HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

TOM DAVIS, VIRGINIA
RANKING MINORITY MEMBER

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

Majority (202) 225–5051
Minority (202) 225–5074

January 16, 2007

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Ariel Rios Building
Washington DC, 20460

Dear Administrator Johnson:

I am writing in regard to the U.S. Environmental Protection Agency's (EPA) handling of the air permit application for the BHP Billiton liquefied natural gas (LNG) floating storage and regasification project off the coast of Ventura County, California.

Specifically, it has come to my attention that EPA has reversed its interpretation of the governing laws and regulations in examining the air permit application for this project. At least three times, EPA explained clearly, as part of the public record, that this project would be permitted according the air quality permitting requirements of the Ventura County Air Pollution Control District. As you may know, as part of these requirements, a project would need to obtain emission reduction credits within Ventura District to offset the increased emissions from a new facility.

On April 5, 2004, EPA wrote to BHP Billiton in order to provide their preliminary conclusions that the project's applicable onshore area was Ventura District, and that the offset requirements of the Ventura District NSR rule would apply.[1]

Although BHP Billiton subsequently argued that Ventura District's rules should not apply to their project, on June 10, 2004, EPA confirmed to the Coast Guard that BHP's arguments had "not changed our position on applicability of the District rules to the proposed deepwater port, and we plan to followup with BHP on our request to provide air emission

---

[1] Letter from Gerardo C. Rios, Chief, Permits Office, Air Division, Region IX, U.S. EPA, to Steve R. Meheen, Project Manager, BHP Billiton LNG International Inc. (Apr. 5, 2004).

offsets."[2] EPA conveyed their analysis to BHP Billiton on June 29, 2004, confirming that "our position regarding the applicability of the District rules has not changed."[3]

On December 21, 2004, EPA provided comments on the Draft Environmental Impact Statement (EIS) for the BHP Billiton project. EPA commented that although the EIS noted that Ventura District's requirements applied, the EIS "should also state that the Applicant has committed to obtain the necessary [offsets] within a time frame consistent with the project permitting schedule."[4]

On February 23, 2005, BHP Billiton again argued to EPA that the project should not be covered by Ventura District rules, and instead should be treated as though the project were being constructed in the Channel Islands.[5]

On June 29, 2005, EPA reversed its position in a letter to the U.S. Coast Guard, stating "Based on our further analysis of the Deepwater Port Act and the District rules, we have concluded offsets are not required for sources constructed in the area where BHP plans to site its" project.[6] Unfortunately, EPA's letter did not provide an explanation of the analysis that led to this reversal, nor has it, to my knowledge, ever publicly released the analytical and legal basis for the change in its position. Subsequently, there were press reports that the decision was made for political, rather than legal or environmental reasons. For instance, the *Los Angeles Times* reported:

> EPA records show that for two years, the agency strenuously argued that BHP acquire offsets for its project. But securing offsets is costly, difficult to achieve and leads to delays, so the company resisted.

---

[2] Letter from Gerardo C. Rios, Chief, Permits Office, Air Division, Region IX, U.S. EPA, to Commander Mark Prescott, Acting Chief, Office of Operating and Environmental Standards Commandant, U.S. Coast Guard, Department of Homeland Security (June 10, 2004).

[3] Letter from Gerardo C. Rios, Chief, Permits Office, Air Division, Region IX, U.S. EPA, to Steve R. Meheen, Project Manager, BHP Billiton LNG International Inc. (June 29, 2004).

[4] Letter from Enrique Manzanilla, Director, Cross Media Division, Region IX, U.S. EPA, to Lieutenant Ken Kusano, U.S. Coast Guard (Dec. 21, 2004).

[5] Letter from Thomas R. Wood, Stoel Rives, to Amy Zimpfer, Associate Director, Air Division, Region IX, U.S. EPA (Feb. 23, 2005).

[6] Letter from Amy Zimpfer, Associate Director, Air Division, Region IX, U.S. EPA, to Commander Mark Prescott, Deepwater Ports Standards Division, U.S. Coast Guard, Department of Homeland Security (June 29, 2005).

> The EPA reversed itself and granted a waiver after the company contacted the White House Task Force on Energy Project Streamlining. Bush created the task force in 2001 to accelerate energy projects. BHP spent $1.8 million in California lobbying for its project last year — the seventh highest expenditure among special-interest groups, according to the secretary of state.
>
> "I have never seen an energy project in the state with this much lawyering and lobbying in 25 years," said V. John White, air quality lobbyist for the Sierra Club.[7]

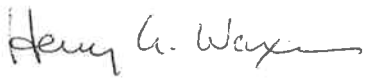
The *Times* article further reported:

> sources in the EPA's San Francisco office said officials in the agency's Washington headquarters often overrule the regional office on pollution permits. "More and more of our decisions on permits are overhauled by headquarters, and that's different than the way we've done things before," said one EPA official.[8]

As the primary oversight body in the House, the Committee on Oversight and Government Reform has the authority and responsibility to investigate allegations of unusual and potentially suspect agency actions. For this reason, I am requesting that you provide the Committee the analysis referenced in EPA's June 29, 2005, letter that provides the factual and legal basis for EPA's reversal on this project. I also request copies of any communications between EPA headquarters and the regional office that discuss the reversal of EPA's position.

I respectfully request that you provide a copy of the analysis by January 23, 2007, and copies of the communications by February 13, 2007. Should any questions arise, please contact Greg Dotson, of my Committee staff, at (202) 225-4407.

Sincerely,



Henry A. Waxman
Chairman

Cc: Rep. Tom Davis
Ranking Minority Member

---

[7] *Offshore Terminal's Onshore Effect Debated*, Los Angeles Times (Sept. 3, 2006).

[8] *Id.*