

Chairman Henry A. Waxman

Committee on Oversight and Government Reform

Opening Statement

“EPA’S NEW OZONE STANDARDS”

MAY 8, 2008

Good afternoon. Today’s hearing will focus on several recent decisions that are of fundamental importance to our health and the environment.

I have worked on health and environmental issues for decades. I know that regulatory decisions in these areas can be extraordinarily complex. But the law is clear: while all of us are free to have strong views on these decisions, none of us are entitled to specific results. We are only entitled to a fair process that is based on the science, the facts, and the law.

That impartial and rigorous system is one of the critical pillars of our government.

Unfortunately, President Bush seems to believe these rules don’t apply to him. On key issues, this Administration has pushed ahead with its agenda despite the evidence and the law. We know that’s what happened on the decision to launch the Iraq War. It happened again on decisions authorizing torture. And it happened when the White House fired independent and nonpartisan Justice Department officials.

For months this Committee has been investigating recent Environmental Protection Agency (EPA) decisions relating to both global warming and new air quality standards. And after reviewing nearly 60 thousand pages of internal documents and interviewing officials involved in the rulemakings, we have found evidence that the White House again ignored the facts and the law.

The first rulemaking was a response to California’s petition to regulate greenhouse gas emissions from cars and light-duty trucks. Under the Clean Air Act, EPA must approve California’s request unless it finds the proposal is

arbitrary, isn't technically feasible, or isn't justified by "compelling and extraordinary conditions."

The record is overwhelming that EPA's experts and career staff all supported granting the California petition. In one internal document, EPA's own lawyers said: "we don't believe there are any good arguments against granting the waiver. All of the arguments † are likely to lose in court if we are sued."

Administrator Johnson apparently listened. The Committee has learned that before communicating with the White House, the Administrator supported granting a partial approval to California's request.

But then the White House intervened. In December, after secret communications with White House officials, Administrator Johnson ignored the law and the evidence and denied California's petition.

The second EPA rulemaking revised the air quality standards for ozone air pollution to protect both human health and the environment.

In this case, EPA's expert advisory panel, the Clean Air Scientific Advisory Committee, unanimously recommended a new standard for protecting the environment. After considering all of the alternatives, Administrator Johnson agreed with this new approach, which is called a seasonal standard. In a submission to the White House, he described the case for the new standard as "compelling," and he said that there was "no evidence" from the perspective of biological impact supporting the alternative standard favored by industry.

But once again, the White House intervened. On the evening before the final rule was released, President Bush rejected the unanimous recommendation of both EPA's experts and Administrator Johnson and instructed EPA to abandon the new standard.

The Committee's investigation reveals that EPA officials were astounded by the President's decision and said it wasn't supported by either the science or the law. One official wrote: "I have been working on National Ambient Air Quality Standards for over 30 years and have yet to see anything like this."

Another wrote: "we could be in a position of having to fend off contempt proceedings. † The obligation to promulgate a rule arguably means to promulgate one that is nominally defensible."

And an EPA Associate Director observed: this "looks like pure politics."

The same thing happened in a third critical rulemaking. Last April, the Supreme Court directed EPA to determine whether CO<sub>2</sub> emissions endanger health and the environment and must be regulated under the Clean Air Act. Under Administrator Johnson, EPA assembled a team of over 60 career officials to work on this hugely important regulation. The staff determined that CO<sub>2</sub> did endanger the environment and drafted proposed rules to reduce tailpipe emissions.

To his credit, Administrator Johnson listened to his staff and sent an official “endangerment finding” to the White House. Jason Burnett, the Associate Deputy Administrator, told the Committee that he personally transmitted the Administrator’s determination to the White House in December.

Yet once again, the White House ignored the law, the science, and Administrator Johnson. Two months ago, EPA was forced to announce that the agency would go back to square one and start the rulemaking process all over again.

In each of these rulemakings, the pattern is the same: the President apparently insisted on his judgment and overrode the unanimous recommendations of EPA’s scientific and legal experts.

Our investigation has not been able to find any evidence that the President based his decisions on the science, the record, or the law. Indeed, there’s virtually no credible record of any kind in support of the decisions.

I recognize and support the broad powers our Constitution vests with the President of the United States. But the President does not have absolute power and he is not above the law. The President may have a personal opinion about the new ozone standards, California’s motor vehicle standards, and regulating CO<sub>2</sub>, but he is not allowed to elevate his view above the requirements of the law.

This is an important hearing and I look forward to learning more from our witnesses.