

Congress of the United States

Washington, DC 20515

October 14, 2003

The Honorable Marianne Horinko
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Ms. Horinko:

We are writing regarding EPA's advertising campaign in support of the President's proposed Clear Skies Act, which is currently pending before Congress.

On September 29, 2003, EPA announced that it had launched a new Spanish language campaign on the Hispanic Radio Network (HRN) throughout the U.S. mainland and Puerto Rico. According to EPA's announcement:

This EPA series, which coincides with National Hispanic Heritage Month, will run for six weeks on HRN's program "Planeta Azul" (Blue Planet) which explores environmental issues. "Planeta Azul" is broadcast by the network's 162 radio station affiliates, covering 90 percent of the national Hispanic radio audience, reaching more than four million people throughout the US mainland and Puerto Rico.¹

The EPA radio series will tout, among other issues, "President Bush's Clear Skies Initiative." In addition, EPA plans to publish three columns in 90 Hispanic newspapers throughout the nation.²

Either as part of this campaign or as a separate initiative, EPA is also running advertisements for the Clear Skies Act in the print media. For example, EPA recently ran a full-page color ad promoting the Administration's proposed Clear Skies Act in *Al Día*, a Spanish language publication in Dallas.³

We are concerned that EPA's Clear Skies advertising campaign constitutes an inappropriate use of taxpayer dollars, quite possibly in violation of federal law, including the latest appropriations law under which EPA is currently funded. We also believe this action is unprecedented. We are not aware of any previous occasion on which the agency ran a paid advertising campaign designed to favorably influence how millions of individuals view a pending legislative proposal.

¹ *EPA Launches Environmental Education Campaign on Hispanic Radio Network*, U.S. Newswire (Sept. 29, 2003).

² *Id.*

³ *EPA Ad Praising Bill Riles Opponents*, Dallas Morning News (Oct. 2, 2003).

There are several laws that appear to be implicated by this advertising campaign. As you are well aware, EPA's current appropriations law specifically bans using agency funds for "propaganda purposes." The provision states:

No part of any funds appropriated in this Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.⁴

This ad campaign also raises questions regarding a potential violation of 18 U.S.C. 1913, which prohibits federal officials from engaging in campaigns about pending legislative matters. The prohibition reads:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation.

In addition, it is unclear whether these activities are in compliance with the Antideficiency Act, which prohibits federal agencies from expending funds except as authorized by Congress.⁵

In order for Congress to understand the scope and implications of EPA activities to publicize and generate support for the President's proposed Clear Skies Act, please provide the following information:

- (1) All records, including e-mails and notes, relating to paid advertising or broadly distributed (non-electronic) promotional materials (i.e., materials describing the benefits of the proposal or otherwise portraying the proposal in a positive manner) regarding the "President's Clear Skies proposal" (by which we reference both the Clear Skies Initiative and the proposed Clear Skies Act). These records would include, but are not limited to:
 - (a) materials used in any advertising or promotional campaigns related to the Clear Skies proposal, including print ads, columns, radio spots, television spots, information

⁴ Sec. 414, Division K, Consolidated Appropriations Resolution, 2003, Pub. Law 108-7 (Feb. 20, 2003).

⁵ See 31 U.S.C.A. §§ 1341, 1511.

packets (e.g., kits or pamphlets, and any mailing list intended to be used for this information) and other media material (but excluding power point presentations and materials distributed exclusively through EPA's website);

- (b) records relating to communications between the EPA and the White House, including the Council on Environmental Quality and its staff, relating to any advertising or promotional campaign regarding the Clear Skies proposal;
 - (c) planning documents, reports, and summaries regarding paid advertising campaigns or the distribution of promotional materials related to the Clear Skies proposal.
- (2) A list of all media outlets, including newspapers, radio stations, radio networks, and television stations, that EPA has contacted in relation to dissemination of information on the President's Clear Skies proposal.
 - (3) Correspondence or other records relating to (2), above.
 - (4) A schedule detailing the plans for past and future use of the materials identified under (1)(a) above, and identifying the media market in which each piece of promotional material has been or will be used.
 - (5) Identification of EPA, White House, other executive branch, or contractor staff, by title and office, who prepared the materials identified under (1)(a) above.
 - (6) An accounting of the cost of EPA's promotional activities for the Clear Skies proposal, including:
 - (a) payments for advertising and the preparation and distribution of the materials identified under (1)(a), above (including the amount paid to place each ad, column, or radio spot);
 - (b) the identity of the recipient of each payment;
 - (c) all payments to contractors associated with these promotional activities; and
 - (d) the number of staff hours associated with these activities, the costs associated with that staff time, and any travel or other related costs.
 - (7) A list describing any other Clear Skies promotional items (posters, magnets, etc.) that have been produced at EPA expense, including:
 - (a) the quantity of each item and price paid per item;

The Honorable Marianne Horinko
October 14, 2003
Page 4

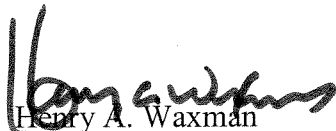
- (b) a list of those to whom the items were provided, including any mailing list used or intended to be used for these items, and the costs of distribution, if any; and
 - (c) if any Clear Skies promotional items have been produced in consultation with EPA or for use by EPA, but at the expense of parties other than EPA, a detailed accounting of the items, who paid for them, and what was done with the items.
- (8) Identification of the EPA officials who authorized all advertising and other promotional expenditures identified in (6) and (7) above;
- (9) Any formal or informal legal analysis (including e-mails) prepared by the Office of General Counsel or other personnel pertaining to the appropriateness or legality of these activities.

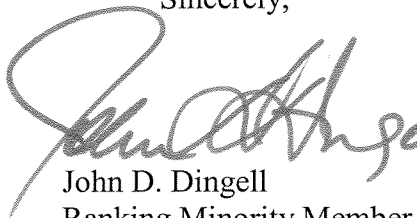
Given the seriousness of this issue, we request that you immediately notify all EPA staff that they should retain all documents related to this campaign, including e-mails and electronic files. We request that you provide us with a copy of this notice contemporaneously with its distribution to EPA staff.

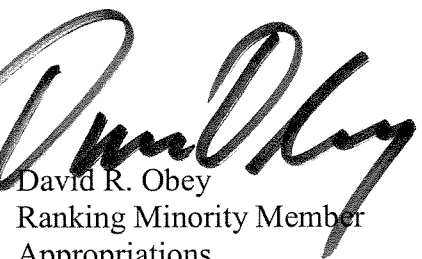
Since it has been reported that this series of advertisements will extend through the month of October, we request that you immediately discontinue these ads and any expenditures associated with this campaign until EPA's compliance with all appropriate laws, regulations, and guidance can be determined.

Please provide answers to each question and responsive documents no later than October 24, 2003. Thank you for your immediate attention to this issue.

Sincerely,


Henry A. Waxman
Ranking Minority Member
Government Reform
Committee


John D. Dingell
Ranking Minority Member
Energy and Commerce
Committee


David R. Obey
Ranking Minority Member
Appropriations
Committee