

October 14, 2014

Arthur A. Elkins, Jr.  
Inspector General  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (2410T)  
Washington D.C. 20460

**By Facsimile: 202-566-2549**

Dear Inspector Elkins:

Given evidence from the public record and other documentary evidence obtained under the Freedom of Information Act (FOIA), and cited herein, the Free Market Environmental Law Clinic (FMELC) and the Energy & Environment Legal Institute (E&E Legal) respectfully request that you investigate whether the Sierra Club (“Sierra”) and the Natural Resources Defense Council (“NRDC”) were granted or exercised improper roles in developing, or improperly influenced, EPA’s New Source Performance Standards (“NSPS”) and other rules relating to EPA regulation of greenhouse gases (GHGs).

We are particularly concerned that this influence was granted or exerted in order to achieve shared political/ideological objectives, including but not limited to damaging a politically disfavored industry, and to benefit another. Targeted industry includes coal and electric utilities that burn coal to, as the president repeatedly vowed, “finally make [renewable] energy profitable”. EPA’s GHG regulations threaten to do just that with no expectation of a detectable impact on the nominal objective of impacting climate (or climate change), according to any computer model projection and as EPA has since admitted.<sup>1</sup> Given the high costs of these regulations and the related, various vows and admissions, we believe that, as EPA’s statutorily charged watchdog, the Inspector General’s Office must take careful notice of numerous facts in the public record, investigate further, and provide a formal response.

We note and follow a similar request made, on far less evidence than we present, by Citizens for Responsible Ethics in Washington (“CREW”), on May 22, 2014. CREW requested that your office “investigate whether the Carlyle Group (“Carlyle”) and Delta Air Lines (“Delta”) improperly influenced the Renewable Fuel Standards (“RFS”) proposed by the Environmental Protection Agency (“EPA”) in November 2013 to financially benefit oil refineries the companies

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<sup>1</sup> “Jackson Confirms EPA Chart Showing No Effect on Climate Without China, India,” Press Release, Senate Committee on Environment and Public Works, July 7, 2009. Available at: [http://www.epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord\\_id=564ed42f-802a-23ad-4570-3399477b1393](http://www.epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord_id=564ed42f-802a-23ad-4570-3399477b1393). Last retrieved 10/9/2014.

own.”<sup>2</sup> The present case is far more open and shut than those allegations; indeed, this request is based not only on information in media reports, as was CREW’s, but on substantial documentation obtained under FOIA requests, while CREW sought supporting information under FOIA after requesting an OIG inquiry.

The New York Times has released information demonstrating that one pressure group, Natural Resources Defense Council (NRDC), EPA’s framework for its GHG regulations<sup>3</sup>; this past weekend the Time revealed information that has subsequently emerged adding support to the paper’s original reporting.<sup>4</sup> Information obtained by the undersigned requesters, in response to an FOIA request seeking records relating to Sierra Club, as well as others obtained under FOIA by the Competitive Enterprise Institute, show that that group improperly guided the actual standard EPA ultimately proposed under this framework.

As CREW noted, “these kinds of reports undermine confidence that the EPA is making decisions in the best interest of the public at large.”<sup>5</sup> We agree, and seek inquiry into troubling evidence that this far more economically significant series of proposed rules<sup>6</sup> were unlawfully developed with improper influence from certain special interests and their lobbyists.

Once EPA pursued NRDC’s framework, Sierra Club’s role influencing these regulations was not only improper on its face but also came, inherently, at the expense of other stakeholders and the general public and with the active and intentional assistance of EPA officials intimately involved in the rule making processes.

As NRDC noted in another, earlier context, documentation of meetings involving *non-regulatory* executive activity demonstrated such “extensive access”, “key involvement” and

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<sup>2</sup> Letter to Arthur Elkins, May 22, 2014. Available at: [www.citizensforethics.org/page/-/PDFs/Legal/Investigation/5\\_22\\_2014\\_CREW\\_Request\\_for\\_Investigation\\_to\\_EPA\\_IG\\_re\\_Carlyle\\_Group\\_American\\_Airlines\\_Fuel\\_Standards.pdf?nocdn=1](http://www.citizensforethics.org/page/-/PDFs/Legal/Investigation/5_22_2014_CREW_Request_for_Investigation_to_EPA_IG_re_Carlyle_Group_American_Airlines_Fuel_Standards.pdf?nocdn=1).

<sup>3</sup> Coral Davenport, “Taking Oil Industry Cue, Environmentalists Drew Emissions Blueprint”, *New York Times*, July 6, 2014. [http://www.nytimes.com/2014/07/07/us/how-environmentalists-drew-blueprint-for-obama-emissions-rule.html?\\_r=0](http://www.nytimes.com/2014/07/07/us/how-environmentalists-drew-blueprint-for-obama-emissions-rule.html?_r=0). Last viewed 7/14/14.

<sup>4</sup> Coral Davenport, “Republicans to Investigate Environmental Group’s Influence on Carbon Rule”, *New York Times*, October 10, 2014, <http://www.nytimes.com/2014/10/11/us/republicans-to-investigate-environmental-groups-influence-on-carbon-rule.html>.

<sup>5</sup> CREW, Letter to Arthur Elkins.

<sup>6</sup> EPA-HQ-OAR-2011-0660, EPA-HQ-OAR-2013-0495; 79 FR 34829, 79 FR 34959 (both June 18, 2014).

“influence”<sup>7</sup> as to suggest outside parties wrote a (again, non-regulatory) “report”<sup>8</sup> and indeed delegitimized governmental actions. The instant request documents much more than that complained of in NRDC’s analogous circumstance, critically involving *actual regulatory actions* taken at the behest of NRDC and guided by Sierra Club, rising on their face to the touted “extensive access”, “key involvement” and “influence”.

The evidence is compelling, and such that EPA denials are not on their face sufficient.

Since 2010 the EPA has put forth a series of regulations concerning carbon dioxide and other greenhouse gases<sup>9</sup> with the stated goal of mitigating climate change. The rules, while consistent with then-candidate Barack Obama’s vow to “bankrupt” politically disfavored industry and later, serial pledges that these rules are needed to “finally make [renewable energy] profitable”, are both technologically and economically unsound<sup>10</sup> and rely on non-public scientific data and analysis. This is particularly noteworthy given the criticisms of EPA standards for and practices in assessing such data, including by your office.<sup>11</sup>

To these existing concerns we add information obtained using FOIA, and request a review ensuring the process by which these regulations were formulated was free of undue influence from special interest groups.

The improper process flows in part from bias built into the EPA staff developing these rules, so pronounced as to exhibit the improper “unalterably closed mind” for decisionmakers

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<sup>7</sup> NRDC, “How NRDC Brought the Records to Light”, <http://www.nrdc.org/air/energy/taskforce/bkgrd.asp>, last viewed October 7, 2014.

<sup>8</sup> NRDC, “Heavily Censored Energy Department Papers Show Industry is the Real Author of Administration's Energy Task Force Report”, <http://www.nrdc.org/media/pressreleases/020327.asp>, last viewed October 7, 2014.

<sup>9</sup> The EPA its self has a listing of these regulatory efforts listed prominently on its website. *See* Climate Change - Regulatory Initiatives, Available at: <http://www.epa.gov/climatechange/EPAactivities/regulatory-initiatives.html>. Last retrieved 7/7/2014.

<sup>10</sup> “EPA assailed on power plant regulations”, E2 Wire The Hill's Energy and Environmental Blog, Nov. 14, 2013. Available at: <http://thehill.com/blogs/e2-wire/e2-wire/190269-epa-assailed-on-power-plant-carbon-regs>, last retrieved 7/7/2014.

<sup>11</sup> “EPA Has Not Implemented Adequate Management Procedures to Address Potential Fraudulent Environmental Data,” May 29, 2014. Report No. 14-P-0270. *See also* United States Senate Committee on Environment and Public Works, Minority Staff Report, “EPA’s Playbook Unveiled: A Story of Fraud, Deceit, and Secret Science,” March 19, 2014.

demonstrating prejudgment in rule making.<sup>12</sup> The evidence reflects an Agency culture rife with bias, e.g., in which senior staff speak of anti-coal regulations as “Another step closer,”<sup>13</sup> celebrate aggressive public campaigns by aligned green groups,<sup>14</sup> and dismissively receive studies inconsistent with their agenda with sneers about the “bogus claim season” and “pls add this to the industry study pile.”<sup>15</sup>

This bias is compounded by the conflicts of interest and the appearance thereof<sup>16</sup> in violation of Executive Order 12674<sup>17</sup> dogging many senior EPA staff involved in producing these rules and who, the evidence also shows, once they were in-house at EPA worked collusively with former green-group colleagues in doing so,<sup>18</sup> as did a group of sympathetic senior aides materially involved in developing these rules, across numerous offices, as we have shown.

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<sup>12</sup> See *Association of National Advertisers, Inc. v. Federal Trade Comm.*, 627 F.2d 1151 (D.C. Cir 1979).

<sup>13</sup> Email, From: Rick Albright, To: Dennis McLerran, Janet McCabe, Subject: Fw: Bill moves Wash. plant off coal by 2025. 04/13/2011.

<sup>14</sup> Email, From: Al McGartland, (Director of the National Center for Environmental Economics and lead EPA economist) To: Alexa Barron, Paul Balsarak, Barry Elman, Shannon Kenny, DavidA Evans, Alex Marten, Subject: Re: RECORD 3 MILLION COMMENTS IN SUPPORT OF EPA’S CARBON POLLUTION STANDARD!!!!!! 08/14/2012. This was originally sent to green lobbyists and a small crowd of their allies within EPA, Alex Barron, Michael Goo, Shira Sternberg, and Joe Goffman.

<sup>15</sup> See Email From: Alex Barron To: Al McGartland, Rob Brenner, Lydia Wegman , Jim DeMocker, Lorie Schmidt, Nathalie Simon, Subject, API ozone study. 07/28/2011.

<sup>16</sup> An illustrative but non-exclusive list of current and recent-former EPA officials with potential conflicts with green pressure groups are: Nancy Stoner, Interim Assistant Administrator of Water (formerly with Natural Resources Defense Council), Glenn Paulson, Chief Scientist (NRDC), Michael L. Goo, Associate Administrator for the Office of Policy, (NRDC), Bob Perciasepe, Deputy Administrator (National Audubon Society), Cynthia Giles, Assistant Administrator for Enforcement & Compliance (The Conservation Law Foundation's Advocacy Center), Michelle J. DePass, Assisant Administrator for the Office of International and Tribal Affairs (New York City Environmental Justice Alliance), Mathy Stanislaus, Assistant Administrator for Solid Waste (New York City Environmental Justice Alliance),

<sup>17</sup> Executive Order 12674, (Apr. 12, 1989): Principles of Ethical Conduct for Government Officers and Employees available at [http://www.oge.gov/Laws-and-Regulations/Executive-Orders/Executive-Order-12674-\(Apr--12,-1989\)---Principles-of-Ethical-Conduct-for-Government-Officers-and-Employees/](http://www.oge.gov/Laws-and-Regulations/Executive-Orders/Executive-Order-12674-(Apr--12,-1989)---Principles-of-Ethical-Conduct-for-Government-Officers-and-Employees/); e.g., ”(e) Employees shall put forth honest effort in the performance of their duties....(h) Employees shall act impartially and not give preferential treatment to any private organization or individual... (n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.”

<sup>18</sup> See also, Email From: Bob Perciasepe, To: Brendan Gilfillan, Subject: Fw: Article, 05/21/2012.

FOIA has allowed us and others to document collusion on a shared agenda with outside lobbyists. The stated objective of Sierra Club’s “Beyond Coal” campaign is “to prevent new coal plants from being built,” to “Retire one-third of the nation’s more than 500 coal plants by 2020,” and to “Keep coal in the ground.”<sup>19</sup> We know that President Obama expressed a similar goal, only to walk it back publicly through EPA officials after it became politically problematic. Since then, top EPA officials insist that EPA’s rules do not seek to reduce coal’s market share as do their partners at Sierra Club and NRDC; that EPA is not, like these groups, working to ensure no new coal plants are built; and that instead they are actually creating “a clear path forward for coal as a power source” contrary to these groups’ demands. However, FOIA’d email indicates EPA officials share an understanding, as expressed by the leader of Sierra Club’s Beyond Coal campaign, that this rhetorical stance is also “pants on fire” untrue.<sup>20</sup>

Gina McCarthy’s senior aide Joe Goffman, a veteran of a dozen years with the Environmental Defense Fund, acted as EPA’s Air Office outreach and liaison to Sierra Club, acknowledging in emails that he pushed Sierra requests regarding “New Source Performance Standards for GHG emissions” outside of “normal channels”<sup>21</sup> (other staff also submitted comments for Sierra on a rulemaking outside of the prescribed time limits and process<sup>22</sup>). Others serving as extensions of Sierra but inside the Agency included former professional NRDC activist Michael Goo and Alex Barron, whose close collaborative relationships with Sierra Club lobbyists we demonstrate and the impact of which require formal scrutiny.

For example, emails show that “Beyond Coal” leader and close EPA advisor John Coequyt was influential in ensuring that whatever EPA GHG standards emerge they must be sufficiently stringent that Sierra’s targeted list of plants cannot meet them. In one email to Goo and Barron, Coequyt clearly laid this out: “Attached is a list of plants that the companies said were shelved because of uncertainty around GHG regulations. If a standard is set that these

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<sup>19</sup> “About Us”, Beyond Coal website. Available at <http://content.sierraclub.org/coal/about-the-campaign>, last retrieved 7/7/2014. This stance is identical to most major green pressure groups. See, FN8.

<sup>20</sup> Sierra Club’s chief lobbyist on climate issues sent a story ( Lindsay Morris, “Coal to Remain Viable, says EPA's McCarthy at COAL-GEN Keynote” Power Engineering, Aug 15, 2012. Available at: <http://www.power-eng.com/articles/2012/08/coal-to-remain-viable-says-epas-mccarthy-at-coal-gen-keynote.html>) to his close colleagues at EPA, namely Michael Goo and Alex Barron, commenting only, “Pants on Fire”e. See Email, From: John Coequyt, To: Michael Goo, Alex Barron, Subject Fwd:[CLEAN-STRATEGY] Coal to Remain Viable, says EPA’s McCarthy at COAL-GEN Keynote, 8/16/2012 4:33pm.

<sup>21</sup> Email, From: Joseph Goffman, To: Patricia Embrey and four others including Rob Brenner, Subject: Fw: New Source Performance Standards for GHG emissions, 9/26/2010.

<sup>22</sup> Email, From: Marie Bergen, To: John Coequyt, Subject: Carbon Rule Comments for EPA from Change.org, 6/13/2012.

plants could meet, there is not a small chance that the company could decide to revive the proposal.”<sup>23</sup>

Additionally, he persisted in these efforts, constantly bringing up the “score” to EPA officials.<sup>24</sup> Importantly, EPA took notice, with Goo and Barron corresponding in response<sup>25</sup> and their administrative assistants printing out Coequyt’s list, apparently to present them in EPA’s briefing materials for formulating their particular standards.<sup>26</sup>

Furthering the appearance that several EPA officials intimately involved in these rule makings served as extensions of Sierra Club in performing their official duties. Coequyt requested Goo or Barron to attend specific meetings with other top EPA officials, sometimes apparently because Coequyt could not do so himself. A reasonable person might surmise that this is to ensure it was properly staffed from Sierra’s perspective.<sup>27</sup>

Regardless of requesters’ views on whether these GHG standards are properly set, our legitimate concern is that special interests with both a financial stake in them and powerful political connections *improperly influenced the process*, e.g., specifically targeting a funding industry’s competitors, allowing NRDC to provide the regulatory framework from which EPA

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<sup>23</sup> Email, From: John Coequyt, To: Michael Goo, Alex Barron, Subject: Zombie’s[sic] 4/29/2011 02:35PM.

<sup>24</sup> Email, From: Alex Barron, To: Shannon Kenny, Paul Balserak, Al McGartland, David A. Evans, Subject: Fw: Zombie’s [sic]. 4/29/2011, 07:51pm. Email, From: John Coequyt, To: Alex Barron, Subject: Check this out, 8/17/2011. Email, From: John Coequyt, To: Alex Barron, Subject: Numbers. 9/07/2011. Email, From: John Coequyt, To: Alex Barron, Subject: Check this out, 8/17/2011. From: John Coequyt, To: Alex Barron, Subject: You are looking at this, right? 9/07/2011.

<sup>25</sup> Email, From: John Coequyt, To: Alex Barron, Subject: Check this out, 8/17/2011. Email, From: John Coequyt, To: Alex Barron, Subject: Numbers. 9/07/2011

<sup>26</sup> Email, From: Robin Kime, To: Verna Irving, Subject: May I please have 1 copy of this email and tab 1 of the attachments, 3 hole punched? Thanks! 4/29/2011. Further examples range from Sierra Club influence on EPA’s decision concerning locations for public hearings (Email, From: John Coequyt, To: Joseph Goffman, Subject:Re: EPA Hearings for Carbon Protection Rule. 03/29/2012. Email, From: Sam Napolitano, To: Joseph Goffman, Subject: Sierra Club Request for a CSAPR Technical Corrections Proposal Hearing in TX. 10/18/2011 (partially redacted)), and in those hearings’ conduct including with the “right” people (Email, From: Jan Cortelyou-Lee, To: Alison Davis, Steve Page, Peter Tsirigotis, Jeffrey Clark, Jenny Noonan, Sarah Terry, Robert J Wayland, Bill Maxwell, Jackie Ashley, Kelly Rimer, Subject: Re: Chicago toxics hearing summary, 05/25/2011), in helping EPA write talking points for a U.S. Senator supporting and in assistance of the EPA/Sierra Club agenda (Email, From: Catherine Corkery, To: Nancy Grantham, Cynthia Greene, Subject: Press release draft for tomorrow, 04/03/2012).

<sup>27</sup> See e.g., Email, From: John Coequyt, To: Michael Goo, Subject: NSPS Meeting with Green Group and Gina. 1/13/2012.

began then targeting specific power plants that Sierra Club identified for EPA as those which must not be permitted to survive whatever standard EPA sets.

**We incorporate by reference our recent report on this issue as an appendix to this request (which includes copies of all emails cited to in this letter<sup>28</sup>).** This report broadly documents direct and indirect evidence obtained so far of improper collaboration, even collusion by EPA with Sierra Club, and NRDC, and improperly biased EPA officials such that EPA's GHG regulations are the product of undue influence.

To summarize, evidence of improperly collaborative relationships between Sierra Club, NRDC and EPA in pursuit of a shared agenda, to the improper derogation of others' interests and opportunities, is widespread. The facts suggest that the unusually close relationship between Sierra Club and EPA in crafting various regulations is at least in appreciable part an effort to advance a shared ideological agenda and one underwritten in great part by an industry also seeking to undermine a rival industry. It was the use of the state to affect a "naked transfer of wealth" to selected businesses (including an industry which has massively underwritten Sierra's efforts, which EPA then effectively brought in-house<sup>29</sup>), in violation of our prescribed regulatory process grounded in the Constitution and guaranteeing equal protection and due process.

Formal inquiry is necessary and must be informed by the acknowledged fact that all these regulations will have no measurable effect on their nominal target, climate change, as former EPA Administrator Lisa Jackson admitted before Congress.<sup>30</sup>

Allowing such efforts to go unimpeded, and even without investigation, sanctions it and undermines public confidence in the EPA, also unsettling the careful balance that must exist between reasonably addressing legitimate environmental concerns and the potential for cronyism, for conflicts of interest and activism under color of law, as well as for severe financial, social and political consequences of regulation.

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<sup>28</sup> <http://eelegal.org/wp-content/uploads/2014/09/EE-Legal-FOIA-Collusion-Report-9-15-2014.pdf>.

<sup>29</sup> See, "Exclusive: How The Sierra Club Took Millions from the Natural Gas Industry and Why They Stopped", by Brian Walsh. Time, Ecocentric Blog, February 2, 2012. Available at: <http://science.time.com/2012/02/02/exclusive-how-the-sierra-club-took-millions-from-the-natural-gas-industry-and-why-they-stopped/>, last retrieved 7/9/2014.

<sup>30</sup> Jackson Confirms EPA Chart Showing No Effect on Climate Without China, India, Senate Committee on Environment and Public Works, July 7, 2009. Available at: [http://www.epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord\\_id=564ed42f-802a-23ad-4570-3399477b1393](http://www.epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord_id=564ed42f-802a-23ad-4570-3399477b1393). Last retrieved: 7/8/2014.

President Obama promised to curb the power of special interests and stop conflicts of interest from influencing his administration's decision making. Public trust in the EPA can be restored at least to some degree with a full and impartial investigation by your office.

Thank you for your prompt attention to this important matter. If you have any questions please do not hesitate to contact the undersigned.

Respectfully submitted,



Craig E. Richardson  
Executive Director, E&E Legal  
[Richardson@EELegal.org](mailto:Richardson@EELegal.org)  
703.981.5553



Christopher C. Horner, Esq.  
Free Market Environmental Law Clinic  
[CHornerLaw@aol.com](mailto:CHornerLaw@aol.com)  
202.262.4458