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November 2, 2016

To: Urban Air Initiative

From: Boyden Gray & Associates

Re: Evidence of Collusion between EPA and the Oil Industry in the EPAct study

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On behalf of the Urban Air Initiative, Boyden Gray & Associates has reviewed over four thousand EPA documents related to the design of an influential fuel effects study known as the EPAct study. The documents, obtained through litigation under the Freedom of Information Act, include many emails sent between EPA and oil company employees. Thanks to these documents, we have learned many technical details about the EPAct study that will help support subsequent challenges to EPA models based on the EPAct study. In addition, and perhaps more importantly, we have collected evidence demonstrating EPA's collusion with the oil industry to generate scientific data favorable to oil.

During this process, we have learned that the oil industry, and the Coordinating Research Council or "CRC", an organization funded by the American Petroleum Institute,<sup>1</sup> exercised significant influence over the design of the EPAct study, and the test fuels used in the study in particular.

EPA's emails show that oil company employees affiliated with CRC were "very eager to provide input" to EPA.<sup>2</sup> EPA made it clear to these oil company employees that it "was definitely seeking their input, especially on the fuel matrix," and that it would not finalize the test fuels without CRC's approval.<sup>3</sup> As result of the oil industry's significant influence over the EPAct study, EPA decided to use match-blended test fuels similar to the test fuels used in prior CRC studies.<sup>4</sup>

The emails show that EPA's open door policy to oil company employees has a simple explanation. EPA wanted oil money.<sup>5</sup> EPA proposed using CRC as a clearinghouse to "pool money" and other forms of support for the EPAct study.<sup>6</sup> EPA aggressively solicited oil company employees affiliated with CRC, asking them to "lay the groundwork for higher level discussions" about funding "with member companies and/or trade associations."<sup>7</sup> EPA emphasized that the study would "be critical to future policy decisions," providing examples of how the resulting data would support future regulatory initiatives affecting biofuels.<sup>8</sup>

EPA's solicitations worked. Oil company employees provided technical input to EPA free of cost. EPA, for example, hosted several phone conferences with BP and Chevron consultants to "resolve several outstanding issues related to" the test fuels.<sup>9</sup> Based on this feedback, EPA re-designed the test fuels and proposed several test fuel design options to BP and Chevron employees, asking them which fuels they would "prefer to see tested" in the EPAct study.<sup>10</sup> A Chevron employee responded by reaching out to EPA to discuss possible "compromises."<sup>11</sup> And in response to this input, EPA changed the fuel parameters to "allay" the oil company employee's concerns.<sup>12</sup>

Later, the same Chevron re-designed the test fuels, adding two new match-blended test fuels to the EPAct study.<sup>13</sup> And when EPA ran out funds because it mismanaged the study, CRC purchased the test vehicles for EPA free of cost, so EPA could finalize the EPAct study.<sup>14</sup>

The evidence also shows that EPA and its oil industry collaborators expected the test fuels to produce bad results for ethanol. When preliminary tests of fuels that were not closely match-blended showed that higher ethanol fuels lowered emissions of nitrogen oxides and other pollutants, EPA considered “changing the program midstream” to obtain different results “if we continue seeing no NO<sub>x</sub> effect” for ethanol.<sup>15</sup> EPA decided to cut these test fuels from the study entirely, instead using only test fuels that were closely match-blended to EPA’s arbitrary parameters.<sup>16</sup>

The emails also show that EPA made a series of arbitrary changes to the fuels that lacked any plausible scientific rationale, in response to EPA management’s directive to “emphasiz[e] ethanol’s effects” as the goal of the study.<sup>17</sup> As a result of this directive and the oil industry’s involvement, the statistical quality of the study deteriorated significantly, falling below the level of quality that EPA initially said was acceptable.<sup>18</sup>

In sum, the email records collected by Urban Air Initiative paint a very grim picture of EPA’s partnership with the oil industry.

All of the EPA documents cited in this press release are available at this [link](#).

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<sup>1</sup> CRC, CRC Organizational Overview 8 (June 22, 2015), <http://bit.ly/1T2nlfD>.

<sup>2</sup> E-mail from John Koupal, Dir., Air Quality and Modeling Ctr., Assessment and Standards Division (“ASD”), Office of Transportation and Air Quality (“OTAQ”), EPA, to Michael Christianson, ASD, OTAQ, EPA, et al., EPA-RED-000270 (June 7, 2007) (“The CRC members are very eager to provide input to us . . . . I made it clear that . . . we are definitely seeking their input to finalize, especially on the fuel matrix.”).

<sup>3</sup> *Id.*

<sup>4</sup> *Compare* EPA, EPAct Light Duty Fuel Effects Program, Experimental Design Proposals, Presentation to CRC, EPA-RIF-000320, at -000324 (Sept. 14, 2007), *with* Thomas Durbin, *Effects of Ethanol and Volatility Parameters on Exhaust Emissions*, CRC Project No. E-67 (2006).

<sup>5</sup> John Koupal & Rick Rykowski, ASD, OTAQ, EPA, EPA Perspective on Fuel Effects Data Needs, Briefing for CRC Board, EPA-RIF-000775, at -000786, -000788 (Sept. 28, 2006) (requesting that CRC “pool money” from “member companies”)

<sup>6</sup> *Id.* at -000786.

<sup>7</sup> *Id.* at -000786, -000788

<sup>8</sup> *Id.* at -000778, -000790–793.

<sup>9</sup> E-mail from Rafal Sobotowski, ASD, OTAQ, EPA, to Frank S. Gerry, BP Products, et al., EPA-RIF-004017 (Feb. 12, 2008) (“In order to resolve several outstanding issues related to this fuel matrix, we would like to propose a conference call between fuel experts from EPA, BP, and NREL to discuss” “T50 ranges at the different ethanol content levels” and “RVP ranges at ethanol content/T50 combinations selected for the test fuels.”); E-mail from Rafal Sobotowski, ASD, OTAQ, EPA, to Frank S. Gerry, BP Products, et al., EPA-RIF-004040 (Feb. 13, 2008) (“The EPAct Fuel Matrix conference will take place today[.]”).

<sup>10</sup> E-mail from Rafal Sobotowski, ASD, OTAQ, EPA, to Wendy Clark, NREL, DOE, et al., EPA-RED-000209 (Feb. 19, 2008).

<sup>11</sup> E-mail from James P. Uihlein, Chevron Products Co., to Rafal Sobotowski, ASD, OTAQ, EPA, et al., EPA-RIF-003001 (Feb. 22, 2008) (stating that EPA had agreed “that whatever fuel matrix is selected, there will be compromises involved.”).

<sup>12</sup> *See* “Response to Uihlein.doc,” EPA-RIF-003014, *attachment to* E-mail from Rafal Sobotowski ASD, OTAQ, EPA, to Rafal Sobotowski, EPA-RIF-003013 (Feb. 24, 2008) (informing a consultant from Chevron that EPA was changing the test fuel parameters “to allay [his] concerns”).

<sup>13</sup> James P. Uihlein, Proposed CRC Addition to EPA Fuel Effects Study, CRC Emissions Committee Meeting, EPA-RIF-000411, at 000415–16 (May 22, 2008) (proposing the addition of two new test fuels); E-mail from James P. Uihlein, Chevron Products Co., to

Rafal Sobotowski, ASD, OTAQ, EPA, EPA-RIF-012841 (Sept. 15, 2008) (selecting two new test fuels, following CRC's re-design of the study's test fuels).

<sup>14</sup> EPA, EPA/V2/E-89: Assessing the Effect of Five Gasoline Properties on Exhaust Emissions from Light-Duty Vehicles Certified to Tier 2 Standards: Final Report on Program Design and Data Collection 46 (Apr. 2013) ("The Coordinating Research Council then purchased the test vehicles and made them available to the test program for the remainder of its duration.").

<sup>15</sup> EPA, E0-E10-E15 Results from Phase 1 of EPA Act Program, EPA-RIF-009068, at -009082 (Sept. 4, 2008) ("If we continue seeing no NO<sub>x</sub> effect, should we . . . [a]dd some tests with fuels that have exactly the same properties except for ethanol[?]").

<sup>16</sup> EPA/V2/E-89: Final Report on Program Design, App'x A: Re-Design of the Fuel Matrices for EPA Act Program, at A-12 ("Fuels 26, 27 and 28 were removed from the matrix design #4.") (hereinafter EPA Act Appendix A, Re-Design).

<sup>17</sup> E-mail from Catherine Yanca, to Rich Cook, & Joseph Somers, ASD, OTAQ, EPA, EPA-RED-000537, at -000537-38 (Feb. 24, 2009).

<sup>18</sup> Compare EPA, Fuel Matrix Design Options, EPA-RED-001086, at -001087 (Jul. 18, 2007) (">60% considered satisfactory") with EPA Act Appendix A, Re-Design, *supra* note 16, A-2 (Apr. 2013) ("50-60% is considered adequate for prediction purposes."); *see also id.* at A-13 (lowering the quality of the test fuel matrix to 51.6%).