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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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November 7, 2007

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The Honorable Michael Chertoff
Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Mr. Secretary:

On October 19, 2007, you issued a determination pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, waiving the applicability of 20 Federal laws, including certain laws within the jurisdiction of the Committee on Energy and Commerce, with respect to land in the vicinity of the United States border from approximately 4.75 miles west of the Naco, Arizona, Port of Entry to the western boundary of the San Pedro Riparian National Conservation Area. The laws within the Committee's jurisdiction include the Safe Drinking Water Act; the Solid Waste Disposal Act; the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and the Noise Control Act.

This letter is an inquiry as to the specific facts and circumstances that support your determination that waiver of these laws was "necessary to ensure expeditious construction of the barriers and roads" in the geographic area described.

In particular, we request responses to the following questions no later than Wednesday, November 21, 2007.

1. What specific facts and/or circumstances on the ground caused you to determine that the requirements of the Safe Drinking Water Act were preventing the expeditious construction of roads and barriers? Further, please identify the particular regulations and specific requirements of the Safe Drinking Water Act that were impeding construction of physical barriers and roads in the area.

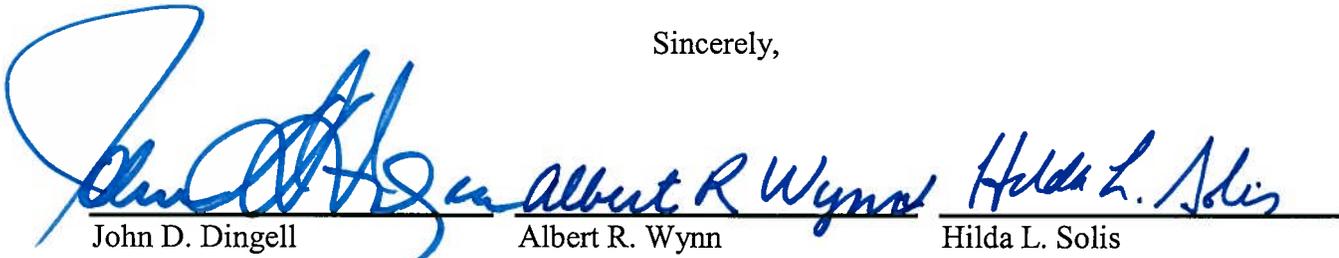
2. What specific facts and/or circumstances on the ground caused you to determine that the requirements of the Solid Waste Disposal Act were preventing the expeditious construction of roads and barriers? Further, please identify the particular regulations and specific requirements of the Solid Waste Disposal Act that were impeding construction of physical barriers and roads in the area.
3. What specific facts and/or circumstances on the ground caused you to determine that the requirements of the Clean Air Act were preventing the expeditious construction of roads and barriers? Further, please identify the particular regulations and specific requirements of the Clean Air Act that were impeding construction of physical barriers and roads in the area.
4. What specific facts and/or circumstances on the ground caused you to determine that the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act were preventing the expeditious construction of roads and barriers? Further, please identify the particular regulations and specific requirements of CERCLA that were impeding construction of physical barriers and roads in the area.
5. What specific facts and/or circumstances on the ground caused you to determine that the requirements of the Noise Control Act were preventing the expeditious construction of roads and barriers? Further, please identify the particular regulations and specific requirements of the Noise Control Act that were impeding construction of physical barriers and roads in the area.
6. Prior to deciding to waive the applicability of the Safe Drinking Water Act, the Solid Waste Disposal Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Noise Control Act, did you identify the specific statutory provisions that were impeding or preventing expeditious construction of physical barriers and roads in the area? If so, please identify those provisions. Please also explain why you waived the Acts in their entirety rather than the specific offending sections, if any.
7. Were there any lawsuits or judicial judgments citing the authority of the Safe Drinking Water Act, the Solid Waste Disposal Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Noise Control Act or regulations promulgated thereunder that affected or prevented the expeditious construction of physical barriers and roads in the vicinity of the international land border of the United States? If so, please identify each of them and provide copies of the pleadings and/or judicial opinions.

8. Did you conduct any analysis of the harm to the environment from waiving any or all of the following statutes: the Safe Drinking Water Act, the Solid Waste Disposal Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Noise Control Act? If so, please provide any such analysis.

9. What specific facts and/or circumstances on the ground caused you to determine that the requirements of the Administrative Procedure Act were preventing the expeditious construction of roads and barriers? Further, please identify the particular regulations and specific requirements of the Administrative Procedure Act that you believe were impeding construction of physical barriers and roads in the area.

Thank you for your cooperation with the work of the Committee. If you have any questions, please contact us or have your staff contact Richard A. Frandsen or Lorie Schmidt with the Committee on Energy and Commerce staff at (202) 225-2927.

Sincerely,



John D. Dingell
Chairman

Albert R. Wynn
Chairman
Subcommittee on
Environment
and Hazardous Materials

Hilda L. Solis
Vice Chair
Subcommittee on
Environment
and Hazardous Materials

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials