

Congress of the United States
Washington, DC 20515

July 17, 2009

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Jackson:

Evidence recently uncovered by our respective Committees raises serious questions about the integrity of the regulatory decision making process at the Environmental Protection Agency (EPA). In a recent interview with Committee staff, an EPA employee described a polarized culture at EPA. It was “a battle,” he said, “between climate believers and climate skeptics.”¹ Objective science was getting lost.

You previously wrote that “Public trust in the Agency demands that we...fully disclose the information that forms the bases for our decisions.”² Because we believe your commitment to this ideal is sincere, we respectfully request your cooperation as we work to resolve whether EPA suppressed internal dissent by inappropriately limiting staff contributions and by punishing staffers who opposed EPA’s decision to propose an affirmative endangerment finding.

Specifically, credible evidence suggests that EPA proceeded on a predetermined course to propose the endangerment finding and erected substantial hurdles to limit opposing viewpoints.

In our joint letter dated June 23, 2009,³ we raised concerns about a series of emails, dated March 12-17, 2009, in which the director of EPA’s National Center for Environmental Economics (NCEE) expressly refused to include a staff member’s report in the official record. The staff member was Dr. Alan Carlin, a 37-year EPA employee. In the office director’s view, the Administration was not interested in exploring questions of scientific uncertainty, as it had already “decided to move forward on endangerment” and Dr. Carlin’s comments “[did] not help the legal or policy case for the decision.”⁴ In another email, and in a subsequent interview with Committee staff, the director indicated that, while the report held some important ideas, attempting to submit it for the record would have negatively impacted NCEE and undermined its role within EPA.⁵ Given the

¹ Telephone Interview with Dr. Alan Carlin, Senior Research Analyst, National Center for Environmental Economics, in Washington, D.C. (July 9, 2009) [hereinafter *Carlin Interview*].

² Memorandum from Administrator Jackson to EPA Employees (Jan 23, 2009) available at <http://www.epa.gov/administrator/memotoemployees.html>.

³ Letter from Congressmen Sensenbrenner and Issa to EPA Administrator Jackson (June 23, 2009).

⁴ Email from Office Director of EPA’s NCEE to Senior Operations Research Analyst at NCEE (March 17, 2009).

⁵ Telephone Interview with Dr. Al McGartland Director, National Center for Environmental Economics (July 1, 2009).

cultural battles that his staff described, the director's instinct to suppress the report may unfortunately have been warranted.

EPA attempted to dismiss these allegations by discrediting Dr. Carlin. An EPA spokeswoman stated that "certain opinions were expressed by an individual who is not a scientist and was not part of the working group dealing with the issue."⁶ EPA's response, however, directly conflicts with evidence gathered by Committee staff.

Interviews with Drs. Alan Carlin and John Davidson revealed that Dr. Carlin actively participated in the internal agency workgroup tasked with the responsibility of drafting and evaluating the endangerment finding and the Technical Support Document (TSD).⁷ It is our belief that his participation is adequately documented in emails sent between the organizers and members of the workgroup. Moreover, Dr. Carlin's important contributions on climate change were not in question previous to the suppression controversy, as both he and Dr. Davidson are listed as coauthors/contributors of the TSD report.⁸

Perhaps more troubling than the suppression of the report, we have uncovered serious and credible allegations of retaliation against Drs. Carlin and Davidson. It is our understanding that Dr. Carlin is now prohibited from working on climate change issues and has been reassigned to tasks previously performed by junior staff members and contractors.⁹ Specifically, Dr. Carlin has been removed from the climate change workgroup at NCEE, has been deleted from the group's email distribution list, is no longer invited to the group's periodic meetings, and has been forbidden from doing any work on the climate issues he had previously handled. According to sources, EPA took these actions in direct response to Dr. Carlin's submission of his report.

According to Dr. Davidson at NCEE, this action, while not unprecedented, deprived the center of a valuable resource on climate change. He said "Dr. Carlin had built up a wealth of knowledge and was a help as we attempted to grapple with the enormity of big picture climate science."¹⁰

Additionally, we have been informed that EPA is attempting to reorganize the NCEE in a manner that would result in the elimination of Dr. Davidson's position.¹¹ The

⁶ Ian Talley, *US Lawmakers Demand Probe Into Claims EPA Suppressed CO2 Study*, DOW JONES NEWSWIRE, (July 2, 2009).

⁷ Carlin Interview, *supra* note 1; Telephone Interview with Dr. John Davidson, Environmental Scientist, National Center for Environmental Economics, in Washington, D.C. (July 9, 2009) [hereinafter *Davidson interview*]

⁸ Benjamin DeAngelo et al., Technical Support Document for Endangerment and Cause or Contribution Findings for Greenhouse Gases Under Section 202 (a) of the Clean Air Act, available at http://www.epa.gov/climatechange/endangerment/downloads/TSD_Endangerment.pdf.

⁹ Carlin Interview, *supra* note 1.

¹⁰ Davidson interview, *supra*, note 6.

¹¹ *Id.*

reorganization would potentially eliminate the scientific staff from the office—effectively disbanding the staff who argued that the science underlying EPA’s endangerment record should be updated.

As you are aware, your agency is under a legal obligation to consider all relevant evidence when making a regulatory determination, not just the facts and opinions that are politically expedient.¹² Moreover, the perception of retaliation against career civil servants, whose only offenses are to raise legitimate questions during review of a regulatory decision, raises serious questions about political retribution. Given your many commitments to the American people to an open and transparent process at EPA, we are alarmed that such activities are occurring under your watch.

As a preliminary matter, we request your agency provide our Committees with the following documents:

1. The February 26, 2009 email and attached documents sent to EPA offices requesting expedited interim tiering for the Endangerment Finding. This email was distributed by Stuart Miles McClain.
2. The March 2, 2009 email and any attached documents announcing the first intra-agency workgroup meeting on the endangerment finding.
3. All documents relating to the March 3, 2009 work group meeting, including all records of attendance and briefing memorandum distributed to members of the workgroup.
4. The March 9, 2009 email and any attached documents sent by OAR staff to members of the workgroup. This email contained a draft of the endangerment finding and the TSD.
5. The March 10, 2009 email from Dr. McGartland to Drs. Davidson and Carlin regarding the role to be played by the NCEE in the review of the TSD.
6. The March 10, 2009 email, sent at 12:30pm from OAR to members of the workgroup regarding the leak of options selection material.
7. All documents relating to the March 11, 2009 workgroup meeting, including all records of attendance and briefing memoranda distributed to members of the workgroup.

¹² *Ethyl Corp. v. EPA*, 541 F.2d 1, 36 (D.C. Cir. 1976) (stating the rulemaking record should include both “the evidence relied upon [by the agency] and the evidence discarded.”)

8. All records related to the meeting scheduled for Thursday, March 12, 2009 between Alan Carlin, John Davidson, Ben DeAngelo, Rona Birnbaum, Stephen Newbold and others at the Agency.
9. The March 13, 2009 email to Paul Balsarak and Al McGartland by NCEE staff with their response to the draft technical support document.
10. NCEE's submission to OAR, commenting on the Endangerment TSD.
11. All documents relating to Dr. Carlin's removal from the climate change work group at the NCEE and his subsequent reassignment to other projects.
12. All documents relating to the potential reorganization of NCEE.

As this is a limited and narrow document request, we appreciate a prompt reply. If you withhold any of the requested documents, please state the basis and legal justification for doing so. All documents should be turned over to our respective Committees no later than July 30, 2009.

In addition to these documents, we would appreciate your assistance in arranging interviews with the following staff at EPA: Chris Dockins and Steve Newbolt from NCEE as well as Ben De Angelo, Dina Kruger, Paul Balsarak, and Rona Birnbaum. Because many of Dr. Carlin's statements related to our discussion with Dr. McGartland, we would appreciate the opportunity to briefly re-interview Dr. McGartland.

Finally, we request that you reply to the following questions before July 30:

1. Was Dr. Carlin a member of a climate group within NCEE? Was he a member of any agency-wide climate groups?
2. Was Dr. Carlin forbidden to work on climate change issues? Was he removed from any working groups on the topic?
3. If Dr. Carlin was removed from climate issues and related working groups, who made the decision to remove him?
4. Does EPA currently have any plans to reorganize NCEE? If so, what is the basis for the reorganization? When were such plans first discussed?
5. What was EPA's timeline for its proposed endangerment finding? How long was NCEE given to review the TSD supporting the proposed finding?

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We sincerely appreciate your cooperation with this investigation. If you have any questions regarding this request, please contact Bart Forsyth, General Counsel, House Select Committee on Energy Independence and Global Warming at 202-225-0110 or Kristina Moore, Senior Counsel with the Oversight and Government Reform Committee at 202-225-5074.

Sincerely,



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



Darrell Issa
Ranking Member
Oversight and Government Reform Committee

cc: The Honorable Edolphus Towns, Chairman
The Honorable Ed Markey