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ONE HUNDRED ELEVENTH CONGRESS
**Select Committee on
Energy Independence and Global Warming**
U.S. House of Representatives
Washington, DC 20515

EDWARD J. MARKEY, MASSACHUSETTS
CHAIRMAN

July 8, 2009

The Honorable Edward Markey
Chairman, House Select Committee on Energy Independence and Global Warming
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Markey:

During her confirmation hearing, Administrator Jackson promised “overwhelming transparency.” She said, “[a]s Administrator, I will ensure EPA’s efforts to address the environmental rises of today are rooted in three fundamental values: Science-based policies and programs, adherence to the rule of law, and overwhelming transparency.” Notwithstanding this promise, EPA has conducted itself under an unprecedented veil of secrecy.

I initially raised these concerns in a letter to you and Congressman Towns dated June 9, 2009.¹ In that letter I cited two incidents. First, Mary Nichols, the head of the California Air Resources Board (CARB), revealed that the White House had held a series of secret meetings as they were crafting the new Corporate Average Fuel Economy (CAFE) standards. Nichols admitted that there was a deliberate “vow of silence” surrounding the negotiations with the White House on vehicle fuel standards.² According to Nichols, “[Carol] Browner [Assistant to the President for Energy and Climate Change] quietly orchestrated private discussions from the White House with auto industry officials.” Negotiators were instructed to “put nothing in writing, ever.” Clearly, Browner’s actions were intended to leave little to no documentation of the deliberations that lead to stringent new CAFE standards.

The second issue raised in the previous letter related to EPA’s proposed endangerment finding. An official from the Office of Management and Budget (OMB) warned EPA in an interagency memo that “[m]aking a decision to regulate CO₂ 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.”³ According to Administration sources, these

¹ Letter from the Honorable F. James Sensenbrenner and Darrel Issa to the Honorable Edolphus Towns and Edward Markey (June 9, 2009).

² Colin Sullivan, Vow of Silence Key to White House-California Fuel Economy Talks, *New York Times*, May 20, 2009.

³ Ian Talley, OMB Memo: Serious Impact Likely from EPA CO₂ Rules, *Dow Jones Newswire*, May 11,

warning were dismissed, in part, because they originated from “a Bush Holdover.”⁴ In fact, the “holdover” was a career civil servant hired by the Clinton Administration.

I am again raising concerns regarding the transparency of EPA’s process in light of new evidence of suppression at EPA. In a series of emails, dated March 12-17, 2009, the Director of EPA’s National Center for Environmental Economics (NCEE) expressly refused to include relevant scientific evidence in the official record because, in his view, the administration had already reached its conclusion regarding the endangerment finding.

On March 16, a senior analyst with EPA wrote to his office director to request that his comments be included in EPA’s record. The analyst wrote:

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.

In response, the director refused to forward the analyst’s comments, not because he questioned their scientific merits, but because “[t]he administrator and administration has decided to move forward on endangerment, and your comments do not help the legal or policy case for this decision.”⁵

The director then sent a follow-up email, forbidding the analyst from continuing his work: “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.”

As it did with the OMB memo, EPA attacked the analyst’s credibility. In response to publication of the above emails, EPA spokeswoman Adora Andy reiterated EPA’s now empty pledge of transparency and said, “[i]n this instance, certain opinions were expressed by an individual who is not a scientist and was not part of the working group dealing with this issue.”⁶

In fact, the analyst is a 38-year EPA employee with a scientific background, but regardless, EPA’s response ignores the ultimate problem. NCEE’s director did not dismiss the analyst’s opinions because of his scientific background or because of the merits of his study, the director expressly refused to forward his opinion because they did not support the conclusions that EPA had already reached.

2009, available at http://www.djnewsplus.com/article_ss/SB124206897993062889.html?param=gn&

⁴ Ian Talley, EPA Chief Says CO2 Finding May Not ‘Mean Regulation,’ *Wall Street Journal*, May 13, 2009.

⁵ Email from Office Director of EPA’s NCEE to Senior Operations Research Analyst at NCEE (March 17, 2009).

⁶ Robin Bravender, House GOP Accuses Admin of Suppressing EPA Staff on ‘endangerment’ finding,’ *E&ENews* (June 25, 2009).

This past December, President Obama said, “[p]romoting science isn’t just about providing resources—it’s about protecting free and open inquiry. It’s about ensuring that facts and evidence are never twisted or obscured by politics or ideology. It’s about listening to what our scientists have to say, even when it’s inconvenient—especially when it’s inconvenient.”

The email exchange documents a second instance in which EPA refused to consider alternative internal opinions and delineates an agency culture set in a predetermined course. It therefore raises substantial questions about what additional evidence may have been suppressed. EPA has become an agency determined to silence inconvenient perspectives, but as policymakers we must openly and honestly consider all reliable evidence. I therefore respectfully request that we hold a hearing to investigate the lack of transparency at EPA. I am prepared to assist in any way necessary to help prepare for such a hearing.

Sincerely,

A handwritten signature in black ink, reading "F. James Sensenbrenner, Jr." in a cursive style.

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