



{In Archive} Fw: Sent to OPEI and Approved to go to OMB (3/20/2009) : SAN 5335 Proposal for Endangerment Finding for Greenhouse Gases under the CAA

Lisa Heinzerling to: Richard Windsor

03/20/2009 05:28 PM

From: Lisa Heinzerling/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA
Archive: This message is being viewed in an archive.

hooray!!

----- Forwarded by Lisa Heinzerling/DC/USEPA/US on 03/20/2009 05:27 PM -----

From: Mariana Cubeddu/DC/USEPA/US
To: Rona Birnbaum/DC/USEPA/US@EPA, Lisa Heinzerling/DC/USEPA/US@EPA, Dina Kruger/DC/USEPA/US@EPA, Ben DeAngelo/DC/USEPA/US@EPA
Cc: Louise Wise/DC/USEPA/US@EPA, Lesley Schaaff/DC/USEPA/US@EPA, Nicole Owens/DC/USEPA/US@EPA, Ken Munis/DC/USEPA/US@EPA, Paul Balserak/DC/USEPA/US@EPA
Date: 03/20/2009 05:22 PM
Subject: Sent to OPEI and Approved to go to OMB (3/20/2009) : SAN 5335 Proposal for Endangerment Finding for Greenhouse Gases under the CAA

This proposed action was submitted via ROCIS.

ROCIS - EO Review Package - Windows Internet Explorer provided by EPA

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EO Review Package was submitted at 05:17:08 PM EST on 03/20/2009

RIN: 2060-ZA14 (200904)

Agency/Sub Agency: 2060 EPA/AR

Tracking #:

Stage of Rulemaking: Proposed Rule Stage

Submitted By: Mariana Cubeddu

Submitted Date: 03/20/2009

Title: Proposal for Endangerment Finding for Greehouse Gases under the Clean Air Act

EO Package 2060-ZA14

Unfunded Mandates

Undetermined

Major

Undetermined

Priority Category

Other Significant

Legal Authority

Not Yet Determined

CFR Citation

Not Yet Determined

Legal Deadline

Action	Source	Date	Description
None	None		

Overall Description of Deadline

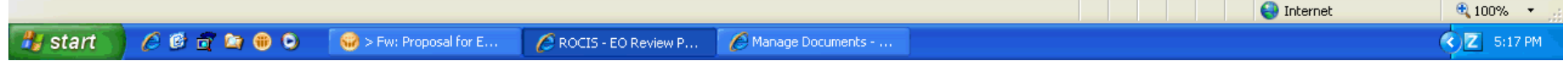
Abstract

EPA must use the statutory criteria laid out under Section 202 of the CAA to determine whether or not greenhouse gases cause endangerment. This action is to issue a proposed endangerment determination.

Next Timetable Action

Action Description	Action Date	FR Cite
No associated records found		

Regulatory Flexibility Analysis Required



Mariana Cubeddu
Office of Policy, Economics and Innovation
Regulatory Management Division
(202) 564-6566
(202) 564-0965 (fax)
cubeddu.mariana@epa.gov



{In Archive} Re: See what you think of this response ? 📄

David McIntosh to: Richard Windsor, David McIntosh, Lisa Heinzerling

03/21/2009 12:41 PM

Archive:

This message is being viewed in an archive.

It looks good to me. You might add a broader, process point. If the purpose of this memo device is to provide agency heads with an approved and limited channel for communicating directly to the President, then isn't that purpose completely undermined by giving OMB and others within the WH an opportunity to kill the memos? Isn't it essentially begging agency heads to go around the Cabinet Affairs Office and use back-channel, informal means of communicating with the President?

From: Richard Windsor

Sent: 03/21/2009 12:35 PM EDT

To: "David McIntosh" <mcintosh.david@epa.gov>; "Lisa Heinzerling" <heinzerling.lisa@epa.gov>

Subject: See what you think of this response?

Chris,

I'm confused by your note. My memo is to the President. Are you saying that my memo will be forwarded to the President along with a staff recommendation that he delay making a final decision until the OIRA review is complete? Or are you saying that my memo will not be forwarded to the President for another 3 weeks? If so, is this decision coming from the Chief of Staff? Does it mean that the head of EPA is prohibited from sending a short memo directly to the President?

I am well aware of the fact that OIRA commenced a 3 week interagency review of the draft endangerment finding yesterday. In fact, the memo says as much. That review will conclude on April 10. The purpose in my writing to the President on March 16th was to alert him to and get his decision on a possible Earth week announcement while the interagency review process was proceeding. If the President doesn't get the memo for three weeks, then won't it be too late for him to accept my invitation?

From: "Lu, Christopher P." (b) (6)

Sent: 03/21/2009 10:45 AM AST

To: Richard Windsor

Subject: Endangerment finding memo

Lisa –

We circulated your memo to the different White House components, including OMB, and the consensus was that we should (b) (5)
My understanding is that the OIRA process will be completed in three

weeks. Happy to discuss with you further if you'd like.

--Chris

Chris Lu
Assistant to the President and Cabinet Secretary
(Cabinet Affairs) (b) (6)
(Fax) (b) (6)
(b) (6)

{In Archive} Re: Endangerment 

Lisa Heinzerling to: Richard Windsor

02/22/2009 10:21 AM

Archive: This message is being viewed in an archive.

Sounds good. Thanks.
Richard Windsor

----- Original Message -----

From: Richard Windsor
Sent: 02/22/2009 10:15 AM EST
To: Lisa Heinzerling
Cc: "Allyn Brooks-Lasure" <Brooks-lasure.allyn@epa.gov>
Subject: Re: Endangerment

1 - Given where we are press-wise (which I agree is a very good place), I am loathe to release it right now. Perhaps we should find a way to let it be known publicly (via my upcoming interview with Greenwire and others that I have received a first briefing on the prior finding and that I have specifically requested additional information, analysis on public health, particularly the effect of climate on EJ communities.

2 - I would like to shoot for an April 16th event at EPA that features POTUS.

Thx, Lj
Lisa Heinzerling

----- Original Message -----

From: Lisa Heinzerling
Sent: 02/22/2009 09:22 AM EST
To: Richard Windsor
Subject: Endangerment

Hi Lisa - Two questions on endangerment: 1) OGC and OAR are both comfortable with releasing the Dec. 2007 draft endangerment finding. As you and I discussed, this would be a big statement about transparency, given the secrecy surrounding this document in the last administration, and would also provide an opportunity to send a signal to the environmental justice community that we're working on a fuller statement of the effects of GHGs on vulnerable populations. Are you still interested in releasing this document?

2) What date should we shoot for for our own proposed endangerment finding? A number of press outlets have surmised, based on your excellent NYT interview, that the finding will be issued April 2, the Mass v. EPA anniversary. You have also said the first day of Earth Week would be good. Which do you prefer? Dina Kruger says her team can do April 2 IF the OMB review process goes quickly.



{In Archive} Re: Endangerment finding memo

Richard Windsor to: Chris Lu



03/21/2009 01:20 PM

Archive:

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Chris,

I'm confused by your note. My memo is to the President. Are you saying that my memo will be forwarded to the President along with a staff recommendation that he delay making a final decision until the OIRA review is complete? (If so, I am comfortable with that as long as WH communications is aware of the date(s) I suggested).

Or are you saying that my memo will not be forwarded to the President for another 3 weeks, if at all? If so, is this decision coming from the Chief of Staff? Does it mean that the head of EPA is prohibited from sending a short memo directly to the President?

I am well aware of the fact that OIRA commenced a 3 week interagency review of the draft endangerment finding yesterday. In fact, the memo says as much. That review will conclude on April 10 and I expect it will go quite well. The purpose in my writing to the President on March 16th was to alert him to and get his decision on a possible Earth week announcement while the interagency review process was proceeding. If the President doesn't get the memo for three weeks, then won't it be too late for him to accept my invitation?

Tx, Lisa

From: "Lu, Christopher P." (b) (6)

Sent: 03/21/2009 10:45 AM AST

To: Richard Windsor

Subject: Endangerment finding memo

Lisa –

We circulated your memo to the different White House components, including OMB, and the consensus was that we should wait until OIRA completes its process before we tee this up for a Presidential decision. My understanding is that the OIRA process will be completed in three weeks. Happy to discuss with you further if you'd like.

--Chris

Chris Lu

Assistant to the President and Cabinet Secretary

(Cabinet Affairs) (b) (6)

(Fax) (b) (6)



{In Archive} Re: Endangerment finding memo 
David McIntosh to: Richard Windsor, Lisa Heinzerling

03/21/2009 11:24 AM

Archive:

This message is being viewed in an archive.

I wonder whether you might get someone who has POTUS email privileges (Podesta?) to email him a shorter version of the suggestion under his/her own name.

From: David McIntosh
Sent: 03/21/2009 11:16 AM EDT
To: Richard Windsor; "Lisa Heinzerling" <heinzerling.lisa@epa.gov>; "David McIntosh" <mcintosh.david@epa.gov>
Subject: Re: Endangerment finding memo

The memo wasn't addressed to "the White House components." It was addressed to the President. You might seek clarification from Chris that he is saying that the head of EPA is prohibited from ever sending a short memo directly to the President. If he doesn't get the memo for three weeks, then won't it be too late for him to accept your invitation?

From: Richard Windsor
Sent: 03/21/2009 11:10 AM EDT
To: "Lisa Heinzerling" <heinzerling.lisa@epa.gov>; "David McIntosh" <mcintosh.david@epa.gov>
Subject: Fw: Endangerment finding memo

Hmmm...

From: "Lu, Christopher P." (b) (6)
Sent: 03/21/2009 10:45 AM AST
To: Richard Windsor
Subject: Endangerment finding memo

Lisa –

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[REDACTED]

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Thx, Lj
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{In Archive} memo to President
Lisa Heinzerling to: Richard Windsor

03/13/2009 05:45 PM

History: This message has been forwarded.
Archive: This message is being viewed in an archive.

Lisa,

Attached is a draft of the memo you requested, using the form Eric obtained from the WH. This draft incorporates Allyn's suggestions.

I'll be eager to hear what you think.

I heard you're not feeling well. I hope you get better soon.

Lisa



Presidential_Decision_Memo endangerment LH 3-13.doc



{In Archive} Fw: memo to President

Richard Windsor to: Lisa Heinzerling, David McIntosh

03/13/2009 07:53 PM

Archive:

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Thanks. It is compelling and straightforward. I am forwarding to David to add the political angle. And I intend to make some changes as well so the Prez can hear the counterarguments from me rather than his advisors in the WH. I hope to send a new draft tomorrow for your thoughts.

One question - Nancy Sutley called yesterday to put forth a Jody Freeman suggestion that perhaps the Endangerment Finding proposal could be accompanied by an ANPR on the car "deal" if there is one. She thought it would provide something more concrete in terms of a problem solved as well as respond to critics who would portray the End Finding as a scary open-ended drag on the economy and EPA as a regulator gone wild. I'm not sure I agree but wanted to put her suggestion to you two (and only you two please) for now.

Lisa

Lisa Heinzerling

----- Original Message -----

From: Lisa Heinzerling

Sent: 03/13/2009 05:44 PM EDT

To: Richard Windsor

Subject: memo to President

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Presidential_Decision_Memo endangerment LH 3-13.doc



{In Archive} Re: Fw: memo to President

David McIntosh to: Richard Windsor

Cc: "Lisa Heinzerling", "David McIntosh"

03/13/2009 08:45 PM

History: This message has been replied to and forwarded.

Archive: This message is being viewed in an archive.

Exciting stuff -- and beautifully written. Into this version of the document I've added (in redline) two proposed paragraphs on the politics.



Presidential_Decision_Memo endangerment LH 3-13 - redline.doc

Richard Windsor

Thanks. It is compelling and straightforward. I am forwarding to David to add th...

03/13/2009 07:52:39 PM

From: Richard Windsor/DC/USEPA/US

To: "Lisa Heinzerling" <heinzerling.lisa@epa.gov>, "David McIntosh" <mcintosh.david@epa.gov>

Date: 03/13/2009 07:52 PM

Subject: Fw: memo to President

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Presidential_Decision_Memo endangerment LH 3-13.doc



{In Archive} Re: Fw: memo to President 

Richard Windsor to: David McIntosh

Cc: "Lisa Heinzerling"

03/13/2009 08:58 PM

Archive: This message is being viewed in an archive.

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David McIntosh

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From: David McIntosh

Sent: 03/13/2009 08:45 PM EDT

To: Richard Windsor

Cc: "Lisa Heinzerling" <heinzerling.lisa@epa.gov>; "David McIntosh" <mcintosh.david@epa.gov>

Subject: Re: Fw: memo to President

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[attachment "Presidential_Decision_Memo endangerment LH 3-13 - redline.doc" deleted by Richard Windsor/DC/USEPA/US]

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{In Archive} Re: Fw: memo to President 

Lisa Heinzerling to: Richard Windsor

Cc: "Lisa Heinzerling", "David McIntosh"

03/14/2009 11:37 AM

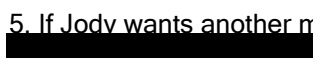
Archive:

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Here I'll disagree again, this time with Jody Freeman's suggestion as conveyed through Nancy Sutley.

First, notice that this suggestion is the polar opposite of the one on the cause or contributes finding. That suggestion would be to pare back the endangerment finding for fear of the consequences that flow from a cause or contributes finding. This suggestion would enlarge the endangerment finding to include an ANPR. When one gets the sense that one might receive two opposite reactions to an idea from the same people, one has to wonder what the real concern is.

On doing an ANPR for cars along with the endangerment finding: I think this is a bad idea, for the following reasons:

1. No auto deal is near. Waiting for a deal -- if it ever comes -- will delay the endangerment finding indefinitely. (This is not to say we cannot come up with a good rule on autos; it is to say that the come-together moment OECC has been trumpeting to the press is not imminent.)
2. Even if there is something I do not know and an auto deal is indeed near, pairing the endangerment finding with an ANPR will still delay the endangerment finding because we will need to write the ANPR. This is not a simple matter.
3. Doing an ANPR will also delay the proposed auto rule, which we have scheduled for July/August (probably August; DOT has the same schedule). We will need to take comment on the ANPR, which will mean providing a chunk of time for a comment period and also take time away from actually writing the rule.
4. "ANPR" has become a dirty word in the context of EPA climate regulation. Last summer's ANPR on climate regulation was the Bush Administration's mechanism for putting off any action whatsoever on climate. I understand that an ANPR could still be useful in some settings, even when it comes to climate, but not in the context of endangerment and mobile sources. Last summer's ANPR was ABOUT endangerment and mobile sources, in large part. To do ANOTHER ANPR would be very awkward.
5. If Jody wants another mechanism for sealing an autos deal, that mechanism could be -- as you and I have discussed -- (b) (5)  Our lawyers believe that is a legally plausible way to go. It has precedent at the agency. I have suggested it in conversation with OECC. I do not honestly know why they would prefer an ANPR to this other mechanism.

We have a politically fraught but scientifically and legally straightforward decision ready to go: that is, that greenhouse gases endanger public health and welfare and that mobile sources contribute to the pollution that is dangerous. Ours is a simple and true story to tell. I do not believe we should complicate the story by adding spin-offs that are driven by an agenda that -- I fear -- has not been fully disclosed to us.

Richard Windsor

Thanks. It is compelling and straightforward. I am forwarding to David to add th...

03/13/2009 07:52:39 PM

From: Richard Windsor/DC/USEPA/US
To: "Lisa Heinzerling" <heinzerling.lisa@epa.gov>, "David McIntosh" <mcintosh.david@epa.gov>
Date: 03/13/2009 07:52 PM
Subject: Fw: memo to President

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{In Archive} Re: Fw: memo to President 
Lisa Heinzerling to: Richard Windsor

03/14/2009 11:43 AM

History: This message has been replied to.
Archive: This message is being viewed in an archive.

"an engineer" -- ha! -- a brilliant, funny, savvy, kick-ass-manager engineer

thanks for the kind words

Richard Windsor

Thx to you both again. Now, it falls to me, an engineer, to revise the joint produ...

03/13/2009 08:57:56 PM

From: Richard Windsor/DC/USEPA/US
To: David McIntosh/DC/USEPA/US@EPA
Cc: "Lisa Heinzerling" <heinzerling.lisa@epa.gov>
Date: 03/13/2009 08:57 PM
Subject: Re: Fw: memo to President

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David McIntosh

----- Original Message -----

From: David McIntosh
Sent: 03/13/2009 08:45 PM EDT
To: Richard Windsor
Cc: "Lisa Heinzerling" <heinzerling.lisa@epa.gov>; "David McIntosh" <mcintosh.david@epa.gov>
Subject: Re: Fw: memo to President

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03/13/2009 07:52:39 PM



{In Archive} Re: Fw: memo to President

Richard Windsor to: Lisa Heinzerling

03/14/2009 11:45 AM

Archive:

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Cool!

Lisa Heinzerling

----- Original Message -----

From: Lisa Heinzerling

Sent: 03/14/2009 11:43 AM EDT

To: Richard Windsor

Subject: Re: Fw: memo to President

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Richard Windsor

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03/13/2009 07:52:39 PM



{In Archive} Re: Fw: memo to President

David McIntosh to: Lisa Heinzerling

Cc: "Lisa P Jackson", Richard Windsor

03/16/2009 06:48 AM

History: This message has been replied to and forwarded.

Archive: This message is being viewed in an archive.

And here I've just made a few minor, additional line-edits -- and only to the two paragraphs that I originated.



Presidential_Decision_Memo endangerment LPJ 3-15 - redline LH - DM.doc

Lisa Heinzerling

What you've done is excellent. I've gone back and forth, too, wondering wheth...

03/15/2009 10:38:53 PM

From: Lisa Heinzerling/DC/USEPA/US
To: "Lisa P Jackson" <(b) (6)>
Cc: David McIntosh/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA
Date: 03/15/2009 10:38 PM
Subject: Re: Fw: memo to President

What you've done is excellent.

I've gone back and forth, too, wondering whether answering potential criticisms of the finding itself diverts attention from the ostensible purpose of the memo, which is to seek the President's involvement in the actual announcement. I've worried that perhaps if we "lose" on the memo, we lose not only on the possibility of a Presidential announcement but also, because of the way the memo is written, on the timing and perhaps content of the finding itself. We've put those on the table now, at least implicitly, right alongside the Presidential announcement. But I also see the value in responding to potential criticisms up-front. And, for the same reasons I'm concerned, there is also a possibility that persuading with this memo will lead to the whole ball of wax -- Presidential announcement, Earth Week timing, and content of the finding.

On balance, I think your initial instinct to anticipate criticism is correct. I'd leave the memo the current length. I've added a few little suggested edits. In two places I highlighted text because otherwise you wouldn't be able to see what I had changed slightly as compared to David's version.

I've also renamed the memo for purposes of version control.

Thanks. See you tomorrow.

[attachment "Presidential_Decision_Memo endangerment LPJ 3-15 - redline LH.doc" deleted by David McIntosh/DC/USEPA/US]

"Lisa P Jackson"

OK - here is my mark-up. I went back and forth on it all weekend and decided...

03/15/2009 08:26:24 PM



{In Archive} Re: Fw: memo to President 
Richard Windsor to: David McIntosh, Lisa Heinzerling
Cc: "Lisa Jackson"

03/16/2009 06:50 AM

Archive: This message is being viewed in an archive.

Ok - one last read and this will go. E 3 are the sole keepers here. Tx.
David McIntosh

----- Original Message -----

From: David McIntosh
Sent: 03/16/2009 06:48 AM EDT
To: Lisa Heinzerling
Cc: "Lisa P Jackson" <(b) (6)>; Richard Windsor
Subject: Re: Fw: memo to President

And here I've just made a few minor, additional line-edits -- and only to the two paragraphs that I originated.

[attachment "Presidential_Decision_Memo endangerment LPJ 3-15 - redline LH - DM.doc" deleted by Richard Windsor/DC/USEPA/US]

Lisa Heinzerling

What you've done is excellent. I've gone back and forth, too, wondering wheth...

03/15/2009 10:38:53 PM

From: Lisa Heinzerling/DC/USEPA/US
To: "Lisa P Jackson" (b) (6)
Cc: David McIntosh/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA
Date: 03/15/2009 10:38 PM
Subject: Re: Fw: memo to President

What you've done is excellent.

I've gone back and forth, too, wondering whether answering potential criticisms of the finding itself diverts attention from the ostensible purpose of the memo, which is to seek the President's involvement in the actual announcement. I've worried that perhaps if we "lose" on the memo, we lose not only on the possibility of a Presidential announcement but also, because of the way the memo is written, on the timing and perhaps content of the finding itself. We've put those on the table now, at least implicitly, right alongside the Presidential announcement. But I also see the value in responding to potential criticisms up-front. And, for the same reasons I'm concerned, there is also a possibility that persuading with this memo will lead to the whole ball of wax -- Presidential announcement, Earth Week timing, and content of the finding.

On balance, I think your initial instinct to anticipate criticism is correct. I'd leave the memo the current length. I've added a few little suggested edits. In two places I highlighted text because otherwise you wouldn't be able to see what I had changed slightly as compared to David's version.

I've also renamed the memo for purposes of version control.

Thanks. See you tomorrow.

[attachment "Presidential_Decision_Memo endangerment LPJ 3-15 - redline LH.doc" deleted by David McIntosh/DC/USEPA/US]

"Lisa P Jackson"

OK - here is my mark-up. I went back and forth on it all weekend and decided...

03/15/2009 08:26:24 PM

DECISION MEMO

THE WHITE HOUSE

Washington

March --, 2009

MEMORANDUM FOR THE PRESIDENT

FROM: LISA P. JACKSON

SUBJECT: POTENTIAL PRESIDENTIAL ANNOUNCEMENT OF EPA'S
"ENDANGERMENT FINDING" ON GREENHOUSE GASES

I am writing to ask you to give your most serious consideration to the idea of personally announcing the Environmental Protection Agency's impending determination that greenhouse gases endanger public health and welfare. Climate change is the most pressing environmental issue of our time, and the "endangerment finding" soon to be issued by EPA will be the United States Government's first official recognition of this threat. I would urge that this announcement be the major Presidential event of this year's Earth Week.

Background

Alone among the federal agencies, EPA has the duty formally to determine whether greenhouse gases present a danger to public health and welfare. The Clean Air Act provides the statutory home for this duty. Under this law, the EPA Administrator must make a judgment as to whether air pollutants may reasonably be anticipated to endanger public health or welfare. In the previous Administration, EPA argued that it had no duty to make this finding. In *Massachusetts v. EPA*, the Supreme Court disagreed. Two years have elapsed since then.

Following your campaign pledge to follow the rule laid down in *Massachusetts v. EPA* and my own commitment, in my confirmation hearing, to do the same, I instructed my staff to turn their attention back to the endangerment finding. In doing so, I directed them to look carefully at the consequences of greenhouse gases and climate change for human health and also to incorporate the latest scientific evidence into their analysis. They have done so. A draft endangerment finding will be sent to OMB for interagency review on March 20. OMB has indicated that they will endeavor to complete the process of interagency review in three weeks, so that the endangerment finding would be ready to be issued in mid-April.

The Issue

The issue is whether you will personally announce the finding that greenhouse gases endanger public health and welfare, and make that announcement the centerpiece of your Earth Week activities this year.

Analysis and Policy Considerations

You have made climate policy a central part of your domestic and international agenda. The premise of this policy is that greenhouse gases do indeed threaten human well-being. Yet the United States Government has never officially and formally proclaimed this basic fact. Quite to the contrary; until very recently, the official government position was one of avoidance and denial. The longstanding failure of the United States Government to announce – clearly, emphatically, and officially – that climate change is a real threat has not only delayed action on this grave danger, but it has also done significant damage to our international credibility and scientific integrity. In addition to emphasizing climate policy, you have also made re-engagement in the international community and renewed respect for scientific integrity essential pieces of your governing agenda. All of these parts of your broad mission come together in the official U.S. finding that greenhouse gases endanger public health and welfare.

In announcing this finding, you would be speaking not only to our own citizens but also to the world. The world has waited for a long time, breath held and hopes high, for the United States Government finally to acknowledge the real and serious threats of climate change. I believe that when the Government does so, through the endangerment finding EPA soon will make, you should be the one to deliver this long-awaited message.

If Earth Day passed without a finding, the domestic and foreign criticism would begin immediately and mount steadily. When, eventually, your Administration made the finding – something that, I will be so bold to say, is a near-certainty – it would be described as more the result of criticism than of leadership.

The endangerment finding does not unleash a pell-mell regulatory charge – something that I I oppose because it would provoke a public backlash. Instead, the regulatory process that begins with the endangerment finding unfolds deliberately and incrementally. Its pace and direction can be controlled – by the White House and EPA – in ways that are consistent with the law and that do not become lightning rods of criticism. In fact, the beauty of making the endangerment finding during Earth Week is that it would elate the Left without offering targets of opportunity to the Right. After all, the finding is comprised of nothing more than science and common sense. The document contains no gloomy regulatory to-do list.

I cannot imagine a more appropriate major Presidential event for Earth Week than this one. Earth Week this year runs from April 20-24.

Recommendation

I recommend that you personally announce EPA's endangerment finding during a major Earth Week event.

☐ Approve ☐ Disapprove ☐ Discuss

DECISION MEMO

THE WHITE HOUSE

Washington

March --, 2009

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☐ Approve ☐ Disapprove ☐ Discuss

{In Archive} Re: Endangerment 

Lisa Heinzerling to: Richard Windsor

02/22/2009 10:21 AM

Archive: This message is being viewed in an archive.

Sounds good. Thanks.
Richard Windsor

----- Original Message -----

From: Richard Windsor
Sent: 02/22/2009 10:15 AM EST
To: Lisa Heinzerling
Cc: "Allyn Brooks-Lasure" <Brooks-lasure.allyn@epa.gov>
Subject: Re: Endangerment

1 - Given where we are press-wise (which I agree is a very good place), I am loathe to release it right now. Perhaps we should find a way to let it be known publicly (via my upcoming interview with Greenwire and others that I have received a first briefing on the prior finding and that I have specifically requested additional information, analysis on public health, particularly the effect of climate on EJ communities.

2 - I would like to shoot for an April 16th event at EPA that features POTUS.

Thx, Lj
Lisa Heinzerling

----- Original Message -----

From: Lisa Heinzerling
Sent: 02/22/2009 09:22 AM EST
To: Richard Windsor
Subject: Endangerment

Hi Lisa - Two questions on endangerment: 1) OGC and OAR are both comfortable with releasing the Dec. 2007 draft endangerment finding. As you and I discussed, this would be a big statement about transparency, given the secrecy surrounding this document in the last administration, and would also provide an opportunity to send a signal to the environmental justice community that we're working on a fuller statement of the effects of GHGs on vulnerable populations. Are you still interested in releasing this document?

2) What date should we shoot for for our own proposed endangerment finding? A number of press outlets have surmised, based on your excellent NYT interview, that the finding will be issued April 2, the Mass v. EPA anniversary. You have also said the first day of Earth Week would be good. Which do you prefer? Dina Kruger says her team can do April 2 IF the OMB review process goes quickly.



{In Archive} Re: In her voice mail...

Richard Windsor to: Lisa Jackson

01/31/2009 11:03 AM

Archive:

This message is being viewed in an archive.

And let me know if you think I am being too cavalier on the ### stuff. My analysis is:

- This was my first week with little to no staff (and though it was aggravating dealing with their silliness), thanks to you and Lisa and Bob, we did well.
- It is too soon to press for much more detail on how we will work the jurisdictional issues. I would be better served to get Goo and Alison in place. Then, Alison and I can respectfully request that her folks go through Alison's office when they need to access EPA staff.
- She may be holding up Sussman's appointment and spreading general concerns (lobbying, etc). She may also be underestimating my tenacity and Bob's ties to media and industry folks who would love to find out that she is afraid of her former deputy.
- No matter what, certain folks on the Hill will work with ### because they want the White House's blessing. It is in my best interest to allow her to overplay that role now if she is going to do that.
- She is running all over Nancy and her office such that allies there won't help. And she is a pro at spreading "concerns" about me or my staff in the WH if she so chooses.
- She has no traction anywhere but EPA. DOI and DOE are too big. USDA is too stubborn. The COE will do what they want. If we can publicly link her success or failure to how she moves other agencies (e.g., "Climate legislation is going to be complicated, but her real tests are the Highway Bill and/or building codes"), we will get some breathing room.

David McIntosh

----- Original Message -----

From: David McIntosh

Sent: 01/31/2009 08:00 AM EST

To: Richard Windsor

Subject: Re: In her voice mail...

You might consider saying something like this to Browner at your Monday mini cabinet lunch: "When are our deputies going to start meeting about climate policy? My deputies have seen one of yours speaking directly to EPA career staff about climate a couple of times in the past week, but your deputies still have not called a meeting with my deputies. Heather Zichal received the names and contact info of my deputies about a week ago but never responded."

Richard Windsor

----- Original Message -----

From: Richard Windsor

Sent: 01/31/2009 07:56 AM EST
To: David McIntosh
Subject: Re: In her voice mail...

Cool. Thanks.

David McIntosh

----- Original Message -----

From: David McIntosh
Sent: 01/31/2009 07:51 AM EST
To: Richard Windsor; "David McIntosh" <mcintosh.david@epa.gov>; "David McIntosh"

(b) (6)

Subject: Re: In her voice mail...

On Monday EPA career staff and I met with Waxman staff to discuss the modeling needs of their climate legislative effort. We'll be serving Waxman very well in that regard, and that's clear to Waxman's staff. So Browner is urging you to do something that you are already doing (that will be a theme of the next 4 years). It is advantageous to us that she is eager for us to satisfy climate modeling consumers on the Hill. Because satisfying them means drastically shortening the period of WH and interagency review of EPA modeling reports. In the last Administration, that review took 2 months. At our meeting with the WH and other agencies about modeling yesterday (Joe Aldy was there) our Dina Kruger in OAR succeeded in nonchalantly getting that review period shortened to two weeks. We'll push to make it a lot shorter than that for follow-up analyses.

Richard Windsor

----- Original Message -----

From: Richard Windsor
Sent: 01/30/2009 11:11 PM EST
To: "David McIntosh" <mcintosh.david@epa.gov>; "David McIntosh" (b) (6)
Subject: In her voice mail...

Carol Browner mumbled something about needing to follow up on Waxman and modelling. What's that about?



{In Archive} Re: In her voice mail... 

Richard Windsor to: David McIntosh

01/31/2009 10:44 AM

Archive:

This message is being viewed in an archive.

I will.

David McIntosh

----- Original Message -----

From: David McIntosh

Sent: 01/31/2009 08:00 AM EST

To: Richard Windsor

Subject: Re: In her voice mail...

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Richard Windsor

----- Original Message -----

From: Richard Windsor

Sent: 01/31/2009 07:56 AM EST

To: David McIntosh

Subject: Re: In her voice mail...

Cool. Thanks.

David McIntosh

----- Original Message -----

From: David McIntosh

Sent: 01/31/2009 07:51 AM EST

To: Richard Windsor; "David McIntosh" <mcintosh.david@epa.gov>; "David McIntosh"

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Subject: In her voice mail...

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{In Archive} Re: Good news re: Johnson memo 
Richard Windsor to: Lisa Heinzerling

02/16/2009 10:34 PM

Archive: This message is being viewed in an archive.

Wow. How did you pull THAT off?
Lisa Heinzerling

----- Original Message -----

From: Lisa Heinzerling
Sent: 02/16/2009 07:34 PM EST
To: Richard Windsor; Allyn Brooks-LaSure
Subject: Good news re: Johnson memo

The Sierra Club and other petitioners who have challenged the Johnson memo on PSD will NOT be asking the court to stay the memo tomorrow. So we should all be celebrating together tomorrow, and the Green Group meeting should be cause for a group hug.

Have a good night.



Re: OMB/Endangerment Finding 
Bob Sussman to: Lisa Heinzerling

02/23/2009 08:15 PM

Can you do the 90 day review and still issue it in April?

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

Lisa Heinzerling

we're planning on doing this

02/23/2009 06:03:47 PM

From: Lisa Heinzerling/DC/USEPA/US
To: Bob Sussman/DC/USEPA/US@EPA
Cc: David McIntosh/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA
Date: 02/23/2009 06:03 PM
Subject: Re: OMB/Endangerment Finding

we're planning on doing this

Bob Sussman

I met one-on-one today with Michael Fitzpatrick...

02/23/2009 06:01:56 PM

From: Bob Sussman/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA, Lisa Heinzerling/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA
Date: 02/23/2009 06:01 PM
Subject: OMB/Endangerment Finding

I met one-on-one today with Michael Fitzpatrick of OIRA. I'll save most of what he said for another time but wanted to highlight one important item -- he says that OIRA feels very strongly that the proposed endangerment finding should be subject to OMB/interagency review under EO 12866. Since this isn't my issue, I did not respond but wanted to put it on your screen.

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency



{In Archive} endangerment
Lisa Heinzerling to: Richard Windsor

03/05/2009 11:16 AM

Archive:

This message is being viewed in an archive.

Cass Sunstein PROMISES a three-week review for the endangerment finding. We will send it to them on March 20 and they will get it back to us by April 10, in time for an April 16 announcement.

(b) (6)

Power Sector Strategy: Climate, Public Health, Environmental Justice

The Building Blocks

Briefing for Gina McCarthy and Ali Zaidi

February 4, 2021

EPA Has Responsibility Across Multiple Media to Address Environmental Effects of the Power Sector

- Air
 - Toxics
 - NAAQS Pollutants
 - GHGs
 - Regional Haze
- Water
 - Effluent Limitation Guidelines
 - Cooling water requirements
- Solid Waste
 - Coal Combustion Residuals

Key Considerations - Timing

- Timing

Ex. 5 Deliberative Process (DP)

- Air Toxics Standards (Flagged in EO)

Ex. 5 Deliberative Process (DP)

Key Constraints - Geographic Scope

- Some authorities apply to all units across the country while others only apply to a subset of units
 - National Rules Include
 - Air Toxics Standards
 - GHG Standards
 - Water Standards
 - Coal Combustion Residual Standards
 - Authorities that would cover a subset of units include
 - Non-attainment provisions (transport provisions would generally cover a greater number of units than provisions for non-attainment areas)
 - Regional Haze

Effluent Limitation Guidelines and Coal Combustion Residuals

Ex. 5 Deliberative Process (DP)

Air Toxics Standards (e.g., MATS Rule)

Ex. 5 Deliberative Process (DP)

Non-attainment Provisions

Ex. 5 Deliberative Process (DP)

111(d) CO2 Standards

- National in scope, but requires two step process
(EPA guidelines followed by State Plans)

Ex. 5 Deliberative Process (DP)

Regional Haze

Ex. 5 Deliberative Process (DP)

Next Steps for Coal-Fired Units

Ex. 5 Deliberative Process (DP)

New Natural Gas Units and 111(b)

Ex. 5 Deliberative Process (DP)



{In Archive} Re: CB 
Richard Windsor to: David McIntosh

03/06/2009 03:52 PM

Archive:

This message is being viewed in an archive.

U r right on all counts. No worries.
David McIntosh

----- Original Message -----

From: David McIntosh
Sent: 03/06/2009 03:49 PM EST
To: Richard Windsor
Subject: CB

I went less far than this, and unlike her, I did not make the statement publicly. And unlike her, I was responding to a direct question from a Member of Congress. I've prepared Allyn

Monday, February 23rd 2009, 10:35 AM GMT
[Co2sceptic](#) (Site Admin)



WASHINGTON -(Dow Jones)- President Barack Obama's climate czar said Sunday the Environmental Protection Agency will soon issue a rule on the regulation of carbon dioxide, finding that it represents a danger to the public.

The White House is pressing Congress to draft and pass legislation that would cut greenhouse gases by 80% of 1990 levels by 2050, threatening to use authority under the Clean Air Act if legislators don't move fast enough or create strong enough provisions.

Carol Browner, Obama's special advisor on climate change and energy, also said the administration is seeking to establish a national standard for auto emissions that could mean tougher efficiency mandates for auto makers. The new standard could be fashioned after strict proposals developed in California that would limit greenhouse gas emissions - initiatives that car makers have vigorously fought.

Article continues below this advert:

The comments - the first by the administration on the topic - could lead to another blow for beleaguered car companies such as General Motors (GM) and Ford (F) that are already tottering.

"EPA's going to look at Mass. Vs. EPA and will make an endangerment finding," Browner told Dow Jones Newswires in an interview. The Supreme Court ordered the EPA in the Mass. Vs. EPA case to determine if carbon dioxide endangered public health or welfare.

"The next step is a notice of proposed rulemaking" for new regulations on CO2 emissions, Browner said on the sidelines of the National Governors Association meeting, one of her first public appearances since the inauguration.

Browner declined to say exactly when the EPA would issue the finding or rulemaking, but EPA chief Lisa Jackson has indicated it could be on April 2, the anniversary of Mass Vs. EPA. Obama EPA chief Lisa Jackson said earlier in the month that her office would soon begin drafting rules for regulating CO2. The agency has been intensely reviewing and updating an existing endangerment finding made last year by agency officials - but blocked by the previous administration - that found carbon dioxide threatened human welfare.

Officially recognizing that carbon dioxide is a danger to the public would trigger regulation of the greenhouse gas emissions from coal-fired power plants, refineries, chemical plants, cement firms, vehicles and any other emitting sectors across the economy.

Industry fears it could shut down the economy, not only preventing plants from operating and spurring a dramatic retooling of the energy sector but also pushing up costs and hurting the international competitiveness for a raft of sectors. Environmentalists, meanwhile, say action by the administration is required by law and need to pressure lawmakers to act.

But Browner said the administration prefers that Congress draft legislation rather than CO2 to be regulated under the Clean Air Act because lawmakers could develop a bill that could more deftly regulate the greenhouse gas through a cap- and-trade system.

Senate Majority Leader Harry Reid, D-Nev., said Friday he aims to pass a climate change bill by the end of the summer, and Rep. Henry Waxman, D-Calif., head of the panel responsible for drafting a CO2 bill, said he wanted a bill approved by the Memorial Day holiday in May.

Browner also declined to say what the administration's target date for Congress to pass a climate bill before accelerating the Clean Air Act rulemaking, but she called Waxman's schedule an "aggressive" one.

"In the next several weeks we will begin to see the shape of legislation...(and) we will work with Congress as they shape it," she later told a group of Western Governors.

The climate czar dismissed critics of fast, stringent climate change laws who have said that the existing financial crisis would only be exacerbated by putting a premium on emitting carbon dioxide. She said businesses hoping to invest in CO2 mitigation projects needed more certain policy signals to plow cash into projects and companies, and that the rulemaking process would create a buffer for action and compliance.

Critics of putting an expensive premium on carbon say that such a schedule may be overly optimistic given the global financial crisis and the ramifications that putting a cap on greenhouse gases would have across nearly every sector of the economy. Tough action too fast, they say, not only could curb manufacturing and create an energy crisis by halting new power plant construction, but also could force a rapid migration of businesses

overseas to cheaper energy climes.

Specifically, Obama wants an economy-wide law - instead of just some major emitting sectors - and to auction off 100% of the emission credits, which analysts say could exponentially increase the cost of emitting, as well as the pay-off for low-carbon projects.

Browner also said the administration had directed the EPA and the Department of Transportation to develop a national policy for auto emissions.

The DOT is currently developing new auto efficiency standards, but the White House and the EPA are currently considering a request from California to implement their own much stricter standards, which consider greenhouse gas emissions rather than just fuel efficiency and are likely to be followed in a more than a dozen other states. The administration could seek to implement the California standards or a negotiated version of them across the country, however, Browner indicated.

"We need a unified national policy when it comes to clean vehicles," Browner told the governors, adding that the Department of Transportation and EPA needed to cooperate and determine the impact of both conventional pollution and greenhouse gas emissions and give auto makers the time and policy direction necessary to re-tool their plants.

"Both agencies have to meet their responsibilities...we're just trying to figure out how do you do it in a way that the car companies have a clear (mandate)," Browner told reporters after the event.

Car makers have expressed concern not only about the costs of meeting the tough new standards, but also having to make cars that have to meet two different mandates.

Separately, Browner said the administration was also going to create an inter-agency task force to site a new national electricity transmission grid to meet both growing demand and the President's planned renewable energy expansion. Siting has been a major bottleneck to renewable growth, and lawmakers and administration officials have said they're likely to seek greater federal powers that would give expanded eminent domain authorities.

By Ian Talley, Dow Jones Newswires

Message

From: David McIntosh [McIntosh.David@epamail.epa.gov]
Sent: 2/26/2009 4:06:05 PM
To: Richard Windsor [Windsor.Richard@epamail.epa.gov]; Lisa Heinzerling [Heinzerling.Lisa@epamail.epa.gov]
Subject: Fw: tentative schedule of some EPA actions

----- Forwarded by David McIntosh/DC/USEPA/US on 02/26/2009 11:06 AM -----

From: David McIntosh/DC/USEPA/US
To: Ex. 6 Personal Privacy (PP)
Date: 02/26/2009 11:04 AM
Subject: tentative schedule of some EPA actions

Hi Heather. Administrator Jackson wanted us to convey this information to your office this morning (normally Lisa Heinzerling would do this, but she is on work travel):

1. Administrator Jackson would sign a proposed EPA action on the endangerment finding on about April 16, which is in the week immediately preceding Earth Day (April 22). In order for that to happen, OMB/inter-agency review must last no longer than 2 weeks.
2. Administrator Jackson would sign a final EPA action on the California Waiver in June.
3. In August, Administrator Jackson would sign a proposed EPA rule instituting a nation-wide GHG emissions standard for light-duty vehicles. California has indicated that, so long as EPA's standard is as strict as the California program, California will defer to EPA's standard once it is in place.
4. Signature on final EPA action on the endangerment finding: We haven't discussed specifics, but our estimate (based on 60-day comment period and expeditious OMB/inter-agency review) would be August or September. Note that EPA action on the endangerment finding need not be final before car standards are proposed.



{In Archive} Re: In her voice mail... 📎

Richard Windsor to: Lisa Jackson

01/31/2009 11:03 AM

Archive:

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And let me know if you think I am being too cavalier on the ### stuff. My analysis is:

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David McIntosh

----- Original Message -----

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Sent: 01/31/2009 08:00 AM EST

To: Richard Windsor

Subject: Re: In her voice mail...

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Richard Windsor

----- Original Message -----

From: Richard Windsor

Sent: 01/31/2009 07:56 AM EST
To: David McIntosh
Subject: Re: In her voice mail...

Cool. Thanks.

David McIntosh

----- Original Message -----

From: David McIntosh
Sent: 01/31/2009 07:51 AM EST
To: Richard Windsor; "David McIntosh" <mcintosh.david@epa.gov>; "David McIntosh"

(b) (6)

Subject: Re: In her voice mail...

On Monday EPA career staff and I met with Waxman staff to discuss the modeling needs of their climate legislative effort. We'll be serving Waxman very well in that regard, and that's clear to Waxman's staff. So Browner is urging you to do something that you are already doing (that will be a theme of the next 4 years). It is advantageous to us that she is eager for us to satisfy climate modeling consumers on the Hill. Because satisfying them means drastically shortening the period of WH and interagency review of EPA modeling reports. In the last Administration, that review took 2 months. At our meeting with the WH and other agencies about modeling yesterday (Joe Aldy was there) our Dina Kruger in OAR succeeded in nonchalantly getting that review period shortened to two weeks. We'll push to make it a lot shorter than that for follow-up analyses.

Richard Windsor

----- Original Message -----

From: Richard Windsor
Sent: 01/30/2009 11:11 PM EST
To: "David McIntosh" <mcintosh.david@epa.gov>; "David McIntosh" (b) (6)
Subject: In her voice mail...

Carol Browner mumbled something about needing to follow up on Waxman and modelling. What's that about?



{In Archive} Re: In her voice mail...

Richard Windsor to: David McIntosh

01/31/2009 10:44 AM

Archive:

This message is being viewed in an archive.

I will.

David McIntosh

----- Original Message -----

From: David McIntosh

Sent: 01/31/2009 08:00 AM EST

To: Richard Windsor

Subject: Re: In her voice mail...

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Sent: 01/31/2009 07:56 AM EST

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Subject: Re: In her voice mail...

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Sent: 01/31/2009 07:51 AM EST

To: Richard Windsor; "David McIntosh" <mcintosh.david@epa.gov>; "David McIntosh"

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Subject: Re: In her voice mail...

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----- Original Message -----

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Sent: 01/30/2009 11:11 PM EST

To: "David McIntosh" <mcintosh.david@epa.gov>; "David McIntosh" <(b) (6)>

Subject: In her voice mail...

Carol Browner mumbled something about needing to follow up on Waxman and modelling. What's that about?



{In Archive} Re: Fw: Sen. Stabenow's Recommendation

Richard Windsor to: David McIntosh

01/29/2009 12:37 PM

Archive:

This message is being viewed in an archive.

tx

David McIntosh

The gist of this is that Senator Stabenow (D-MI) wants you to know that she rec...

01/29/2009 12:32:30 PM

From: David McIntosh/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA
Cc: Eric Wachter/DC/USEPA/US@EPA, Robert Goulding/DC/USEPA/US@EPA, Lisa Heinzerling/DC/USEPA/US@EPA
Date: 01/29/2009 12:32 PM
Subject: Fw: Sen. Stabenow's Recommendation

The gist of this is that Senator Stabenow (D-MI) wants you to know that she recommends Cameron Davis (president and CEO of the Alliance for the Great Lakes) for the position of Assistant Administrator for Water. I will tell Stabenow's office that you have received and are aware of the recommendation, and that you very much appreciate her reaching out to you on this.

----- Forwarded by David McIntosh/DC/USEPA/US on 01/29/2009 12:29 PM -----

From: "Renteria, Amanda (Stabenow)" <Amanda_Renteria@stabenow.senate.gov>
To: David McIntosh/DC/USEPA/US@EPA
Cc: "Adamo, Chris (Stabenow)" <Chris_Adamo@stabenow.senate.gov>
Date: 01/29/2009 10:33 AM
Subject: Sen. Stabenow's Recommendation

David,

Hi there. Chris Adamo said you were the right person to contact for the Senator's personnel recommendations. He also mentioned that we have good folks in place over there. So, with that kind of reputation, I look forward to working with you in the new year. We certainly have a lot to do to get this country back on track.

On behalf of the Senator, I wanted to send you a letter of recommendation for Cameron Davis for Assistant Administrator for the Office of Water. He is the President and CEO of the Alliance for the Great Lakes. He not only has experience in coalition-building across various states, but he is well aware of the water issues facing the nation. Anything we can do to provide more information, answer questions, etc. we are happy to do so.

Thanks David and pls send the Senator's best to Ms. Jackson.

The Senator and our office look forward to working with you in the future.

Warm Regards,
Amanda

Amanda A. Renteria
Chief of Staff
Office of U.S. Senator Debbie Stabenow (MI)
202.224.4822
[attachment "ds davis.pdf" deleted by Richard Windsor/DC/USEPA/US]



{In Archive} Re: I'll miss the morning mtg again tomorrow , but that'll be for the last time 📎

David McIntosh to: Richard Windsor

01/29/2009 06:37 PM

Archive:

This message is being viewed in an archive.

I'm glad you're getting home. I don't want to bug you tomorrow afternoon for fear of catching you while you're with (b) (6). But please feel free to call my cell (b) (6) for an update if you're alone on a train or something.

Richard Windsor

I am not in the office tomorrow. I have a conference in NYC in the morning. The...

01/29/2009 06:30:36 PM

From: Richard Windsor/DC/USEPA/US
To: David McIntosh/DC/USEPA/US@EPA
Date: 01/29/2009 06:30 PM
Subject: Re: I'll miss the morning mtg again tomorrow, but that'll be for the last time

I am not in the office tomorrow. I have a conference in NYC in the morning. Then I'll head home. I am available by phone all afternoon. Want to hear about your adventures.

David McIntosh

----- Original Message -----

From: David McIntosh
Sent: 01/29/2009 06:18 PM EST
To: Richard Windsor
Cc: Lisa Heinzerling; Eric Wachter; Robert Goulding
Subject: I'll miss the morning mtg again tomorrow, but that'll be for the last time

Tomorrow morning from 9 to 11 is the second of the two previously scheduled meetings between Browner's/Summers's Joe Aldy and EPA's climate modelers. I'll be there again to make sure that nothing is given away and to deliver a diplomatic but firm message. In the meantime, I'm accumulating some issues that merit your attention, although they can wait until Monday morning if you have a full schedule tomorrow afternoon.



{In Archive} Re: Presidents' Ethics EO

David McIntosh to: Richard Windsor

01/29/2009 06:14 PM

Archive:

This message is being viewed in an archive.

I reached both Michael and Alison.

Richard Windsor

I left a copy of the above document on my desk. It might be helpful for Goo an...

01/29/2009 05:26:20 PM

From: Richard Windsor/DC/USEPA/US
To: David McIntosh/DC/USEPA/US@EPA
Date: 01/29/2009 05:26 PM
Subject: Presidents' Ethics EO

I left a copy of the above document on my desk. It might be helpful for Goo and Taylor to review it before they speak to Norm Eisen. Sussman was cleared today (though his may have been a more clear cut set of facts than theirs may be). The order is also available on the web. Lisa



Re: OMB/Endangerment Finding 
Bob Sussman to: Lisa Heinzerling

02/23/2009 08:15 PM

Can you do the 90 day review and still issue it in April?

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

Lisa Heinzerling

we're planning on doing this

02/23/2009 06:03:47 PM

From: Lisa Heinzerling/DC/USEPA/US
To: Bob Sussman/DC/USEPA/US@EPA
Cc: David McIntosh/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA
Date: 02/23/2009 06:03 PM
Subject: Re: OMB/Endangerment Finding

we're planning on doing this

Bob Sussman

I met one-on-one today with Michael Fitzpatrick...

02/23/2009 06:01:56 PM

From: Bob Sussman/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA, Lisa Heinzerling/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA
Date: 02/23/2009 06:01 PM
Subject: OMB/Endangerment Finding

I met one-on-one today with Michael Fitzpatrick of OIRA. I'll save most of what he said for another time but wanted to highlight one important item -- he says that OIRA feels very strongly that the proposed endangerment finding should be subject to OMB/interagency review under EO 12866. Since this isn't my issue, I did not respond but wanted to put it on your screen.

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

Appointment

From: Daniel Gerasimowicz [CN=Daniel Gerasimowicz/OU=DC/O=USEPA/C=US]

Sent: 1/30/2009 10:01:28 PM

Subject: Briefing on the Response to the Endangerment Issue from Mass v. EPA

Location: The Bullet Room

Start: 2/4/2009 4:00:00 PM

End: 2/4/2009 5:00:00 PM

Recurrence: (none)

Ct: Dina Kruger Ex. 6 Personal Privacy (PP)

Craig/McLean/Kruger/Birnbaum/DeAngelo/Holmes/McIntosh/Zinger/Krieger/Hannon/Heinzerling/Wegman/Oge/Lynch/Ketcham-Colwill/Embrey/Ossias/Brenner/Dunham/Page/Montoro/Wayland (by phone)

Dial -in:

Ex. 6 Personal Privacy (PP)

{In Archive} EPA activities regarding power plants

Lisa Heinzerling to: Richard Windsor, Robert Goulding, Eric Wachter, David McIntosh, Allyn LaSure

02/08/2009 03:15 PM

History: This message has been forwarded.

Archive: This message is being viewed in an archive.

Lisa,

Attached is a memo on EPA's activities relating to power plants, prepared in anticipation of tomorrow morning's conference call with Carol Browner's team. It would be good if we could spend a few minutes discussing this before the call.

I hope you're having a good (b) (6)

Lisa



power plants memo.doc

To: Lisa Jackson
From: Lisa Heinzerling
Date: February 8, 2009
Re: EPA Activities Relevant to Power Plants

Our “power plants” conference call with Carol Browner and her team is scheduled for tomorrow morning at 10:00. In preparation for that call, I have put together the following description of recent and near-term EPA activities related to power plants:

Mercury: The Acting Solicitor General has, at EPA’s request, withdrawn the petition for certiorari in *EPA v. New Jersey*. (Technically, the acting SG has asked the Supreme Court to dismiss the case; this is the functional equivalent of withdrawing the petition.) This case involves the challenge to EPA’s controversial 2005 rule creating a trading program for mercury under section 111 of the Clean Air Act. EPA has, through the acting SG and in public statements, stated its intention to develop appropriate standards for power plants under section 112.

(As a happy aside, you might be interested to know that Court watchers can’t remember another instance in which the Solicitor General’s office has withdrawn a cert. petition due to a changed legal position. Even the career attorney on the case – who has been in the SG’s office for years – had to look up the relevant Supreme Court rule to find out how this is done.)

The following is a discussion that is useful for you to have but almost certainly too detailed for our phone call tomorrow: The Supreme Court might ask for the government’s views on the industry petition that has been filed in the mercury case. In that event, we will need to be ready to state whether we disavow the previous legal position EPA took with respect to the requirements for delisting source categories under section 112. In addition, if the Court does ask for the government’s views, it may be helpful for the EPA to state its intentions with respect to power plants and mercury in a formal ANPR, thus allowing the SG to use our own rather than his voice in describing our intentions. The ANPR may prove a useful device even beyond this context, as a way of soliciting views on the best and most careful way to move toward regulation under section 112. In the course of defending the Bush-era mercury rule, a lot of negative things were said about the 2000 finding that power plants should be listed under section 112; this legal tide will need to be turned if EPA is to craft a legally solid new rule. Someone should immediately begin reviewing the best way to handle the mercury matter from here on out.

CAIR: The D.C. Circuit has invalidated CAIR in its entirety, but has allowed the rule to remain in place while EPA repairs it. We have decided not to seek Supreme Court review of the D.C. Circuit’s decision and have informally notified the SG’s office of our decision. We will file a more formal explanation of our decision not to seek further review early this week.

Endangerment: We expect to be able to issue a proposed finding of endangerment for greenhouse gases within the next 100 days. Within the same document, we expect to find that certain major categories of greenhouse gases – in particular, motor vehicles – cause or contribute to air pollution (GHG emissions) which endangers public health and welfare. An endangerment finding combined with a causal finding will trigger regulatory obligations under the Clean Air Act.

Major stationary sources of air pollution – such as power plants and refineries – are already listed as regulated sources under section 111 of the Clean Air Act, which creates the “New Source Performance Standards” program. EPA need not make a new “cause or contributes” finding for these sources in order to regulate them under section 111. Nevertheless, in declining to regulate greenhouse gases from various categories of stationary sources (such as petroleum refineries), the Bush-era EPA relied in part on the lack of an endangerment finding for greenhouse gases. Making such a finding thus relates to – and would facilitate – the regulation of sources emitting greenhouse gases under section 111.

Environmentalists’ challenge to EPA’s failure to set section 111 standards for power plants was remanded to EPA a little over a year ago. The litigation has been stayed pending EPA’s reconsideration of its decision.

Greenhouse gas reporting rule: We plan to send this rule to OMB for interagency review early this week. The rule is on a tight time frame due to a statutory deadline. The proposed rule will contain reporting obligations for power plants.

PSD: As I stated in an email earlier today, I recommend that tomorrow (Monday), you offer to a select press outlet the following quotation regarding reconsideration of Stephen Johnson’s interpretive memorandum in the “Bonanza” case: “I am actively reviewing Stephen Johnson’s interpretive memo. During this stage of my decision making, I believe it would be premature for our regional offices to issue PSD permits based on the assumption that the Johnson memo is the final word on the appropriate interpretation of Clean Air Act requirements.” As I noted in my email, a decision on at least one coal-fired coal plant in Nevada might come as early as Thursday. Senator Reid’s office has been in touch with us, inquiring whether we are able send a signal about your reconsideration of the interpretive memo. I believe that the quotation I am recommending would put permitting authorities on notice that the legal framework is in flux and they should tread carefully in this uncertain environment.

Also on PSD, I am preparing the memo you requested for regional offices, giving a more detailed explanation of the reasons for caution on their part and also directing them to request certain data with respect to applications for permits for coal-fired power plants.

In addition, this Wednesday is “PSD Day” for me. I have five hours of briefings scheduled regarding the path forward regarding PSD and greenhouse gases.

NSR lawsuits against companies: Last week, DOJ filed a lawsuit against Westar Energy alleging violations of NSR requirements. DOJ filed this action on behalf of EPA. According to DOJ, it had sent notices of violations of the Clean Air Act to Westar years ago. There are additional potential NSR lawsuits in the pipeline.

NSR lawsuits against and reconsideration petitions to EPA: In the waning days of the Bush administration, several rules were issued weakening the NSR program. EPA is in the process of launching reconsiderations of these “midnight rules.” Power plants are, of course, among the sources regulated under the NSR program.



Re: OMB/Endangerment Finding 
Bob Sussman to: Lisa Heinzerling

02/23/2009 08:15 PM

Can you do the 90 day review and still issue it in April?

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
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Lisa Heinzerling

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02/23/2009 06:03:47 PM

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To: Bob Sussman/DC/USEPA/US@EPA
Cc: David McIntosh/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA
Date: 02/23/2009 06:03 PM
Subject: Re: **OMB/Endangerment Finding**

we're planning on doing this

Bob Sussman

I met one-on-one today with Michael Fitzpatrick...

02/23/2009 06:01:56 PM

From: Bob Sussman/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA, Lisa Heinzerling/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA
Date: 02/23/2009 06:01 PM
Subject: **OMB/Endangerment Finding**

I met one-on-one today with Michael Fitzpatrick of OIRA. I'll save most of what he said for another time but wanted to highlight one important item -- he says that OIRA feels very strongly that the proposed endangerment **finding** should be subject to OMB/interagency review under EO 12866. Since this isn't my issue, I did not respond but wanted to put it on your screen.

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency



{In Archive} Fw: all materials for Tuesday's 12:00 meeting with Democratic Senators

David McIntosh to: Richard Windsor

06/08/2009 03:33 PM

From: David McIntosh/DC/USEPA/US

To: Richard Windsor/DC/USEPA/US@EPA

History: This message has been replied to.

Archive: This message is being viewed in an archive.

Just FYI (I never know if materials actually find their way into your binder).

----- Forwarded by David McIntosh/DC/USEPA/US on 06/08/2009 03:32 PM -----

From: David McIntosh/DC/USEPA/US

To: "Katharine Gage" <Gage.Katharine@epamail.epa.gov>

Date: 06/08/2009 03:09 PM

Subject: Fw: all materials for Tuesday's 12:00 meeting with Democratic Senators

Hi Kate. Sorry, Arvin told me you're the Book Captain, not Megan. Pls let me know you received this stuff.

David McIntosh

----- Original Message -----

From: David McIntosh

Sent: 06/08/2009 02:15 PM EDT

To: Megan Cryan

Cc: Robert Goulding; Katharine Gage; Eric Wachter

Subject: Fw: all materials for Tuesday's 12:00 meeting with Democratic Senators

FYI (for today's book in the event that the Administrator ends up doing this).

----- Forwarded by David McIntosh/DC/USEPA/US on 06/08/2009 02:14 PM -----

From: David McIntosh/DC/USEPA/US

To: Gina McCarthy/DC/USEPA/US@EPA

Cc: Arvin Ganesan/DC/USEPA/US@EPA

Date: 06/08/2009 02:14 PM

Subject: all materials for Tuesday's 12:00 meeting with Democratic Senators

All the documents, including the Q&A, are here now.



Memo re June 9 Mtg w Dem Senators.docx June 9 Outline.doc June 9 Remarks.docx June 9 Q&A.doc

CONFIDENTIAL MEMORANDUM

TO: Administrator Jackson
FROM: David McIntosh
DATE: June 8, 2009
RE: Tuesday 12:00 Meeting with Democratic Senators about Climate Policy

From noon to 1:00 on Tuesday, you are scheduled to meet with Democratic Senators about climate policy in room S-116 of the Capitol Building. S-116 is the meeting room of the Senate Foreign Relations Committee. The only link between that committee and your meeting is Senator Kerry. He will co-lead the meeting along with Senator Boxer, and he chairs the SFR Committee, so he was able to reserve its meeting room. The location will be convenient for the attending Senators, who will have their weekly Senate Democratic Caucus luncheon in the Capitol immediately following their meeting with you.

At 9:30 Tuesday morning, the Environment and Public Works Committee will begin a scientific-integrity hearing at which you will testify. You probably will be released from that hearing at around 11:00, at which point you might be rushed to the White House for a brief meeting with the President. If so, then after that meeting you will turn around and go back up the Hill to the SFR room in the Capitol. I will sit through the entire EPW hearing (the committee will hear from a second panel of witnesses after you leave) and then accompany Chairman Boxer's staff to the Capitol for your meeting.

Tuesday's meeting is one in a series. Every week or two, Chairmen Boxer and Kerry (and Senators Whitehouse and Cardin, as sub-ringleaders) invite a different guest or group of guests to meet privately (no reporters or members of the public) with them and other Democratic Senators who are particularly interested in climate policy. At the most recent meeting, Congressmen Waxman, Markey, and Boucher presented on the House Energy and Commerce Committee's energy/climate bill and on their recent success in reporting the bill favorably to the full House. Fifteen Senators attended that meeting.

You will be the only guest at Tuesday's meeting. S-116 is not divided into a dais for committee members, a table for witnesses, and a large gallery for the public. Rather, there are chairs arranged around a large conference table, plus smaller chairs along the walls. You will sit at the side of the table nearest the door through which you will enter.

Chairmen Kerry and Boxer likely will open the meeting with brief remarks. Then they will invite you to speak for ten or fifteen minutes. For the balance of the hour, the Senators in the room will ask you questions and listen to your responses.

Several of the attendees will be EPW members, but the expanding list of Democratic Senators invited to these meetings now includes nearly every caucus member thought to be reasonably progressive on the question of climate legislation. Senators Lieberman and Specter have been attending. A group of moderate Democratic Senators meets (not specifically on climate policy) at the same time as the Boxer-Kerry meetings. Some of those members, including Senator Carper, might try to attend the second half of your meeting. Some Senators might leave your meeting early, because the doors to the caucus luncheon will open at 12:45.

Chairmen Boxer and Kerry expect you to speak mainly about the GHG-related steps that EPA is taking under the existing Clean Air Act, and about the ways in which that activity interacts with the effort to enact a GHG emissions-reduction statute. The Senators' questions might cover a range of climate-related topics and reflect a diversity of views.

I have attached ten minutes' worth of mock-remarks. You might read over that document once or twice this evening. The meeting will be too informal for script-reading, so I recommend that, during the meeting, you keep only the attached outline in front of you. Finally, I have drafted and attached a Q&A list that you might also read over prior to the meeting.

If a Senator asks you a question that you are not sure how to answer, referring it to me is not a *faux pas*. My response will not be better than yours would be, but my attempt will buy you time to think. Another way to gain time to consider your response is to ask the Senator a clarifying question.

OUTLINE OF PROPOSED JUNE 9 REMARKS TO DEMOCRATIC SENATORS

Compliment about early Senate leadership on climate legislation.

What EPA is doing to directly assist the effort to enact climate and energy legislation.

Technical assistance, including drafting legislative provisions.

Computer modeling of the economic impacts of climate and energy legislation.

Close cooperation with other Executive agencies to coordinate message and outreach.

EPA actions that are underway now, under existing law, in the arena of GHG pollution control.

Mandatory reporting rule.

Endangerment findings.

Vehicle emissions standard.

The road ahead for EPA, and the relation of EPA's regulatory steps to the legislative effort.

Proposed Clean Air Act GHG emissions standards for new major stationary sources.

Why regulating exclusively under existing Clean Air Act programs would be unwise.

EPA's pre-legislative regulatory approach will be sensible and measured.

Most climate bills envision some future use of programs already in the Clean Air Act.

The question of EPA's ongoing efforts providing political leverage for new legislation.

SOME TOUGH QUESTIONS AND PROPOSED RESPONSES FOR JUNE 9

QUESTION: The Waxman bill would prohibit EPA from using key Clean Air Act programs to reduce greenhouse-gas pollution. Will EPA help get that provision removed?

ANSWER: I doubt that Chairman Waxman and Congressman Markey, two of the House's most steadfast champions of EPA and the Clean Air Act, included the provision lightly. My understanding is that the bill would have lost a substantial number of the necessary industrial-state votes if that provision were not in the bill. EPA believes that enacting a greenhouse-gas cap-and-trade bill is more important than leaving EPA the ability to apply requirements such as new source review to greenhouse-gases, for sources that are subject to the cap.

QUESTION: The caps in the Waxman bill are now so weak, the allowance give-aways so generous, and the offsets so voluminous that existing coal plants will not have to shut down for more than a decade. What can we do about that?

ANSWER: The purpose of the bill is not to shut down coal plants or prevent their construction. If that were the bill's purpose, it would not have been reported favorably from the Energy and Commerce Committee. EPA's modeling shows that coal use in this country would not increase until carbon capture and sequestration technology begins to penetrate the marketplace significantly. The bill's caps cover coal combustion, and those caps tighten aggressively.

QUESTION: What is going on between EPA and USDA when it comes to implementation of a domestic offsets program?

ANSWER: Secretary Vilsack said on Friday that EPA will play important roles in implementing a domestic offsets program, and EPA believes that USDA will play important roles in implementing that program. USDA is well-situated to interact directly in the field with the farmers, foresters, and other land-owners conducting offset projects. Moreover, USDA has expertise that should be used in developing the protocols, baselines, and methodologies for land-use offset categories. EPA will be ultimately responsible for ensuring that the overall cap-and-trade program achieves all of the emissions reductions that it advertises. A necessary part of that responsibility is ensuring that the offsets program does not cause actual emissions reductions to be less than the advertised reductions. Moreover, EPA will be the primary agency when it comes to non-land-use offsets, and market participants will expect EPA to ensure that a land-use offset allowance will always merit the same compliance value and a non-land-use-offset allowance. So EPA is going to be expected to have had enough of a role in the certification of each land-use offset such that EPA can really stand behind it as meriting the same compliance value as non-land-use offsets and as a regular emission allowance. Moreover, EPA will need to play a large role alongside USDA in developing the protocols, baselines, and methodologies for land-use offset categories.

QUESTION: Irrespective of the Copenhagen talks, I believe it is very important that EPA use whatever authority it has to regulate greenhouse-gas emissions under the existing Clean Air Act now, because it might take a while for Congress to enact a climate bill. Last month, two professors at NYU law school published a report concluding that EPA can, under the existing Clean Air Act, promulgate an efficient -- or, in their words, "nearly efficient" -- cap-and-trade system for greenhouse gases. Do you agree with them? If so, will EPA issue such a rule-making proposal this year?

ANSWER: I have not taken a close look at the NYU paper, but I suspect that what it is proposing is a theoretical possibility rather than a likely outcome. Moreover, I am aware that various cost-containment mechanisms such as offsets have been integral to most legislative cap-and-trade proposals, and I am not sure that even the NYU lawyers read the existing Clean Air Act to authorize the inclusion of those cost-containment features in any greenhouse-gas cap-and-trade system that they think EPA could promulgate under the existing Act. In any event, I believe that reducing total US greenhouse-gas emissions expeditiously enough and substantially enough to protect the nation's economic future requires instituting an integrated, economy-wide, market-based system. I do not believe the existing Clean Air Act can support regulations that institute such a comprehensive system, even though the existing Act probably can support sensible regulations that achieve substantial reductions from some sectors of the economy.

QUESTION: Current statutory law directs EPA to promulgate a final mandatory reporting rule for greenhouse gases no later than June 26 of this year. Is EPA on track to meet that deadline? If not, why not? And if not, then is EPA on track to promulgate a final rule in time to collect 2010 emissions data?

ANSWER: Completing this rule is a priority for me. As you know, I signed the proposed rule on March 10. I have directed my staff to do everything possible to enable EPA to promulgate the final rule this fall, so that we can collect 2010 emissions data. I believe that we can meet that deadline, and I assure you that EPA staff shares my commitment to accomplishing this important goal. EPA is not going to be able to complete the rule by June 26, because the public comment period does not close until today.

PROPOSED REMARKS FOR JUNE 9 MEETING WITH DEMOCRATIC SENATORS

OPENING COMPLIMENT

Thank you very much for inviting me to meet with you. I have followed for many years the effort to launch a serious, federal climate policy. So I know that Senators – people in this room – are the ones who pioneered that effort more than a decade ago. And I know that Senators – again, people in this room – are the ones whose labors in the last Congress endowed serious federal climate policy with the mark of inevitability. So I am in the presence of some personal heroes.

INTRODUCTION TO THE PREAMBLE

I think you have asked me here mainly to do two things. First, to describe the steps that EPA is taking now in the arena of greenhouse-gas pollution control. Second, to explain how those steps relate to the effort to enact a new, greenhouse-gas pollution-control statute. I will do that. First, though, I would like to describe the work that EPA is doing to directly assist the effort to enact that climate statute.

PREAMBLE

First, EPA is providing technical assistance, including assistance in drafting legislative provisions, to the authors of climate legislation. EPA has traditionally played that role in environmental legislation, as many of you know. Brave EPA civil servants even played that role to a degree under the last Administration, at the risk of reassignment to bureaucratic Siberia. We are blessed that most of EPA's climate-policy experts endured the last eight years and were ready to start helping climate-bill authors from Day One of this Congress.

Second, EPA's computer modelers are developing and publishing objective estimates of the economic impacts that draft energy and climate provisions would have on American families and businesses. EPA is not the only source of that expertise in the Executive Branch. The Energy Information Administration does similar work using its own computer models. Multiple analyses of a draft policy using different computer models and different assumptions are to be desired, because every computer model has shortcomings, and no assumption is fully accurate. Still, I take some pride in the fact that, in the last four months, the most sought-after, respected, and influential economic analyses of climate policies have come from EPA.

Finally, political appointees at EPA cooperate with their counterparts at the other federal agencies that have major equity in climate policy. We work to develop coordinated climate-policy messages that are designed to help narrow the range of conflict between the legislative positions of different outside constituencies whose support is necessary to enact a comprehensive energy and climate bill.

I'll provide a specific example: My understanding is that any cap-and-trade climate bill probably needs the acquiescence of agricultural constituencies in order to become law. To those constituencies, EPA is usually the bad cop. So they fear an outcome in which EPA is the exclusive authority implementing a domestic land-use offsets program – a program that farmers, foresters, and ranchers see as essential to their economic viability under a cap-and-trade system. They react with skepticism when EPA tries to reassure them directly. But when I say things to environmentalist audiences about the importance of a role for USDA in implementing a domestic offsets program, and when Secretary Vilsack cites my statements in his meetings with farmers, it helps to put them at ease. Conversely, when Secretary Vilsack speaks to farm

groups about the necessity of a role for EPA as the guarantor of the environmental integrity of a domestic offsets program, then I can cite his statements in my meetings with environmental groups, and hopefully it helps to put them at ease. President Obama places a high premium on that kind of cooperation across traditional bureaucratic fiefdoms. I hope it will help attract the stakeholder support necessary to enact a strong, cap-and-trade climate bill.

So those are the three main ways in which EPA is directly engaged in the effort to help enact a cap-and-trade climate bill: First, technical assistance on legislative provisions. Second, economic analysis of the legislation. Third, close coordination across Executive agencies, so that the right messenger says the right thing to the right stakeholder, without contradicting another Administration messenger.

INTRODUCTION TO THE MAIN SUBJECT

Again, I think you mainly want to hear two things from me today. First, a description of the steps that EPA is taking now in the arena of global-warming pollution control. Second, an explanation as to how those steps relate to the effort to enact a new, global-warming pollution-control statute.

THE STEPS THAT EPA IS TAKING NOW

The first regulatory step EPA took in this Administration in the arena of global-warming pollution control was not under the Clean Air Act, but rather under a provision that Appropriations Subcommittee Chairman Feinstein and others got into the current appropriations act. That provision directs EPA to promulgate a mandatory greenhouse-gas emissions registry across the United States. Administrator Jackson signed that rulemaking proposal on March 10. The public-comment period closes today. EPA intends to issue a final rule in time to collect, in early 2011, emissions data for all of 2010. That is what the appropriations act directs EPA to do. I believe that the authors in Congress of cap-and-trade climate legislation will be able to rely on EPA's mandatory reporting system being up-and-running, and ratify it rather than design something from scratch.

The second step that EPA took in the arena of global-warming pollution control was on April 17, when Administrator Jackson proposed to find under the Clean Air Act that man-made greenhouse-gas emissions endanger public health and welfare, and that carbon dioxide emitted from light-duty motor vehicles contributes substantially to those emissions and that endangerment. The Supreme Court had ordered EPA, more than two years earlier, to issue findings on those two points. The public comment period closes on June 23. I cannot tell you the precise date on which the Administrator will sign final findings. But I believe it will be well before the end of this year. I certainly do not intend to dawdle.

The third step that EPA took in the arena of global-warming pollution control was on May 19, when Administrator Jackson joined the President in announcing that EPA will issue nation-wide, tailpipe greenhouse-gas emissions standards for light-duty vehicles under the Clean Air Act. The new standards will apply to model years 2012 through 2016, and will be backed up by new CAFÉ rules to be issued by the Transportation Department. Together, the EPA and DOT rules will have the effect of requiring an average fuel-economy of 35.5 miles-per-gallon for new light-duty vehicles. EPA has not finished preparing that rulemaking proposal, and the issuance of a final rule will require the final Clean Air Act endangerment findings that I just described. But EPA is working on a schedule that would have a final rule in place in time to apply to the 2012 model year.

THE ROAD AHEAD, AND INTERACTION WITH THE LEGISLATIVE EFFORT

Administrator Jackson is often asked what else EPA will do in that arena under existing law, in the period before Congress enacts a climate statute. The answer depends in part, of course, on how much time elapses before Congress enacts that new law. If Congress does not act this year, then I think it is likely that EPA at least will have proposed emissions standards for new major stationary sources of greenhouse gases – most prominently, for fossil-fuel-fired power plants – prior to the enactment of the new law.

But I would like Congress to pass comprehensive climate legislation sooner than that. I do not believe that regulating greenhouse-gas emissions exclusively under the existing Clean Air Act, without new legislation, would be the best way to address the challenge of climate change. I believe that reducing total US greenhouse-gas emissions expeditiously enough and substantially enough to protect the nation's economic future requires instituting an integrated, economy-wide, market-based system. I do not believe the existing Clean Air Act can support regulations that institute such a comprehensive system, even though the existing Act probably can support sensible regulations that achieve substantial reductions from some industrial sectors of the economy. And I do not believe that regulations under the existing Clean Air Act can send a strong enough signal – much less include the necessary inducements – to convince nations such as China and India to do their part to curb global warming.

If, in the absence of action by Congress, EPA moves forward to regulate greenhouse-gas emissions from any sources of those emissions, the agency will avail itself of the flexibility that the Clean Air Act provides for a sensible -- as opposed to a maximalist -- approach. Before EPA finalizes any greenhouse-gas regulations, the agency will not only propose those regulations and seek public comment on them, but also propose and seek public comment on the legal interpretations that allow the agency to avoid a maximalist approach to regulating greenhouse-gas emissions. So EPA will go public with its legal interpretations before it acts in reliance on them and before it issues any final greenhouse-gas regulations. I will not be previewing those legal interpretations today. But when the time comes, no one will need to simply take my word for it.

It is important to note that some of the draft climate bills that have been circulated to-date would direct EPA to promulgate certain types of greenhouse-gas regulations under programs that are already found in the Clean Air Act. If EPA were to begin working on some such regulations under existing Clean Air Act mandates prior to the enactment of federal climate legislation, then that work might well be compatible with the legislative enterprise.

Many also believe that having EPA begin taking steps now in the arena of greenhouse-gas pollution control is politically compatible with the legislative enterprise, in that the specter of strict EPA regulation might help convince emitters to support a cap-and-trade statute as a less onerous, more flexible alternative.

I hope that EPA's ongoing steps do improve the politics of climate legislation. I need to urge some caution, however. First, if EPA were ever to give the impression that its ongoing greenhouse-gas regulatory activity were motivated by anything other than a desire to apply today's best science to today's statutory law, then it would de-legitimize EPA's actions in the eyes of many stakeholders and members of the public. Second, circumstances could, for some time, leave EPA rules issued under the existing Clean Air Act as the primary thing that the President really can show or promise the international community at climate negotiating sessions such as the one in Copenhagen in December. If that turns out to be the case, then we

will not want the domestic opponents of action to be able to cite recent statements from US progressives accentuating the downsides of EPA regulation under the existing Clean Air Act for American private enterprise.

I think I have gone on long enough. Let me thank you again for inviting me and offer to answer any questions you might have.

Message

From: Richard Windsor [CN=Richard Windsor/OU=DC/O=USEPA/C=US]
Sent: 12/5/2009 12:31:31 AM
To: Adora Andy [Andy.Adora@epamail.epa.gov]
Subject: Fw: Background on the Hacker/East Anglia issues
Attachments: east anglia talking points-2.doc

----- Original Message -----

From: Gina McCarthy
Sent: 12/03/2009 11:48 PM EST
To: Richard Windsor; "Lisa Heinzerling" <Heinzerling.Lisa@EPA.GOV>; Seth Oster; "John Millett" <Millett.John@EPA.GOV>; "David McIntosh" <McIntosh.David@EPA.GOV>
Cc: Joseph Goffman
Subject: Fw: Background on the Hacker/East Anglia issues

I know we have already provided you background on the hacked emails before but attached is some additional context as it relates to the Engangerment Finding.

As you will see, the integrity of our analysis has not in any way been compromised by this new controversy. OAR remains confident that the range of issues raised by those concerned with the hacked emails have already been thoroughly considered and the evidence in support of the findings remains overwhelming.

We believe that in moving forward with this decision we are not only following sound science we are being true to our obligation to thoroughly consider all public comment. We recommend that requests to extend the comment period to address issues related to the emails be denied since we have already thoroughly considered the same range of substantive issues. We believe that extending the comment period now would only serve to add delay to an already long overdue decision.

----- Original Message -----

From: Dina Kruger
Sent: 12/03/2009 06:27 PM EST
To: Gina McCarthy; Joseph Goffman
Subject: Background on the Hacker/East Anglia issues

Gina,
Here's background on the email issue, and an earlier issue with the same group in the UK. Let me know if you want more detail on any of this. We're working more broadly on preparing "tough Q's and A's" on these and other issues that might arise. I'm assuming you (and the Administrator?) would want to see that tomorrow afternoon. If there are other things we should be doing, or different time frames, just let me know. We're down to the final reviews and cross-references -- still a lot, but we all see the light at the end of the tunnel.

Also schedule with Heidi has become clearer. We're going to be talking with her at noon, after she's had a chance to check in with the other agencies that commented.

Have a good evening,
Dina



east anglia talking
points-2.doc

Dina Kruger
Director, Climate Change Division
USEPA

202-343-9039 (phone)
202-343-2290 (fax)

Issues Raised Regarding the Climate Research Unit (CRU) of University of East Anglia

Hacked E-Mails

Background

- Two weeks ago, thousands of e-mails spanning the period 1996 – November 2009 were hacked from a webserver at CRU and made public. Most of the e-mails were to or from Phil Jones, the current director of CRU (although he has just stepped down while an investigation into the issue is ongoing.)
- These e-mails focus on certain contentious issues in the climate debate, particularly the existence of a “Medieval Warm Period” about 1000 years ago, the “hockey stick graph”, and (more recently) the explanation for the slowing and/or pause in the rate of warming over the last several years.
- These e-mails also contain statements that, when taken out of context, make it appear that the scientists were manipulating data, manipulating the peer review and IPCC process, potentially suppressing evidence and generally being nasty.
- Just this week, CEI petitioned EPA to reopen the comment period to allow analyses of the e-mails.

Relevance to EPA and the Endangerment Finding

- From our review, it appears that the controversial technical issues discussed in the e-mails were also raised in public comments, although the e-mails give some of the issues an “extra oomph”. In fact, we believe that the public comments submitted on our Proposed Findings are more comprehensive than the issues discussed in the e-mails, because many comments included literature and data to support their points.
- EPA reviewed and responded to comments on all of the scientific issues, as well as comments on the integrity of the IPCC process.
- Neither the public comments, nor the hacked e-mails, undermine the body of literature that supports the endangerment finding. Our finding does not rely on a single line of evidence, a single study, or a single assessment report.
 - Evidence includes observational data and multiple lines of evidence and types of analyses.
 - Other assessment reports, in particular those of the US Global Change Research Program and National Research Council have also examined the information, independent of the IPCC, and reached similar compelling conclusions regarding the threat of climate change.
 - The data from CRU is not unique; it is not the “foundation of the IPCC report.”
- The hacked emails also do not undermine the integrity of the IPCC process. As we describe in the findings, the IPCC has established rigorous procedures to insure the transparency and integrity of their reports, and there is no evidence that a few scientists were able to subvert that process. Multiple levels of review and oversight prevented such occurrences.

- We note that one of our expert reviewers on the TSD is included in the hacked e-mails – Gavin Schmidt of NASA. We searched the database for his emails and have found no evidence of inappropriate conduct on his part.

Alleged Destruction of Climate Data

Background

- In July 2009, CRU explained on its Web site that some raw data from global weather stations was not available. This was seized upon by some groups as “undermining the foundation of climate science”, because it prevented the dataset from being independently replicated .
 - They emphasized that the CRU database was the main source of data on the temperature trend in the IPCC Fourth Assessment Report (2007).
 - They claimed that CRU had intentionally destroyed the data for an unknown reason
- CEI petitioned EPA to reopen the comment period because the loss of this data undermined the endangerment finding.
- There is no evidence that CRU purposefully destroyed any raw data. In fact, CRU states that over 95% of the data set concerning land surface temperatures is accessible, and all of the raw data is still held at the weather stations (although it is time-consuming to collect).
- The CRU dataset is not unique. The most recent IPCC report (2007), relies on three datasets for the discussion of long-term temperature trends. Two of these are U.S. datasets – from NOAA and NASA. The three datasets use different methods but arrive at consistent results, which provides additional confidence in the trends.

Implications for EPA and the Endangerment Finding

- We received numerous comments on the quality of the data sets, and specifically on the alleged destruction of some of the CRU raw data.
- We have thoroughly responded to all comments and demonstrate that the long-term temperature record is robust.

Key Statements from IPCC Chairman Rajendra K Pachauri On the Hacked E-mails and the IPCC Process

Dr. Pachauri issued a statement rebutting claims that the unauthorized disclosure of e-mail messages and documents undermines the IPCC science assessment process. The following are excerpts from his statement:

- The IPCC as a body follows impartial, open and objective assessment of every aspect of climate change carried out with complete transparency.
 - The IPCC relies entirely on peer reviewed literature in carrying out its assessment and follows a process that renders it unlikely that any peer reviewed piece of literature, however contrary to the views of any individual author, would be left out.
 - The entire report writing process of the IPCC is subjected to extensive and repeated review by experts as well as governments. Consequently, there is at every stage full opportunity for experts in the field to draw attention to any piece of literature and its basic findings that would ensure inclusion of a wide range of views. There is, therefore, no possibility of exclusion of any contrarian views, if they have been published in established journals or other publications which are peer reviewed.
 - In summary, no individual or small group of scientists is in a position to exclude a peer-reviewed paper from an IPCC assessment. Likewise, individuals and small groups have no ability to emphasize a result that is not consistent with a range of studies, investigations, and approaches.
 - Every layer in the process (including large author teams, extensive review, independent monitoring of review compliance, and plenary approval by governments) plays a major role in keeping IPCC assessments comprehensive, unbiased, open to the identification of new literature, and policy relevant but not policy prescriptive.
 - This thoroughness and the duration of the process followed in every assessment ensure the elimination of any possibility of omissions or distortions, intentional or accidental.
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Additional statements from OSTP and NOAA:

- “There is, and there will remain after the dust settles in this current controversy, **a very strong scientific consensus** on the key characteristics of the problem,” John Holdren, White House Science Adviser, told the House Select Committee on Energy Independence and Global Warming.
- “The e-mails do nothing to undermine the **strong scientific consensus and independent scientific analysis** of thousands of scientists around the world that tell us the Earth is warming and warming is largely a result of human activities,” added Jane Lubchenco, administrator of the National Oceanic and Atmospheric Administration.