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EPA Unable to Show Reasons for Cabrillo Port Smog Rule Reversal

- Congressman Charges Agency with Cover-Up and Policies that Obstruct the Clean Air Act

BY HANS LAETZ

Environmental Protection Agency political appointees used non-existent analysis and misled the public when they reversed course and rejected tough smog rules for the proposed Cabrillo Port liquefied natural gas terminal off the Malibu coast, the chairman of the House Investigations Committee said Monday.

Rep. Henry Waxman also accused top EPA officials of refusing to hand over key documents detailing the 2005 decision by a White House political appointee to overrule regional EPA officials on a key decision about whether the Cabrillo Port proposal can go forward.

The news from Washington comes as BHP Billiton and its lobbying firm have hired another two close associates of Gov. Arnold Schwarzenegger and his wife, Maria Shriver, to press the case behind the scenes for Cabrillo Port. That facility faces key licensing decisions next month, and could be operating on Malibu's coastal horizon in three years.

Waxman, a Democrat who represents Malibu, began a probe into the BHP Billiton-White House-EPA connection last January, when he assumed the chairmanship of the House Committee on Oversight and Government Reform. In a Jan. 16 letter, he asked for details about why Cabrillo Port was being classified as if it were located on a distant Channel Island, when local smog rules appear to require it to be treated as an onshore smog source.

The difference is critical: Ventura County smog regulators say it is likely the LNG terminal cannot be built, as it would be unable to buy enough smog offset credits to allow it to be built and then discharge an estimated 484 tons of smog ingredients per year just upwind of Malibu.

In a letter sent to EPA Administrator Stephen Johnson this week, Waxman charged that "EPA provided no analysis that justified the reversal of EPA's position. Nor does the agency now claim that such an analysis even exists.

"In short, while EPA assured the public that its decision was based on sound analysis, EPA has been unable to produce documents that support this claim," the congressman said.

Waxman's latest letter confirmed a trail of political interference with the nation's Clean Air Act first uncovered by lawyers for the Environmental Defense Center, the legal agency funded by the California Coastal Protection Network. The City of Malibu has chipped in \$50,000 for the legal fight.

EPA spokesperson Jessica Emond in Washington would not specifically address Waxman's letter, but released a statement saying the agency "is committed to protecting public health and the environment, while increasing our domestic energy supplies by developing alternative and renewable sources of energy, like liquefied natural gas."

Waxman's letter quoted the EPA as saying it acted because "natural gas is 'extremely important to California and the Nation,' the project sponsor, BHP, offered to make some environmental commitments, (and) there are unidentified and unexplained 'unique issues posed by the first west coast Deepwater Port application.'"

Waxman called those reasons "vague" and said EPA lawyers all the way up to the agency's top legal office felt the smog loophole was unwarranted.

But he said EPA documents turned over since January confirm that "career officials at EPA opposed

the permit decision reversal; a senior EPA political official intervened in the permit decision after meeting with the company seeking the permit; and the analysis that EPA cited to justify reversing the career officials does not appear to exist.”

The political appointee was identified as Jeffrey Holmstead, an EPA official. Holmstead, who has since left that job, is a former timber industry lobbyist who infuriated environmental activists during his tenure as the nation’s top smog cop.

Attorneys for the Environmental Defense Center have also pointed out evidence of interference on behalf of BHP Billiton by Bob Middleton, director of the White House Task Force on Energy Streamlining, who sought expedited handling of BHPB’s requests.

Waxman this week also accused the EPA of failing to turn over all of the documents he requested last January, including some that “intensify, rather than diminish, concerns about EPA’s handling of this process.” In particular, Waxman wants to see a top EPA lawyer in San Francisco’s memo that lists legal problems with BHP Billiton’s smog mitigation plan, which was referred to in e-mails but not provided to the committee.

BHP Billiton’s Oxnard spokeswoman, Kathi Hann, said the company would have no comment on “an issue between a legislator and a regulator.”

A Malibu newspaper first revealed the flip-flop, but Linda Krop, the chief attorney for the EDC, uncovered the White House connection by using the Freedom of Information Act to obtain e-mails, letters and phone call logs. In a statement, Krop said Waxman’s findings confirm that regional EPA officials “had no valid justification for this change in position, and that the decision was based on pressure from Bush appointees in the EPA. “It is illegal to exempt this company from the Clean Air Act requirement to obtain emission offsets.” Krop said. “We know it, BHP Billiton knows it, and now the public-at-large knows it.” The Cabrillo Port exemption is still under consideration by EPA regional officials in San Francisco, who have said they may hold another public hearing before making a final determination on Cabrillo Port’s argument that it should be exempt from smog offset requirements.

Meanwhile, other state and federal licensing hearings are one month away (see accompanying article on page 2).

In other news, a former Clinton White House political director who is a key adviser to California First Lady Maria Shriver has now gone to work in the state capital, campaigning for BHP Billiton’s plan.

Karen Skelton is a longtime Democratic Party and candidate fundraiser, and has extensive contacts among party activists and donors in Sacramento.

Two Democrats, John Garamendi and John Chiang, sit with a governor’s representative on the three-member California State Lands Commission. That agency’s vote on April 9 is viewed by coastal advocates as their best chance at stopping the proposal.

Skelton refused to return numerous phone calls and e-mails. A BHPB public relations spokesman from Ventura called back on her behalf Friday, confirmed that she had been hired, but then said Skelton would have to speak for herself.

Two months ago, former Schwarzenegger legislative director Richard Costigan took a job with Manatt, Phelps and Phillips, the national law and lobbying firm that represents BHP Billiton.

Reached by phone at his Sacramento office, Costigan confirmed he now works on BHPB matters, but then said he did not want to “be ambushed” and hung up.

Those two mark the fifth and sixth former state officials or Schwarzenegger political associates to go to work for one of the three LNG companies that plan terminals in the Malibu area or the Manatt law firm, which has a million dollar BHPB lobbying contract.

“It seems business as usual for this project,” said Sierra Club activist Owen Bailey. “They seem to be pouring millions of dollars into lobbying, rather than paying for a project that complies with the Clean Air Act.”

PRAISE—Critics of the Cabrillo Port LNG floating terminal proposal hailed action by Malibu Representative Henry Waxman challenging the Environmental Protection Agency’s controversial role in the project permitting process.

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