



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

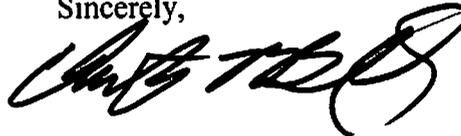
reflect the Agency's full and complete thinking on the matter. Indeed, final decision documents have not yet been completed and made available to the public through publication in the Federal Register, so the public, if given access to the pre-decisional documents, would effectively be denied access 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