

Congress of the United States

Washington, DC 20515

March 9, 2007

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Ariel Rios Building
Washington, DC 20460

Dear Administrator Johnson,

As members of Congress who sit on committees with oversight jurisdiction over the Environmental Protection Agency and the Clean Air Act (CAA), we are writing to you regarding the Agency's actions in the permitting process of the BHP Billiton Cabrillo Deepwater Port Project (Cabrillo Project).

We are deeply concerned about the abrupt reversal in June 2005 of EPA's position regarding the Deepwater Port Act (DPA) and its relationship with the CAA. For two years, in both letters and in comments on the Cabrillo Project's Environmental Impact Statement, EPA had stated that the project was required to obtain a CAA permit and to comply with certain key state and local air pollution requirements, including the requirement the facility offset its emissions to avoid damaging air quality. Then, after lobbying from BHP Billiton and the participation of at least one EPA political appointee from Washington, the agency reversed itself and took the position that many of these requirements do not apply, and no CAA offsets are necessary for the project. We are troubled that this reversal indicates a significant change in the decision making process and legal interpretations at EPA.

As you are no doubt well aware, the air quality of Southern California suffers from high levels of pollution. Emissions from the Cabrillo facility will contribute to the further degradation of air quality in the area and, consequently, further impair the health of Californians. The Agency's new interpretation of the DPA and the CAA allows the Cabrillo Project to proceed to construction without a CAA emissions offset. Such an interpretation may lead to the degradation of air quality and allow emissions in violation of the CAA, and runs contrary to EPA's mission to preserve and protect the environment for all Americans. The provisions of the DPA meant to preserve state control appear to have been ignored. *See* 33 CFR 148.737. Furthermore, the Agency's inconsistent application of Ventura County Air Pollution Control District rules is confusing and troubling.

In order to clarify the Agency's position and ascertain how that position was established, we write today to request documents related to the Project. In particular, we seek the following from EPA Headquarters and Regional offices:

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- 1.) All EPA records¹ containing or pertaining to communications between BHP or their agents and EPA regarding air permits or requirements for the Cabrillo Project.
- 2.) All EPA records containing internal discussions of BHP air permits or requirements, and the potential application of any CAA provisions to the project.
- 3.) All EPA records regarding the Agency's interpretation of the DPA as it relates to the CAA and state air quality regulations.
- 4.) All EPA records containing or pertaining to communications between the White House (including but not limited to OMB) and EPA regarding the Cabrillo Project or interpretation of the DPA.
- 5.) All EPA records containing or pertaining to communications between EPA and other federal and state agencies or departments regarding the Cabrillo Project or interpretation of the DPA or CAA as it may affect this project, including but not limited to any communications with the Department of Energy or the Department of the Interior.

We respectfully request that you provide these documents as soon as possible, but no later than April 13, 2007. If you have any questions regarding this request please contact Erik Olson or Mary Frances Repko with the Senate Environment and Public Works Committee staff, at (202) 224-8832, or Jonathan Levenshus of the Office of Congresswoman Capps, at (202) 225-3601.

Sincerely,



Barbara Boxer
U.S. Senate



Lois Capps
Member of Congress

¹ The term "record" in this letter includes but is not limited to to any and all electronic or hard copy records, including correspondence, emails, notes, memos, minutes, phone logs, or other forms of records in the possession of the agency.