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Congress of the United States

House of Representatives

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December 2, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing to request your assistance in obtaining documents from Kenneth Cuccinelli, the Attorney General of the Commonwealth of Virginia.

As you know, Attorney General Cuccinelli appeared before our Committee on November 1, 2011, to testify against the Environmental Protection Agency's proposed Mercury and Air Toxics Standards rule. This rule establishes national standards to reduce toxic pollutants from the nation's largest source of air pollution—coal- and oil-fired power plants.

Since his appearance before the Committee, Attorney General Cuccinelli has declined to respond to written requests for documents relating directly to the accuracy of his testimony and to his record of enforcement against corporate polluters in Virginia.

I request that you write to Attorney General Cuccinelli on behalf of the Committee to obtain these previously requested documents.

Claims Against Toxic Air Pollution Regulation

When Attorney General Cuccinelli appeared before the Committee on November 1, 2011, he testified that, as a result of the proposed Air Toxics rule, electricity prices "will increase between 10 and 35 percent," and there will be approximately "180,000 jobs lost per year for each year between 2013 and 2020."¹

¹ House Committee on Oversight and Government Reform, Written Testimony of Virginia Attorney General Kenneth T. Cuccinelli, II, *Lights Out II: Should EPA Take a Step Back to Fully Consider Utility MACT's Impact on Job Creation?* (Nov. 1, 2011).

Attorney General Cuccinelli did not cite any specific reports or estimates to support his assertions, and his statements contradict several reputable studies that predict only minor price increases and net job gains rather than losses.² As a result, on November 8, 2011, I wrote to Attorney General Cuccinelli to request “all studies, reports, and analyses on which you relied when preparing your testimony before the Committee.”³

As I explained in my letter, Attorney General Cuccinelli’s assertions appear to misstate conclusions from several industry-sponsored studies.⁴ These studies do not examine the effects of the Air Toxics rule alone. Instead, they estimate the cumulative impact of multiple proposed regulations from an industry perspective. If Attorney General Cuccinelli improperly exaggerated the potential negative effects of the Air Toxics rule, even as predicted by industry sources, this is a serious matter that needs to be addressed.

Although I requested these documents by November 18, 2011, Attorney General Cuccinelli failed to respond to my request. He has declined to provide any of the requested documents, and he has not responded to my staff’s attempts to obtain an explanation for his delay. Despite follow-up calls to his office on November 22 and 28, we have received no response. Attorney General Cuccinelli’s refusal to explain or even defend his testimony raises significant concerns about his motivations in making these unsubstantiated statements.

² See, e.g., Political Economy Research Institute, *New Jobs—Cleaner Air: Employment Effects Under Planned Changes to the EPA’s Air Pollution Rules* (Feb. 2011) (online at www.peri.umass.edu/236/hash/cf02bdc58d7e2a55b587c753e86c3881/publication/440/); Economic Policy Institute, *A Lifesaver, Not a Job Killer: EPA’s Proposed “Air Toxics Rule” is No Threat to Job Growth* (June 14, 2011) (online at w3.epi-data.org/temp2011/BriefingPaper312%20%282%29.pdf); Charles J. Cicchetti, *Why EPA’s Mercury and Air Toxics Rule is Good for the Economy and America’s Workforce* (July 2011) (online at www.cleanair.org/sites/default/files/MercuryRuleEconomicsReport_1.pdf); Environmental Protection Agency, *Regulatory Impact Analysis of the Proposed Toxics Rule: Final Report* (Mar. 2011) (online at www.epa.gov/ttn/ecas/regdata/RIAs/ToxicsRuleRIA.pdf).

³ Letter from Ranking Member Elijah E. Cummings to Virginia Attorney General Kenneth T. Cuccinelli, II (Nov. 8, 2011) (online at http://democrats.oversight.house.gov/images/stories/20111108EEC_to_Cucinelli.pdf).

⁴ American Electric Power, *Environmental Compliance and Impacts* (June 2011) (online at www.aep.com/investors/present/documents/EnvironmentalCompliancePlan.pdf); NERA Economic Consulting, *Potential Impacts of EPA Air, Coal Combustion Residuals, and Cooling Water Regulations* (Sept. 2011) (online at www.globalwarming.org/wp-content/uploads/2011/09/NERA_Four_Rule_Report_Sept_21.pdf).

Claims of Enforcement Actions Against Polluters

During the hearing, Attorney General Cuccinelli also responded to questions about his record of enforcement against corporate polluters in Virginia. He testified that he has been “aggressive” about enforcing environmental laws, and that there has been a “regular flow” of prosecutions of polluters who have not complied with the law.

During an exchange with Representative Dennis Kucinich, Attorney General Cuccinelli committed to providing documents to support his statements:

Rep. Kucinich:	So your office has been instrumental, you’re saying, in causing polluters to be fined.
Attorney General Cuccinelli:	Yes.
Rep. Kucinich:	Do you have any information you can present to this Committee right now about specific cases?
Attorney General Cuccinelli:	I did not bring specific cases.
Rep. Kucinich:	But you could produce—will you produce for this Committee a list of such cases?
Attorney General Cuccinelli:	I’d be glad to. ⁵

On November 3, 2011, Representative Kucinich sent a follow-up letter to Attorney General Cuccinelli requesting the documents he had committed to providing, as well as additional materials relating to the Attorney General’s enforcement of pollution laws. Although Representative Kucinich requested these documents by November 25, 2011, Attorney General Cuccinelli has failed to respond to this request.

Conclusion

As I stated in my letter to Attorney General Cuccinelli, Congress relies on the accuracy of data presented in official testimony to make effective policy determinations. If his testimony before the Committee improperly exaggerated the potential negative effects of the Air Toxics rule, he has an obligation to respond to the Committee’s inquiries about the accuracy of his statements.

⁵ House Committee on Oversight and Government Reform, *Lights Out II: Should EPA Take a Step Back to Fully Consider Utility MACT’s Impact on Job Creation?*, 112th Cong. (Nov. 1, 2011).

In previous cases in which you have believed hearing testimony was inaccurate or witnesses were not forthcoming, you have insisted on a swift and comprehensive response. For example, on October 12, 2011, the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending heard testimony from Gina McCarthy, EPA's Assistant Administrator for the Office of Air and Radiation, in support of Corporate Average Fuel Economy (CAFE) standards. Following the hearing, on October 18, 2011, you wrote a letter accusing Ms. McCarthy of providing false testimony. You wrote:

Your statements under oath misled the Subcommittee in understanding the relationship between fuel economy standards and greenhouse gas regulations.

You also asserted that Ms. McCarthy's statements "impede the Committee's important oversight work," and you asked her to "fully explain" her statements.⁶

Although I disagree with your characterizations of Ms. McCarthy's testimony, I believe the Committee should apply a consistent standard for all witnesses—including prominent Republicans—to ensure that testimony is based on factual information rather than political posturing. I am sure you agree that we should not have one standard for officials who oppose environmental protections and another standard for those who support them.

For all of the reasons described above, I request that you write to Attorney General Cuccinelli on behalf of the Committee to obtain the documents I sought in my November 8 letter and that Representative Kucinich sought in his November 3 letter. Thank you for your assistance in this matter.

Sincerely,


Elijah E. Cummings
Ranking Member

⁶ Letter from Chairman Darrell Issa to Assistant Administrator Gina McCarthy, Office of Air and Radiation, Environmental Protection Agency (Oct. 18, 2011). *See also* Letter from Chairman Darrell Issa and Subcommittee Chairman Jim Jordan to Assistant Administrator Gina McCarthy, Office of Air and Radiation, Environmental Protection Agency (Nov. 15, 2011) (insisting on a transcribed interview despite receiving Ms. McCarthy's written response).