ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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energycommerce.house.gov

July 16, 2009

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

Dear Administrator Jackson:

We write to follow up on Ranking Member Barton's June 24 letter to you (attached) to request additional information and documents relating to the facts and circumstances surrounding the preparation of the Environmental Protection Agency (EPA) proposed endangerment finding.

Questions about the process and treatment of critical opinion and debate within EPA have only increased since we wrote three weeks ago. Since that time, you or EPA spokesmen have issued statements at once minimizing the critical comments by a senior career employee, Dr. Alan Carlin, on the quality of the agency's basis for the proposed endangerment finding, and ignoring the substantive questions about the integrity of the EPA process raised by the alleged suppression of Dr. Carlin's report.

An EPA spokesperson said in response to press inquiries about emails indicating document suppression: "The individual in question [Dr. Carlin] is not a scientist and was not part of the working group dealing with this issue." This statement stands in conflict with the plain fact that Dr. Carlin is listed as an author and contributor to the EPA's Technical Support Document (TSD) prepared in support of the proposed endangerment finding, raising questions about the actual authorship and review process of this key document. In light of the apparent expedited pace with which this TSD was internally reviewed during your tenure, we also question whether listed authors, if they did contribute, had sufficient opportunity to evaluate and document whether the TSD represented a full, up-to-date examination of scientific evidence and uncertainties surrounding climate change.

In another instance, you testified during a July 7, 2009 Senate Environment and Public Works Committee hearing that you personally directed staff to inform Dr. Carlin that he could share his views widely, but you made no comments relating to the email evidence that Dr. Carlin was instructed not to discuss endangerment outside his immediate office, that he was to spend no more agency time on climate change or endangerment issues, and that his supervisor feared negative consequences for his office. These comments, therefore, left unaddressed our serious concerns about potential retaliation for dissenting views and the atmosphere for open debate, as well as the integrity of "scientific decision-making" at the agency for the proposed endangerment finding.

Your July 10 letter response and subsequent telephone conversation with Ranking Member Barton about that response did not mitigate our concerns about agency process and atmosphere. At this point, we cannot accept as plausible your contention that neither you nor your staff nor direct reports supplied or authorized timelines or other directives for collecting internal comments and for preparing the proposed endangerment finding, which was apparently sought by the Administration.

Furthermore, your letter was not fully responsive to the information and documents requested in our initial letter. Given the incomplete responses from EPA on this matter to date, we seek additional clarification to ensure Congress has the full and complete facts surrounding this matter. Accordingly, we write to seek additional information and documents pursuant to the inquiry sent on June 24, 2009. Please respond within two weeks of the date of this letter to the following:

1. Was Dr. Alan Carlin's work commenting on the Technical Support Document (TSD) dated March 2009 prepared as part of his official EPA duties?

2. Was the set of comments prepared during March 2009 by Dr. Carlin concerning the March 2009 draft of the TSD forwarded to EPA staff outside the National Center of Environmental Economics (NCEE)?

    a. If so, please identify by name and office all EPA staff who received the document and explain how EPA staff outside NCEE came into possession of a document his supervisor said he would not forward to the program office responsible for preparing the proposed endangerment finding?

    b. Please provide all documents, including, but not limited to, emails, calendar records, and meeting notes, relating to (1) Dr. Carlin's written comments on the draft(s) of the TSD, (2) his expressed views about climate change, and (3) his analysis or comments about the EPA process for developing an endangerment proposal.

3. Why was Dr. Carlin directed not to work any longer on climate change on March 17, 2009? (See email, attached). Do you support this directive? If not, when was Dr. Carlin allowed to work on climate change again?

4. Concerning the March 12, 2009, email from Dr. Al McGartland to Dr. Carlin and Dr. John Davidson: (1) explain the "tight schedule and the turn of events" and (2) explain why these two individuals were not to have "any direct communication with anyone outside of NCEE on endangerment," including "no meetings, emails, written statements, phone calls etc." (see attachment).

    a. Were similar directives applied to others identified as authors and contributors to the TSD? If so, which person(s) originated these directives and when and how were they issued?

    b. Have you, your staff, or EPA management restricted communication by any other career staff, particularly senior career professional staff, on the topic of climate change or any other science policy matter? If no, did this directive reflect your policies? Are you in agreement with this directive?

    c. Please provide all documents, including, but not limited to, emails, calendar records, and meeting notes, relating to the decision to direct Dr. Carlin or Dr. Davidson not to communicate with anyone outside of NCEE on endangerment, including any directives or memoranda relating to your guidance on staff communication and/or on ensuring the scientific integrity and transparency at the EPA.

    d. Have you had any concerns about unauthorized disclosures of information? Did those concerns ever involve NCEE?

5. In your July 10, 2009, telephone conversation with Ranking Member Barton, you stated that Al McGartland was "counseled" about his actions or emails regarding Dr. Carlin. Please explain how and when he was counseled, who counseled him, what specifically he was counseled about, and who ultimately directed that he be counseled. What was the basis for the counseling? Did EPA conduct an internal investigation of Dr. McGarland's conduct? If so, what was the allegation, and what did EPA find?

6. Please identify and provide documentation for the specific events you referenced in your July 7 Senate testimony that formed the basis for your statements regarding Dr. Carlin's attendance at or participation in conferences, and identify which specific events occurred during prior administrations and which specific events, if any, occurred during the Obama Administration.

    a. Please provide records of travel requests since January 1, 2004 sought by and granted or not granted to Dr. Carlin for attendance at conferences or speaking engagements on the topic of climate change.

7. Please provide the date(s) and list of attendees for each of the EPA brown bag lunches related to climate change science, policy, or economics, referred to in your July 7 Senate testimony, in which Dr. Carlin participated.

8. According to a June 29, 2009, press interview with Dr. Carlin by FOXnews.com, Dr. Carlin says his supervisor, Dr. Al McGartland, was pressured to take Dr. Carlin off of climate research when he attempted to submit his TSD comments. Please identify the person(s) who instructed Dr. McGartland to remove Dr. Carlin from climate research, and the basis for their instruction. If EPA does not have this information, please explain why and how Dr. McGartland could be counseled without all pertinent facts.

9. Please describe the purpose, role and functions of the Office of Policy, Economics, and Innovation (OPEI), including the NCEE, within your headquarters operation.

10. Please describe any ongoing efforts to evaluate the role of OPEI, the NCEE, or its other component offices and what your plans are for this office or any of its components, including plans for staffing increases (or decreases), for changes to staff expertise, for changes to its function or role within the Agency Action Development Plan process or rulemaking process or other advisory or support function.

    a. Please provide any evaluations of OPEI or its components you or your staff have requested to be conducted.

11. Please describe the EPA resources that have been and are planned to be devoted to the OPEI, including detailed budget information, broken out by center and function, the number of EPA employee positions (FTEs) assigned to work in these offices and their roles, the availability of contract funding support, performance goals, and measures for these specific office functions. Please provide this information for each of the years FY2008, FY2009 and FY2010.

12. Please describe the development of the TSD, including its initial development during the Bush Administration, and how the draft that circulated for review in March 2009 differed from the draft prepared in the Bush Administration? How was it updated?

13. Please identify the office and branch and individual(s) in charge of developing the draft TSD initially and the TSD draft that circulated in March of this year. Please also identify who in your office was responsible for advising you on and monitoring the draft TSD and its development.

14. Please explain why the EPA identifies Dr. Carlin as an EPA author and contributor to the April 17, 2009, TSD. What specifically was his contribution, when did he make that contribution, and what was the interaction between Dr. Carlin and EPA staff preparing the April TSD about his contribution, if any?

15. What was the schedule for EPA's internal review of the TSD prior to submitting the proposed endangerment finding to the Office of Management and Budget for review?

    a. Who set the deadline for submission to OMB for review?

b. Did you or your staff attend or participate in any internal workgroup meetings or conference calls relating to the development of the TSD? If so, please identify who attended or participated, when, and why.

c. Please provide all documents relating to the schedule for preparation of the TSD, including but not limited documents reflecting the schedules and timetables for the drafting of the TSD and obtaining comments from EPA agency staff, calendars and attendance records for TSD workgroup meetings and conference calls, as well as all internal guidance and directives for preparing the TSD.

d. Why were offices, including the OPEI, outside of the Office of Air and Radiation given only about one week to comment on the TSD?

e. Please list the last 10 proposed rulemakings for which OPEI or its component offices were asked to comment, and identify how much time was provided to OPEI and NCEE for comment on each of these rulemakings.

16. Please explain the specific role and contributions of Stratus Consulting, the reported contractor that assisted EPA staff with preparation of the TSD.

a. Please provide all documents related to the work performed by contractor(s) that assisted EPA staff in the preparation for the TSD issued in April 2009, including scoping documents, contracts, and drafts and comments, and any editorial contribution made by the contractor(s).

b. Please provide all documents related to the work to be performed by contractor(s) that are and/or will be assisting EPA staff responding to comments on the proposed endangerment finding and/or TSD, including scoping documents, and contracts.

17. Please explain the specific contributions of other EPA staff listed as "authors and contributors" to the TSD and explain how their contributions and evaluations were documented.

18. Please explain (1) the process for choosing, (2) the specific role, and (3) contributions and date of contributions of the Federal expert reviewers listed in the April 17, 2009 TSD.

a. Please provide all comments and contributions by these reviewers, and related responses from EPA staff authors.

19. During the July 10 telephone call with Ranking Member Barton, you participated in the call via a speaker phone. If others were in your office during this call, please list their names and affiliations and provide any notes taken of the phone conversation and when you muted the phone.

20. If the EPA withholds any documents or information in response to this letter, please provide a Vaughn Index or log of the withheld items. 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.

Please provide the written responses and documents requested by no later than two weeks from the date of this letter. Should you have any questions, please contact Mr. Peter Spencer of the Minority Committee staff at (202) 225-3641.

Sincerely,

Joe Barton
Ranking Member

Greg Walden
Ranking Member
Subcommittee on Oversight and Investigations

Nathan Deal
Member

George Radanovich
Member

John Sullivan
Member

Michael C. Burgess
Member

Marsha Blackburn
Member

Phil Gingrey
Member

cc: The Honorable Henry A. Waxman
Chairman

The Honorable Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

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June 24, 2009

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.

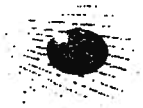
Please provide the written responses and documents requested by no later than two weeks from the date of this letter. I would respectfully request, if the Agency withholds any documents or information in response to this letter, that a Vaughan Index or log of the withheld items be attached to the response. 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,

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 McGartland, 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/USEPA/US@EPA
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 10:28:46 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

[redacted]

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 Marrietta 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