

**350.org * Center for Biological Diversity * CREDO Action *
Energy Action Coalition * Friends of the Earth * Greenpeace USA *
Interfaith Power & Light * League of Conservation Voters *
Natural Resources Defense Council * Oil Change International *
Rainforest Action Network * Sierra Club**

October 28, 2011

Honorable Harold W. Geisel, Deputy Inspector General
Office of Inspector General
U.S. Department of State
P.O. Box 9778
Arlington, VA 22219-1778
Email: oi hotline@state.gov

Re: Request for Investigation of State Department Actions re: Keystone XL Pipeline Project

Dear Deputy Inspector General Geisel:

Pursuant to 5 U.S.C. App., the following organizations submit this request for the Office of Inspector General (OIG) to conduct an investigation into illegality and/or abuse of authority by U.S. State Department officials in connection with National Environmental Policy Act review and National Interest Determination (NID) for the TransCanada Corporation's proposal for the Keystone XL tar sands pipeline. This request follows and supports the letter from 15 Members of the US Congress, on October 26, requesting that the Office of Inspector General at the U.S. Department of State launch an investigation into the State Department's handling of the Environmental Impact Statement (EIS) and National Interest Determination for TransCanada Corporation's proposed Keystone XL Pipeline.¹ This request is based on documents received by Friends of the Earth under the Freedom of Information Act (FOIA) concerning the proposed pipeline.²

¹ The request letter to the Inspector General from 15 Members of Congress is available at <http://cohen.house.gov/index.php?option=content&task=view&id=1671>.

² Documents released under FOIA to Friends of the Earth are available at <http://www.foe.org/internal-state-department-documents-raise-concerns-new-questions> & <http://www.foe.org/new-foia-docs-reveal-smoking-gun-regarding-state-department-bias>.

See also *Pipeline Review Is Faced With Question of Conflict*, Elisabeth Rosenthal & Dan Frosch, Oct. 7, 2011, New York Times, www.nytimes.com/2011/10/08/science/earth/08pipeline.html?_r=1&hpw.

TransCanada Pipeline Foes See U.S. Bias in E-Mails, Elisabeth Rosenthal, Oct. 3, 2011, New York Times, www.nytimes.com/2011/10/04/science/earth/04pipeline.html.

Environmental groups target Democratic lobbyists on Canadian oil pipeline, Juliet Eilperin, Oct. 5, 2011, Washington Post, www.washingtonpost.com/national/health-science/environmental-groups-target-democratic-lobbyists-on-canadian-oil-pipeline/2011/10/05/gIQA4Pw4OL_story.html.

Each of the actions listed below qualifies for investigation under the Inspector General Act of 1978, 5 U.S.C. App., as illegality and/or abuse of authority. Relevant legal authority includes U.S. Office of Government Ethics regulations that require agency officials – 1) to act impartially and not give preferential treatment, 5 C.F.R. § 2635.101 (b)(8); 2) not to create the appearance of a conflict of interest, 5 C.F.R. § 2635.101 (b)(14), and 5 C.F.R. § 2635.502; and (3) that employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government, 5 C.F.R. § 2635.101 (b)(6). The standard for “abuse of authority” is “arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons.” *D’Elia v. Department of Treasury*, 60 M.S.P.R. 226, 232 (1993).

Each of the allegations below satisfies these legal standards:

1. State Department officials including but not limited to David Goldwyn, engaged in pre-determination coaching and provision of proper arguments to submit for the public record while seeking pipeline approval. At the same time the agency was refusing to provide analogous information to the public, or even permitting the public to be privy to its coaching of the corporation seeking approval. These arbitrary actions provided invaluable access and support for TransCanada, a foreign corporation which had a financial stake in the approval of the Keystone XL pipeline. At the same time, the State Department withheld access and support to U.S. citizens without a financial stake in the approval of the pipeline. Information made public by WikiLeaks demonstrates that David Goldwyn, the former State Department Special Envoy for International Energy Affairs, assured Canadian officials that the pipeline would be approved. These WikiLeaks cables also reveal that Goldwyn instructed Canadian officials on how to improve oil sands messaging and increase visibility. After leaving the State Department, Goldwyn went on to testify before Congress about why the U.S. should approve Keystone XL and is now employed by a company that advocates on behalf of the tar sands industry.
2. Recently obtained official State Department emails reveal that Paul Elliott, formerly Secretary Clinton’s Deputy National Campaign Director and now TransCanada’s chief lobbyist, has used his political connections to gain inordinate access to State Department officials and to influence their decisions and actions. These emails show that there was frequent communication between high-ranking State Department officials and Mr. Elliott where the State Department provided messaging advice and released confidential information that should not have been made available to the applicant. It has also recently been discovered that Mr. Elliott was lobbying extensively on behalf of TransCanada prior to registering as a lobbyist, a possible violation of the Foreign Agents Registration Act, 22 U.S.C. § 611 *et seq.* Besides potentially violating the law, this permitted TransCanada to conceal the full scope of its efforts to gain State Department approval of the pipeline.

Environmental groups call for State Dept to step aside on oil pipeline from Canada, Matthew Daly, Oct. 04, 2011, The Associated Press, www.canadianbusiness.com/article/48645--environmental-groups-call-for-state-dept-to-step-aside-on-oil-pipeline-from-canada.

3. The State Department flouted the intent of the National Environmental Policy Act by hiring Cardno Entrix, a company with strong financial ties to TransCanada, to conduct the environmental impact study for the Keystone XL pipeline. Given that TransCanada successfully recommended that the State Department select Cardno Entrix to conduct the Environmental Impact Statement, despite Cardno Entrix's listing TransCanada as a "major client" and Cardno Entrix having a pre-existing financial relationship with TransCanada, there certainly appears to be a significant conflict of interest. ExxonMobil, Chevron, and BP are also listed as "major customers" of Cardno Entrix and may also stand to benefit financially from Keystone XL.
4. Cardno Entrix, since 2008, has stated on its website that it was under contract with TransCanada to perform the Environmental Impact Statement for the Department of State for the Keystone XL pipeline. We request that the investigation include obtaining the contract between the State Department and/or TransCanada and Cardno Entrix in order to discover whether there are violations of third-party contracting rules as outlined in the National Environmental Policy Act.
5. Recently obtained emails by the State Department reveal that high-ranking officials provided information about the agency's internal thinking and coached TransCanada on what to say during the legally mandated environmental review process. Additionally, these emails show that State Department officials were predisposed to approve the project, and were actually working with TransCanada behind the scenes to ensure the permit was granted.
6. Recently obtained State Department emails indicate that high-ranking officials reached a shared understanding with TransCanada that it could drop its request to operate the pipeline at higher pressures in order to expedite the approval process. Because of the inherent risk of operating a pipeline at higher pressure, TransCanada's request was politically contentious and was slowing down the approval process. By suggesting that TransCanada could table this request and apply for it at a later date through a less scrutinized and less transparent process, it is clear that State Department understood that TransCanada could raise pressures at a later date.
7. In October 2010, Secretary Clinton stated that she was inclined to approve the Keystone XL pipeline even though the State Department was more than a year away from completing its review. A recently released October 2011 letter from TransCanada to Nebraska State Senator Mike Flood also demonstrates this predetermination: "As we discussed in the meeting, at this late date in the federal Presidential Permit process, it is impossible for us to move the route to avoid the Sandhills." This statement was made in response to concern about the route of the pipeline through the Ogallala aquifer. These statements reveal a clear predisposition to approve the pipeline and are an affront to the impartiality needed to fairly evaluate this important matter.

Thank you for considering this request. We will contact your office seeking an appointment to brief you on the context and information supporting this request, as well as the availability of additional supporting evidence.

Sincerely,

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