

J A S O N K E S T R E L B U R N E T T

July 6, 2008

The Honorable Barbara Boxer
Chairman, Committee on Environment and Public Works
United States Senate
Washington, DC 20510-6175

Dear Senator Boxer:

In order to answer your questions from your letter dated July 1st, 2008 I will provide some background. In my role as Associate Deputy Administrator of the Environmental Protection Agency (EPA), I led and coordinated energy and climate change actions across various EPA offices. The most significant such action was the effort to respond to the *Massachusetts v. EPA* Supreme Court decision. Having found that greenhouse gases are air pollutants under the Clean Air Act, the Supreme Court's decision required that the Administrator of EPA determine whether greenhouse gases "may reasonably be anticipated to endanger public health or welfare" and, if so, to issue greenhouse gas regulations. The basic logic of the statute is straightforward; if the public is endangered, the government must act.

After months of work by EPA professional scientists and lawyers, a number of senior meetings at the White House, and a robust decision-making process, the Administrator asked staff to draft a provisional finding that greenhouse gases may reasonably be anticipated to endanger public welfare.

1. Your first question concerns the events of December 2007 related to that endangerment finding. In early December EPA was preparing the finding for formal Office of Management and Budget (OMB) review. All of us were very deliberate in our actions knowing the profound consequences of such a finding caused. I took extra steps to ensure that there was a common understanding within the government regarding this finding. For example, on December 1st, 2007 I read key sections of the provisional endangerment finding to OMB staff to ensure that it correctly reflected the conclusions that had been reached in prior meetings. On the morning of December 5th I discussed the finding with the Administrator of the Office of Information and Regulatory Affairs of the OMB. I got agreement that the finding was ready for formal OMB review provided that EPA make certain modifications.

We made the requested modifications, I checked with others in senior EPA management, and I sent an email containing the finding. Shortly after I sent the email, EPA received a phone call from the White House asking for us not to send the finding. When we explained that the document had been sent, I was asked to

send a follow-up note saying that the email had been sent in error. I explained that I could not do this because it was not true.

I was then asked to retract the previous email on the grounds that the Energy Bill then working its way through Congress could make such a finding moot. I declined to do so. I and others at EPA explained that if Congress did amend the Clean Air Act to render the Supreme Court decision moot then and only then would the EPA be relieved of the obligation to move forward with an endangerment finding.

- 2a. You ask whether I am "aware of any efforts by White House or other officials to encourage or require the redaction of statements by CDC [Centers for Disease Control and Prevention] that global warming endangers human health or the environment." The Council on Environmental Quality (CEQ) and the Office of the Vice President (OVP) were seeking deletions to the CDC testimony. CEQ requested that I work with CDC to remove from the testimony any discussion of the human health consequences of climate change.
- 2b. You ask whether "such redactions were sought in order to avoid support for a finding of public endangerment that could trigger regulatory action under the Clean Air Act." During the fall of 2007 there was extensive debate about how the Administrator should make the endangerment finding. CEQ contacted me to argue that I could best keep options open for the Administrator if I would convince CDC to delete particular sections of their testimony. As I have said in other forums, I saw it as a key part of my job to keep options open for the Administrator even if I did not personally agree with those options. However I only worked to keep options open that were consistent with relevant scientific information.
- 2c. You ask "who sought such changes in CDC's testimony" and any role I or White House officials may have played. As stated above, CEQ and OVP were seeking changes and CEQ asked if I would work with CDC to make the desired deletions. I read the testimony, checked with EPA scientists, and came to the conclusion that the draft testimony was fundamentally accurate as written. I therefore declined to make the requested deletions or to suggest to CDC that they do so.
3. You ask for a description of "any efforts by White House officials to alter any other testimony regarding the threats posed by global warming in hearings before this Committee." In preparation for the January 24th, 2008 hearing before this Committee regarding the Administrator's denial of California's request for a vehicle emission waiver, EPA staff had drafted written testimony that quoted the Administrator's December 19th, 2007 letter to Governor Schwarzenegger. That letter had stated "greenhouse gas emissions harm the environment in California and elsewhere regardless of where the emissions occur." While EPA staff, myself included, did not support the denial, we thought including such language in the testimony would help clarify that the denial was consistent with the Administrator's belief that climate change is a problem.

In the course of interagency review of EPA's draft testimony we received a suggestion to avoid the phrase "greenhouse gas emissions harm the environment." EPA made it clear that we intended to keep the original language since it was accurate and informative.

An official in the OVP called to tell me that his office wanted the language changed. I declined to accept the suggestion, providing again the defense that the testimony was accurate as written. I said if the OVP wanted the language changed then someone more senior would need to talk with the Administrator. In the end this part of the Administrator's testimony remained as EPA had written it.

I have recently resigned from my position at EPA having reached the conclusion that no more productive work responding to the Supreme Court could be accomplished under this Administration. Please feel free to contact me at

Sincerely,

A handwritten signature in black ink, appearing to read "Jason K. Burnett". The signature is fluid and cursive, with a large loop at the end of the last name.

Jason K. Burnett