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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

July 29, 2008

The Honorable Michael Mukasey
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Mukasey:

As members of the Senate Committee on Environment and Public Works (EPW), we are writing to ask that you open an investigation into whether the Administrator of the U.S. Environmental Protection Agency (EPA), Stephen L. Johnson, has made false or misleading statements before the EPW Committee.

We do not make this request lightly. However, we believe that there is significant evidence to suggest that Mr. Johnson has provided statements that are inconsistent with sworn testimony and documents provided in connection with an investigation conducted by this Committee. These false, misleading, or intentionally incomplete statements relate to the decision announced by EPA on December 19, 2007, to deny the request by California for a waiver under Section 209 of the Clean Air Act. After Mr. Johnson's testimony[1], a former senior aide to Mr. Johnson at EPA, Jason Burnett, provided sworn testimony before the EPW Committee on July 22, 2008, that appears to contradict Mr. Johnson's testimony on key factual matters.

For example, Mr. Johnson stated under oath before the EPW Committee on January 24, 2008 that he based his denial of the California waiver request on California's failure to meet the "compelling and extraordinary" circumstances criterion under Section 209, and that he reached this decision independently. However, Mr. Burnett testified that Mr. Johnson had in fact determined that California met this criterion and the other Clean Air Act criteria necessary for approval of the waiver, and that the Administration's decision to deny the waiver was based on the President's policy preferences, rather than the lack of compelling and extraordinary circumstances.

[1] Such testimony includes, but is not limited to, Administrator Johnson's appearances before the EPW Committee on July 26, 2007, January 24, 2008, and February 27, 2008

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In addition, Mr. Johnson testified before the EPW Committee that the decision to deny that waiver was solely his decision. However, Mr. Burnett testified that Mr. Johnson had a plan to grant the waiver and had concluded that the statutory criteria for granting it were met, until it was "clearly articulated" by the White House that the President's "policy preference" was to deny the waiver.

We also are concerned about Mr. Johnson's testimony that the energy legislation enacted by Congress and signed by the President on December 19, 2008, was not substantively related to his decision announced on the same day to deny the California waiver, which he asserted was based upon his finding that the waiver did not meet the Clean Air Act statutory criteria. Mr. Burnett testified, however, that Mr. Johnson had required extensive analysis of the impact of this energy bill in evaluating whether to grant the waiver, and that it was the President's policy preference that led to the denial of California's waiver request, because granting the waiver or a partial grant of the waiver would have led to two standards, not one, as the President desired. The energy bill established a single standard for vehicle fuel efficiency, as the President desired.

It appears that Mr. Johnson's account of the California waiver decision is factually inaccurate or misleading. We take the inconsistency between Mr. Johnson's testimony and other evidence very seriously. False testimony by any witness is serious and undermines our ability to fulfill our constitutional duties on behalf of the American people. Our concern is heightened because this decision by the EPA Administrator affects the health and wellbeing of the American people. For these reasons, we have no choice but to refer the matter to you for appropriate investigation and prosecutorial action.

We look forward to your prompt response on this matter.

Sincerely,

Barbara Boxer
Chairman

Sheldon Whitehouse
United States Senator

Amy Klobuchar Frank R. Lautenberg