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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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June 19, 2008

The Honorable Susan E. Dudley
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Ms. Dudley:

On June 18, 2008, I received a letter from the General Counsel of the Office of Management and Budget requesting that the Committee not proceed with a resolution of contempt against you. In this letter, OMB once again failed to commit to producing subpoenaed documents or to assert a valid claim of executive privilege with respect to the documents the Committee has sought in its investigation of the issuance of new ozone air quality standards by Stephen Johnson, Administrator of the Environmental Protection Agency (EPA).

Administrator Johnson made a decision on the ozone air quality standard revision in January 2008. In several key aspects, his decision reflected the unanimous recommendation of the Clean Air Scientific Advisory Committee. Following his decision, EPA staff developed a nearly 350-page regulation. However, you objected to the science-based approach of the secondary standard and the President overruled Mr. Johnson. As a result, in the final 24-hours of the rulemaking process, EPA staff rewrote the regulation in conformance with the President's decision.

The Clean Air Act is clear about what can be considered in revising the ozone air quality standard and what cannot be considered. The Committee has been attempting to determine whether the final revision is based upon proper considerations. However, your efforts to draw a curtain around the White House are preventing Congress from understanding whether appropriate considerations underlay this decision. Although I have repeatedly informed you that you must provide the documents responsive to the April 16 subpoena unless the President asserts a valid claim of executive privilege, you continue to defy the subpoena.

I also note that your defiance of congressional oversight stands in stark contrast to the response of the previous Administration. In 1997, the House also investigated ozone standards

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established by EPA. Several House committees requested documents from the Administration related to the ozone air quality standards. In the Government Reform and Oversight Committee, Subcommittee Chairman David McIntosh requested that OMB “produce all records related to OIRA’s review of the proposed rules.”¹ Over a period of less than two months and without the issuance of a subpoena, OMB produced thousands of pages of documents, including internal White House communications, and withheld only “two memoranda to the President from senior advisors within the Executive Office of the President.”²

In light of prior practice, your effort to shield the Administration’s decision-making process from appropriate congressional oversight is remarkable. Throughout this process, I have made accommodations wherever possible. Your refusal to provide the remaining 1,900 responsive documents is thwarting the Committee’s ability to conduct effective oversight.

I regret that your failure to produce the subpoenaed 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 tomorrow to consider a resolution holding you in contempt. I strongly urge you to reconsider your position and to comply with the duly issued subpoena.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

¹ Letter from Rep. David M. McIntosh, Chairman, National Economic Growth, Natural Resources, and Regulatory Affairs, Committee on Government Reform and Oversight, to Sally Katzen, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (Jan. 17, 1997).

² Letter from Sally Katzen, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, to Rep. Tom Bliley, Chairman, House Committee on Commerce (Mar. 7, 1997).