

# Congress of the United States

Washington, DC 20515

June 09, 2009

The Honorable Edolphus Towns  
Chairman  
Oversight and Government Reform Committee  
U.S. House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Edward Markey  
Chairman  
Select Committee on Energy Independence and Global Warming  
B243 Longworth House Office Building  
Washington, D.C. 20515

Dear Chairmen Towns and Markey:

We are writing out of grave concern over the lack of transparency and accountability that the Administration has exhibited in the development of regulations of carbon dioxide (CO<sub>2</sub>) and other greenhouse gasses (GHGs) under the Clean Air Act (CAA). Regulations that give the Environmental Protection Agency (EPA) unprecedented power and authority to intervene in the U.S. economy in the name of reducing carbon emissions have been crafted behind a deliberate veil of secrecy and under a vow of silence. This is deeply troubling and demands Congressional attention. Accordingly, we respectfully request that the House Committees on Oversight and Government Reform (OGR) and Energy Independence and Global Warming (Select Committee) initiate a joint investigation and demand that the Administration make its decision-making process fully transparent to the public.

As you are aware, EPA proposed an affirmative endangerment finding for CO<sub>2</sub> and other GHGs under Section 202 of the CAA.<sup>1</sup> Additionally, the President recently announced his intention to set higher fuel economy standards for passenger vehicles and light trucks, relying in part on authority under the CAA.<sup>2</sup>

Mary Nichols, the head of the California Air Resources Board (CARB), revealed to the *New York Times* that the White House held a series of secret meetings with select special interests as they were crafting the new CAFE standards. Nichols was a key player

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<sup>1</sup> Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the CAA, 74 Fed.Reg. 18886 (April 24, 2009).

<sup>2</sup> Notice of Upcoming Joint Rulemaking to Establish Vehicle GHG Emissions and CAFE Standards (May 19, 2009) available at [http://www.nhtsa.gov/staticfiles/DOT/NHTSA/Rulemaking/Rules/Associated%20Files/Joint\\_CAFE\\_GHG\\_Emissions.pdf](http://www.nhtsa.gov/staticfiles/DOT/NHTSA/Rulemaking/Rules/Associated%20Files/Joint_CAFE_GHG_Emissions.pdf).

in these negotiations because of California's determined efforts to regulate fuel economy standards at the state level. Nichols admitted there was a deliberate "vow of silence" surrounding the negotiations between the White House and California on vehicle fuel economy [standards].<sup>3</sup> According to Nichols' interview, "[Carol] Browner [Assistant to the President for Energy and Climate Change] quietly orchestrated private discussions from the White House with auto industry officials."<sup>4</sup> Great care was taken to "put nothing in writing, ever."<sup>5</sup> This coordinated effort, led by Carol Browner, to leave no paper trail of the deliberations within the White House appears to be a deliberate and willful violation of the Presidential Records Act. This Act requires the President to take, "all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as Presidential records."<sup>6</sup> Clearly, Browner's actions were intended to leave little to no documentation of the deliberations that lead to the development of stringent new CAFE standards.

While the most extreme, this is not the only example of the Administration's effort to conceal the process leading up to major decisions to regulate GHGs under the CAA.

We have repeatedly expressed our concern for the process in which the proposed endangerment finding was crafted. In a March 12, 2009 letter to EPA Administrator Jackson, Ranking Member Issa posed nine questions probing the agency's use of the public comments to the 2008 Advanced Notice of Proposed Rulemaking (ANPR) for regulating greenhouse gasses. Having received no response, two additional oversight requests were sent to Carol Browner on March 24, 2009 and to President Obama on May 14, 2009. Ranking Member Sensenbrenner raised similar concerns in a letter dated March 10, 2009 and introduced a House Resolution of Inquiry seeking documents related to EPA's finding. As described in the letters, many believe that a positive endangerment finding will have an immediate and negative impact on many sectors of the economy that are already struggling in these challenging economic times.<sup>7</sup> Similarly, the Administration's reliance on the CAA for authority to regulate emissions of CO<sub>2</sub> from mobile sources will trigger new and onerous obligations under the CAA for both mobile

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<sup>3</sup> Colin Sullivan, Vow of Silence Key to White House-California Fuel Economy Talks, May 20, 2009.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> 44 U.S.C § 2203

<sup>7</sup> Letter from the Honorable Darrell Issa, Ranking Member, Oversight and Government Reform Committee, to The Honorable Lisa Jackson, Administrator U.S. Environmental Protection Agency (March 12, 2009); Letter from the Honorable Darrell Issa, Ranking Member, Oversight and Government Reform Committee, to The Honorable Carol Browner, Assistant to the President for Energy and Climate Change (March 24, 2009), available at <http://republicans.oversight.house.gov/media/pdfs/20090324BrownerLetter.pdf>.

and stationary sources.<sup>8</sup> EPA has so far failed to respond to these and other concerns in an adequate way.<sup>9</sup>

Finally, EPA has ignored interagency warnings about the consequences of moving forward with an endangerment determination. According to a recent news article, EPA was warned in an interagency memorandum that “[m]aking a decision to regulate CO<sub>2</sub> under the CAA for the first time is likely to have serious economic consequences for regulated entities throughout the U.S. economy, including small businesses and small communities.”<sup>10</sup> According to Administration sources, these warnings were dismissed because they originated, in part, from “a Bush holdover.”<sup>11</sup> However, the so-called “holdover” is a career civil servant who was originally hired during the Clinton Administration.

Congress is entitled to know the process employed by EPA to determine that GHGs endanger both the public health and welfare and the extent to which the White House controlled that decision. EPA inherited a wealth of analysis conducted both by the previous administration as well as thousands of citizens and organizations in response to the July 2008 ANPR.<sup>12</sup> Many commenters agreed with the warnings contained in the OMB analysis, and Chairman Dingell has famously warned that regulating CO<sub>2</sub> under the CAA would create a “glorious mess.” However, Congress does not know how EPA evaluated these concerns or why they chose to ignore the warnings.

Moreover, the Administration’s tactics of negotiating back room deals with select special interests, insisting that nothing is ever written and refusing to respond to legitimate Congressional oversight inquiries violates President Obama’s pledge of openness and transparency. In a Memorandum for the Heads of Executive Departments and Agencies, the President stated: “My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and

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<sup>8</sup> Jenny Johnson, *After Autos, EPA on Track To Regulate GHGs From Multiple Sources*. Inside EPA, March 22, 2009.

<sup>9</sup> Letter from Elizabeth Craig, Acting Assistant Administrator, EPA, to The Honorable Darrell Issa, Ranking Member, Oversight and Government Reform (May 18, 2009) (EPA’s response to the detailed inquiry regarding the comments received because of the ANPRM were non responsive and either simply stated that EPA has “not yet proposed emissions reduction requirements for mobile or stationary sources” or simply referred Ranking Member Issa to the Federal Register) (on file with the Committee).

<sup>10</sup> Ian Talley, *OMB Memo: Serious Impact Likely From EPA CO<sub>2</sub> Rules*, DOW JONES NEWSWIRE, May 11, 2009, available at [http://www.djnewsplus.com/article\\_ss/SB124206897993062889.html?param=gn&](http://www.djnewsplus.com/article_ss/SB124206897993062889.html?param=gn&)

<sup>11</sup> Ian Talley, *EPA Chief Says CO<sub>2</sub> Finding May Not ‘Mean Regulation,’* Wall Street Journal, May 13, 2009, available at <http://online.wsj.com/article/SB124214922088511421.html>

<sup>12</sup> Advanced Notice of Proposed Rulemaking Regulating Greenhouse Gas Emissions under the Clean Air Act, 73 Fed. Reg. 44354 (July 30, 2008).

collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.”<sup>13</sup>

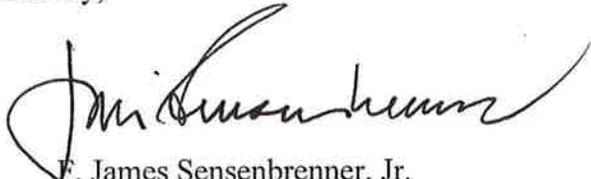
The process of agency decision-making was vigorously pursued by the Oversight and Government Reform Committee under the Chairmanship of Henry Waxman. A primary example is the California Waiver investigation - an eight month investigation that led to EPA turning over more than 7,000 documents related to the California Waiver and Endangerment determination, and the deposition of several career staff at EPA. Similarly, the Select Committee on Energy Independence and Global Warming investigated the Bush Administration’s efforts to respond to *Massachusetts v. EPA*, which required EPA to make a decision on whether carbon dioxide endangers health and welfare. The very same issues of transparency and White House intervention that concerned the Committees in the prior Congress are at the core of this request. Therefore, we respectfully request that our Committees join together to investigate the Administration’s decision-making process to regulate CO<sub>2</sub> under the CAA. We hope you agree that the intensity with which Congress pursues questionable agency decisions should not wane merely because another political party is in charge of the White House. This investigation provides the Administration with an opportunity to honor the President’s promise to be the “most open and transparent in history.” Accordingly, we look forward to working with you both as we pursue this legitimate area of Congressional oversight.

If you have any questions regarding this request, please do not hesitate to contact Senior Counsel Kristina Moore with House Oversight and Government Reform at 202-225-5074 or Chief Counsel Bart Forsyth at the House Select Committee on Energy Independence and Global Warming at 202-225-0110.

Sincerely,



Darrell Issa  
Ranking Member  
Oversight and Government Reform



F. James Sensenbrenner, Jr.  
Ranking Member  
Select Committee on Energy Independence  
and Global Warming

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<sup>13</sup> The President, Memorandum for the Heads of Executive Departments and Agencies, Subject: Transparency and Open Government, Jan. 21, 2009, [http://www.whitehouse.gov/the\\_press\\_office/Transparency\\_and\\_Open\\_Government/](http://www.whitehouse.gov/the_press_office/Transparency_and_Open_Government/) (emphasis added).