

ONE HUNDRED TENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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April 8, 2008

The Honorable Henry A. Waxman
Chairman
House Oversight and Government Reform Committee
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Waxman:

I am writing to request an investigation into questionable conduct by senior Environmental Protection Agency (“EPA”) officials in connection with EPA’s recent decision on the State of California’s request for a federal waiver to allow the state to enforce its own regulations on greenhouse gas emissions from motor vehicles.

According to press reports and evidence obtained by the Committee in its investigation of that decision, senior EPA officials responsible for the agency’s work on the request provided substantial information and advice to a private individual to assist in his lobbying effort to persuade the EPA Administrator to grant the waiver. Such conduct raises serious questions about whether senior EPA officials either violated the lobbying ban or otherwise misused their positions to surreptitiously influence EPA’s decision on the waiver request.

A February 27, 2008, *San Francisco Chronicle* article reported that a senior agency official and her subordinate (also a senior official) were involved in preparing and providing detailed legal and technical information, including talking points, for “a supporter of California’s new rules” to use while “making his case” to the EPA Administrator.¹ I also recently learned this same senior EPA official is, and was at the time, actually the director of the EPA office that was “principally responsible” for EPA’s analysis of California’s waiver request² and her subordinate managed the EPA team preparing the analyses of California’s waiver request.³

¹ Zachary Coile, *Memo Warned: EPA chief’s credibility at risk*, S.F. CHRON., Feb. 27, 2008 [hereinafter *Feb. 27, 2008 Article*], available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/02/27/MNBQV8V4J.DTL&type=politics> [last visited Apr. 7, 2008].

² Transcribed interview with Dr. Margo Oge, Director, U.S. Environmental Protection Agency, Office of Transportation and Air Quality [within EPA’s Office of Air and Radiation], in Washington, D.C. (Feb. 7,

According to press reports, senior EPA officials were directly involved in preparing and providing information to former EPA Administrator William Reilly to use in his effort to lobby EPA Administrator Stephen Johnson to grant California's waiver request.⁴ Specifically, it appears that at least one of the referenced senior EPA officials may have "assigned" another EPA official to prepare this document.⁵

In addition to technical information gleaned from EPA staff's analysis from the docket for California's waiver request, the senior EPA officials provided Reilly with a full page of talking points that included such statements as:

- 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.
- 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

2008), Tr. at 6 (Majority Counsel: "From documents and interviews, we understand that your office was principally responsible for the Agency's work on the California waiver request?" Dr. Oge: "Yes, it is.").

³ Transcribed interview with Karl Simon, Director, U.S. Environmental Protection Agency, Compliance and Innovative Strategies Division [within the Office of Transportation and Air Quality within EPA's Office of Air and Radiation], in Washington, D.C. (Jan. 30, 2008), Tr. at 6 (Karl Simon: "I also manage the waiver team for California waiver review.") and Tr. at 7 (Majority Counsel: "Please generally describe your role with respect to California's request for a waiver to enforce regulations to reduce greenhouse gas emissions from motor vehicles, this latest waiver." . . . Karl Simon: "Well, as noted, I was the manager for basically the last 2 years for the waiver practice, so working with my team and general counsel, we would have gone through the general steps with additional ones for this one, through the waiver practice review, and that would be -- entail, you know, working, for example, serving on the public hearing panel. We had two public hearing panels. Also [my role included] managing the comment and review process; working with senior management in my office, as well as technical and legal staff that were reviewing the waiver decisions; the general management of the practice and providing feedback on ensuring that we were working to get -- to come to a decision.")

⁴ Feb. 27, 2008 Article

⁵ E-mail from Christopher Grundler, Deputy Director, U.S. Environmental Protection Agency, Office of Transportation and Air Quality [within EPA's Office of Air and Radiation] to Karl Simon, Director, U.S. Environmental Protection Agency, Compliance and Innovative Strategies Division [within the Office of Transportation and Air Quality within EPA's Office of Air and Radiation] [Oct. 17, 2007; 14:45] (Bates stamp EPA 614) [hereinafter *Grundler E-mail*]. Attachment A. The subject of this e-mail is "Homework Assignment" and requests Simon "pls review" the attached document called "CA Waiver Background." The attachment is four pages long and includes, *inter alia*, EPA's legal arguments and analyses and Talking Points as discussed above.

the details, but this sounds like the seed for a “grand bargain”, and would put you 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 as 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.⁶

These actions are at least as serious as those already investigated by the Committee regarding the alleged lobbying by a Department of Transportation (“DOT”) official to oppose the California request. That investigation lasted for months, including the production of hundreds of documents, several transcribed interviews, and lengthy questioning of the EPA Administrator himself during a Committee hearing.⁷ The Committee should investigate similar actions by EPA officials to support California’s request. A decision not to investigate this matter would seem to indicate that otherwise improper lobbying will not be scrutinized by the Committee if the majority happens to agree with the position being advocated.

Your June 12, 2007, letter to Secretary of Transportation Mary E. Peters perfectly expresses your concerns with the use of federal resources to lobby EPA on the California request:

[DOT staff’s action] raises serious concerns. It is not an appropriate use of federal resources to lobby members of Congress to oppose state efforts to protect the environment.⁸

⁶ *Id.* See also Feb. 27, 2008 Article and [Statement by Sen. Barbara Boxer, Chairman, Senate Committee on Environment and Public Works] on *Censorship of California Waiver Decision Documents*, Jan. 23, 2008, available at http://epw.senate.gov/public/index.cfm?FuseAction=Majority.PressReleases&ContentRecord_id=5688a360-802a-23ad-4441-77f52c3c17b6&Region_id=&Issue_id= [last visited Apr. 7, 2008] (see “2.26.2008 EPA Documents”) (citing Senate EPW staff transcription of “E-mail between Staff at EPA Office of Transportation and Air Quality, Oct. 17, 2007, SUBJECT: “FollowUp [sic] to this Morning;” this e-mail includes an attachment entitled “Homework Assignment.doc,” the final page of which includes the subject talking points). Note this document and the *Grundler e-mail* differ slightly.

⁷ *Hearing on EPA Approval of New Power Plants: Failure to Address Global Warming Pollutants before the House Oversight and Government Reform Committee* (Nov. 8, 2007).

⁸ Letter from Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, to Mary E. Peters, Secretary, U.S. Department of Transportation (Jun. 12, 2007), available at <http://oversight.house.gov/documents/20070612112959.pdf> [last visited Apr. 7, 2008].

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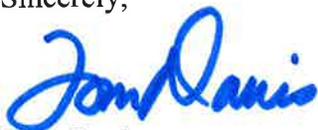
You also highlighted that “[such lobbying] is especially problematic on an issue that is pending for decision before the Administration and that is supposed to be decided based upon an independent assessment of the merits.”⁹ You further stated that “[a]t the very least [DOT staff’s action] suggests the presence of an improper hidden agenda.”¹⁰ One need only substitute “EPA” for “DOT” and “support” for “oppose” to see the obvious parallels.

As you stated in your September 24, 2007 letter to White House Council on Environmental Quality Chairman, James E. Connaughton: “[DOT staff’s actions] raised questions about whether California’s request would receive the independent and objective consideration that the Clean Air Act requires.”¹¹ EPA staff’s actions raise similar questions regarding “the independent and objective” consideration of California’s request. These senior EPA staff do not appear to have maintained their independence or objectivity and may have improperly used federal resources to advance their own preconceptions.

Accordingly, the Committee should commence an investigation – including document requests and transcribed interviews – to establish what actions were taken by these two senior EPA officials (and possibly others) and to determine whether their actions violated the lobbying ban or otherwise misused federal resources.

I look forward to discussing this with you.

Sincerely,



Tom Davis
Ranking Member
Committee on Oversight



Darrell Issa
Ranking Member
Subcommittee on Domestic Policy

⁹ *Id.*

¹⁰ *Id.*

¹¹ Letter from Henry A. Waxman, House Oversight and Government Reform Committee, to James E. Connaughton, Chairman, White House Council on Environmental Quality (Sep. 24, 2007), available at <http://oversight.house.gov/documents/20070924105804.pdf> [last visited Apr. 7, 2008].