

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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October 17, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Regan,

We write to express our expectation that the Environmental Protection Agency (EPA) will commit to substantive cooperation with the Committee on Oversight and Accountability's oversight requests. After months-long delays in receiving responsive productions to our requests, we invited an official at EPA's Office of Congressional and Intergovernmental Relations to appear at a hearing on October 25, 2023.¹ The sole purpose of this hearing was to obtain testimony regarding EPA's "failures to comply with multiple Committee requests."² Almost immediately after transmitting this invitation, EPA finally began delivering responsive documents and communications requested by the Committee, in addition to making commitments for further responsive productions. Given EPA's newfound willingness to cooperate with our inquiries, we will postpone the October 25, 2023, hearing with the expectation that EPA will honor the commitments it has made to continue being responsive to our oversight.

Since February, the Committee has transmitted five separate request letters to EPA seeking documents, information, and communications we believe are vital to conducting oversight of your agency's activities.³ Prior to sending our invitation for EPA to appear for the

¹ Letter from Pat Fallon, Chairman, Subcommittee on Economic Growth, Regulatory Affairs, and Economic Growth, H. Comm. on Oversight and Accountability, to Tim Del Monico, Associate Administrator, Office of Congressional and Intergovernmental Affairs, EPA (Oct. 11, 2023).

² *Id.*

³ Letter from James Comer, Chairman, H. Comm. on Oversight and Accountability, to Michael S. Regan, Administrator, EPA (Feb. 15, 2023); Letter from James Comer, Chairman, H. Comm. on Oversight and Accountability, and Pat Fallon, Chairman, Subcommittee on Economic Growth, Regulatory Affairs, and Economic Growth, H. Comm. on Oversight and Accountability, to Michael S. Regan, Administrator, EPA (Feb. 27, 2023); Letter from James Comer, Chairman, H. Comm. on Oversight and Accountability, and Pat Fallon, Chairman, Subcommittee on Economic Growth, Regulatory Affairs, and Economic Growth, H. Comm. on Oversight and Accountability, to Michael S. Regan, Administrator, EPA (Apr. 6, 2023); Letter from James Comer, Chairman, H. Comm. on Oversight and Accountability, to Michael S. Regan, Administrator, EPA (May 4, 2023); and Letter from James Comer, Chairman, H. Comm. on Oversight and Accountability, et al. to Michael S. Regan, Administrator, EPA (June 21, 2023).

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October 25, 2023, hearing, EPA flooded our offices with thousands of pages of nonresponsive documents, the overwhelming majority of which were publicly available or grossly outdated in some cases.

As just one example, EPA produced several hundred pages of documents⁴ purportedly in response to our June 21, 2023, inquiry regarding a proposed rule which would set stringent new emissions standards for power plants.⁵ This production was comprised of printouts of EPA's own website,⁶ the Background Technical Support Document for the Proposed New Source Performance Standards from 2015 totaling 264 pages,⁷ and the Background Technical Support Document for the Final New Source Performance Standards from 2016 totaling 176 pages.⁸ These documents—hundreds of pages of which related to rulemaking from the prior decade—were already known and available to us, as they were publicly available online and even published in the Federal Register. Moreover, they are nonresponsive to the request specified in our letter for relevant documents and communications “for the time period from January 20, 2021, to present...”⁹

This is not the first time the Committee has encountered frustrations with how EPA has responded to Congressional requests. As we wrote you on May 17, 2023, after EPA declined to provide any witness in response to an oversight hearing invitation:

“The U.S. Constitution, by vesting Congress with legislative authority, requires Congress to exercise an oversight function to obtain information necessary to legislate.¹⁰ The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate, “any matter” at “any time” under House Rule X.”¹¹

Given our ongoing frustrations, we invited the Associate Administrator of the Office of Congressional and Intergovernmental Relations at EPA to an October 25, 2023, hearing before

⁴ Document production from EPA to H. Comm. on Oversight and Accountability (July 26, 2023), on file with H. Comm. on Oversight and Accountability.

⁵ Letter from James Comer, Chairman, H. Comm. on Oversight and Accountability, et al. to Michael S. Regan, Administrator, EPA (June 21, 2023).

⁶ *Id.*, p. 28-40.

⁷ *Id.*, p. 445-709.

⁸ *Id.*, p. 710-886.

⁹ Letter from James Comer, Chairman, H. Comm. on Oversight and Accountability, and Pat Fallon, Chairman, Subcommittee on Economic Growth, Regulatory Affairs, and Economic Growth, H. Comm. on Oversight and Accountability, to Michael S. Regan, Administrator, EPA (Apr. 6, 2023).

¹⁰ *See e.g. McGrain v. Daugherty*, 273 U.S. 135 (1927) (Noting that Congress has the power to compel information necessary to enable its legislative functions).

¹¹ Letter from James Comer, Chairman, H. Comm. on Oversight and Accountability, and Pat Fallon, Chairman, Subcommittee on Economic Growth, Regulatory Affairs, and Economic Growth, H. Comm. on Oversight and Accountability, to Michael S. Regan, Administrator, EPA (May 17, 2023).


the Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs to provide testimony regarding EPA's "failures to comply with multiple Committee requests."¹²

The very next day, EPA finally provided documents partially responsive to an outstanding request.¹³ In addition to this responsive production, EPA has now committed to providing additional responsive productions, including: |

- 1) formal responses to questions for the record from a June 21, 2023, hearing with Joseph Goffman, Principal Deputy Assistant Administrator, Office of Air and Radiation,¹⁴ on or before October 20, 2023;
- 2) a production responsive to our April 6, 2023, request,¹⁵ to be transmitted on or before October 20, 2023; and
- 3) a production responsive to our February 27, 2023, request,¹⁶ to be transmitted on or before October 27, 2023.

The Committee appreciates this sudden "show of good faith"¹⁷ by EPA after months of failing to adequately respond to our requests. As such, we will honor EPA's request to postpone this hearing with the expectation that the Committee will continue to receive substantive information from EPA responsive to our requests and that EPA will honor the recent commitments it has made. We look forward to receiving expeditious productions pursuant to each of our requests.

Sincerely,



James Comer
Chairman
Committee on Oversight and Accountability



Pat Fallon
Chairman
Subcommittee on Economic Growth,
Energy Policy, and Regulatory Affairs

¹² *Supra*, n.1.

¹³ Document production from EPA to H. Comm. on Oversight and Accountability (Oct. 12, 2023), on file with H. Comm. on Oversight and Accountability.

¹⁴ H. Comm. on Oversight and Accountability, Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs, *Hearing on Clearing the Air: Examining the Environmental Protection Agency's Proposed Emissions Standards*, 118th Cong. (June 21, 2023) (H. Rept. 118-44).

¹⁵ *Supra*, n.3.

¹⁶ Letter from James Comer, Chairman, H. Comm. on Oversight and Accountability, and Pat Fallon, Chairman, Subcommittee on Economic Growth, Regulatory Affairs, and Economic Growth, H. Comm. on Oversight and Accountability, to Michael S. Regan, Administrator, EPA (Feb. 27, 2023).

¹⁷ E-mail from EPA staff to H. Comm. on Oversight and Accountability staff (Oct. 12, 2023).

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cc: The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

The Honorable Cori Bush, Ranking Member
Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs