an emergency order in 2010 accusing Range Resources of contaminating an aquifer west of Fort Worth and giving it 48 hours to provide clean drinking water to residents. At the time, Armendariz circumvented state regulators actively investigating the situation citing in the emergency order that EPA had "determined" that State and local authorities had not taken sufficient action. The order later was withdrawn after a state court ruled evidence that hydraulic fracturing had caused the contamination had been falsified.[7] We now know that far from being Armendariz's pet project – the highest levels of EPA were aware of and endorsed his actions. In one email recently obtained by the Committee, Assistant Administrator Cynthia Giles sent the following email to her colleagues:

> Just wanted to say how impressed I am at the terrific work the Region did on the Range order…and thanks to the HQ folks for supporting the region on this and getting this done as one EPA. Great job all![8]

After EPA withdrew the order, both Giles and Bob Sussman, Senior Policy Counsel to the Administrator, sent Armendariz personal emails expressing their disappointment that EPA withdrew the order.[9]

Moreover, it appears that "Gina's new air rules," presumably the New Source Performance Standards for Electric Generating Units proposed on March 27, 2012, are part of a

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[4] Email from Al Armendariz, to Bob Sussman & Cynthia Giles (Mar. 30, 2012, 06:34 PM).
[5] *U.S. v. Range Production Co*., No. 3:11-CV-00116-F (N. D. Tex. Mar. 30, 2012).
[6] *Supra* note 4.
[7] Dina Cappiello, *Al Armendariz, EPA Official, Resigns Over 'Crucify' Comment,* THE HUFFINGTON POST, Apr. 30, 2012, http://www.huffingtonpost.com/2012/04/30/al-armendariz-epa-official-resigns_n_1464919.html.
[8] Email from Cynthia Giles, to John Blevins, Suzanne Murray & David Gray (Dec. 8, 2010, 07:41 AM).
[9] Email from Bob Sussman, to Al Armendariz, et al. (Mar. 30, 2012, 03:46 PM).

deliberate strategy to shut down new electricity generation.[10] Dr. Armendariz proudly declared that the NSPS rules are "icing on the cake" and achieved a goal he had "worked on years before my current job."[11] While it is not clear from the email, it appears that Dr. Armendariz was boasting about EPA's decision to list petroleum coke (pet coke) in the definition of coal so pet coke-fired power plants would also be captured under the proposed NSPS rule. In addition to our concerns over the credibility of EPA's decision to regulate pet-coke as coal in the proposal without substantial evidence or appropriate findings in the administrative record, the proposed NSPS rule, which was prompted by a 2011 settlement agreement[12] between several environmental groups – including the Sierra Club – and the EPA, effectively outlawed the construction of the Las Brisas Energy Center (LBEC) in Corpus Christi, Texas. Dr. Armendariz had previously worked for the Sierra Club in preparation for the public hearings against the LBEC. Thus, Dr. Armendariz's reference to an "issue I worked on years before my current job" seemingly refers to his work for the Sierra Club on LBEC. Despite this obvious conflict-of-interest, documents obtained by the Committee reveal that you in fact exchanged emails with Dr. Armendariz on January 12, 2011, about the LBEC.[13]

We are also concerned that as Region 6 Administrator, Dr. Armendariz brought on two attorneys, Leyla Mansuri and Chrissy Mann, who previously litigated against the construction of electric generating units – specifically the LBEC.[14] Prior to her appointment, Ms. Mansuri was an attorney with the Environmental Integrity Project, and represented the Sierra Club in its litigation against LBEC.[15] Ms. Mann was also engaged in litigation against the LBEC in her role at the Office of Public Interest at TCEQ.[16] It appears as if Dr. Armendariz commandeered the resources of the EPA to accomplish his goals of killing the LBEC, all with the consent and knowledge of EPA leadership.

As the President's nominee to be Administrator, we require your immediate attention to the questions that have been raised by these documents. Failure to respond in a prompt and fully transparent fashion will leave a cloud of doubt over whether you intend to break with your predecessor and truly lead a transparent agency. Accordingly, I request that the EPA provide any and all records, electronic or otherwise, of meetings, conversations, e-mails, letters, or other communications or documents referring or relating to the LBEC, including, but not limited to, all communications between you, Dr. Armendariz or any other EPA officials concerning the LBEC. Please provide the requested documents and responses to the following questions no later than March 22, 2013.

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[10] *See* Standards for Performance For Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, 77 Fed. Reg. 22,392 (Apr. 13, 2012).
[11] *Supra* note 4.
[12] *See* U.S. ENVTL. PROT. AGENCY, *Settlement Agreements to Address Greenhouse Gas Emissions from Electric Generating Units and Refineries –Fact Sheet*, http://epa.gov/carbonpollutionstandard/pdfs/settlementfactsheet.pdf (last accessed March 8, 2013).
[13] Email from Gina McCarthy, to Al Armendariz & Janet McCabe (July 12, 2011, 09:11 PM).
[14] APPLICATION OF LAS BRISAS ENERGY CENTER, LLC FOR STATE AIR QUALITY PERMIT, SOAH No. 582-09-2005 (Mar. 29, 2010) *available at* http://www.soah.state.tx.us/pfdsearch/pfds/582%5C09%5C582-09-2005-pfd1.pdf.
[15] *Id.*
[16] APPLICATION OF LAS BRISAS ENERGY CENTER, LLC FOR STATE AIR QUALITY PERMIT, SOAH No. 582-09-2005 *at* 4 (Dec. 1, 2010) *available at* http://web.caller.com/2010/pdf/1201lasbrisas.pdf.

1. As you are aware, Dr. Armendariz previously served as an expert witness for the Sierra Club in a proceeding against the LBEC.[17] While this presents a clear conflict-of-interest, he was permitted to work on EPA's permitting decisions related to LBEC and actively engaged EPA leadership on this issue.
    a. Please explain why he was allowed, at any time during his tenure, to work on matters relating to the LBEC.
    b. Please list all entities in which Dr. Armendariz had an identified conflict-of-interest.
    c. What are EPA's criteria for identifying a conflict-of-interest?
    d. After a conflict-of-interest was identified, how was Dr. Armendariz screened from working on covered projects?

2. While Dr. Armendariz has resigned his position from EPA, Leyla Mansuri and Chrissy Mann are still employed by Region 6. Both of these individuals represented entities opposed to the construction and permitting of the LBEC.
    a. Has EPA identified conflict-of-interest for either Ms. Mansuri or Ms. Mann? Please list all topics in which EPA has identified a conflict-of-interest.
    b. Has either Ms. Mansuri or Ms. Mann worked on any matter related to the LBEC?
    c. Has either Ms. Mansuri or Ms. Mann worked on the development of the NSPS rule for greenhouse gases for new power plants Electric Generating Units?

3. On July 12, 2011, Dr. Armendariz sent you and your Deputy Administrator, Janet McCabe, an email stating the following: "*I am looking forward to seeing Janet tomorrow to talk about a couple of air issues. On last Friday last week I received guidance from OGC ethics office that I have been in the agency long enough that my "cooling off period" has lapsed on working on matters that I had previously worked on before joining the agency*."[18] The next ten paragraphs are redacted. Your response to this email – sent at 9:11pm on the same date is also redacted.
    a. Please provide the Committee with an unredacted version of both emails.
    b. Did you or Janet McCabe ever discuss the LBEC with Dr. Armendariz, Ms. Mansuri, or Ms. Mann? If so, characterize the nature of the conversation and provide the Committee with all such communications.
    c. Did you or Janet McCabe ever discuss the NSPS for Electric Generating Units rule with Dr. Armendariz, Ms. Mansuri, or Ms. Mann? Please provide the Committee with all such communications referring or relating to these conversations.

4. What is your interpretation of Dr. Armendariz's comment that your "air rules" were "icing on the cake"?

[17] Denise Malan, *EPA Appointment Could Affect Las Brisas Hearing*, CALLER.COM, Nov. 5, 2009, http://www.caller.com/news/2009/nov/05/epa-appointment-could-affect-las-brisas-hearing/?print=1.
[18] Email from Al Armendariz, to Gina McCarthy & Janet McCabe (July 12, 2011, 07:22 PM).

Thank you for your prompt attention to this matter. If you have any questions, please contact the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,

David Vitter
Ranking Member
Committee on Environment and Public Works

James Inhofe
United States Senator

Roger Wicker
United States Senate

Jeff Sessions
United States Senator

John Boozman
United States Senator