

Congress of the United States
Washington, DC 20515

November 12, 2009

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

Dear Administrator Jackson:

We are writing to express our concern over media reports that two EPA career employees have been effectively censored from publically expressing their opposition to climate change legislation. In a YouTube video produced on their own time, Laurie Williams and Allan Zabel clearly state that the views expressed are their own and not that of the agency or the Obama Administration.¹ Even so, EPA officials ordered the couple to remove the YouTube video last week.² EPA's actions appear to be an inappropriate abuse of authority and a possible infringement on the couple's First Amendment rights. Accordingly, we ask that you immediately reverse the decision, and place no restrictions on Laurie Williams' and Allan Zabel's ability to post and distribute their video, pending further analysis.

Specifically, EPA ordered that the video be taken down until the couple removed the statement, "Our opinions are based on more than 20 years each working as attorneys at the U.S. Environmental Protection Agency in the San Francisco Regional Office."³ EPA also demanded that the couple remove images of EPA's Region 9 office and a statement that Mr. Zabel has been overseeing California's cap-and-trade and offset programs for more than 20 years.⁴ Moreover, the couple was warned that "failure to comply with instructions could lead to disciplinary action."⁵

It is clear that EPA's demands were intended to strip the couple of the legitimacy that their 20 years of federal service has afforded them. Mr. Zabel's experience overseeing California's cap-and-trade and offset programs makes him particularly well qualified to offer an opinion as to the effectiveness of an economy wide cap-and-trade scheme. This information is extremely relevant to the debate occurring in Congress.

The week EPA ordered the video taken down was the very same week Senator Barbara Boxer came under heavy criticism for moving forward with a controversial mark-up of climate change legislation in the Senate Environment and Public Works

¹ YouTube.com, The Huge Mistake - Climate Change Solutions 2009, available at <http://www.youtube.com/watch?v=uSNQzSjb38g> (last visited Nov. 10, 2009) (hereinafter, *The Huge Mistake*).

² Robin Bravender, *Agency Ordered Attorneys to Remove Video Criticizing Climate Bill*, GREENWIRE, Nov. 09, 2009, available at <http://www.eenews.net/Greenwire/2009/11/09/5/>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

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Committee.⁶ In their YouTube video, the couple explained why it is false to compare the success of the acid rain cap-and-trade program in the 1990's with today's legislative proposals due to the fact that addressing acid rain "didn't require major innovations in technology."⁷ Accordingly, EPA's censorship deprived the public of significant information regarding the viability of an economy wide cap-and-trade plan at a critical moment in the legislative process.

This action appears to run contrary to your statement in January that you will "ensure the EPA's efforts to address the environmental crises of today are rooted in three fundamental values: science-based policies and programs, adherence to the rule of law, and overwhelming transparency."⁸

In addition to our request that the order to take down the video be immediately reversed, we also request that you respond to the following questions and document request no later than November 25, 2009.

Please provide our respective committees with:

1. A copy of EPA's Ethics Policy that allegedly served as the basis for EPA's determination that the YouTube video should be removed, along with any guidance documents intended to educate EPA employees engaged in public communications.⁹
2. All documents related to similar instances in which EPA threatened to discipline employees pursuant to the relevant provisions of the Ethics Policy.
3. A detailed explanation of the legal basis for EPA's decision to order the video be removed, including any relevant precedent where EPA has taken similar action against career employees.
4. The name and title of the individual who made the decision to order the video removed.
5. A response to the statement by Jeff Ruch, the executive director of Public Employees for Environmental Responsibility (PEER) that "EPA is abusing ethics rules to gag two conscientious employees who have every right to speak out as citizens."¹⁰
6. All documents relating to EPA's decision to censure the Williams/Zabel video.

⁶ Stephen Koff, *Amid GOP Climate-Change Boycott, Voinovich Says Again: Cap-and-Trade Needs Much Deeper Analysis*, THE CLEVELAND PLAIN DEALER, Nov. 3, 2009 available at http://www.cleveland.com/open/index.ssf/2009/11/amid_gop_climate-change_boycot.html.

⁷ The Huge Mistake, *supra*, note 1.

⁸ Press Release, Lisa Jackson, Administrator-designate, U.S. EPA, (Jan. 23, 2009) available at <http://yosemite.epa.gov/opa/admpress.nsf/6427a6b7538955c585257359003f0230/2297c12a9f4773d285257547006497d4!OpenDocument>.

⁹ *Id.*

¹⁰ *Id.*

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If you have any questions regarding this request, please contact Kristina Moore, Senior Counsel for the House Committee on Oversight and Government Reform at (202) 225-5074, Bart Forsyth, Minority Staff Director for House Select Committee on Energy Independence and Global Warming at (202) 225-5101, or Brian Clifford, Minority Staff Director, Subcommittee on Oversight, Senate Environment and Public Works Committee at (202) 224-6441.

Sincerely,



Darrell E. Issa
Ranking Member
House Oversight and Government
Reform Committee



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



John Barrasso, M.D.
Ranking Member
Subcommittee on Oversight
Senate Committee on Environment and
Public Works

cc: The Honorable Edolphus Towns, Chairman