

Following is the letter sent today by Chairman Feinstein to the EPA:

January 2, 2008

Bill A. Roderick
Deputy Inspector General
Environmental Protection Agency
Office of Inspector General
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Mr. Roderick,

U.S. EPA Administrator Stephen Johnson recently denied California's request for a waiver to implement a law to reduce greenhouse gas emissions from automobiles. The waiver request, denied more than two years after it was first requested, blocks California and 17 other states from addressing emissions that cause climate change. Because multiple reports suggest that EPA deviated from standard Administration protocols in making this unprecedented decision, I request that the Office of the Inspector General open an investigation immediately.

Media reports indicate Administrator Johnson denied the waiver despite recommendations from both EPA technical and legal staffs that California's request be granted. EPA sources have told the press that Administrator Johnson cut off any consultation with his agency technical experts for the last month and made his decision before the agency had written the formal, legal justification for it. Furthermore, multiple parties assert that Mr. Johnson, after cutting off communication with EPA technical staff, continued to consult with the White House in making this decision.

While multiple agencies, courts, and Congressional committees will investigate Administrator Johnson's decision, the Office of Inspector General is uniquely qualified to perform an objective, thorough analysis of the circumstances under which this decision was made. In conducting a thorough internal investigation, I request that the Office of the Inspector General:

1. Please provide a history of California's past waiver requests, EPA's decision making processes, and EPA's responses.
2. Please describe EPA's typical process for addressing waiver requests and other similar decisions, the role of Agency experts in the process, and the historic level of internal concurrence of opinions with final decisions.
3. Please describe, compare, and contrast the process by which EPA rejected California's waiver request with standard EPA decision making methods, including internal and external consultations and concurrence of internal and external opinions with Administrator Johnson's final decision.

As Attachment A to this request, please find a list of specific questions that should be addressed in the course of your investigation.

I look forward to the results of your prompt and thorough investigation. Please keep me informed as to the progress of this investigation, the resources deployed to conduct this investigation, and any additional resources necessary to complete this investigation, on at least a monthly basis.

Sincerely,

Dianne Feinstein

Chairman, Senate Appropriations Subcommittee on Interior,
Environment, and Related Agencies

Attachment A

1. How does the process by which EPA rejected the California waiver request differ from standard EPA decision making methods, from past decision making processes used to consider California waiver requests, and from legal obligations that govern EPA administration of the Clean Air Act?
2. Under the process used for past waiver requests, to what extent has the EPA Administrator relied on the recommendations of EPA technical staff in making these decisions?
3. Did the EPA Administrator cease consultations with EPA technical and legal staff before denying the waiver request? If so, why? Did the Administrator's use of technical and legal staff differ from standard policy at EPA?
4. Is it unusual for an EPA Administrator to issue a legally binding decision before the legal documents justifying the decision have been written, finalized, and/or published?
5. Did the EPA Administrator or his staff violate EPA decision making protocols? Did the EPA Administrator or his staff violate any laws which govern the EPA decision making process? Did the EPA Administrator or his staff conform to the letter and spirit of the Clean Air Act in making this decision?
6. Did the EPA Administrator consult with personnel at the White House, including but not limited to the Office of the President, the Office of the Vice President, and the Office of Management and Budget, prior to denying the waiver to California? Did Administrator Johnson receive direction from White House personnel on whether the waiver request should be granted? Did Administrator Johnson follow direction from the White House?
7. Did the EPA Administrator or his deputies discuss this waiver decision with any parties that represented the automobile industry, automobile manufacturers, or the owners of automobile companies prior to denying this waiver request?
8. The EPA Administrator denied the waiver in a two page letter to California, citing the enactment of the Energy Independence and Security Act that President Bush signed into law only hours before as legal justification of his decision.

Was the EPA Office of General Counsel or EPA technical staff consulted on the content of this letter before it was sent to California? What were their recommendations, if they were consulted?

9. Did EPA legal or technical staff agree with EPA Administrator Johnson's assertion that, due to the global nature of climate change, "California does not have a 'need to meet compelling and extraordinary conditions'"? Did EPA Administrator Johnson seek or receive a legal determination of whether climate change posed a "compelling and extraordinary condition"? If so, was that interpretation consistent with Administrator Johnson's letter to California?
 10. Did the EPA Administrator consult with the EPA Office of General Counsel in coming to the legal conclusion that the Energy Independence and Security Act impacted the California waiver request? Did the Office of General Counsel produce any written interpretation of the impact of the Energy Independence and Security Act on the waiver decision? Did the Office of General Counsel agree with the legal interpretation expressed by Administrator Johnson in his December 19 letter to California? If not, upon whose legal advice did Administrator Johnson conclude that the Energy Independence and Security Act had legal impact on his decision to issue the waiver?
 11. How many times has California requested a waiver under Section 209 of the Clean Air Act?
 12. How many times have such waiver requests been denied?
 13. Was California given opportunity to refute the basis under which EPA denied the waiver request?
 14. What changes in policy would be required to increase the likelihood that EPA technical and legal staff views are given due consideration in EPA Administrator decisions regarding Clean Air Act Section 209 waiver requests?
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