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House of Representatives

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June 13, 2008

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Johnson:

On April 9 and May 5, 2008, the Committee issued subpoenas to you for the production of documents relevant to Committee investigations of Environmental Protection Agency (EPA) actions. You have neither complied with these subpoenas by their returnable date nor asserted any privilege to justify withholding documents from the Committee. In light of your actions, I am writing to inform you that the Committee will meet on June 20 to consider a resolution citing you for contempt of Congress. I strongly urge you to comply with the duly issued subpoenas.

The May 5 Subpoena

On March 12, 2008, you issued revised national ambient air quality standards for ozone. On March 14, I requested documents relating to your decision, including complete and unredacted copies of documents reflecting "communications between EPA and persons in the White House relating to the updated NAAQS for ozone."¹ The deadline for the production of communications with the White House was March 21.

You began to produce documents to the Committee on April 11, and your staff informed Committee staff that the agency hoped to complete the production by April 18.² On April 28, EPA staff informed Committee staff that you were withholding approximately 200 EPA documents involving the White House and that the agency was consulting with the White House

¹ Letter from Rep. Henry A. Waxman to EPA Administrator Stephen L. Johnson (Mar. 14, 2008).

² Phone conversation between EPA staff and House Oversight and Government Reform Committee staff (Apr. 11, 2008).

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about its production. EPA was unable to provide any estimate of when these documents would be produced.³

On May 2, EPA staff informed Committee staff that consultations with the White House regarding the production of documents continued and that they could provide no information about when or whether the documents would be provided.⁴ That day, I wrote to you to request that the outstanding EPA documents reflecting communications with the White House be provided by May 5.⁵

On May 5, you did not provide the documents, and there was no assertion of executive privilege. Instead, your staff informed the Committee that it was prepared to provide only 15 of the approximately 200 responsive documents and requested a meeting with the Committee staff and White House counsel to discuss the production of EPA's communications with the White House.⁶

On May 5, I issued a subpoena to you requiring production of the responsive documents by 5 p.m. on May 6. On May 6, Committee staff met with EPA staff and White House counsel, and White House counsel said approximately 35 documents would not be produced to the Committee because they are "indicative of high level" decision-making material.⁷

On May 16, I wrote to you again, stating:

[T]he Committee has not been provided sufficient access to the information to understand why the President rejected your recommendations regarding the ozone standard. The Clean Air Act specifies the factors that may be permissibly considered in setting air quality standards and those that may not. The record before the Committee does not provide enough insight into the deliberations inside the White House to assess whether the President and other White House officials acted in compliance with the requirements of the law.⁸

³ Phone conversation between EPA staff and House Oversight and Government Reform Committee staff (Apr. 28, 2008).

⁴ Phone conversation between Oversight and Government Reform Committee staff and EPA staff (May 2, 2008).

⁵ Letter from Rep. Henry A. Waxman to EPA Administrator Stephen L. Johnson (May 2, 2008).

⁶ Phone conversation between Oversight and Government Reform Committee staff and EPA staff (May 5, 2008).

⁷ Meeting between Oversight and Government Reform Committee staff, EPA staff, and White House staff (Apr. 22, 2008).

⁸ Letter from Rep. Henry A. Waxman to EPA Administrator Stephen L. Johnson (May 16, 2008).

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I also noted that you would be testifying before the Committee on May 20 and advised you:

Unless the President asserts a valid claim of executive privilege with respect to the documents being withheld by EPA, you will be expected to personally bring the documents to the hearing. The Committee's subpoena was directed to you and you will be in defiance of the subpoena if you appear at the hearing without the documents.⁹

At the May 20 hearing, you did not produce the remaining responsive documents and you testified that the President is not asserting executive privilege.¹⁰ On that same day, your staff confirmed that you were continuing to withhold approximately 35 responsive documents from the Committee without an assertion of executive privilege.¹¹

The April 9 Subpoena

On December 19, 2007, you denied California's petition to regulate greenhouse gas emissions from motor vehicles. The next day, I requested documents relating to your decision, other than those that were available on the public record, including "all communications between the agency and persons outside the agency, including persons in the White House, related to the California waiver request."¹² The deadline for this request was no later than January 23, 2008.

On January 18, your staff informed me that the agency would complete production by February 15.¹³ However, you failed to complete production by that date. On March 10, 2008, I wrote to you again to request that your staff work with Committee staff to establish by the close of business on March 12, 2008, a mutually agreeable deadline for the production of documents involving the White House.¹⁴ Your staff responded on March 12 that you anticipated providing

⁹ *Id.*

¹⁰ House Oversight and Government Reform Committee, *EPA's New Ozone Standards*, 110th Cong. (May 20, 2008).

¹¹ Conversation between Oversight and Government Reform Committee staff and EPA staff (May 20, 2008).

¹² Letter from Rep. Henry A. Waxman to EPA Administrator Stephen L. Johnson (Dec. 20, 2007).

¹³ Letter from EPA Associate Administrator Christopher Bliley to Rep. Henry A. Waxman (Jan. 18, 2008).

¹⁴ Letter from Rep. Henry A. Waxman to EPA Administrator Stephen L. Johnson (Mar. 10, 2008).

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final responses regarding documents involving the White House no later than March 28.¹⁵ On March 24, I wrote to you again and requested the documents involving the White House by noon on March 28.¹⁶

On March 28, 2008, your staff informed me that the agency would respond by April 3, 2008.¹⁷ On April 4, your staff informed Committee staff that approximately 90 responsive documents would not be made available to the Committee, and there was no assertion of executive privilege.¹⁸

On April 9, I issued a subpoena to you for the production of the remaining responsive documents. The subpoena required you to produce the responsive documents by April 11.

On April 11, you did not provide the documents. Instead, EPA staff requested a meeting with the Committee staff and White House counsel to discuss the production of EPA's documents reflecting communications with the White House.¹⁹ In response to this request, Committee staff met repeatedly with EPA and White House counsel.

On April 22, White House counsel informed Committee staff that EPA possesses 32 documents that evidence telephone calls or meetings in the White House involving at least one high-ranking EPA official and at least one high-ranking White House official. The White House counsel has described these documents as "indicative of deliberations at the very highest level of government."²⁰ These responsive documents have not been provided to the Committee, and there has been no assertion of executive privilege.

Conclusion

¹⁵ Letter from EPA Associate Administrator Christopher Bliley to Rep. Henry A. Waxman (Mar. 12, 2008).

¹⁶ Letter from Rep. Henry A. Waxman to EPA Administrator Stephen L. Johnson (Mar. 24, 2008).

¹⁷ Letter from EPA Associate Administrator Christopher Bliley to Rep. Henry A. Waxman (Mar. 28, 2008).

¹⁸ Phone conversation between Oversight and Government Reform Committee staff and EPA staff (Apr. 4, 2008).

¹⁹ Phone conversation between Oversight and Government Reform Committee staff and EPA staff (Apr. 11, 2008).

²⁰ Meeting between Oversight and Government Reform Committee staff, EPA staff, and White House staff (Apr. 22, 2008).

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You are now more than a month overdue in providing subpoenaed documents relating to the ozone investigation. You are more than two months overdue in providing subpoenaed documents relating to the California motor vehicles standards investigation. You have had ample opportunity to provide the documents, and White House counsel has had ample opportunity to review the withheld documents for executive privilege concerns. Yet you are persisting in withholding responsive documents that the Committee needs to meet its oversight and legislative duties without any assertion of executive privilege by the President.

I regret that your failure to produce responsive documents has created this impasse, but Congress has a constitutional duty to conduct oversight of the executive branch. Therefore, unless the documents are provided to the Committee or a valid assertion of executive privilege is made, the Committee will meet on June 20 to consider a resolution holding you in contempt. I strongly urge you to reconsider your position and comply with the duly issued subpoenas.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member