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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

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June 25, 2009

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The Honorable Henry A. Waxman
Chairman
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Bart Stupak
Chairman
House Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Waxman and Chairman Stupak:

We are writing to request an investigation and hearings regarding the process that the Environmental Protection Agency (EPA) followed in developing its Proposed Endangerment and Cause or Contribute Findings under Section 202(a) of the Clean Air Act (hereinafter "proposed endangerment finding") issued in April 2009. As described more fully in the attached letter sent to EPA Administrator Jackson yesterday, certain EPA emails have come to light that raise serious questions about the agency's process for developing the proposed endangerment finding.

The proposed finding has great relevance to the current climate change debate within the Congress and the pending Waxman-Markey legislation. The finding also has enormous regulatory and economic consequences for the U.S. economy, businesses and consumers. A decision to finalize the proposed finding would trigger new regulation by EPA, and, as stated by EPA's former Administrator last year, such a decision would "result in an unprecedented expansion of EPA authority that would have a profound effect on virtually every sector of the economy and touch every household in the land." *Regulating Greenhouse Gas Emissions Under the Clean Air Act*, 73 Fed. Reg. 44,354-55 (July 30, 2008).

It appears the Administration and EPA Administrator rushed to issue the proposed endangerment finding without considering fully substantive analysis and views of senior EPA career staff within the agency. The attached EPA emails raise serious questions about the process for developing the proposed endangerment finding, whether analysis or information was suppressed because it did not support the Administration and/or Administrator's proposed finding, and/or whether there is a fear within the agency that there will be negative consequences for offices that offer views critical of the prevailing views of the Administrator and the Administration.

Congress needs full information about the circumstances and events surrounding these emails to be assured EPA bases its important regulatory decisions on the best analysis and advice. Given the relevance of these matters to the current climate change legislative debate, and the importance of ensuring scientific integrity and transparency at the agency, we believe the Subcommittee on Oversight and Investigations can conduct a thorough and bi-partisan inquiry to get the full story and set the record straight. Your prompt attention to this request is appreciated.

Sincerely,



Joe Barton
Ranking Member



Greg Walden
Ranking Member
Subcommittee on Oversight and Investigations

Attachment

HENRY A. WAXMAN, CALIFORNIA
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June 24, 2009

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The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

I write with reference to certain EPA emails which raise serious questions about the integrity, transparency and completeness of the Environmental Protection Agency's (EPA) rulemaking process for the agency's proposed finding that carbon dioxide and other greenhouse gases endanger public health and welfare.

I recently learned of agency emails that suggest that substantive analysis that was critical of the proposed endangerment finding, and that had been prepared by the agency's own staff, was barred from agency consideration by supervising EPA officials, based on concerns of negative consequences for the office from which the analysis had been generated. Further, the emails suggest the staff analysis was suppressed because the Administrator and the Administration had already decided to go forward with the endangerment finding, and that the office's budget would be further reduced if analysis or comments critical of the proposed finding were forwarded (see emails, attached).

On March 16, 2009, an email from what is reported to be a senior career economist in EPA's National Center for Environmental Economics (NCEE) requested to have his comments on the proposed finding forwarded within an apparent deadline to the agency's Office of Air and Radiation which apparently was managing development of the proposed finding. In pertinent part, the email notes:

"I believe my comments are valid, significant, and contain references to significant new research since the cut-off for IPCC and CCSP [climate science assessment] inputs. They are significant because they present information

critical to the justification (or lack thereof) for the proposed endangerment finding. They are valid because they explain much of the observational data that have been collected which cannot be explained by the IPCC models.”

A subsequent March 17, 2009, email from the Director of the NCEE refuses to submit the document for further agency consideration, based on concerns that you and the Administration had already decided to move forward and that forwarding comments critical of the finding would have negative impacts for the office of NCEE. In pertinent part the email reads:

“The time for such discussion of fundamental issues has passed for this round. The administrator and the administration has [sic] decided to move forward on endangerment, and your comments do not help the legal or policy case for this decision.... I can only see one impact of your comments given where we are in the process, and that would be a very negative impact on our office.”

Following this exchange, the employee was directed to spend no more agency time on the EPA’s endangerment finding. In an email of that same date, the Director of NCEE also noted that “our budget was cut by 66%.”

I understand NCEE to be an office located in EPA’s Office of Policy, Economics and Innovation (OPEI), and that OPEI is the primary policy arm of EPA and has responsibility for managing the development of regulations. The agency’s website (<http://www.epa.gov/opei/>.) also indicates that NCEE “provides EPA with the expertise to take economic issues, such as benefits and costs, into account” and that it is a resource for information regarding “benefit-cost research techniques,” “economic impact models and measures,” and “economic incentive mechanisms.”

These emails, to the extent they accurately reflect decisions and events in the run-up to your April 2009 proposed endangerment finding, raise serious questions not only about the completeness and reliability of the information you relied upon in making the proposed endangerment finding, but also whether you truly sought objective and complete information in exercising your judgment. Suppression of material information from EPA’s own staff and concerns about budget cuts for offices that submit comments critical of the proposed endangerment finding also raise serious questions concerning the transparency and integrity of EPA’s analyses and the atmosphere of open and free intellectual discourse at the Agency.

The issue of climate change policy as well as EPA’s regulation of greenhouse gases has been at the forefront of Congressional deliberation in recent months. It is imperative that we can be assured EPA operates with full information when making its regulatory science decisions, that information or analysis is not suppressed, that critical offices within EPA that are involved in policy and cost analyses do not receive retaliatory budget cuts if they offer views contrary to those of the Administration, and that the process for these decisions, which Congress relies upon, is not driven by a political agenda or an atmosphere that chills open and honest agency deliberation.

Accordingly, I write to seek information and documents relating to the aforementioned emails. Given the serious implications and concerns raised by these emails, I believe it is incumbent upon you to provide an immediate explanation regarding agency procedures and directives you have implemented for collecting information relating to the proposed endangerment finding. Please respond within two weeks of the date of this letter to the following:

1. Did you issue any directive or instructions to any agency staff that research or analyses relating to the endangerment finding by agency staff cease?
2. Have you or the EPA received any instructions from the Administration, including the Executive Office of the President, to cease any ongoing agency inquiry and analyses relating to the proposed endangerment finding?
3. Have you issued any direction to the NCEE office not to conduct any further analyses relating to the proposed endangerment finding?
4. Has EPA been seeking to reduce the budget of the NCEE office within EPA?
5. If yes, given the importance of economic analysis to rulemaking, including the importance of cost-benefit analyses, why has the NCEE budget been reduced?
6. Please provide all staff analyses submitted by the NCEE to the OAR relating to the proposed endangerment finding.
7. Please provide the documents, including any draft analysis, prepared by Dr. Alan Carlin, as referenced in the aforementioned emails.
8. Please provide all directives and information you supplied to agency employees, or the relevant office or department directors, concerning your process for collecting agency staff comments on the proposed endangerment finding.

Please provide the written responses and documents requested by no later than two weeks from the date of this letter. I would respectfully request, if the Agency withholds any documents or information in response to this letter, that a Vaughn Index or log of the withheld items be attached to the response. The index should list the applicable question number, a description of the withheld item (including date of the item), the nature of the privilege or legal basis for the withholding, and a legal citation for the withholding claim.

Should you have any questions, please contact Mr. Peter Spencer of the Minority Committee staff at (202) 225-3641.

Sincerely,

A handwritten signature in black ink that reads "Joe Barton". The signature is written in a cursive style with a large, stylized "J" and "B".

Joe Barton
Ranking Member

cc: The Honorable Henry A. Waxman
Chairman

Re: endangerment
Alan Carlin to: Al McGartland
Cc: John Davidson

03/12/2009 04:08 PM

Agreed.
Alan

Al McGartland

In light of the tight schedule and the turn of events, please do not have any dire... 03/12/2009 02:40:31 PM

From: Al McGartland/DC/USEPA/US
To: Alan Carlin/DC/USEPA/US@EPA, John Davidson/DC/USEPA/US@EPA
Cc: Chris Dockins/DC/USEPA/US@EPA, Steve Newbold/DC/USEPA/US@EPA
Date: 03/12/2009 02:40 PM
Subject: endangerment

In light of the tight schedule and the turn of events, please do not have any direct communication with anyone outside of NCEE on endangerment. There should be no meetings, emails, written statements, phone calls etc. All communication needs to go through Steve and me and then to Paul, and then to OAR.

Al McGartland, PhD.
Director, National Center for Environmental Economics
US EPA
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20460

202.566.2244

Fw: Comments on the Endangerment TSD

Alan Carlin to: Steve Newbold

Cc: Al McGarland, John Davidson, Chris Dockins

03/16/2009 03:55 PM

Steve,

I have not heard from Al as of now so presumably the decision is yours as we approach the COB deadline today.

Since Friday, I have endeavored to respond to your concerns about the extent of the material in my comments that have not so far appeared in the peer-reviewed scientific literature and about the title page in the hope that you will change your decision as to forwarding my comments to Paul and



then hopefully onto OAR. I am attaching a revised copy *Endangerment comments v7b.doc* with some improvements in the list of references and the title page changes you requested. I have not had time to improve the formatting, however. I would like to note, however, that by my rough count roughly two-thirds of my references are to peer-reviewed publications. It is also my view that the critical attribute of good science is its correspondence to observable data rather than where it appears in the technical literature. I believe my comments are valid, significant, and contain references to significant new research since the cut-off for IPCC and CCSP inputs. They are significant because they present information critical to the justification (or lack thereof) for the proposed endangerment finding. They are valid because they explain much of the observational data that have been collected which cannot be explained by the IPCC models.

There is still time to submit my comments to Paul and I urge you to do so.

Alan

— Forwarded by Alan Carlin/DC/USEPA/US on 03/16/2009 03:04 PM —

From: Alan Carlin/DC/USEPA/US
To: Steve Newbold/DC/USEPA/US@EPA
Cc: John Davidson/DC/USFP/PA/IS@FPA
Date: 03/13/2009 10:49 AM
Subject: Re: Fw: Comments on the Endangerment TSD

Hi Steve,

The authorship is clearly indicated on the last page. Actually, much of the non-observational material (ie, statements that do not involve direct interpretation of existing data) is actually in peer-reviewed literature somewhere and I have tried to reference everything. If it is not going anywhere, I will postpone changing the cover, although this is easily done.

Alan

Steve Newbold

Alan, At the moment, I am working on combining John's and my comments into...

03/13/2009 10:28:45 AM



Re: endangerment comments???

Al McGartland to: Alan Carlin

Cc: John Davidson, Steve Newbold

03/17/2009 08:12 AM

Alan, I decided not to forward your comments. The time for such discussion of fundamental issues has passed for this round. The administrator and the administration has decided to move forward on endangerment, and your comments do not help the legal or policy case for this decision. I have stressed in previous emails that this is not a criteria document for climate change and greenhouse gases. If such a document is ever drafted, then perhaps your comments might be considered.

I can only see one impact of your comments given where we are in the process, and that would be a very negative impact on our office.

Al McGartland, PhD.
Director, National Center for Environmental Economics
US EPA
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20460

202.566.2244



climate change work
Al McGartland to: Alan Carlin

03/17/2009 08:20 AM

History: This message has been forwarded.

With the endangerment finding nearly final, you need to move on to other issues and subjects. I don't want you to spend any additional EPA time on climate change. No papers, no research etc, at least until we see what EPA is going to do with Climate.

I would like you to work with Marnetta to get that grants data base in place. I am not sure what the problem is there. Maybe its further along than I realize.

Also, I'd like you to update part of the market incentives report -- inventorying the market incentive programs undertaken by the states (updating part of the market incentives report).

Let me know if you have even more time for other endeavors.

You may have heard that our budget was cut by 66%. This work will have to be done inhouse.

Al McGartland, PhD.
Director, National Center for Environmental Economics
US EPA
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20460

202.566.2244