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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510–6175

April 10, 2013

The Honorable Gina McCarthy
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Assistant Administrator McCarthy:

We write to clearly outline the concerns our staff have been working through with the U.S. Environmental Protection Agency (EPA) staff over the last several weeks. As you are aware, the nomination process provides the opportunity for staff to meet and work collaboratively through concerns with the Agency. During your meeting with Senator Vitter on March 20th, five challenges related specifically to transparency were highlighted that would likely be of concern to all Republican members. For too long EPA has failed to deliver on the promises of transparency espoused by President Barack Obama, former Administrator Lisa Jackson, and by you. Accordingly, we find particular interest in continuing to determine if EPA remains entrenched in a process of secrecy.

Outlined below are the five specific requests, along with our position on the status and nature of EPA's responsiveness. The requests, of which you are already aware, are as follows:

1. **Request:** That the EPA issue new guidance drafted by its Office of General Counsel that clearly outlines: a) standards and procedures to ensure that all official business is conducted solely on official government email accounts; and b) standards and procedures for responding fully, truthfully, and in a timely manner to FOIA requests and Congressional inquiries. The guidance document should also establish training regimes in these areas for all appropriate EPA staff, as well as penalties and procedures for dealing with deviations from the guidance.

   Status: Your letter of April 8, 2013, committing to roughly 85% of this request is considered an important first step. We appreciate recognition that the FOIA process at EPA is broken and that you are taking steps to address significant concerns. Accordingly, we recognize the commitment – assuming it is followed to completion – as a step forward.

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2. **Request:** That all private email accounts of Regina McCarthy are exhaustively reviewed, and that all emails regarding official EPA business are produced unredacted to the committee. If no such emails exist, that an affidavit stating that fact by McCarthy be produced for the committee. In addition, we are asking for transparency on specific documents the committee has obtained in unredacted form. An outline of specific emails that should have already been made available to the public and Congress was provided to EPA staff.

   Status: Wholly unresponsive.

3. **Request:** That underlying data used to promulgate Clean Air Act rules be made public so the public can independently examine cost/benefit and other issues. That the EPA release a full set of data files for the American Cancer Society Study; the Harvard Six Cities Study; HEI/Krewski et al. 2009; Laden et al. 2006; Lepeule 2012; and Jerrett 2009. This request includes the coding of Personal Health Information (PHI).

   Background: Since 1997, Congress has requested the underlying data for particulate matter studies (PM2.5) be made available to Congress and the public. Then-EPA Administrator Carol Browner went back and forth with Members regarding Congressional and public access to the underlying data, citing legitimate scientific inquiry qualifications and confidentiality concerns. In response to the continued reticence by EPA to publicly release data, the Shelby amendment, a rider to the FY1999 Omnibus Appropriations Act (P.L. 105-277), mandated that OMB amend Circular A-110 to require federal agencies to ensure that "all data produced under a [federally funded] award be made available to the public through the procedures established under FOIA."

   A March 4, 2013, letter to EPA from Ranking Member Vitter and House Science, Space, and Technology Committee Chairman Lamar Smith requested the underlying data from additional long term cohort studies that rely on updates from the Harvard Six Cities Study and the American Cancer Society Study, including: Krewski e. al. (2009); Pope et al. (2002); Pope et al. (2009); Krewski et al. (2000); Laden et. al (2006); and Lepeule et al. (2012). This letter repeated multiple communications from Congress requesting the release of the underlying data which are the basis for nearly all the health and benefit claims from CAA rulemaking in this Administration.

   Status: Wholly unresponsive.

4. **Request:** That written assurances be given the committee that the EPA will conduct cost/benefit analyses as required under various executive orders and as required by the CAA, Section 321(a), specifically through issuance of new guidance mandating "whole economy" modeling on major rules.

   Status: Wholly unresponsive.

5. **Request:** That all petitions for rulemaking or the promulgation of guidance received by the Agency, including by the Office of the Administrator and/or by the Office of General

Counsel, be tracked, listed, and made publicly available, including copies of the documents, via readily available links on the Agency's website. This information is to be regularly updated. That all notices of intent to sue received by the Agency, including by the Office of the Administrator and/or by the Office of General Counsel be tracked, listed, and made publicly available, including copies of the documents, via readily available links on the EPA website. This information is to be regularly updated.

If a citizen's suit is brought against the Agency alleging that EPA failed to undertake a nondiscretionary duty, and the Agency determines to undertake settlement negotiations with the plaintiff, then:

a. The Agency shall issue public notice of its intent to engage in settlement negotiations at least 30 days prior to the commencement of those negotiations; and

b. The Agency shall include intervenors in any such negotiations.

Further, that the Agency in fulfilling the requirements of Section 113(g) of the Clean Air Act shall share all comments received on a consent order or settlement agreement with the presiding judge prior to the Agency certifying and agreeing to support any such consent order or settlement agreement

Status: Although EPA has agreed to publish notices of intent to sue, this does not provide adequate opportunity for impacted parties to have a say in settlement negotiations. Accordingly you have responded to only 25% of this request, which we consider as an insufficient response.

In light of our interest in continuing to move forward so that the Agency can indeed be considered "transparent," we publicly ask that you move the process forward on the outstanding four requests.

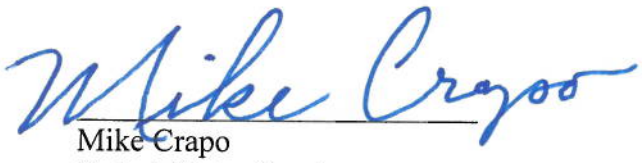
Sincerely,

David Vitter
Ranking Member
Environment and Public Works

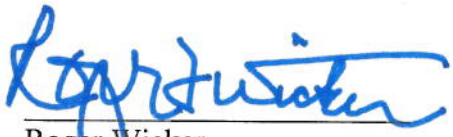
James Inhofe
United States Senate

John Barrasso
United States Senate

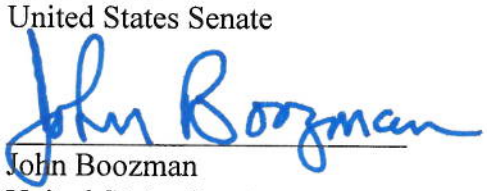
Jeff Sessions
United States Senate



Mike Crapo
United States Senate



Roger Wicker
United States Senate



John Boozman
United States Senate



Deb Fischer
United States Senate