



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

DEC 19 2007

OFFICE OF THE  
ADMINISTRATOR

The Honorable Arnold Schwarzenegger  
Governor of the State of California  
State Capitol  
Sacramento, California 95814

Dear Governor Schwarzenegger,

As I have committed to you in previous correspondence, I am writing to inform you of my decision with respect to the request for a waiver of Federal preemption for motor vehicle greenhouse gas emission standards submitted by the California Air Resources Board (CARB).

As you know, EPA undertook an extensive public notice and comment process with regard to the waiver request. The Agency held two public hearings: one on May 22, 2007 in Washington, D.C. and one in Sacramento, California on May 30, 2007. We heard from over 80 individuals at these hearings and received thousands of written comments during the ensuing public comment process from parties representing a broad set of interests, including state and local governments, public health and environmental organizations, academia, industry and citizens. The Agency also received and considered a substantial amount of technical and scientific material submitted after the close of the comment deadline on June 15, 2007.

EPA has considered and granted previous waivers to California for standards covering pollutants that predominantly affect local and regional air quality. In contrast, the current waiver request for greenhouse gases is far different; it presents numerous issues that are distinguishable from all prior waiver requests. Unlike other air pollutants covered by previous waivers, greenhouse gases are fundamentally global in nature. Greenhouse gases contribute to the problem of global climate change, a problem that poses challenges for the entire nation and indeed the world. Unlike pollutants covered by the other waivers, greenhouse gas emissions harm the environment in California and elsewhere regardless of where the emissions occur. In other words, this challenge is not exclusive or unique to California and differs in a basic way from the previous local and regional air pollution problems addressed in prior waivers.

Also, I firmly believe that, just as the problem extends far beyond the borders of California, so too must be the solution. Congress has recognized the need for very aggressive yet technically feasible national standards to address greenhouse gases and energy security by passing the Energy Independence and Security Act. Just today the President signed these national standards into law, providing environmental benefits and economic certainty for Californians and all Americans. I strongly support this national approach to this national challenge which establishes an aggressive standard of 35 miles per gallon for all 50 states, as opposed to 33.8 miles per gallon in California and a patchwork of other states. This legislation

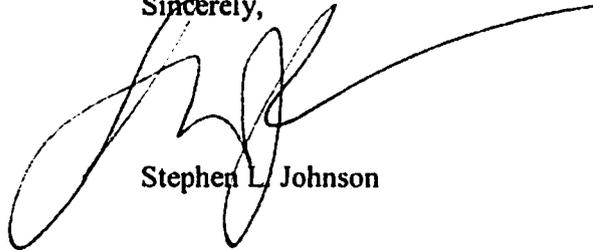
will deliver energy security benefits and bring a much needed national approach to addressing global climate change, improving the environment for all Americans.

In light of the global nature of the problem of climate change, I have found that California does not have a "need to meet compelling and extraordinary conditions." Accordingly, I have decided that EPA will be denying the waiver and have instructed my staff to draft appropriate documents setting forth the rationale for this denial in further detail and to have them ready for my signature as soon as possible.

Please be assured that my decision in this matter is made specific to the facts and circumstances of this request, which, as explained above, are distinctly different from prior waiver requests. I do not intend for this decision to affect any future requests by the State of California for waiver determinations for non-greenhouse gas emissions from vehicles.

Finally, I want to acknowledge the leadership that you and your state have shown to increase vehicle fuel economy, to address energy security, and to reduce greenhouse gases. I agree that increased vehicle standards can be a win-win for the environment and the economy. I have no doubt that the national standards Congress adopted and the President signed into law this week were enacted, in part, because of your efforts.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Johnson', with a long horizontal flourish extending to the right.

Stephen L. Johnson

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Governor Bill Ritter  
Governor Charlie Crist  
Governor Deval Patrick  
Governor Martin O' Malley  
Governor John Baldacci  
Governor Jon S. Corzine  
Governor Eliot Spitzer  
Governor Ted Kulongoski  
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Representative Kevin McCarthy

**Representative Howard "Buck" McKeon  
Mary D. Nichols, California Air Resources Board**

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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, STAFF DIRECTOR  
ANDREW WHEELER, MINORITY STAFF DIRECTOR

December 20, 2007

Stephen L. Johnson  
Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Johnson:

I was extremely disappointed to learn of your decision yesterday to deny the State of California's request for a waiver for its Regulation to Control Greenhouse Gas Emissions from Motor Vehicles under the Clean Air Act. I am particularly concerned about reports indicating that you overrode the recommendations of your technical and legal staff in making this decision.

Even though it took two years to make this decision, the two-page letter denying the waiver is unsupported by legal or technical analysis. On its face, this decision appears to be contrary to the Clean Air Act and the science. Pursuant to its oversight responsibilities, the Environment and Public Works Committee is initiating a comprehensive review of this decision. Please provide the following:

1. All records that you or any other person in the Office of the Administrator received or reviewed that mention or are otherwise related to this waiver request, including any records presenting options, recommendations, "pros and cons," legal issues or risks, political implications or considerations, or any other record. Please provide these records by January 7, 2008.
2. All records reflecting communications that you, or any person in the Office of the Administrator, or any person in the Office of the Assistant Administrator for Air and Radiation, had with any person in the White House (including but not limited to Office of the Vice President, the Council on Environmental Quality, the Office of Management and Budget, or any other person in the Executive Office of the President) regarding or relating to this waiver request. Please provide these documents by January 7, 2008.
3. All other records making recommendations relating to this waiver request presenting options, recommendations, "pros and cons," legal issues or risks, or political implications or considerations. Please provide these records by January 14, 2008.
4. All other records relating to the California waiver request not available on the date of this letter in the EPA public docket for this waiver. This includes but is not limited to all emails or other records reflecting any communications within the agency, or communications with any person or entity outside of the agency, including the White House (as defined above) or any other agency, related to the California waiver request. Please provide these records by January 14, 2007.

Please immediately notify all EPA staff of this request with specific instructions for them to immediately initiate record collection, and to preserve all potentially relevant records. If you have any questions please contact Erik Olson of the Committee's staff at 202-224-8832.

Sincerely,

A handwritten signature in black ink that reads "Barbara Boxer". The signature is written in a cursive, flowing style with a large initial 'B'.

Barbara Boxer  
Chairman



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JAN 04 2008

OFFICE OF CONGRESSIONAL  
AND INTERGOVERNMENTAL RELATIONS

The Honorable Barbara Boxer  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Madam Chairman:

I am writing to respond to your letter of December 20, 2007, requesting information regarding California's request for a waiver under section 209 of the Clean Air Act. You request certain records by January 7, 2008, and additional documents thereafter. Please be assured that EPA respects your very strong interest in this issue and is committed to providing the Committee to the extent possible information necessary to satisfy its oversight interests consistent with our Constitutional and statutory obligations.

Your request is a top priority for the Agency and we are working hard to respond as quickly as possible. To that end, the Agency has taken a number of steps to expedite the process of collecting and evaluating the responsiveness of gathered documents. As you know, the Agency responded immediately after receiving your request by sending mass mailers on December 21 and 26, 2007, directing all Agency personnel to preserve responsive documents. Points of contact for each office within the Agency were established to ensure the document collection process is coordinated across the entire Agency. Preliminary results suggest there may be tens of thousands of emails and documents that are possibly responsive to your request. Accordingly, we have established a computer database to facilitate the collection and evaluation of documents, and thus make further response ultimately more efficient.

Although we have taken the steps described above in order to process the request as quickly and effectively as possible, this will still be a significant logistical burden on the Agency. Therefore, we will need additional time to process your request. We expect to further respond by Friday, January 11, 2008.

If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,



*for*

Christopher P. Bliley  
Associate Administrator

cc: The Honorable James M. Inhofe  
Ranking Member

BARBARA BOXER, CALIFORNIA, CHAIRMAN

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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR  
ANDREW WHEELER, MINORITY STAFF DIRECTOR

January 4, 2008

Stephen L. Johnson  
Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Johnson:

I have just learned that you are refusing my request to provide documents to the Senate Environment and Public Works Committee regarding your denial of California's waiver to regulate greenhouse gas emissions from motor vehicles by the deadline.

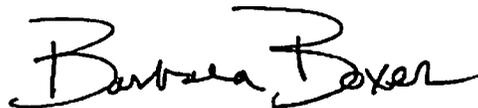
Your continuing refusal to cooperate with this Committee, which has EPA oversight responsibility, demonstrates a failure to understand that the EPA and its Administrator are accountable to Congress and to the people of the United States.

I am urgently requesting that you hand over these documents by the original deadline of January 7, so they may be part of the Committee's field hearing in Los Angeles on January 10. It is essential that we have these documents since you have refused to attend the briefing, and have not allowed any other representative of EPA to attend. Apparently, we will have no EPA Administrator and no EPA documents. What we will have is an excellent presentation by State leaders that will make clear the outrageous nature of the decision you have made to deny California and the other states the right to curb global warming.

The initial documents requested include any records the Office of the Administrator received or reviewed related to the waiver request, and any records presenting options, recommendations, "pros and cons," legal issues or risks, and political implications or considerations related to the decision. This would include briefing papers for the Administrator and PowerPoint presentations, which should be readily available. This request also includes any records reflecting communications with the White House relating to this waiver request.

Please immediately notify your staff that the Monday, January 7 deadline stands. No extension will be granted. If you have any questions please contact Erik Olson of the Committee's staff at 202-224-8832.

Sincerely,



Barbara Boxer  
Chairman



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460**

**JAN 11 2008**

**OFFICE OF CONGRESSIONAL  
AND INTERGOVERNMENTAL RELATIONS**

**The Honorable Barbara Boxer  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510**

**Dear Madam Chairman:**

I am writing to further respond to your letter of December 20, 2007 requesting information regarding California's request for a waiver under section 209 of the Clean Air Act. You requested certain records by January 7, 2008, and additional documents thereafter. I responded by letter on January 4, 2008, indicating the steps the Agency is taking in order to respond this request. This letter updates you on our efforts.

Please be assured that EPA respects your very strong interest in this issue and is committed to providing the Committee information necessary to satisfy its oversight interests to the extent possible and consistent with our Constitutional and statutory obligations. As I stated in my January 4 letter, your request is a top priority for the Agency and we are working hard to respond as quickly as possible. As you know, the Agency responded immediately after receiving your request by sending mass mailers on December 21 and 26, 2007, directing all Agency personnel to preserve responsive documents. We have also established a computer database to facilitate the collection and processing of documents, and thus make further response more efficient.

Although our document collection process is still ongoing, we have made significant progress in collecting possibly responsive documents from across the Agency. The volume of possibly responsive documents already collected is consistent with the estimate given in my January 4 letter. I expect staff in the Administrator's Office and the Office of Air and Radiation will have substantially completed their searches by today and those in other parts of the Agency by January 18.

I also appreciate the willingness of your staff to communicate the Committee's priorities so that our efforts can be more focused. During a conversation between Bettina Poirier of your staff and Anthony Reed of my staff on January 8, Ms. Poirier identified the categories of documents in which the Committee is most immediately interested. Please be assured that we are working to identify those categories of documents as quickly as possible, and expect to further respond soon.

Finally, as I discussed with Ms. Poirier on January 9, Administrator Johnson is planning to appear before the Committee at its January 24 hearing in Washington, D.C. As we continue working on your request, we look forward to additional discussions with your staff about ways in which we can assist the Committee to the extent possible with its preparations for this hearing.

If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Bliley', written in a cursive style.

Christopher P. Bliley  
Associate Administrator

cc: The Honorable James M. Inhofe  
Ranking Member



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JAN 18 2008

The Honorable Barbara Boxer  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

OFFICE OF CONGRESSIONAL  
AND INTERGOVERNMENTAL RELATIONS

Dear Madam Chairman:

This is in further response to your December 20, 2007 letter requesting information regarding California's request for a waiver under section 209 of the Clean Air Act. You requested certain records by January 10, 2008, and additional documents thereafter. I responded by letters on January 4 and 11, 2008, indicating the steps the Agency is taking in order to accommodate this request. This letter further responds to your request.

EPA respects your very strong interest in this issue and is committed to providing the Committee to the extent possible information necessary to satisfy its oversight interests consistent with our Constitutional and statutory obligations. As stated in the Agency's prior responses, your request is a top priority for the Agency and we are working hard to respond as quickly as possible. We appreciate your staff's willingness to identify specific categories of documents so that we could respond as efficiently as possible. As discussed with your staff in a January 15, 2008 conference call, we have made significant progress in collecting possibly responsive documents from across the Agency. We believe staff across the Agency have substantially completed their collection of potentially responsive documents. We have completed the processing of hard-copy documents from the Administrator's Office, and we are beginning to process the remaining documents from that office and the other parts of the Agency. Please find enclosed copies of hard-copy documents from the Administrator's Office. We expect to provide interim responses concerning documents from the other offices on a rolling basis, and we expect to complete our response by February 15, 2008.

Please note that EPA has identified an important Executive Branch confidentiality interest in a number of these documents because they reflect internal deliberations and/or attorney-client communications regarding California's waiver request. We recognize the importance of the Committee's need to inform itself in order to perform its oversight functions, but we remain concerned about any further disclosure of this information for a number of reasons. First, because the documents reveal deliberative process information internal to the Agency, EPA is concerned about the chilling effect that would occur if Agency employees believed their frank and honest opinions and analysis expressed as part of assessing California's waiver request were to be disclosed in a broad setting. The Supreme Court has recognized this "chilling effect" concern in particular. See United States v. Nixon, 418 U.S. 683 (1974). Second, further disclosure could result in needless public confusion about the Administrator's decision that EPA will be denying California's request. That is, many of the documents are pre-decisional and thus do not

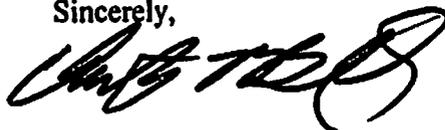
reflect the Agency's full and complete thinking on the matter. Indeed, final decision documents have not yet been completed and made available to the public through publication in the Federal Register, so the public, if given access to the pre-decisional documents, would effectively be denied access to the full, complete rationale by the Agency. Finally, the Agency is currently engaged in ongoing litigation regarding this matter, and future litigation is expected. The documents contain privileged and confidential attorney-client communications and attorney work product. Further disclosure of this type of confidential information could jeopardize the Agency's ability to effectively litigate claims related to California's waiver request.

Despite the foregoing concerns, the Agency has a strong desire for transparency regarding the Agency's decision-making process here. As such, we are providing you with copies for the majority of the Administrator's Office's hard-copy documents. EPA has copied these documents on paper with a watermark that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized to Congress Only for Oversight Purposes." Through this accommodation, EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee protect the documents and the information contained in them from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

Given the Agency's strong interest in transparency, Administrator Johnson has directed us to provide these documents despite privileges he may assert over them. This production includes, in particular, briefing papers prepared and presented directly to the Administrator. Given the ongoing litigation, however, the Agency must redact portions of some documents in order to adequately protect confidential, internal information. Despite this concern, the Administrator, in furtherance of his goal of transparency, has authorized us to provide this redacted material for inspection at your convenience.

We look forward to continued discussions with your staff as we move forward with this process. If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,



Christopher P. Bliley  
Associate Administrator

cc: The Honorable James M. Inhofe  
Ranking Member