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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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December 22, 2008

The Honorable Michael Mukasey
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Mukasey:

I am writing to request that as the nation's chief law enforcement officer, you intervene immediately with Environmental Protection Agency Administrator Stephen Johnson to ensure that he withdraws his blatantly illegal memo, entitled "EPA's Interpretation of Regulations that Determine Pollutants Covered By Federal Prevention of Significant Deterioration (PSD) Permit Program," issued on December 18, 2008.

Administrator Johnson issued the document without legal authority under the Clean Air Act, and in spite of the clear opinion of the EPA's Environmental Appeals Board in *In re: Deseret Power Electric Cooperative*, PSD Appeal No. 07-03 (EAB November 13, 2008). Johnson's guidance also flies in the face of the U.S. Supreme Court in *Massachusetts v. EPA* (2007).

The Johnson document presents as arguments against including carbon dioxide emissions in a Clean Air Act permit the same kind of transparent excuses for inaction on global warming pollution that both the Supreme Court and the Environmental Appeals Board flatly rejected in their respective opinions. In addition, the EPA's issuance of the Johnson document completely disregards the public's right to participate in EPA decision making.

If EPA or its Regional Offices proceed under this illegal document, the U.S. government will certainly face a lawsuit in the immediate future. The EPA under Mr. Johnson has had an almost perfect record of defeat when it comes to its major environmental policies. Again and again, the Bush EPA has been reversed by the federal courts, including the Supreme Court of the United States. Court battles over Mr. Johnson's latest indefensible policy will only throw away more taxpayer dollars, in addition to the millions already wasted.

In addition, any action going forward under the Johnson document would do nothing but create further unconscionable delay in efforts to protect America— and the world — from the ravages of unchecked global warming. The steps we must take to

address global warming are a recipe for economic recovery, but Mr. Johnson's illegal memo will only postpone the steps that will combat global warming, create millions of jobs, and ensure America's energy security.

Swift and decisive action on your part to ensure that Administrator Johnson immediately withdraws this unauthorized document will not only prevent a gross waste of taxpayer money defending an illegal decision, but it will also make clear that the waning days of the Bush Administration should not be used to issue "midnight rules" that undermine the law and threaten the health of our people and our planet.

Given the urgency of this matter, please contact me immediately regarding your next steps to ensure that this illegal policy is suspended and that more taxpayer dollars are not wasted.

Sincerely,

A handwritten signature in blue ink that reads "Barbara Boxer". The signature is written in a cursive, flowing style.

Barbara Boxer
Chairman