

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

March 22, 2012

TO: Republican Members, Committee on Natural Resources
FROM: Doc Hastings, Chairman
RE: Full Committee Meeting to Authorize Issuance of Subpoenas

Today, official notice was given that the Full Committee will meet at 10 a.m. next Wednesday, March 28, 2012, to consider a motion to authorize the Chairman to issue *duces tecum* subpoenas for the production of documents relating to two long-running oversight investigations.

The first oversight investigation concerns the Obama Administration's actions to rewrite a coal production regulation, and whether this rewrite is being properly conducted, even though tens of thousands of jobs and energy costs across the country would be directly and indirectly affected by this regulation.

The second oversight investigation concerns why an Obama Administration report that recommended a six-month drilling moratorium in the Gulf of Mexico was edited to make it falsely appear as though the moratorium was supported by a panel of engineering experts. The imposition of this drilling moratorium by political appointees without any apparent technical, scientific, or economic analysis cost thousands of jobs, caused economic pain throughout the Gulf region, and decreased American oil and natural gas production.

Both investigations have been ongoing for over one year – and both matters raise serious questions about the actions of the Obama Administration, the resulting significant impact on the economy, and thousands of lost American jobs.

Extensive time and effort has been dedicated to working with and prompting the Obama Administration to comply with these legitimate oversight requests for documents and communications. However, not once has the Department of the Interior (“Department”) met a single deadline for producing all of the requested information and it continues to withhold the vast majority of requested materials. In stark contrast to President Obama's pledge of unprecedented transparency, the Administration has taken deliberate steps to avoid openness and prevent disclosure of information about these actions. Regrettably, in both these matters, where thousands of livelihoods and American energy production are at stake, the Obama Administration has chosen to spend over a year hiding its actions and decision-making from the Congress.

Further specific details on each of these oversight investigations are provided on the following pages, and exchanges of letters with the Administration are publicly accessible on the Committee website at naturalresources.house.gov/oversight.

The Obama Administration's Effort to Rewrite Regulations on Coal Production

Almost immediately after taking office, the Obama Administration initiated rewriting a recently-completed coal production regulation, the 2008 Stream Buffer Zone Rule ("Rule"). This rushed action, pursued by the Department's Office of Surface Mining Reclamation and Enforcement ("OSM"), would dramatically alter a regulation that took over five years of environmental analysis, careful scientific consideration, and millions of dollars to complete.

The Committee is actively examining serious questions regarding why this rewrite was initiated, how the rulemaking process is being managed, whether political implications are unduly influencing the process, the dismissal of the contractor, and the impacts the rewritten regulation would have on jobs, the economy, and coal and energy production in America.

While conflicting statements have been made about the reasons and timing of the decision to rewrite the Rule, the Administration pursued its rewrite by discarding previously completed environmental work. Despite the fact that a thorough Environmental Impact Statement ("EIS") was conducted for the 2008 Rule, OSM hired another contractor to write an entirely new EIS. An Associated Press story on January 26, 2011, revealed that this draft EIS concluded that the Obama Administration's rewrite could cost over 7,000 mining jobs and cause economic harm in 22 states. Shortly after this information was made public, the Obama Administration criticized and dismissed the prime contractor it had selected and hired.

In February 2011, two oversight letters were sent requesting documents on the decision to rewrite the Rule, the potential economic impact, and the hiring and use of contractors for a new EIS. Another letter was sent in April 2011 seeking documents on the decision to replace the contractors and the development of the EIS. Over the following months, five additional letters and multiple conference calls reiterated these requests, expressed frustration at the continued delays and refusals to comply, and emphasized the Department's obligation to respond in full.

While the Department has provided some documents over the course of a year, the vast majority were already publicly available, including copies of the Federal Register and duplicates of lengthy scientific articles. Much of the other material was heavily redacted. The Department has repeatedly expressed vague confidentiality interests in refusing to respond – despite being repeatedly informed that such privileges do not legally apply to Congress. The Department has also refused to provide a log identifying the documents being withheld from the Committee and the specific legal justification for withholding them, despite repeated requests for this information. Document request letters have also been sent to other federal entities involved in the rewrite, including the Environmental Protection Agency, the Army Corps of Engineers, the Council on Environmental Quality, and the Office of Management and Budget.

On January 25, 2012, the Department was informed in a letter that if it did not voluntarily provide the specifically requested materials, including withheld documents, unredacted material, and more than 30 hours of audio recordings between the Department and its contractors, it may be compelled to do so.

Obama Administration's Decision to Include Gulf Drilling Moratorium in DOI Report

On May 27, 2010, the Secretary of the Interior published a report at the request of President Obama entitled "Increased Safety Measures for Energy Development on the Outer Continental Shelf." The report included a recommendation for an immediate six-month drilling moratorium in the Gulf of Mexico – which the Secretary subsequently imposed – and that resulted in significant economic harm, job loss, and decreased American energy production.

In the report, the Department states it drew expertise from "within the Federal Government, academia, professional engineers, industry, and other governments' regulatory programs." The drilling report noted seven members of the National Academy of Engineering had peer reviewed the recommendations – making it appear they supported the drilling moratorium. However, these peer reviewers were not asked to evaluate the moratorium, which was inserted into the report's Executive Summary – without any apparent technical, scientific or economic analysis – by political appointees at the Department and White House who reviewed and edited the report.

In July 2010, Republican Committee Members requested the Acting Inspector General (IG) of the Department to investigate the editing of the report and examine whether any laws were broken, who made the decision to misrepresent the views of the scientists, were the changes influenced by the White House, and were the changes recommended by outside groups, as news media accounts suggested. The eight-page IG report, issued November 8, 2010, "determined that the White House edit of the original DOI draft Executive Summary led to the implication that the moratorium recommendation had been peer reviewed by the experts." The IG report, however, left a number of questions unanswered and inadequately discussed the actual documents, drafts, and communications surrounding this matter and overall lack of transparency.

In April 2011, separate letters were sent to the Department and IG requesting documents related to the editing of the report, including drafts and emails transmitting edits of the final drilling report, and communications with the peer reviewers on the draft. The IG promptly responded in May 2011 and has continued to be responsive. The IG has provided a copy of its investigative report and 11 attachments as well as additional documents the IG obtained as part of the investigation. Further, the IG has sought to provide the Committee with 13 documents that the Department's Office of the Solicitor intervened and blocked. The IG's May 2011 response included clarification that it was "unable to independently conclude whether the implications contained in the 30-Day Report were intentional or not."

In addition to actively preventing the IG from providing documents to the Committee, the Department has failed to meet its own duty to comply with document requests. Despite sending nine letters requesting compliance, the Department has provided fewer than 100 documents, including many duplicates and those already disclosed by the IG. The Department has refused to release an untold number of other documents, including drafts of the report, and consistently refused to provide an accounting of the documents it is withholding. The Department's vague statements of confidentiality interests have been rebutted and are no defense against transparent disclosure to Congress.

A January 25, 2012, letter providing the Department with a final opportunity to fully comply and provide specific documents was not adhered to.

Despite Pledges of Transparency, Subpoenas Necessary After Year of Patient Diligence

Great patience has been exhibited for over a year, on both these matters, in seeking to persuade the Obama Administration to responsibly comply with this legitimate Congressional oversight.

Despite repeated pledges of unprecedented transparency, the Obama Administration has not only failed to uphold its own standards, it has refused to disclose documents that will explain its decisions and actions that affect the jobs of thousands of Americans.

Upon taking office, the President issued a “Memorandum for Heads of Executive Departments and Agencies regarding Transparency and Open Government” that declared, *“My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.”* In a “Memorandum for the Heads of Executive Departments and Agencies regarding Freedom of Information Act”, the President also advised federal departments and agencies that *“The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve.”* As part of the Interior Department’s efforts to implement the President’s stated policy of openness, Secretary Salazar issued a July 2, 2009, memorandum to all Department employees advising that, *“Our goal is to increase transparency.”*

At times, the refusal to comply has been arrogantly dismissive. For example, a February 2, 2012, letter from the Department on the coal production regulation rewrite states that *“A committee letter request for information in furtherance of an oversight inquiry does not impose a legal obligation to comply with the request. . . .”* With this statement, the Department is declaring that it need not cooperate with the clear implication that only through compulsion will it truly respond. Such a statement and position is an affront to the Constitutional role of Congress to oversee the activities of the Executive Branch and to ensure they are conducted in accordance with the statutory authorities granted by Congress.

It is precisely this obstructive refusal to provide documents that necessitates the issuance of subpoenas. On both matters, the Department was cautioned in January 25, 2012, letters that if it did not fulfill the specific document requests that it could be compelled to do so. After several weeks of working through further dilatory tactics by the Department, it is now necessary to proceed to subpoena these documents.

The economic stakes are very real for both the rewrite of the coal production regulation and the imposition of the six-month drilling moratorium. From the jobs of thousands of hard-working families to energy prices to securing our Nation from over-dependence on energy from hostile regions of the world, the Obama Administration has an obligation on these two matters to be open, honest and forthcoming on its decisions and actions. As the Administration is not voluntarily upholding this obligation, the issuance of Congressional subpoenas will compel it to do so.