

Congress of the United States
Washington, DC 20515

September 14, 2009

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

Dear Administrator Jackson:

On two prior occasions we have expressed concern about questionable activities at the Environmental Protection Agency (EPA) with respect to the proposed endangerment finding to regulate greenhouse gasses (GHGs) under the Clean Air Act (CAA). According to recent media reports, EPA is working to remove all scientists from the National Center for Environmental Economics (NCEE), decoupling the science from the economics and therefore marginalizing the office. As you are aware, NCEE is also at the center of our investigation into EPA's treatment of Dr. Alan Carlin and his work on the proposed endangerment finding.

In a letter dated July 17, 2009, we expressed concern that EPA was proceeding on a predetermined course to propose and finalize an endangerment finding for GHGs and was erecting hurdles to limit opposing viewpoints.¹ We also expressed alarm over treatment of Dr. Alan Carlin, a 37 year career civil servant. Dr. Carlin has a long history of working on climate change policy and was considered a valuable resource by his peers.² As a participant in the internal agency review process, he drafted a report critical of the Technical Support Document (TSD), which provides the scientific basis for the endangerment finding. However, Dr. Carlin's supervisor, Dr. Al McGartland, suppressed his report, in part, because Dr. McGartland feared that "submitting it for the record would have negatively impacted NCEE and undermined its role within EPA."³

Substantial evidence suggests that EPA has in fact taken retaliatory actions against Dr. Carlin. Dr. Carlin has been prohibited from working on climate change issues and has been reassigned to menial tasks.⁴ With the proposed "reorganization" of NCEE, it now appears that Dr. McGartland's concerns for retaliation against NCEE were also well founded.

¹ Letter from Congressman Issa and Sensenbrenner to the Honorable Lisa Jackson, Administrator of the Environmental Protection Agency (EPA) July 17, 2009 [hereinafter *July 17 Letter*]

² Telephone Interview with Dr. John Davidson, Environmental Scientist, National Center for Environmental Economics (July 9, 2009) [hereinafter *Davidson Interview*]

³ Telephone Interview with Dr. Al McGartland, Director, National Center for Environmental Economics (July 1, 2009).

⁴ Telephone Interview with Dr. Alan Carlin, Senior Research Analyst, National Center for Environmental Economics (July 9, 2009); Davidson Interview, *supra*, note 3.

In the July 17 letter, we requested that EPA produce specific documents that would help us develop a more informed understanding of whether officials at EPA behaved inappropriately. We received delivery of select documents on September 3, 2009. EPA, however, expressly withheld certain responsive documents, citing both privacy concerns of personnel and deliberative process.

We are sensitive to privacy concerns and are willing to make reasonable accommodations. Sensitive information not relevant to our investigation could be redacted. Alternatively, our staff could review certain sensitive documents in camera.

Withholding responsive documents because of EPA's deliberative process is simply unacceptable. EPA has proposed the largest regulatory effort in history. Our committees have uncovered irregularities with that process, and it is imperative that these issues are fully investigated and resolved before the deliberative process is complete. For this reason, Congress has never recognized a deliberative process exemption from the executive branch.

Moreover, recent media reports have renewed our concerns that EPA plans to dismantle NCEE by removing all scientific staff, decoupling the science from the economics and therefore marginalizing the office.⁵ As a recent editorial in the *Washington Times* pointed out, such a move would "undermine the entire reason for its existence namely 'researching environmental health issues to improve risk assessment data used in economic analyses for [new regulatory] rules.'"⁶ If NCEE cannot weigh scientific evidence, it will not have a basis for advising the Administrator on the economic impact of proposed regulations. Such a move would impair the Administrator's ability to determine if the cost of a regulation exceeded its benefits. This concern was first articulated in our July 17, 2009 letter.⁷

At a time when American families and businesses are facing unparalleled financial challenges, EPA should not deliberately impair its ability to analyze the economy-wide impact of its regulatory actions. This is especially true in light of the negative impacts that regulation of GHGs under the CAA will have on our economy.

The Obama Administration has repeatedly lauded the need for transparency in government and sound science, but gutting NCEE leaves the unmistakable impression that EPA is silencing the only office that raised serious and legitimate concerns over the proposed endangerment finding. When combined with the marginalization of Dr. Carlin, we have no choice but to remain deeply concerned that EPA is acting to eliminate all

⁵ Editorial, *Bury the Messenger*, WASH. TIMES, Aug. 25, 2009 [hereinafter, *Bury the Messenger*]; Anthony Lacey, *Agency Said to Weigh Scrapping Policy Office's Science Analysis Role*, INSIDE EPA, Aug. 25, 2009.

⁶ *Bury the Messenger*, *supra*, note 7.

⁷ July 17 Letter, *supra*, note 2, (stating "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. The 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.")

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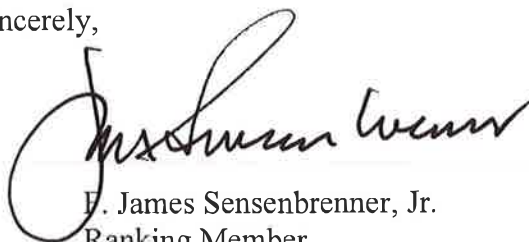
internal opposition to its political agenda of regulating GHGs under the CAA. Given these serious concerns, we request again that all responsive documents be produced and the requested briefings provided.

Please contact Kristina Moore, Senior Counsel, House Oversight and Government Reform Committee or Bart Forsyth, Staff Director, House Select Committee on Energy Independence and Global Warming to set up a briefing regarding the reorganization of the NCEE. Please deliver documents requested in our July 17 letter no later than September 24, 2009.

Sincerely,



Darrell Issa
Ranking Member
Committee on Oversight
and Government Reform



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

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