# REGULATORY REFORM SERIES, PART 7: THE EPA'S REGULATORY PLANNING, ANALYSIS, AND MAJOR ACTIONS

## HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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# C O N T E N T S



WITNESS



SUBMITTED MATERIAL

# REGULATORY REFORM SERIES, PART 7: THE EPA'S REGULATORY PLANNING, ANALYSIS, AND MAJOR ACTIONS

**THURSDAY, SEPTEMBER 22, 2011**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION,
COMMITTEE ON ENERGY AND COMMERCE,
*Washington, DC.*

The subcommittee met, pursuant to call, at 9:07 a.m., in room 2322 of the Rayburn House Office Building, Hon. Cliff Stearns (chairman of the subcommittee) presiding.

Members present: Representatives Stearns, Murphy, Burgess, Blackburn, Myrick, Bilbray, Gingrey, Scalise, Gardner, Griffith, Barton, Upton (ex officio), DeGette, Schakowsky, Castor, Markey, Christensen, Dingell, and Waxman (ex officio).

Staff present: Charlotte Baker, Press Secretary; Jim Barnette, General Counsel; Anita Bradley, Senior Policy Advisor to Chairman Emeritus; Patrick Currier, Counsel, Energy and Power; Andy Duberstein, Special Assistant to Chairman Upton; Todd Harrison, Chief Counsel, Oversight; Kirby Howard, Legislative Clerk; Heidi King, Chief Economist; Carly McWilliams, Legislative Clerk; Dave McCarthy, Chief Counsel, Environment and Economy; Mary Neumayr, Senior Energy Counsel; Krista Rosenthall, Counsel to Chairman Emeritus; Alan Slobodin, Deputy Chief Counsel, Oversight; Sam Spector, Counsel, Oversight; Peter Spencer, Professional Staff Member, Oversight; Kristin Amerling, Democratic Chief Counsel and Oversight Staff Director; Alvin Banks, Democratic Investigator; Brian Cohen, Democratic Investigations Staff Director and Senior Policy Advisor; Jacqueline Cohen, Democratic Counsel; Greg Dotson, Democratic Energy and Environment Staff Director; Kelley Greenman, Democratic Legislative Assistant; Alexandra Teitz, Democratic Senior Counsel, Environment and Energy; and Anne Tindall, Democratic Counsel.

Mr. STEARNS. Good morning, everybody. The Subcommittee on Oversight and Investigations will come to order, and I will open with my opening statement.

## OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Ladies and gentlemen, this past January, President Obama issued Executive Order 13563 to improve regulations and the regulatory review process, noting that our regulatory system "must protect public health, welfare, safety, and our environment while pro-

moting economic growth, innovation, competitiveness, and job creation."

With job creation and the Nation's economic recovery the focal point, the subcommittee has sought to get a clearer understanding of agency regulatory action under this administration. Today, in our seventh hearing in this effort, we will examine the EPA's regulatory planning, analysis, and major actions taken.

While we agree with the principles outlined in the Executive Order, we are disappointed that EPA does not seem to have followed those principles. Time and time again over the last 3 years, we have seen the EPA issue oppressive new regulations that have dramatically raised the costs of doing business in the United States, and, indeed, have driven numerous American companies out of business altogether.

The EPA is unquestionably an important public health regulatory agency, which has contributed to the tremendous improvements in clean air, safe drinking water and environmental quality over the past 40 years. It is also an agency that wields tremendous influence over the essential ingredients of economic recovery: the cost of manufacturing, construction and power production, the reliability of energy, the certainty of future rules and standards in the decisions that drive the Nation's commerce.

Since the beginning of this administration, EPA has issued or proposed a number of large, complex, and expensive rules. The pace of these rulemakings is such that it is not always clear EPA has fully considered or fully informed the public about the potential negative consequences of its actions on the United States economy, jobs creation, and our ability to compete with countries around the world.

Now, consider the decision in the first weeks of the administration to pursue an endangerment finding for greenhouse gases. This formed the regulatory predicate for setting fuel efficiency standards for cars and trucks, at an EPA-estimated cost of about $60 billion. The President announced the prospect of this new regulation at a Rose Garden ceremony. But there was no public discussion about the fact that the new regulation also would have automatically triggered new permitting requirements required by the Clean Air Act for all stationary sources of greenhouse gas emissions. These permitting requirements meant that 82,000 stationary sources annually would need to obtain preconstruction permits. Another 6.1 million sources would need to obtain operating permits. EPA estimated that, absent a rulemaking to exempt the majority of these sources, the permitting costs alone would be $193 billion over just a 3-year period. The cost of ceasing operations or not initiating new projects was never taken into account.

To avoid this absurd and self-imposed economic calamity, EPA issued "tailoring" rules to exempt most, but not all sources, but left open the possibility of sweeping more entities into the new permitting regime at a later date. This affects the entire U.S. economy, as the future of greenhouse gas permitting exists under a cloud of uncertainty.

Now, in another case, in January 2010, EPA chose to reconsider ground-level ozone standards set just recently in 2008. Although the proposed standards would potentially sweep vast areas of the

Nation into noncompliance and cost upwards of $90 billion per year, the agency sought to rush and issue final standards in just 8 months. The agency missed that deadline but was still promising to issue final standards, until the President himself, recognizing that issuing such a rule would cause him severe electoral problems in the next election, recently requested that the Administrator refrain from issuing the ozone rule at this time. The President is on board, however, with issuing onerous new regulations in 2013—after the election.

Just yesterday, this committee reported legislation to provide adequate time for EPA to develop standards for hazardous air pollutants for boilers and cement plants, after it became apparent that EPA's complex and admittedly rushed rulemaking results in requirements simply unachievable in the real world.

Under the Clean Air Act, the Resource Conservation and Recovery Act and various other statutes, EPA appears to be rushing forward with rulemakings that just don't make sense for those who know what it takes to implement them and those concerned with ensuring we simply have a vital economy.

It does not appear that the President's stated priorities for thoughtful, transparent and sound rulemaking have taken hold at the EPA. I am particularly interested in learning about EPA's future regulatory plans and how the cumulative impacts of its rules inform its planning. Does EPA consult adequately with other agencies? Does EPA operate openly with affected stakeholders, States, and the public? These are important questions. I look forward to our discussion with the Honorable Lisa Jackson.

[The prepared statement of Mr. Stearns follows:]

**Opening Statement of the Honorable Cliff Stearns**
**Chairman, Subcommittee on Oversight and Investigations**
**Regulatory Reform Series # 7 –**
**The EPA's Regulatory Planning, Analysis, and Major Actions**
**September 22, 2011**
**784 words**

This past January, President Obama issued Executive Order 13563 to improve regulations and the regulatory review process, noting that our regulatory system "must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation."

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The EPA is unquestionably an important public-health regulatory agency, which has contributed to the tremendous improvements in clean air, safe drinking water, and environmental quality over the past forty years. It is also an agency that wields tremendous influence over the essential ingredients of economic recovery: the cost of manufacturing, construction and power production, the reliability of energy, the certainty of future rules and standards in the decisions that drive the nation's commerce.

Since the beginning of this Administration, EPA has issued or proposed a number of large, complex, and expensive rules. The pace of these rulemakings is such that it is not always clear EPA has fully considered – or fully informed the public – about the potential negative consequences of its actions on the U.S. economy, jobs creation, and our ability to compete with countries around the world.

Consider the decision in the first weeks of the Administration to pursue an endangerment finding for greenhouse gases. This formed the regulatory predicate for setting fuel efficiency standards for cars and trucks – at an EPA-estimated cost of about $60 billion. The President announced the prospect of this new regulation at a Rose Garden ceremony. But there was no public discussion about the fact that the new regulation also would have automatically triggered new permitting requirements required by the Clean Air Act for all stationary sources of greenhouse gas emissions. These permitting requirements meant that 82,000 stationary sources annually would need to obtain preconstruction permits; another 6.1 million sources would need to obtain operating permits.

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There are a lot of questions, and I look forward to a fruitful discussion.

Mr. STEARNS. With that, I recognize the distinguished ranking member, Diana DeGette.

**OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO**

Ms. DEGETTE. Thank you very much, Mr. Chairman, for convening this hearing.

I think that oversight directed towards ensuring efficient and effective federal regulation is an important endeavor, and I like to work with the majority to have efforts to root out unnecessary and wasteful regulations. As a long-time member of this distinguished subcommittee, I believe the purpose of this committee is to investigate what can be done, not to forward a political agenda, and so I know we are going to have a heated discussion today, but I think we should keep it focused on exactly what regulations we are talking about, what the purpose is and in fact they are necessary.

To that end, I am delighted to welcome our witness today, EPA Administrator Lisa Jackson. Administrator Jackson oversees implementation of some of the most important legislation ever passed by Congress, and it is my view that she is one of the most gutsy and effective members of the administration, so I am glad to have her.

The main topic of the conversation today will be jobs. I know that my colleagues on the other side of the aisle will assert that environmental rules and regulations are stifling jobs and harming economic growth, but this is simply not the case. We need to keep in mind the purpose of the Clean Air Act: To protect the health of Americans.

Now, in 2010 alone, the Clean Air Act prevented 160,000 premature deaths, millions of respiratory illnesses, 3 million lost school days and 13 million lost workdays. By 2020, the Clean Air Act's total benefit to the economy will reach $2 trillion, outweighing costs more than 30 to one.

The Clean Air Act and other environmental laws do something else: They create millions of jobs and they could create millions more jobs if it weren't for the inaction of this Congress to pass climate change legislation. Compliance with the Clean Air Act generates investment in design, manufacture, installation and operation of equipment to reduce pollution. The environmental technology and services sector has grown steadily since the Act's adoption, generating $300 billion in revenue and supporting nearly 1.7 million jobs in 2008 alone.

Clean Air Act rules recently announced by the EPA will only add to this remarkable record. For example, investment spurred by the Utility, Toxics and Cross-State Air Pollution Rules will generate 1.5 million new jobs by 2015. These will be high-paying, skilled, professional jobs that cannot be outsourced.

So Chairman, one of the biggest steps this committee could take to boost the economy would be to pass long-overdue legislation to combat climate change and usher in an era of clean energy. Now, you don't need to be a Democrat to believe this; you just need to live in a science-based world. Two years ago when this committee passed landmark climate legislation, we heard from business leaders that there were billions of dollars sitting on the sidelines just

waiting for clear rules of the road to be drawn up for the Nation's energy future. I just met with the Colorado rural electric folks yesterday, who told me the same thing, and these business leaders continue to ask Congress to act.

Just last week, for example, the America Energy Innovation Council led by people like Bill Gates, venture capitalist John Doerr and General Electric CEO Jeff Immelt implored the federal government to invest in clean energy technologies. I want to read to you from these leaders' recent report "Catalyzing Ingenuity:" "Innovation is the core of America's economic strength and future prosperity. New ideas are the key to fostering sustained economic growth, creating jobs in new industries and continuing America's global leadership. Of all the sectors in the economy where innovation has a critical role to play, the energy sector stands out. Ready access to reliable, affordable forms of energy is not only vital for the functioning of the larger economy, it is also vital to people's everyday lives. It also significantly impacts the country's national security, environmental wellbeing and economic competitiveness."

Mr. Chairman, here is what these business leaders conclude: "Unfortunately, the country has yet to embark on a clean energy innovation program commensurate with the scale of the national priorities that are at stake."

Mr. Chairman, this committee should listen to these titans of the economy. We should be passing legislation to unleash American innovation and create American jobs in the new energy economy. Instead, unfortunately, this Congress is sitting on the sidelines pretending that scientific and economic realities do not exist. In March, every single Republican member of this committee voted against the overwhelming scientific consensus to deny the very existence of global climate change. Many Republican members are using the Solyndra debacle as an excuse to all-out cut energy funding. This denial of reality is bad for the economy and bad for the environment.

So I am glad to have this discussion about the rules and regulatory reform efforts and I hope that we can come together in a science-based discussion to talk about new energy and the new economy.

Thank you, Mr. Chairman.

Mr. STEARNS. I thank the gentlelady and recognize the chairman of the full Energy and Commerce Committee, the distinguished gentleman from Michigan, Mr. Upton.

**OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. UPTON. Thank you, Mr. Chairman.

Throughout this year, this committee has focused its oversight and legislation on identifying and mitigating the job-destroying impacts of burdensome regulations, and through its regulatory reform hearing series, this subcommittee's examination of the President's regulatory principles has helped to sharpen our focus on important gaps between the administration's rhetoric and reality.

The rhetoric, which I agree with, is that we should implement reasonable and achievable regs to protect the health, safety and well-being of the American people, and we recognize that well-

being must include ensuring economic growth and healthy job creation. The President has talked about the importance of cost-benefit analysis to ensure that regulations do more good than harm.

The reality, unfortunately, is a regulatory onslaught from EPA that is destroying jobs and stifling economic growth with financial burdens and uncertainty, and in some cases, the cost-benefit analysis is completely absent. In other cases, the devastating economic consequences of rules are flat-out ignored.

Over the years, I have seen EPA conduct rulemakings on important Clean Air Act provisions, but I have never seen so many major rules from EPA at a pace and complexity as has occurred during this administration. These have been complex rules with profound impacts on energy production and manufacturing—essential contributors to economic growth in this country.

In some cases, such as the boiler and cement rules, we have regs that are technically unachievable because EPA appears to be doing too much too fast. In other cases, the agency lays out rapid and changing deadlines and makes alterations to the rulemakings that raise questions about regulatory judgment and decision-making in the first place.

We want the EPA and the administration to comply with its own principles as outlined in the President's Executive Order on regulation. Today we are going to hear directly from Administrator Jackson to learn just what steps she plans to take to ensure that these actions will begin to match the administration's regulatory rhetoric.

I yield to my friend, the chairman emeritus of the committee, Mr. Barton.

[The prepared statement of Mr. Upton follows:]

**Opening Statement of the Honorable Fred Upton**
**Subcommittee on Oversight and Investigations Hearing**
**Regulatory Reform Series # 7 –**
**The EPA's Regulatory Planning, Analysis, and Major Actions**
**September 22, 2011**

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We want EPA, and the administration, to comply with its own principles, as outlined in the President's Executive Order on regulation. Today we will hear directly from EPA Administrator Jackson to learn just what steps she plans to take to ensure EPA's actions will begin to match the administration's regulatory rhetoric.

## OPENING STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BARTON. Well, thank you, Mr. Chairman, and welcome again, Madam Administrator. It is good to have you with us.

There are many things that are ailing our country right now, Madam Administrator, and it seems that your agency appears to be at ground zero of a fair number of them. Since President Obama took office and you became the Administrator at the Environmental Protection Agency, the EPA has rushed to issue rules on greenhouse gases, which the Congress rejected in the last Congress; ozone, which our President just rejected several weeks ago; coal ash, boiler ash and our boiler MACT and cement industries, which those industries are strenuously objecting to.

In my home State of Texas, last year the EPA revoked the flexible air quality permit rules that had been in place for almost 20 years starting with President Clinton, and just recently the EPA announced a Cross-State Air Pollution Rule where Texas, which wasn't even included in the rule 6 months ago, is expected to assume somewhere between 25 and 40 percent of the reductions. This is somewhat puzzling since our monitors indicate that we are in compliance, and it is an EPA model that seems to indicate that in certain States there might be a problem.

The cost of all these rules is in the billions of dollars annually, resulting in thousands of jobs lost. Just last week in my State, in my Congressional district, a company that is subject to the Cross-State Air Pollution Rule announced the closure of two mines and reduction or closure of two power plants that in my district alone is probably going to cost in the order of magnitude of 1,000 jobs.

We have a President who says that we need to create jobs, not destroy jobs. We have a President who says we need a regulatory environment that has a cost-benefit analysis. And yet your agency, the EPA, seems to ignore these admonitions. It is as if there is some evil genie at the EPA that is bound and determined to put every regulation possible on the books as soon as possible regardless of the economic consequences.

I hope today, Madam Administrator, that we can get into some of these specific rules. We have a number of very specific questions that we want to ask, and as always, we look forward to having you answer them and tell us where your agency is.

With that, I yield back.

[The prepared statement of Mr. Barton follows:]

**Opening Statement of the Honorable Joe Barton**
**Chairman Emeritus, Committee on Energy & Commerce**
**Subcommittee on Oversight and Investigations, Hearing**
**"Regulatory Reform Series #7 – The EPA's Regulatory Planning, Analysis, and Major Actions"**
**September 22, 2011**

Thank you Mr. Chairman. I'd like to welcome back Administrator Jackson and I thank her for coming here to answer our questions today.

Mrs. Administrator, there are many things ailing this country right now, but many of them seem to be originating at your Agency's headquarters. Since Obama took office and you became Administrator, the Environmental Protect Agency (EPA) has rushed to issue rules on greenhouse gases, ozone, coal ash, boiler and cement factories, permitting requirements in Texas and now cross state air pollution rules. The costs of compliance with these rules are in the billions of dollars and result in the loss of thousands of jobs. Just last week, a company in my home state announced plans to close facilities to comply with your Agency's cross state air pollution rule which will cause the loss of 500 good-paying jobs. This is just one company's expected losses—this represents a drop in the bucket.

Your boss, President Obama, continues to say that we need to be job creators, not job destroyers. Your boss, President Obama, continues to say that we need a regulatory environment that fosters job creation, innovation, and promotes economic growth. Your boss is asking this Congress and the American people to accept his new jobs bill. You and your boss do not appear to be on the same page.

The recent actions taken by your agency cause more harm to our country's financial health than proposed benefits to our physical health. Regulations of this magnitude cannot be rushed. Rushing leads to mistakes, unintended adverse consequences, frustrated stakeholders, frustrated lawmakers, and you sitting before this Subcommittee. We want and need you and your Agency to slow down, listen, and complete comprehensive cost-benefit analyses of proposed rules based on actual monitored data, not EPA's own hypothetical models, and take prudent, defensible actions to continue to protect our public health.

I look forward to your testimony and am ready to ask questions.

Mr. STEARNS. The gentleman yields back. There are 3 seconds. Dr. Burgess, do you want to take 5, 10 seconds?

Mr. BURGESS. Well, let me just submit my entire opening statement for the record, but I do want to remind the Administrator, as we have had to remind every Cabinet Secretary, every head of the federal agencies, that although you work for the Executive Branch, Congress is a coequal branch of government. When we ask for stuff, you need to produce it. We have been stonewalled in this committee over and over again, and those days have to stop because the American people are asking serious questions. They want answers, and it is up to this committee to get those answers for them, and I will yield back.

[The prepared statement of Mr. Burgess follows:]

**Energy & Commerce Committee**
**Subcommittee on Oversight & Investigations**
**Hearing: The EPA's Regulatory Planning, Analysis, and Major Actions**
**Opening Statement**
**September 22, 2011**

Thank you, Mr. Chairman.

This EPA is out of control. And President Obama is finally coming to the realization that they need to be reined in. Lisa Jackson's EPA is the single most dangerous factor preventing business from investing in new employees in our current economic environment.

Last month, President Obama finally recognized that the ideologues and zealots working at his EPA were putting this country – and his reelection efforts – on the wrong track. This is why he very publicly forced the EPA to rescind its pending ozone rule – a rule Ms. Jackson and others assured this committee would not harm the economy and would be beneficial to American lives.

Every rule coming out of this EPA we are told – repeatedly – would harm human health if it is delayed. Yet here is our President saying that the rule must be delayed until at least 2013. Is President Obama putting the lives and health of Americans at risk by delaying this rule?

And if he is not, then how can we believe any of this EPA's proponents when they claim the delay of other regulations will harm human health. President Obama has unequivocally undermined the arguments of Ms. Jackson and her deputies. Delaying the extreme and capricious rules being put out by this EPA will not harm human health.

In forcing EPA to revoke its ozone rule, President Obama admitted that regulatory threats are forcing the nation's business owners to put a moratorium on hiring until they can fully understand how incredibly expensive these regulations will be. We all know this EPA would never have done this on their own – they have shown over and over again how little regard they give toward the economic impacts of their reckless regulations.

The President knows, as do most Americans, that the toxins that these extreme EPA regulations are purported to regulate are already regulated and are being cleaned up every day. President Obama knows that delaying the EPA's extreme agenda even a few years will not put lives at risk, as Ms. Jackson has claimed over and over. He knows that putting Americans back to work and not harming our economy further is more important than an agenda-driven set of rules put forth by this EPA.

But the ozone rule is just the beginning of the draconian rules this EPA would impose on American business with questionable health benefits. The Cross State Air Pollution Rule (CSAPR) alone will be devastating to the Texas economy – with businesses already announcing over 500 layoffs in the state as a direct result of the rule. Of course, despite multiple drafts of the rule not including Texas, this EPA air-dropped Texas into the final rule with almost no notice, violating every bit of process that Congress intends to be followed by agencies when making rules.

Lisa Jackson's EPA is out of control. The President knows it, the American people know it. Today we look into whether this EPA has been following the President's own orders to review its regulations in light of the struggling economy. I worry that if the President can't get this EPA under control, Americans will see unemployment rates continue to go up, and the air not get any cleaner.

With that, I yield back.

Mr. STEARNS. I thank the gentleman, and now we recognize the——

Mr. WAXMAN. Mr. Chairman, before you recognize me, I would like to ask the gentleman from Texas to provide for us examples of where you think EPA has stonewalled, not now but for the record, because this statement has been made and I would like to see verification.

Mr. BURGESS. And in particular dealing with Title 42 regulations, and I have asked these questions——

Mr. WAXMAN. I would like to see documentary information.

Mr. STEARNS. The gentleman from California is recognized for his opening statement for 5 minutes.

**OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. WAXMAN. Thank you, Mr. Chairman.

This hearing is our seventh hearing on regulatory reform, and we will be told by our colleagues across the aisle that EPA needs to do a better job. We will hear them say they need to better analyze regulations before finalizing them, they need to listen to concerns about their proposals before acting.

But this hearing isn't really about regulatory reform. It is just a continuation of a long series of attacks on our environment and public health. This is the most anti-environment House of Representatives in history. So far this Congress, the House of Representatives has voted again and again to block action to address climate change, to halt efforts to reduce air and water pollution, to undermine protections for public lands and coastal areas, and to weaken the protection of the environment in other ways.

Mr. Chairman, my staff prepared a database last month on every anti-environmental vote taken in this Congress. The tally was 125. One hundred and twenty-five votes to weaken the Clean Air Act and the Clean Water Act; to make our drinking water less safe; to weaken environmental standards in dozens of different ways. This is an appalling and dangerous environmental record. And it should come as no surprise that this record of anti-environmental votes shows little concern for crafting well-analyzed policy that takes the views of all stakeholders into account.

Today, the House will begin consideration of the TRAIN Act, a bill whose passage will block actions to clean up smog, soot and toxic air pollution from the Nation's power plants. When this bill is considered, we will vote on amendments offered by Chairman Whitfield and Representative Latta. The Whitfield amendment will eviscerate the law's ability to require power plants to install modern pollution controls. The Latta amendment will reverse 40 years of clean air policy, allowing our national goals for clean air to be determined by corporate profits, not public health. They will not agree that we need to have a hearing on the Latta amendment before reversing 40 years of success with the Clean Air Act. The Republicans will not clarify the bill on industrial boilers to prevent years and years of litigation and delay.

We should hear from States, industry, public health groups, clean air advocates and other stakeholders before voting on these

radical clean air amendments. These amendments are being considered through an egregiously flawed process, a stark change from the way this Committee has traditionally handled important clean air legislation. We should at least understand what they do before voting on them.

And we are sitting here criticizing the EPA for all the work they put into their regulations before they issue them, and yet we are going to pass laws, at least pass it through the House, without a single moment of hearings just because some representatives want to and maybe the Republican party wants to respond to big business and forget about the safety and the wellbeing and the health of the American people.

Well, today's hearing will provide an opportunity to hear from the Administrator of the EPA, and I am pleased to welcome Lisa Jackson. This is not the first time. I don't know how many times she has had to appear before this committee. I don't think she has time to do all the dreadful things the Republicans are accusing her of doing because she is spending most of her time here to listen to complaints from the Republicans about regulations, some of which they haven't even proposed and the Republicans want to repeal it.

I will ask the Administrator about the Whitfield and Latta amendments and how dangerous they are to the American people. That will serve as some opportunity to examine these issues, and it will give us an opportunity to hear from the EPA Administrator about the impacts of the entire Republican anti-environment agenda.

Mr. Chairman, I have a minute left if any of my Democratic colleagues—Ms. Schakowsky, I yield the balance of my time to you.

[The prepared statement of Mr. Waxman follows:]

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives
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Minority (202) 225–3641

**Opening Statement of Rep. Henry A. Waxman**
**Ranking Member, Committee on Energy and Commerce**
**Hearing on "Regulatory Reform Series # 7 –**
**The EPA's Planning, Analysis, and Major Actions"**
**Subcommittee on Oversight and Investigations**
**September 22, 2011**

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power plants to install modern pollution controls. The Latta amendment will reverse 40 years of clean air policy, allowing our national goals for clean air to be determined by corporate profits – not public health.

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We should hear from states, industry, public health groups, clean air advocates, and other stakeholders before voting on these radical clean air amendments. These amendments are being considered through an egregiously flawed process -- a stark change from the way this Committee has traditionally handled important Clean Air Act legislation. We should at least understand what they do before voting on them.

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I will ask the Administrator about the Whitfield and Latta amendments and how dangerous they are to the American people. That will serve as some opportunity to examine these issues. And it will give us an opportunity to hear from the EPA Administrator about the impacts of the entire Republican anti-environment agenda.

**OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Ms. SCHAKOWSKY. Well, here we are again, and I want to reiterate just a bit what Representative Waxman has said. Clearly, we are witnessing the most anti-environment House of Representatives in American history.

My colleague from Texas, the former chairman of this committee, was citing some of the things that have happened in Texas as a reason to undo some of the regulations that you proposed, but I just wanted to point out that under Governor Rick Perry's tenure, Texas has become far and away the Nation's largest $CO_2$ emitter. If Texas were its own country, as Mr. Perry has advocated in the past, it would be the eighth biggest polluter in the world.

So it is high time that the Environmental Protection Agency continued in what has been a bipartisan tradition of protecting our environment, of protecting the health of Americans, and by the way, not destroying jobs in any way but creating an opportunity for new 21st century clean jobs, and I yield back.

Mr. STEARNS. The gentlelady yields back. Time has expired——

Mr. BARTON. Would the gentlelady yield to the former chairman?

Mr. STEARNS. All her time is expired, so we are going to move now to swear in Madam Administrator.

Madam Administrator, you are aware that the committee is holding an investigative hearing, and when doing so has had the practice of taking testimony under oath. Do you have any objection to testifying under oath?

Ms. JACKSON. No.

Mr. STEARNS. The chair then advises you that under the rules of the House and the rules of the committee, you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony today?

Ms. JACKSON. No.

Mr. STEARNS. In that case, if you would please rise and raise your right hand, I will swear you in.

[Witness sworn.]

Mr. STEARNS. You are now under oath and subject to the penalties set forth in Title XVIII, Section 1001 of the United States Code. You may now give a 5-minute summary of your written statement. Please begin.

**TESTIMONY OF LISA JACKSON, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY**

Ms. JACKSON. Thank you. Chairman Stearns, Ranking Member DeGette and members of the subcommittee. I appreciate the opportunity to be here today to testify on the Environmental Protection Agency's regulatory process. It is a priority of the EPA and of this administration to ensure that our regulatory system is guided by science and that it protects human health and the environment in a pragmatic and cost-effective manner.

One means by which this administration has made this priority clear is through Executive Order 13563, which includes a directive for federal agencies to develop a regulatory retrospective plan for periodic review of existing significant regulations. Under that direc-

tive, EPA has developed a plan which includes 35 priority regulatory reviews. Recent reforms already finalized or formally proposed are estimated to save up to $1.5 billion over the next 5 years.

But let me clear: the core mission of the EPA is protection of public health and the environment. That mission was established in recognition of a fundamental fact of American life: regulations can and do improve the lives of people. We need these rules to hold polluters accountable and keep us safe. For more than 40 years, the agency has carried out its mission and established a proven track record that a healthy environment and economic growth are not mutually exclusive.

The Clean Air Act is one of the most successful environmental laws in American history and provides an illustrative example of this point. For 40 years, the Nation's Clean Air Act has made steady progress in reducing the threats posed by pollution and allowing us to breathe easier. In the last year alone, programs implemented pursuant to the Clean Air Act Amendments of 1990 are estimated to have saved over 160,000 lives, spared Americans more than 100,000 hospital visits and prevented millions of cases of respiratory problems including bronchitis and asthma.

Few of the regulations that gave us these huge gains in public health were uncontroversial at the time they were developed. Most major rules have been adopted amidst claims that they would be bad for the economy and bad for employment. In contrast to doomsday predictions, history has shown again and again that we can clean up pollution, create jobs and grow our economy all at the same time. Over the same 40 years since the Clean Air Act was passed, the gross domestic product of the United States grew by more than 200 percent.

Some would have us believe that job killing describes EPA's regulations. It is misleading to say that enforcement of our Nation's environmental laws is bad for the economy and employment; it isn't. Families should never have to choose between a job and a healthy environment; they are entitled to both.

We must regulate sensibly in a manner that does not create undue burdens and that carefully considers both the benefits and the costs. However, in doing so, we must not lose sight of the reasons for implementation of environmental regulations. These regulations are necessary to ensure that Americans have clean air to breathe and clean water to drink. Americans are no less entitled to a safe, clean environment during difficult economic times than they are in a more prosperous economy.

As President Obama recently stated in his joint address to Congress, what we can't do is let this economic crisis be used as an excuse to wipe out the basic protections that Americans have counted on for decades. We shouldn't be in a race to the bottom where we try to offer the worst pollution standards.

Thank you for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Ms. Jackson follows:]

Opening Statement of Lisa P. Jackson
Administrator, U.S. Environmental Protection Agency

Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
United States House of Representatives

Hearing on Regulatory Reform Series #7: The EPA's Regulatory Planning, Analysis, and Major Actions

September 22, 2011

Chairman Stearns, Ranking Member DeGette and Members of the Subcommittee, I appreciate the opportunity to be here today to testify on the Environmental Protection Agency's (EPA) regulatory process.

The Administration makes it a priority to ensure that our federal regulatory system is guided by science and that it protects the health and safety of all Americans in a pragmatic and cost effective manner.

One means by which this Administration has made this priority clear is through the issuance of Executive Order 13563, an order which supplements and reaffirms the principles that were established in Executive Order 12866.

The Executive Order signed earlier this year also includes a directive for federal agencies to develop a plan for periodic review of existing significant regulations. While EPA spends a significant amount of time performing statutorily required reviews of many of our regulations and promulgates our regulations in full compliance with all applicable laws, the Executive Order gave us an opportunity to re-examine regulations for which reviews might not regularly be required. In accordance with that directive, EPA developed and submitted a plan that includes 35 priority regulatory reviews. Recent Agency reforms, already finalized or formally proposed, are estimated to save up to $1.5 billion over the next five years.

EPA's review plan represents another solid step toward ensuring that our regulatory system accounts for both our duty to protect public health and the Nation's need for a strong economy. Taken together, the two executive orders provide a roadmap for a system which – to paraphrase EO 13563 – enables the federal government to meet its obligations to protect the health, welfare, safety and environment for all Americans while promoting economic growth.

The core mission of the EPA is protection of public health and the environment. That mission was established in recognition of a fundamental fact of American life – regulations can and do improve the lives of people. We need these rules to hold polluters accountable and keep us safe. For more than 40 years, since the Nixon administration, the Agency has carried out its mission and established a proven track record that a healthy environment and economic growth are not mutually exclusive.

The Clean Air Act is one of the most successful environmental laws in American history and provides an illustrative example of this point.

For 40 years, the Clean Air Act has made steady progress in reducing the threats posed by pollution and allowing us to breathe easier. In the last year alone, programs implemented pursuant to the bipartisan-enacted Clean Air Act Amendments of 1990 are estimated to have reduced premature mortality risks equivalent to saving over 160,000 lives; spared Americans more than 100,000 hospital visits; and prevented millions of cases of respiratory problems, including bronchitis and asthma.[1]

Few of the emission control standards that gave us these huge gains in public health were uncontroversial at the time they were developed. Most major rules have been adopted amidst claims that they would be bad for the economy and bad for employment.

In contrast to doomsday predictions, history has shown, again and again, that we can clean up pollution, create jobs, and grow our economy all at the same time. Over the same 40 years since the Clean Air Act was passed, the Gross Domestic Product of the United States grew by more than 200 percent.[2]

Some would have us believe that "job killing" describes EPA's regulations. It is misleading to say that enforcement of our nation's environmental laws is bad for the economy and employment. It isn't. Families should never have to choose between a job and a healthy environment. They are entitled to both.

We must regulate sensibly - in a manner that does not create undue burdens and that carefully considers both the benefits and the costs. EPA's detailed regulatory impact analyses help us accomplish that goal. However, in doing so, we must not lose sight of the reasons for implementation of environmental regulations: These regulations are necessary to ensure that Americans have clean air to breathe and clean water to drink. Americans are no less entitled to a safe, clean environment during difficult economic times than they are in a more prosperous economy.

As President Obama recently stated in his Joint Address to Congress, "...what we can't do...is let this economic crisis be used as an excuse to wipe out the basic protections that Americans have counted on for decades...We shouldn't be in a race to the bottom where we try to offer the...worst pollution standards."[3]

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[1] USEPA (2011). *The Benefits and Costs of the Clean Air Act from 1990 to 2020.* Final Report, Prepared by the USEPA Office of Air and Radiation. February 2011. Table 5-6. This study is the third in a series of studies originally mandated by Congress in the Clean Air Act Amendments of 1990. It received extensive peer review and input from the Advisory Council on Clean Air Compliance Analysis, an independent panel of distinguished economists, scientists and public health experts.

[2] Bureau of Economic Analysis, National Economic Accounts, "Table 1.1.5. Gross Domestic Product," http://bea.gov/national/index.htm#gdp.

[3] Address by President Obama to a Joint Session of Congress, September 8, 2011. http://www.whitehouse.gov/the-press-office/2011/09/08/address-president-joint-session-congress

For 40 years, the Clean Air Act has worked – for our health and our environment and our economy. It is also under assault. There are those who have been very clear that they would like to gut the Clean Air Act, the Clean Water Act and other laws that protect Americans' health. The Administration is committed to opposing those efforts to dismantle those public health protections and roll back the progress that we have made and that we continue to make.

Thank you for the opportunity to testify. I look forward to your questions.

Mr. STEARNS. Thank you, Madam Administrator. I will open with my questions.

I think as you can see from opening statements from our side and the other side, this is a question of promoting economic growth, innovation, competition and job creation. Is that your understanding of the principles that the agency must keep in mind when you make regulations?

Ms. JACKSON. Well——

Mr. STEARNS. Yes or no.

Ms. JACKSON. Yes, but we must also implement the laws.

Mr. STEARNS. On the first day of the administration, you were directed to comply with a similar Executive Order 12866 in a memo from the White House. Is that true?

Ms. JACKSON. I believe that is right, sir.

Mr. STEARNS. Do you agree that the regulatory system must promote predictability and reduce uncertainty?

Ms. JACKSON. I think that is the advantage of the regulatory system.

Mr. STEARNS. In the case of ground-level ozone standards that you proposed in January 2010, were there discussions with the White House about the impact of reconsidering this rule prior to submitting a draft final rule to the White House?

Ms. JACKSON. I am sorry. I didn't understand the question.

Mr. STEARNS. OK. In January 2010, when ground-level ozone standards were proposed, was there discussion between you and the White House about simply the impact of what these would be on this country?

Ms. JACKSON. The proposal went through White House and interagency review.

Mr. STEARNS. Did you meet and participate in discussions with the White House on those ozone standards?

Ms. JACKSON. I am sure that staff in preparation of interagency review did.

Mr. STEARNS. Did you personally meet with the White House?

Ms. JACKSON. On the proposed package in January of 2010, not to my recollection, sir.

Mr. STEARNS. OK. If you recollect differently, if you would be kind enough to submit to this committee who participated in those discussions, that would be helpful.

Was there any reaction from the White House on the proposed ozone standards that were being proposed in January of 2010? Do you recollect what the reaction was in the White House?

Ms. JACKSON. The fact that the proposal went out shows that it cleared interagency review and was signed by me for public review.

Mr. STEARNS. So you assumed the White House was on board fully?

Ms. JACKSON. I don't assume anything, sir. I am giving you the facts as I know them.

Mr. STEARNS. OK. So you are saying the White House reactions, as much as you know them, were supportive?

Ms. JACKSON. The agency exercised its discretion to make rulemaking after an interagency review that was conducted and led by the White House.

Mr. STEARNS. I think there is a chief of staff memo which you cited yourself in the proposed ozone reconsideration as rationale for that reconsideration that was ultimately done. It did not direct any agency to reconsider the regulations that were being finalized, published. Did you consult with the White House before you decided to reconsider the 2008 ozone standard?

Ms. JACKSON. That is the same question you asked before about the proposal, sir.

Mr. STEARNS. OK.

Ms. JACKSON. No, my answer is the same.

Mr. STEARNS. Three weeks ago, the White House requested that you reconsider issuing the Ozone Rule, noting that the rule would not comport with the President's Executive Order and that our regulatory system must promote predictability and reduce uncertainty. Did you agree with the White House decision?

Ms. JACKSON. I respect the decision and I implemented it.

Mr. STEARNS. Did you personally agree with it?

Ms. JACKSON. Well, I don't think it is a secret that we—that the recommendation we sent over and the package that we sent over was something different.

Mr. STEARNS. Yes, and the reason why you disagreed with the White House is because you felt, was it that the standards you thought were imperative to be implemented? Can you give us your rationale why you still feel strongly that the ozone standards should be——

Ms. JACKSON. Mr. Chairman, you are putting words in my mouth about what I feel, and my feelings——

Mr. STEARNS. I am helping you out.

Ms. JACKSON [continuing]. Aren't actually germane here.

Mr. STEARNS. OK. What changed between the time you proposed regulations in January 2010 and September 2, 2011, to warrant reconsideration in your mind if you went along with it? I mean, you are the Administrator. You have strong feelings on this. You don't agree with the President. You are going ahead with it. Can you make some kind of rationale why you are going ahead with it now? I am trying to understand it.

Ms. JACKSON. Well, the facts are that in between those two time periods, the President requested that we reconsider and do the reconsideration in light of new data that will come out such that that reconsideration will happen in 2013.

Mr. STEARNS. And what is that new data?

Ms. JACKSON. That is new public health data that will look at the connection between smog, ozone pollution and asthma and other health indicators.

Mr. STEARNS. Do you think this goes back to what I asked you when I began my questions? Your idea, my idea is the agency has the responsibility to promote economic growth, innovation, competition and job creation? Do you think that was part of the reasons why the President relaxed the standard on ozone standards?

Ms. JACKSON. Well, both the letter from Cass Sunstein and the President's statement explain his rationale and they speak for themselves.

Mr. STEARNS. Did the White House propose this to you any other time than just recently?

Ms. JACKSON. Propose what, sir?

Mr. STEARNS. Relaxation of the ozone standards.

Ms. JACKSON. No, the——

Mr. STEARNS. That was the first time they came to you?

Ms. JACKSON. That was the first time they came to me? The President's actions and his statement and the letter from Mr. Sunstein was the official record of what happened with respect to that package.

Mr. STEARNS. All right. My time is expired.

The gentlelady is recognized, Ms. DeGette.

Ms. DEGETTE. Thank you very much, Mr. Chairman.

Administrator Jackson, let me try to clear up some of the questioning about the new ozone standards that the chairman was pursuing. On September 1st, the administration announced that the EPA would not be revising the National Ambient Air Quality Standards for ozone. Is that right?

Ms. JACKSON. That is right.

Ms. DEGETTE. And this decision, as you know, was controversial. It created a number of extremely important new questions about how we are going to handle the ozone standards going forward. So I am wondering if you can tell us now sitting here today about the next steps you are going to be taking to ensure that States and localities have clear direction on what they should be doing with regard to ozone standards. I think it is important you clarify what you are going to be doing next.

Ms. JACKSON. Yes, ma'am. So we are going to proceed with the regular review in 2013 but simultaneously we are legally required to implement the standard that is on the books. The standard that is on the books now is the 2008 standard. It is 75 parts per billion, and EPA will be notifying States in the days ahead of the path forward in implementing that standard.

Ms. DEGETTE. So what you are saying is that the intention going forward that the EPA will enforce a 75 parts per billion standard, the same as the Bush administration 2008 standard. Is that correct?

Ms. JACKSON. That is right. That is the legal standard on the books.

Ms. DEGETTE. OK. And can you assure us that States and localities will have sufficient time to meet those 2008 standards?

Ms. JACKSON. We will do it in a commonsense way, minimizing the burden on State and local governments.

Ms. DEGETTE. Thank you. Now, Administrator Jackson, the chairman was asking you about what the process is within the EPA about promulgating rules, and the EPA considers not just the effect on human health but also the economic effect per the Executive Order that he was talking about, correct?

Ms. JACKSON. That is right. Our rules have always, at least as long as I have been there, considered costs and benefits of rules.

Ms. DEGETTE. So, you know, one of the things that frustrates me and others is this sort of Sophie's choice that has been articulated that I don't think is true, that you either have to have jobs or high environmental standards, and I want to talk about the Clean Air Act since we are talking about the Clean Air Act as an example. Since the Clean Air Act was signed in 1970, toxic air pollutants

have gone down by 60 percent and saved hundreds of lives, and so that is the main goal of the Clean Air Act, correct?

Ms. JACKSON. The Clean Air Act's goal is to clean up the air and therefore make people healthier.

Ms. DEGETTE. Right, but in addition, the economy has grown since the Clean Air Act was promulgated. Is that correct?

Ms. JACKSON. That is right. GDP has grown over 200 percent.

Ms. DEGETTE. So GDP has grown over 200 percent since the Clean Air Act's passage, correct?

Ms. JACKSON. That is correct.

Ms. DEGETTE. Also, can you talk to us about the effect of the Clean Air Act on job creation?

Ms. JACKSON. Certainly. There have been numerous studies that show that the Clean Air Act has actually helped foster and growth a pollution control industry in this country that actually exports its innovations and technologies and of course puts them to work here on the ground. When we ask someone to spend money, millions or even billions, on pollution control, those are jobs that are generally produced here, everything from engineers to designers to welders to boilermakers.

Ms. DEGETTE. And in fact, I read a study that said just in 2008 all of those things generated $300 billion in revenue and supported nearly 1.7 million jobs. I talked about that in my opening. Are you aware of that study as well?

Ms. JACKSON. Yes, ma'am.

Ms. DEGETTE. Now, I also read a study from the University of Massachusetts that estimated that EPA's Utility, Toxics and Cross-State Air Pollution Rules would generate 1.5 million new jobs by 2015. Are you familiar with that study?

Ms. JACKSON. Yes, generally.

Ms. DEGETTE. OK. And what kind of jobs will compliance with those regulations create?

Ms. JACKSON. Those regulations require companies to invest in pollution controls, scrubbers or selective catalytic reducers. They are everything from working with steelworkers or pipe fitters or engineers, designers, those who actually install and operate pollution control equipment or those who retrofit equipment, and their jobs, because it is the utility industry, it is the energy industry, it has to be done here. It is something that we have to do here to invest in ourselves and——

Ms. DEGETTE. Here in the United States?

Ms. JACKSON. That is right.

Ms. DEGETTE. Thank you.

Thank you very much, Mr. Chairman.

Mr. STEARNS. The gentlelady's time has expired.

The gentleman from Texas, Mr. Barton, is recognized for 5 minutes.

Mr. BARTON. Thank you.

Madam Administrator, in your opening statement, you said that the role of the EPA is to make sure that polluters are accountable. Do you consider an industry that is in compliance with EPA regulation to be a polluter?

Ms. JACKSON. An industry can have a permit and be in compliance with the permit and still be emitting pollution, yes.

Mr. BARTON. But in your definition of a polluter, if an industry is actually complying, then why would you continue to call them a polluter as if they weren't complying?

Ms. JACKSON. Well, it is important for people to understand that in order to operate, there is an assumption that some amount of pollution into our air and water may have to happen. What we do, what our laws require EPA and States to do in their stead is to ratchet down that pollution in the interests of the public health.

Mr. BARTON. So would it be fair to say that in your definition, the only industry that would not be a polluter would be an industry that has no emissions at all, in other words, it was shut down?

Ms. JACKSON. If you don't emit pollution, then you are not a polluter. That is not to say that the emission of some amount of pollution is not permitted. That is the regulatory process.

Mr. BARTON. Let me rephrase the question, Madam. Is it the goal of the EPA to get to zero emissions, i.e., basically shut down the U.S. economy?

Ms. JACKSON. Of course not, sir.

Mr. BARTON. That is the right answer.

You have appeared before this subcommittee and the full committee a number of times this year, and in at least two of those instances I have asked you to document some of these health benefits that EPA spokespersons and yourself continue to allude to as a reason for these new regulations. Unless your agency supplied them to my office last night or this morning, we have yet to receive them. Could you encourage them to actually give us the documents that document these repeatedly referred to health benefits?

Ms. JACKSON. Well, sir, I will say that the regulatory packages that we prepare include significant documentation of both the benefits and the costs of——

Mr. BARTON. You are not answering my question. I don't think they exist.

Ms. JACKSON. You don't think health benefits of clean air exist?

Mr. BARTON. No, I think health benefits from clean air do exist. I don't think some of these documents that you refer to exist or you would have complied with the request to submit them.

Ms. JACKSON. Sir, I will check on any requests for outstanding documentation but I would also refer you to the packages——

Mr. BARTON. I am giving you a request right now. I have given you respectful requests almost every time you have appeared before the subcommittee or the full committee, and you know, when you look in the footnotes of some these proposed regulations, they refer to studies that are 10 to 15 years old, usually very small studies, usually studies that are independent with no real peer-reviewed verification, and then we get these, you know, these huge cost-benefit comparison, and in true science, you actually document what is going on. That does not appear to be the case at your EPA. And if they exist, then send them to us.

Ms. JACKSON. I disagree, but I will check again to see what else may be outstanding from your requests, respectfully.

[The information appears at the conclusion of the hearing.]

Mr. BARTON. All right. Let me make a comment on what Chairman Waxman said in his opening statement, that we have voted 125 times to weaken environmental regulation in this Congress.

That is not true. There is a difference between voting to actually change or reduce an existing standard and voting to delay or slow down our at least review a proposed standard. This Congress has asked and voted to delay, review, go back and check on regulations but I am not aware that we have voted to actually change or weaken any standard that is already in effect, and I think that is a distinction that is worth nothing.

The regional administrator in Texas, Dr. Armand Davis, in an op-ed in the Dallas Morning News earlier this week expressed surprise that Texas industry in attempting to comply with this cross-state air pollution regulation actually beginning to shut down power plants and coalmines. He said in his op-ed that the EPA had reached out numerous times and tried to consult with and interact with the affected industries. Could you provide logs of those meetings, emails and telephone conversations to actually document the regional administrator's assertation that he had been trying to work with the industries in Texas? Because when I checked with the industry, they say that they have had almost no interaction and were absolutely blindsided by the inclusion of Texas in the Cross-State Air Pollution Rule at the very last moment with no ability to impact the regulation.

Ms. JACKSON. Sir, I am happy to provide it. I would also just point you to the record of the Cross-State Air Pollution Rule where EPA specifically took comment and received comment and received comment from Texas industries and Texas regulators about Texas's inclusion in both the——

Mr. BARTON. After the fact. After the fact.

Ms. JACKSON. No, no, sir, during the public comment period.

Mr. BARTON. You couldn't have, because Texas wasn't included in the rule.

Ms. JACKSON. Sir, Texas——

Mr. BARTON. There is a one-paragraph mention of Texas possibly including at some future point. They were put into the rule at the last moment.

Ms. JACKSON. Sir, Texas has been complying with the CAIR rule that the Bush administration put in place. The cross-state rule is a replacement for that rule. We specifically took comment——

Mr. BARTON. I am very aware of that.

Ms. JACKSON [continuing]. And put Texas on notice that besides NOx, ozone, smog requirements, we took comment on what would happen if they weren't in and what would happen if they were. So we have information submitted by Texas regulators and Texas companies——

Mr. BARTON. Well, if you will just comply with my——

Mr. WAXMAN. Regular order, Mr. Chairman.

Mr. STEARNS. The gentleman's time has expired and the gentleman from California, the ranking member, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman.

When you propose a rule, you have to establish a record of the scientific basis for your findings. Isn't that correct?

Ms. JACKSON. That is correct, sir.

Mr. WAXMAN. And that relies on work that has been done by scientists, often, maybe always, peer reviewed. Is that correct?

Ms. JACKSON. That is right. That work goes through peer review before we put it in the record for our rules.

Mr. WAXMAN. And so if Mr. Barton wants to get the scientific backing for your rules, he can just simply look at the record?

Ms. JACKSON. Well, yes, although of course if there is additional information we owe him, I will look to ensure he gets it.

Mr. WAXMAN. Well, I have talked to Mr. Barton, and as I understand it, there is a lot of scientific research that has been peer reviewed on the question of the impact of carbon emissions, global warming, climate change, and yet Mr. Barton doesn't believe in the science, nor does anybody else on the other side of the aisle. They have all voted that they reject the idea that science has come up with this conclusion and they reject the science as well.

We hear about job-killing regulations, and I haven't seen anybody substantiate the job-killing part of the regulations, but we know that a lot of this pollution kills people, and we have that well documented. Isn't that an accurate statement?

Ms. JACKSON. That is accurate, sir.

Mr. WAXMAN. I would like to ask you about the TRAIN Act, which will soon be debated on the House Floor, as a matter of fact, today.

Mr. BARTON. Would the gentleman yield?

Mr. WAXMAN. No, I won't. I only have a limited time.

Mr. BARTON. I would like to see——

Mr. WAXMAN. The bill reported from the committee——

Mr. BARTON [continuing]. One document——

Mr. STEARNS. Regular order.

Mr. WAXMAN. Mr. Chairman, regular order.

Mr. STEARNS. The gentleman is recognized.

Mr. WAXMAN. I want to ask you about the amendment that is going to be offered by Mr. Whitfield. The reported from the committee would indefinitely delay critical public health protections to reduce soot, smog, mercury and other toxic air pollution from power plants but the Whitfield Floor amendment goes much further. It would nullify EPA's final Cross-State Air Pollution Rule and proposed Mercury Air Toxics Rule and it requires EPA to start from scratch on both rules, which have already been years in the making.

Administrator Jackson, how long have we been waiting for old, uncontrolled power plants to finally clean up and how do these power plants compare with other sources of pollution?

Ms. JACKSON. The 1990 Amendments to the Clean Air Act first called for power plant—toxics from power plants to be addressed. The Good Neighbor provisions in the rule I believe were added then as well, which is the basis for the Cross-State Air Pollution Rule. Power plants are the largest emitters in our country of soot and smog and mercury, and for that reason, the prior administration, the Bush administration, tried to address through the Clean Air Interstate Rule and the Clean Air Mercury Rule, rules that were later overturned in court because they did not comply with the law and did not do an adequate job.

Mr. WAXMAN. The Whitfield amendment would ensure that power plants would not have to control toxic air pollution for at least 7 years or reduce sulfur dioxide and nitrogen oxide for at

least 8 years, and those are minimum delays because the amendment would eliminate all Clean Air Act deadlines for the rules. In addition to these delays, the Whitfield amendment changes the underlying Clean Air Act authorities for the rules. I am concerned that these changes would block EPA from ever reissuing the rules for air toxics. The Whitfield amendment replaces the Clean Air Act's proven standard-setting criteria with an entirely new approach for power plants that appears to be completely unworkable. It requires EPA to set standards based on the 12 percent of power plants that are best performing in the aggregate for all toxic pollutants. Administrator Jackson, this would require you to decide whether a plant that emits more neurotoxins but less carcinogens is better or worse performing than a plant that emits more carcinogens but less neurotoxins. Is there any scientific basis for you to make such a decision and how is such a decision likely to fare in the courts?

Ms. JACKSON. Well, sir, I think it would weaken and possibly destroy our ability to ever address those toxins, toxic pollutants because that is not the way they work in our body. You know, those pollutants all act together and we have good science that documents the health effects of mercury and arsenic and lead and hydrochloric acid but to try to pick between one or the other, I fear would simply make the rules subject to being overturned and we would not get those protections.

Mr. WAXMAN. This amendment would change the criteria for addressing pollution that is generated in one State but is blown by the wind and causes unhealthy air quality in a downwind State. States can't require polluters in upwind States to clean up so the Clean Air Act includes a Good Neighbor provision directing EPA to ensure that upwind States clean up pollution that causes unhealthy air beyond their State boundaries. The Whitfield amendment includes an amazing provision that prohibits the EPA from relying on modeling for any rule to address cross-state pollution. Administrator Jackson, if EPA can't rely on modeling, what effect would this have on the agency's ability to issue another cross-state pollution rule to address ozone and particulate problems in downwind States?

Ms. JACKSON. Sir, if we are required to only use monitoring data, which of course we use, but without the modeling to go along with it, I don't believe we will be able to issue a regional cross-state rule in the future ever because we simply have to be able to use scientific modeling to address upwind sources of pollution.

Mr. WAXMAN. And how are these rules that the Whitfield amendment would strike, how are these rules—why are they so important to public health?

Ms. JACKSON. Well, I think looking at the mercury rule, for example, we talk about 6,800 to 17,000 avoided premature deaths a year once implemented, 120,000 avoided asthma attacks per year. The cross-state air pollution, $120 billion to $280 billion in benefits, which represent 13,000 to 34.000 avoided premature deaths and 400,000 avoided asthma attacks every year.

Mr. STEARNS. The gentleman's time has expired.

Mr. WAXMAN. Mr. Chairman, I want to say that Mr. Barton characterized the report. I would like to offer my report to be in the

record, and that is the 125 in our tally votes to weaken the Clean Air Act.

Mr. STEARNS. Without objection, so ordered.

[The information follows:]

**September 2011**

# Anti-Environment Votes in the 112th Congress

**Committee on Energy and Commerce, Democratic Staff**
**Committee on Natural Resources, Democratic Staff**

The House of Representatives in the current Congress is the most anti-environment House in the history of Congress. So far this year, the House has voted 125 times to undermine the protection of the environment.

The House has not completed debate of H.R. 2584, the FY 2012 Interior and Environment Appropriations bill, which some have called "the worst assault on clean air and water in history." This legislation contains 39 new anti-environment riders and slashes funding for the Environmental Protection Agency and the Department of Interior. This analysis includes the votes on H.R. 2584 taken on or before July 28th, 2011.

The anti-environment votes taken by the House include 20 votes to block actions to address climate change. These include votes to deny that climate change is occurring; to block EPA from regulating carbon emissions from power plants and oil refineries; to block EPA from regulating carbon emissions from motor vehicles, which also reduces oil imports; and even to eliminate requirements that large sources disclose the level of their carbon emissions.

The anti-environment votes include 31 votes to block actions to prevent air and water pollution. These include votes to block EPA from regulating mercury and other hazardous air pollutants emitted from cement plants; to relax emission requirements for offshore oil and gas activities; to stop EPA from establishing new water quality standards or enforcing existing ones; and to prevent EPA from protecting streams from the effects of mountaintop-removal mining.

The anti-environment votes include 33 votes to undermine protection for public lands and coastal areas. These include votes to slash funding for the Land and Water Conservation Fund; to require oil and gas leasing off of the East and West Coasts; and to waive requirements for environmental review under the National Environmental Policy Act (NEPA) for offshore oil and gas activities.

And the anti-environment votes include 22 votes to defund or repeal clean energy initiatives. These include votes to overturn new, industry-supported energy efficiency standards for light bulbs; to cut funding for renewable energy projects; and to defund research into promising clean energy technologies.

Multiple federal agencies and statutes have been targeted by the anti-environment votes. Among federal agencies, the most common targets have been the Environmental Protection Agency, the Department of Energy, and the Department of the Interior: 50 votes targeted the Environmental Protection Agency; 24 votes targeted the Department of Energy; and 25 votes targeted the Department of the Interior.

Among federal statutes, the most common targets have been the Clean Air Act, the Clean Water Act, and NEPA: 28 votes rolled back or defunded the Clean Air Act; 16 votes rolled back or defunded the Clean Water Act; and 11 votes limited the application of NEPA.

The anti-environment votes were highly partisan. Of the 125 anti-environment votes, 104 were roll-call votes. On average, 96% of Republicans voted for the anti-environment position. In contrast, 84% of Democrats voted for the pro-environment position.

Mr. STEARNS. The gentleman from Pennsylvania is recognized, Mr. Murphy, for 5 minutes.

Mr. MURPHY. Thank you very much, and welcome here, Administrator Jackson.

On this discussion of premature deaths, et cetera, I am trying to get some accuracy of this from a scientific standpoint. Now, EPA is responsible for setting the National Ambient Air Quality Standard at a level to protect public health including sensitive subgroups with an adequate margin of safety. Am I correct?

Ms. JACKSON. Yes.

Mr. MURPHY. And the current annual standard for fine particulate matter is 15 micrograms per cubic meter?

Ms. JACKSON. Yes.

Mr. MURPHY. Recent review suggests EPA might consider lowering it further to a level of 11. Am I correct?

Ms. JACKSON. Sir, we have not made any regulatory determination. That science is ongoing.

Mr. MURPHY. Are you considering a level of 11?

Ms. JACKSON. We are required by law to review that level every 5 years.

Mr. MURPHY. And these standards are based on review of science. Am I correct in that too?

Ms. JACKSON. That is correct, sir.

Mr. MURPHY. Are external science advisors involved in that or is it all within the agency?

Ms. JACKSON. Yes. Congress mandated that there be an external advisory board, the Clean Air Science Advisory Board, I believe is their name.

Mr. MURPHY. Thank you. In EPA's recent regulatory impact analyses for Utility MACT, Boiler MACT and Cross-State Air Pollution Rule, most of the deaths the EPA says are caused by particulate matter are at air quality levels much cleaner than the air standards require. So I would like to show you a chart with some EPA estimates, a bar chart of estimate in mortality by air quality, if we could have that show up on the screen. We have marked the level of the current particulate matter standard, and as you see, most of the estimated mortality is below the protective standards, to the left of that line.

Now, let me look at the next slide. To make this easier, here is another bar chart. The tall bar represents EPA's estimate of deaths from all causes occurring where the air is cleaner than the current ambient air quality standard, and the short bar represents EPA's estimate of the deaths from all causes occurring at levels less clean than the ambient air quality standards.

So a couple questions on that, Ms. Jackson. EPA's own documents raise an interesting question. Is it true that when you estimate the benefit of your regulations, you are assuming that clean air also kills people?

Ms. JACKSON. Sir, the whole point of the National Ambient Air Quality Standards is to define what is clean air. People deserve to know what level of air will actually make them less sick and avoid those premature deaths.

Mr. MURPHY. And I am just trying to get to the science because it looks like clean air also is in the category of what has happened

to this definition. So the EPA always in the particulate matter risk assessment report that "We do not have information characterizing" deaths for people whose air was determined to be clean by national standards. So reading EPA's own document, it sounds like that there is not evidence that clean air is associated with deaths. So could you please share with the committee any studies that show a causal or associative relationship between fine particulate matter and deaths at levels below what EPA calls lowest measured level? Is that something you could provide for us?

Ms. JACKSON. I am happy to provide whatever science we have that shows the correlation, which is quite clear. It is not an assumed correlation between soot and death. When people breathe in high levels of soot or even moderate levels, that is why we are looking at the National Ambient Air Quality Standard. It causes premature death. People die before they should.

[The information appears at the conclusion of the hearing.]

Mr. MURPHY. Thank you. Now, in the past I believe EPA has said that they don't necessarily take into account the regulations' economic impact or job impact but you waxed extensively on the issue of jobs created by pollution control industry. You said we export and growth pollution control industry, welders, designers, boilermakers. I might add that my boilermakers would like to be putting some cleaner power plants here in the United States. And also it was brought up that the GDP has grown 200 percent since passage. Is this the cause and effect that by passing the Clean Air Act, we have caused a 200 percent growth in our economy?

Ms. JACKSON. No, sir, that wasn't my point. My point was, in contrast to people who say that the Clean Air Act is a job killer, the Clean Air Act has been around for 40 years and our economy has been fine.

Mr. MURPHY. But is it cause and effect? Are we causing—because here is my question. In the last 10 years, we have lost 2.8 million jobs to China, and I think we would all agree, I mean, 16 of the 20 most polluted cities in the world are in China, and we have lost a lot of jobs to China, and I think we would agree, their air quality standards are not good, and my concern also is, a lot of our manufacturers and others who find it cheaper for lots of reasons, not just air quality, I would put that in part of the mix of the issues along with currency manipulation, reverse engineering, cheating, et cetera. That may be one of the factors involved with costs of energy and compliance in this country. So my concern is, instead of just looking at the aspect of jobs being created related to the pollution control industry, which I think is important, I also want to make sure we are evaluating jobs lost if companies are leaving the Nation, going there and then not only reimporting products but reimporting pollution. Is that something that your agency can give us some information on?

Ms. JACKSON. We do look at jobs impacts, especially for the rules that have been under discussion so far this morning. Let me also say that there are studies by economists that show that the cost of environmental regulation, the kinds of things we are talking about, are not really determinative of a company's decision. Labor costs, currency costs, some of the things you mentioned, are much more important. These are very, very small——

Mr. MURPHY. I just want to make sure we are also looking at the—I mean, it was somewhere in the last century, someone referred to Pittsburgh as Hell with the lid off because of levels of pollution, and pretty nasty pollution. It is now quite a remarkably clean city. Unfortunately, that also means we don't have a steel mill in Pittsburgh at all anymore too. But if you could provide that information?

One other thing in my remaining time. Last March when you were here, I asked you on a different topic related to our natural gas industry in Pennsylvania if you could provide us some information, recommendations and evaluation if you think Pennsylvania's laws regarding natural gas are not adequate or if the enforcement is not adequate. I am still waiting for that document. If you would be so kind as to give me information, I would like to advance it to Pennsylvania with some recommendations, or I would be glad to talk to you about that further later on.

[The information appears at the conclusion of the hearing.]

Mr. STEARNS. The gentleman's time is expired.

The gentlelady, Ms. Schakowsky, is recognized for 5 minutes.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

I would just like to suggest that the gentleman from Pennsylvania I think made a very good argument that when we negotiate trade agreements, that environmental concerns ought to be part of that, that we want to make sure that not only are we looking at the benefits or detriment to commerce but that the world environment is also in those trade agreements.

I wanted to get back to the mercury and air toxic rules that actually are being considered for overturning essentially or at least diminishing on the floor today, and there were actually, my understanding is, 800,000 comments in favor of those rules that were submitted and wondered if you could respond to the reaction to the rules that were offered.

Ms. JACKSON. Yes, I can't confirm the exact number for you, ma'am, but, you know, the idea of cutting mercury pollution is very popular with the American people, and most Americans are shocked when they find that power plants are allowed to emit unlimited amounts of mercury and other toxics like arsenic and lead into their communities. They want the power, of course, but they have even said that they understand that we need to invest to ensure we have clean power in our communities because they don't want their children exposed to toxic mercury, they don't want those impacts on their neurological development.

Ms. SCHAKOWSKY. And that is what I wanted to ask you about. If you could describe for us what are the public health consequences of what we are seeing today, the Republican efforts to kill this rule?

Ms. JACKSON. Without a doubt, if this rule is delayed or, God forbid, killed in any way, there will be more premature deaths, more hospital admissions, more people getting sick because of increased levels of everything from mercury to soot, as we heard earlier, to arsenic, to lead, to hydrochloric acid to hydrofluoric acid. In the case of the cross-state air pollution, the entire third of the country, which is quite populated—I think it is a third or more of our population will be subject to air pollution that they can do nothing

about because EPA's hands are tied and cannot stop upwind sources from affecting people, especially our children and our elderly, who are more susceptible to those premature deaths and those asthma and bronchitis attacks.

Ms. SCHAKOWSKY. We will also see adverse effects to wildlife as well, right? So there is——

Ms. JACKSON. Yes. I don't mean to minimize it, but the environment from the loads of those pollutants is harmed. Of course, the example most Americans know is acid rain, the idea that the SOx pollution, the $SO_2$ goes into our atmosphere, comes down in the form of rain that is acidic and it changes the chemistry of our lakes and harms our forests and our plants and wildlife.

Ms. SCHAKOWSKY. I also wanted to reemphasize something I heard you say earlier, that there was actually a Congressional mandate in 1990 to do this.

Ms. JACKSON. That is right.

Ms. SCHAKOWSKY. And so we have failed for 21 years to actually live up to that mandate?

Ms. JACKSON. We have not until this point been able to make rules that have survived court challenge, and every one of those years of delay is more mercury. Mercury accumulates in the environment, so once it is there, it is deposited and stays. The way you are exposed to mercury is, you eat fish, and the way it gets there is that it comes out of the air, it deposits into our lakes and streams.

Ms. SCHAKOWSKY. I wanted to also ask you about the Cross-State Air Pollution Rule. Why did the EPA find it necessary to act to ameliorate cross-state air pollution? What would be the impact of the Republican efforts to repeal this rule?

Ms. JACKSON. Well, as I mentioned, first we were compelled to do so by the courts. The courts overturned the Clean Air Interstate Rule, which was promulgated in the last administration, in the Bush administration, and in remanding it gave it back to EPA and said I will let this rule stand because I don't want to lose the health benefits of this rule such that they are and the market because it is a marked-based program while EPA fixes it. The Cross-State Air Pollution Rule is the replacement for that rule, and the reason it is important is because of the 13,000 to 34,000 premature deaths avoided and the 400,000 avoided asthma attacks. Those are just two of the significant and severe public health impacts that will be lost if we lose or delay those rules.

Ms. SCHAKOWSKY. I thank you, and I thank you for the work that you are doing.

Mr. STEARNS. I thank the gentlelady, and the gentlelady from Tennessee, Ms. Blackburn, is recognized for 5 minutes.

Mrs. BLACKBURN. Thank you, Mr. Chairman, and Madam Administrator, thank you for being with us this morning.

There has been some discussion about the generalities, and I want to talk with you about the specifics. I think we have had some discussion of where does the rubber meet the road and how do these rules and regulations affect companies and affect employees, and I have got an example. This is the labeling requirements for EPA container rules that went into effect on August 27, 2011. It is, I think, a great example of the negative impact that the regu-

lations are having on our economy and specifically Buckman Labs, which is an international chemical company located in Tennessee. To be compliant with these new labeling regulations from the EPA container rule, Buckman Labs had to change all of their targeted micro—their labels and send them to the EPA for approval. Not surprisingly, EPA did not send some of the new labels back to Buckman until just one week before the new regulation went into effect and then Buckman Labs had to rush the EPA-approved labels to their clients for approval as well as 50 States where the product is sold just so that they could continue to maintain existing business. This was not for new business, this was for existing business. And to put this into perspective, we aren't talking about just a small handful of labels, we are talking about 4,000 labels that had to be reviewed and had to be changed to meet compliance, requiring the hiring of temporary employees whose sole job is to work on compliance for this one rule.

So did this new labeling rule actually change the contents of the product?

Ms. JACKSON. I would have to look into the specifics, but I assume it is a pesticide labeling rule, so I would look but I would suppose not. Perhaps you know.

Mrs. BLACKBURN. You are correct. It did not. It didn't. Was there any type of economic impact study conducted before this new rule went into effect and how many jobs it was protected to create or projected to create?

Ms. JACKSON. I can get you specifics on the rule. I don't have them in front of me. It sounds like some people got hired, though, which is a good thing.

[The information appears at the conclusion of the hearing.]

Mrs. BLACKBURN. Well, I think that what we are seeing is that the cost of compliance goes up, which means that these companies are not hiring new workers. The cost of 4,000 labels, the slowing of the process of business—Buckman Labs and the microbicides issue and the re-labeling issue is a perfect example of how this slows the wheels of commerce and how it is added cost and an added expense for these companies, who are trying to create jobs, and, you know, this is money that could have been spent for R&D. It is money that could have been spent for additional employees in this process, but yet they had to go through this compliance.

Now, yesterday they received notice that five more chemical product labels must be altered to meet the EPA label language changes that will require them that they are going to have to spend more time and more money to go through the process again. Can you see how the uncertainty or do you have an understanding of how the uncertainty that your agency is causing is affecting the businesses that are in my State?

Ms. JACKSON. Certainly, I would not argue that regulations and standard setting for safety and health don't have impacts on business, but we are happy to look at the specific issue, but remember that the pesticide laws and regulations are for the safety of the users of those pesticides so whatever is being——

Mrs. BLACKBURN. Ms. Jackson, we are all for clean air, clean water and a safe environment. There is no argument about that. What we are looking at is the cost-benefit analysis of this. We are

looking at the added burden, which indicates to Buckman Labs it didn't change what the composition is. It didn't change any of the content. It was an added regulation. This is specifically the point.

You know, you can't argue about the fact that we are all for clean air, clean water and a clean environment. What we are saying is the manner in which all of these new regulations, you have put over nearly 1,000 new regulations since you all went in at the EPA. The cost to our small businesses now, Chamber of Commerce says, is about $10,000 per employee. The cost to families who are losing their jobs—we started our job creator listening sessions the first of the year and working with our small businesses and our employers in our district, the overreach of the EPA comes up regularly, and it is of concern to us. I yield back.

Mr. STEARNS. Dr. Christensen is recognized for 5 minutes.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman, and welcome, Administrator Jackson.

Let me just say before I ask my question that as a representative of a district with one of the highest concentrations of greenhouse gases, I really thank EPA for its continued support and help to people of the Virgin Islands, and also as a member of a racial minority whose communities are often where some of the most polluting industries are placed, we thank you for your commitment to environmental justice. And I have had the opportunity to see you work and see how you always work toward solutions to protect health and safety while still ensuring and even stimulating economic growth in communities across the country, and the Congressional Black Caucus looks forward to recognizing your work this weekend.

Ms. JACKSON. It is quite an honor.

Mrs. CHRISTENSEN. So despite, you know, the agency's tremendous record when it comes to producing sensible regulations that protect the environment while stimulating innovation that drives economic growth, that is not what we are hearing from the other side of the aisle. Republicans on the committee and in the House appear to be living in an alternate reality when it comes to environmental regulation. For example, in a markup of legislation last week that would stymie your agency's efforts to protect the air we breathe and bring regulations implementing Clean Air Act into compliance with the finally after all this time, Representative Burgess suggested that EPA'S Boiler MACT Rule, and I am quoting here "would not provide one scintilla of improvement in the air we breathe."

Ms. Jackson, your agency's rulemaking process for Boiler MACT Rule was extensive and issued a 232-page impact analysis. Is Mr. Burgess correct that the Boiler MACT Rule you promulgated would not improve air quality one scintilla?

Ms. JACKSON. No, that is not correct.

Mrs. CHRISTENSEN. OK. Would you care to elaborate?

Ms. JACKSON. Sure. EPA estimates show that for every $5 spent on reducing pollution on pollution control, there are $12 worth of public health benefits. That is in reduced mercury, soot and other toxic pollutants.

Mrs. CHRISTENSEN. And, you know, he is not alone in his refusal to accept scientific facts supporting EPA regulatory action. At a hearing in this committee earlier this year, former Chairman Bar-

ton spoke strongly against Clean Air Act regulations that would address dangerous emissions from power plants, and in opposing these regulations he suggested that mercury emissions, which you have heard a lot about this morning, cause no threat to human health. You have spoken generally about the mercury, the impact of mercury and the fact that it is cumulative in the environment. Would you say something about the impact, especially on the health of children?

Ms. JACKSON. Certainly. Mercury, as I noted, is a neurotoxin. It affects developing brain cells and it can affect those cells whether a child has been born or is still in the womb, and lowered IQ points are generally the way that mercury impacts are measured. Recently, EPA Science Advisory Board peer-reviewed data to show that those impacts are real.

Mrs. CHRISTENSEN. Thank you, Administrator Jackson. I believe it is our fundamental duty to protect our children against these dangers, and the only way to argue otherwise is really to ignore decades of science on mercury emissions.

Unfortunately, denying basic scientific facts seems to have become a requirement for the other side of the aisle serving on the committee. I don't have to remind you that in March of this year, every single Republican member of this committee voted to deny the very existence of global warming. So Administrator Jackson, is there any legitimate scientific debate about the existence of global warming?

Ms. JACKSON. Climate change, global warming has been reviewed by numerous scientific panels and the results remain the same, which is that the climate is changing and that human activities and particularly emissions of global-warming gases or climate-forcing gases are a primary cause.

Mrs. CHRISTENSEN. And as you stated, you know, according to a study conducted by the National Academy of Sciences, 97 percent of scientists believe not simply that climate change exists but that humans are causing it. Notwithstanding that overwhelming scientific consensus, my colleagues on the other side are throwing in their lot with a handful of radical outliers in order to block meaningful governmental action to protect our children from rising temperatures, rising tides and the devastating consequences. So denying the problem exists is not a way to solve it.

Let me ask one more question. Would reducing or terminating the "lowest priority programs" in accordance with the Accountable Government Initiative result in cost savings significant enough to justify the termination of those programs?

Ms. JACKSON. I would have to ask you to be a little bit more specific. We are certainly committed to making sure that we are as efficient as possible with our budget, and our budget is such that we can't fund every single program that we are actually required by law to implement, so we are making those kinds of hard choices right now.

Mrs. CHRISTENSEN. Thank you, and thank you for your testimony and thank you for being here.

Mr. STEARNS. The gentlelady's time has expired.

The gentleman from Texas, Dr. Burgess, is recognized for 5 minutes.

Mr. BURGESS. Thank you, Mr. Chairman.

So much has been said on the other side that I need to refute and yet there are some things that I need to get out here. First off, it would be of great help to me if you would provide us the actuarial data that you are using to support the statement that 34,000 lives would be lost if your regulations do not go forward and then I would further ask the question, I am sure you made the President aware of this, does the President not care about the health of Americans by delaying the Ozone Rule?

Ms. JACKSON. Sir, the President can speak for himself, but I think his statement makes clear why he made the decision he made.

Mr. BURGESS. Well, you know, that is part of the point. Of course, there was a recent Nobel scientist who resigned from America's membership in the American Physical Society because of the position that that society took on global warming, and I think paraphrasing his statement, we can sit around for hours and argue about the constant mass of a proton but we are not able to discuss whether or not the validity of the science on climate change is valid or not. And, you know, people of good will and good intention can disagree about things. Chairman Waxman—ranking member—said that we don't believe in the science. Well, yes, that is right. I mean, I believe in God. The science actually should be proven, and if it is true science, it should be provable and that is what the argument is about.

Now, let me ask you this because it is important on this Cross-State Air Pollution Rule because it does affect Texas in a big way. We were faced with the possibility of rolling blackouts this last August because of the electricity usage during the month of August and now we are told that with the introduction of the Cross-State Air Pollution Rule in the time frame as provided by the rulemaking at the EPA that eight to 18 power plants may be shuttered on January 1st, and that will put obviously a significant restriction on the ability to deliver electricity in the State of Texas, and I would argue that that is going to have a significant impact on public health because as we all know, people can die in the cold but they really can die in large numbers in un-air-conditioned homes during the hot summer months.

Did you coordinate, the EPA, did you coordinate with FERC as to the implementation of this rule as the discussions were going forward?

Ms. JACKSON. Sir, in looking at our—EPA did a reliability analysis and asked FERC and the Department of Energy to review that.

Mr. BURGESS. How did you coordinate the information that was provided?

Ms. JACKSON. As EPA did its analysis, we asked for review and comment on the analysis that we did.

Mr. BURGESS. And did we just ignore FERC's recommendations? Because they don't seem to be completely coincident with the decisions that you made.

Ms. JACKSON. No, not at all, sir. In fact, in my own personal conversations with Chairman Wellinghoff and others at DOE, what we have assured them is that we would work with States and others

to ensure the Clean Air Act's perfect record of never having caused a reliability incident in its 40-year history.

Mr. BURGESS. Let me ask you this. Will you provide for this committee all of the relevant memos, communications, letters, emails that are available?

Ms. JACKSON. Certainly, sir.

Mr. BURGESS. And what time frame might we expect those?

Ms. JACKSON. As soon as we can, sir.

[The information appears at the conclusion of the hearing.]

Mr. BURGESS. I might suggest that there is a time frame that could be suggested to you but I will leave that up to the chairman.

Now, I have here a letter to you from the Southwest Power Pool, a regional transmission organization, on electrical reliability, and the Southwestern Power Pool supports a more flexible approach to meeting the emission requirements under CSAPR and they cite several operators who are of similar opinion. They go on to say that EPA must be provide time to allow the industry to plan an approach to comply with its rules in a reliable and reasonable fashion. As it stands now, the southwest pool and its members may be placed in the untenable position of deciding which agency's rules to violate, EPA or the FERC's. Putting an industry with a critical infrastructure in the position of choosing which agency's rules to violate is bad public policy. Editorial comment: I agree. They also suggest that the EPA delay CSAPR's effective date by at least a year to allow for investigating, planning and developing solutions. What would be the problem with delaying for a year?

Ms. JACKSON. The rule is flexible enough. Because it is a market-based program that is intended to replace a rule that was remanded to EPA by the courts, we are under obligation to——

Mr. BURGESS. I am running out of time. With all due respect, people in the industry do not agree with you. I am not sure FERC agrees with you.

Ms. JACKSON. Sir, in 40 years, the Clean Air Act has never caused a reliability problem. I am confident that this rule can be implemented in a way that lets businesses make the decisions they need but doesn't sacrifice public health.

Mr. BURGESS. And what if you are wrong? Are you infallible?

Ms. JACKSON. Of course I am not, but the 40-year history shouldn't be ignored, sir, just because of doomsday scenarios by those who want to stop the public health protections in this rule.

Mr. BURGESS. Well, and I disagree that they want to stop the public health protections, and that is the overreach of which the agency is guilty, but will you provide us the response to the letter to the Southwestern Power Pool that they have posed to you?

Ms. JACKSON. If they were submitted during the public comment period, we may already have it, but I am happy to give you a response if it exists.

[The information appears at the conclusion of the hearing.]

Mr. STEARNS. The gentleman's time has expired.

The gentleman from Michigan, the chairman emeritus of the full committee, Mr. Dingell, is recognized for 5 minutes.

Mr. DINGELL. Mr. Chairman, thank you for your courtesy.

Ms. Jackson, welcome. I want to thank you for your visit to southeast Michigan last month and your tour of the Detroit River

International Refuge, of which you know I am very interested. I have a number of questions to which I would hope you would answer yes or no.

One, does EPA take public comments into consideration during its rulemaking?

Ms. JACKSON. Yes.

Mr. DINGELL. Does EPA allow industry representatives to provide comments during the rulemaking process?

Ms. JACKSON. Yes, sir.

Mr. DINGELL. Does EPA take into account during the rulemaking process a cost analysis of the proposed rule's effect on industry and the costs of that?

Ms. JACKSON. Yes, sir.

Mr. DINGELL. Now, as I remember the writing of the legislation, the EPA is required to in writing these rules to come first to its decisions on the basis of health, and then to come to further decisions on how the rule will be implemented on the basis of other things as well, in other words, cost and impact on industry and things of that kind. Is that right?

Ms. JACKSON. That is generally correct, sir, yes.

Mr. DINGELL. And so if I am correct, then the TRAIN Act would change the sequence of those things. The first decision would be cost of the rule and the second decision would then be how the health of people is going to be affected by the different circumstances in which the rule is directed. Is that right?

Ms. JACKSON. I believe that is right, or it may be the Latta amendment that would amend the TRAIN Act to do that.

Mr. DINGELL. Now, would you briefly state what effect you think there would be if the cost basis analysis is done before the scientific health benefit analysis?

Ms. JACKSON. I think it would require the American people to be kept in the dark about what is happening to their health and about what is clean air. It is analogous to a doctor not giving a diagnosis to a patient because the patient might not be able to afford the treatment. The American people have the right to know whether the air they breathe is healthy or unhealthy.

Mr. DINGELL. Well, now, how are you going to assess the costs if you don't know what the problem you are addressing might be? I am trying to understand. We are going to have a big proceeding to define cost and then after we have defined the cost we are going to decide about the health and what we are going to do. I find this rather curious. How are we going to be able to assess the cost if we don't know what is going to be required to be done?

Ms. JACKSON. I see. I am not sure, sir. I haven't—I don't know what the thinking is.

Mr. DINGELL. Just for my own curiosity, there have been a lot of major changes proposed to the Clean Air Act, and I am sure you will remember that over the years I have not been entirely happy about either the Clean Air Act or the administration of it by EPA. But how many times have you been called upon by the Congress to testify on these proposed changes?

Ms. JACKSON. I believe it is approaching a dozen, sir, but we can get you the exact number.

Mr. DINGELL. Please, if you would. Now, as I mentioned, my colleagues on the committee know I have had some very major disagreements with EPA over the rules, and there are a lot of serious issues that need to be addressed in the Clean Air Act and other policies, and from time to time I have been worried that the industry will bear an undue burden as a result of EPA rules. Those concerns still exist today in places.

I have to say that I am disappointed, Mr. Chairman, that this committee has decided not to address these issues head on through legislation. Instead, we have been running around following false paper trails, taking issues out of context, ignoring policies already in place instead of finding legitimate and balanced solutions to protect the economy and the environment and having hearings in which we address the concerns of industry to find what the specific concerns are and what the particular actions of this committee should be to address those concerns and see to it that we are addressing with proper focus and diligence the questions of protecting the economy, jobs and at the same time addressing the problems in the environment.

I note that my time is up and I thank you for your courtesy, Mr. Chairman.

Mr. STEARNS. Dr. Gingrey is recognized for 5 minutes, the gentleman from Georgia.

Mr. GINGREY. Madam Administrator, thank you for appearing before the committee. Your response to the gentleman from Michigan in regard to what comes first in consideration of the EPA rulemaking and your response was health and protecting the health of the American people comes first, and I think your response also to what comes second was other things including cost. Is that correct? Was that essentially your response to the gentleman from Michigan's line of questioning?

Ms. JACKSON. Yes, with respect to the National Ambient Air Quality Standards and the Clean Air Act.

Mr. DINGELL. If the gentleman would yield, that is required in the statute and something that caused me a lot of trouble.

Mr. GINGREY. Reclaiming my time, and I appreciate that, but the EPA—and this is the reason I bring this up—the EPA counts benefits from protecting people from clean air. They don't actually believe there is a risk at those levels but they are counting the benefits so we are concerned about overstating the benefits in regard to health and understating the risks to the economy. Yes or no, is it true that the Administrator of EPA, yourself, has the responsibility to set ambient air quality standards to protect the public health including sensitive subgroups with an adequate margin of safety?

Ms. JACKSON. Yes, sir.

Mr. GINGREY. And again, yes or no, is it true that the Administrator, yourself, considers advice from EPA staff and also advice from the science advisors on the Clean Air Act Science Advisory Committee in setting those standards?

Ms. JACKSON. Yes, sir.

Mr. GINGREY. Now, EPA staff and their particulate matter report say that there is no evidence of health effects at levels much lower

than the EPA calls the "lowest measured level." Is that your understanding?

Ms. JACKSON. Sir, that wouldn't make sense to me, that below the lowest measured level there be no effects or effects that would be hard to attribute because you couldn't measure the pollutant.

Mr. GINGREY. Right. So the answer is yes, and I thank you for that.

Now, according to the most recent particulate matter risk assessment, EPA estimates, and I quote that "total particulate matter 2.5 micron related premature mortality ranges from 63,000 and 88,000 each year above the lowest measured level." Of course, that is a large number. Would you agree, 63,000 to 88,000?

Ms. JACKSON. It is a lot of premature deaths.

Mr. GINGREY. It represents in fact, Madam Administrator, between 3 and 4 percent of all deaths in the United States annually.

But now I turn to the recent Transport Rule which of course we have concerns over and to its estimates of benefits which involve almost all particulate matter and note that the benefit ranged between 130,000 and 320,000 deaths per year. That is quite different from EPA's own integrated science assessment. So how do you explain that?

Ms. JACKSON. I am sorry.

Mr. GINGREY. Well, let me say it again. The most recent Transport Rule and to its estimate of benefits, which involve all particulate matter, and note that the benefits range between 130,000 and 320,000 deaths per year. As I said, that is quite different from 63,000 to 88,000 from EPA's own integrated science assessment. How do you explain that delta?

Ms. JACKSON. The number I have, sir, is 13,000 to 34,000 avoided premature deaths under the Cross-State Air Pollution Rule. Perhaps our numbers should be reconciled, but that is what I have and I believe that is directly from the rule and their regulatory impact analysis.

Mr. GINGREY. Well, I would like, Madam Administrator, for you to clarify that for me and I would appreciate that very much, because the question becomes—and as I said at the outset—is the EPA modifying the numbers to exaggerate the benefits? Is the EPA claiming benefits below the level where the data support such claims? How can EPA promulgate rules and put out numbers that represent two- and threefold increases over the agency's own scientific assessment? Will you agree, Madam Administrator, that this does raise legitimate questions about overestimating the health benefits?

Ms. JACKSON. No, respectfully, because I don't believe I agree with your numbers, sir, so I can't agree with your premise.

Mr. GINGREY. Well——

Ms. JACKSON. You know, it was briefed not long ago by scientists who said simply—these are scientists who study fine particle pollution—that if you could reduce the levels down to levels that would be considered doable technologically, you could have an impact on public health——

Mr. GINGREY. Well, let me interrupt you just for a second, Madam Administrator, with all due respect, and I do respect you—I have only got—in fact, in fact, I am a little bit over time, but it

is really, it is kind of like this business of the stimulus bill saving jobs. It didn't grow jobs but of saving jobs, and you put out numbers in regard to saving lives. That is much more important, and that has to be accurate.

So thank you for getting that information to me in a timely manner, and I know I have gone over so I yield back.

Mr. STEARNS. The gentleman's time is expired.

I recognize the gentlelady from Florida, Ms. Castor. I welcome her to the hearing.

Ms. CASTOR. Thank you, Mr. Chairman, and thank you, Madam Administrator.

You know, coming from Florida, we really appreciate our clean water and clean air because jobs and the economy are directly tied to having clean air and clean water, and I just have to—you know, this past week on Monday was the 1-year anniversary of finally sealing, closing off the BP Deepwater Horizon well, and there is no better example to explain why rational regulations need to be in place to protect not just the environment but when the environment is tied to the economy and jobs, and I know of the last 30 years even, we have seen a very predictable pattern of when the EPA goes to carry out the direction of the Congress under the law and the will of the American people, there is this typical tug of war that then ensues. You will propose a regulation and then certain industries will weigh in, local citizens, maybe the heart and lung associations, and I think this is very healthy. I think a robust exchange of ideas and looking at all of these regulations is essential to getting to the right result. It can be messy and it can be very contentious sometimes and sometimes folks here in Washington have very high-paid lobbyists that can weigh in, and it is important to have a balance when people at home that oftentimes don't have the same voice. But I think if EPA sticks to the science and if you fairly consider all industry points of view and you consider rational alternatives, is there a less costly alternative, I think if we follow the science, we will get to the right point. And I have a couple of examples. When EPA announced plans to control benzene emissions from chemical production plants, you know, remember that industry claimed pollution controls would cost over $350,000 per plant, but instead, technological innovation led to replacement of benzene with other chemicals and the compliance costs turned out to be zero.

Administrator Jackson, is this the sort of innovation—is this sort of innovation unusual in the face of new environmental regulation?

Ms. JACKSON. No, and indeed, to the contrary, it is the pattern. For example, the industry overstated the per-ton cost of the acid-rain trading program by a factor of four, and what happens is that once industry puts its mind to complying instead of fighting, they learn to do it in a way that is more cost-effective than the current technology and we get both cleaner air and water and jobs as well.

Ms. CASTOR. Then there is a great example just in the home district from decades ago. We had a coal-fired power plant by the local electric company. They were in litigation, and you know, rather than proceed down litigation, the business took a hard look at the new technologies available to clean the air and to settle that they invested in the new technology on scrubbers, and this has been the

best business decision for them. Not only has it earned them great PR but has cleaned the air. It is right on Tampa Bay. The health of Tampa Bay has improved. We don't have as much atmospheric deposition coming on to the water, and I think oftentimes the science and technology proves out to be the best business decision.

Another example, when EPA announced limits on chlorofluorocarbons in vehicle air conditioners, the auto industry insisted they would add up to $1,200 to the price of every car, but the real cost turned out to be as low as $40. So in that case, did the benefits to eliminating chlorofluorocarbons outweigh this $40 cost, in your opinion?

Ms. JACKSON. Yes, I am sure they did, although I don't know the exact ratio, but because the cost was so much less—they already had weighed it when we posed the rule but the happy coincident of innovation is that it is much cheaper than we expected.

Ms. CASTOR. Why do you think this is the case? Why do affected industries and their high-paid lobbyists up here, why do they so often overestimate the costs?

Ms. JACKSON. You know, there has become this dance that is done inside Washington where we propose public health protections in accordance with the law and then the costs are overstated, and even though the history shows that that is not the impact, it seems to me to be devoid of concern for the real people who would be most affected, and that is the American people who want clean air and clean water, and of course they want jobs as well, and I believe we can have all three.

Ms. CASTOR. I agree. I don't think they are mutually exclusive, and a lot of these examples prove that out.

Thank you very much. I yield back.

Mr. STEARNS. The gentlelady's time has expired.

The gentleman from California, Mr. Bilbray, is recognized for 5 minutes.

Mr. BILBRAY. Administrator Jackson, has there been an air district anywhere in the country, not in the world, that has reduced its total emissions more than the South Coast Air Basin in Los Angeles?

Ms. JACKSON. I can double-check that but they have made significant reductions, sir. They still have significant challenges but they have made reductions.

Mr. BILBRAY. Right. The question is, is there another nonattainment area anywhere in the country that has more regulatory control over emissions than Los Angeles, the South Coast Air Basin?

Ms. JACKSON. California, because of their specific challenges, I think has older and probably more well-established air pollution regulations in general.

Mr. BILBRAY. And are you aware also too that California and the Air Resources Board and the air districts have been the leader not just nationally but worldwide in air pollution reduction and technology?

Ms. JACKSON. And technology and moving forward on trying to address public health issues.

Mr. BILBRAY. And you are aware that we have one of the highest, second only to Nevada, unemployment right now, 12-point plus?

Ms. JACKSON. I am sorry, sir.

Mr. BILBRAY. OK. Look, both sides can talk about denial of impacts, health-wise, economic. Let us be upfront. Anybody that straight-faced says we can do these regulations and they will help the environment and drive the economy is still playing in our 1970 illusion that there isn't an impact on both sides, and I don't think either side should be in denial that there is a cost to the economy and a benefit to the environment, and if you retreat on some of these environmental issues, there is going to be an impact on the environment and health and a benefit to the economy. It goes back and forth. The concept that we can pull this off, we have been playing this game in California long enough. We have tried to do—we have done extraordinary things in California to try to make both work out. There is a cost, and there is a cost both ways, and I think that seriously we need to address that.

Now, let me ask you—and that is why the dialog here gets polarized. I want to bring this back to, there is cost and benefit. Don't deny the cost; don't deny the benefit. Now, my question is, in the 1970s, isn't it true that through environmental regs and fuel efficiency regs, the federal government drove the private sector towards diesel operation for about 5 to 6 years? They converted their fleet largely over to diesel?

Ms. JACKSON. I can't confirm that, sir.

Mr. BILBRAY. OK. Well, I will confirm it for you because I think those of us that are old enough to remember that will remember that hideous experiment. That was an environmental regulation that drove the private sector to diesel, which you and I know is a very, very toxic emission, a very big health issue, and it was a major economic and environmental mistake that we made, and there are impacts of that.

I would like to shift over from the other side as somebody who has been on the rulemaking, actually been in the regulations. What is the responsibility or what is the participation of local and State and county government operations in the implementation of these rules, and I will point that out. You are the Environmental Protection Agency. You are not the EDA. You are not the Economic Destruction Agency. What is the local and State responsibility in addressing air pollution and toxic emissions and what is their major goal in participation in this project? And please make it short.

Ms. JACKSON. OK. At a minimum, State governments are primarily responsible for implementation of most aspects of the federal Clean Air Act. Some States have their own laws, and in the case of California, local and county governments do——

Mr. BILBRAY. How much reduction have we had in government operations and procedures in emissions in a nonattainment area like the L.A. Air Basin in comparison to the private sector reduction? Wouldn't you agree that probably overwhelmingly in the 90 percent that the private sector has reduced their emissions proportionally that the reduction has been in the private sector and the public sector has been less than very aggressive at reducing our emissions and our operations to reduce our footprint?

Ms. JACKSON. Sir, I am not sure I understand the question, but the private sector has not done it voluntarily.

Mr. BILBRAY. Let me give you this. The EPA had a scientist coming out of Kansas that could tell you that you could reduce the

emissions from autos by 20 percent with a single regulation. Don't you think the EPA would be very interested in looking at implementing those rules?

Ms. JACKSON. Of course. We are always looking for ways——

Mr. BILBRAY. What are you doing about indirect—the mobile sources caused by inappropriate traffic control by city, county and local and State government?

Ms. JACKSON. Sir, we are implementing the Clean Air Act and we allow States to come up with implementation plans to determine how best to reduce most forms of air pollution. The mercury and air toxic standards are different because they are under a different section of the Clean Air Act.

Mr. BILBRAY. I move right back over. In other words, local governments, State government get to—our job is to make the private sector clean up their act where you can get identified single mobile source that government controls that we have done nothing as a comprehensive approach to reduce it because we focus on cracking down on the private sector, who are the job generators, while we are given a free ride.

And Mr. Chairman, I point this out because that 20 percent that we could reduce in government is 20 percent that the private sector wouldn't have to do while they are laying off employees, and that is the kind of responsible environmental strategy I would like to see both sides of the aisle finally be brave enough to approach.

Mr. STEARNS. The gentleman's time is expired.

The gentleman from Massachusetts is recognized for 5 minutes.

Mr. MARKEY. Thank you, Mr. Chairman.

This week, the Republicans have stepped up their assault on clean air and clean energy. Both this committee and the full House have begun a legislative repeal-a-thon that denies the science, delays the regulations and deters efforts to protect the health and security of millions of Americans. Take today's Floor action. We are having 100-year floods every few years. We have had tornados rip through the country, killing people and destroying property. Hurricanes have caused floods, massive power outages and deaths. Texas is on fire. Forty-eight states have made emergency declarations so far this year. Now, we have set all-time records of 83 major disasters declared this year with 3 months of the year still left to go.

The planet is warming and the weather is worsening. We see it here with our hurricanes, floods, fires and tornados. We see it overseas where famine in Somalia threatens civil war, and how does the tea party respond? "Maybe we can find the money," they say, for disaster relief for people who are suffering, for people who are desperate, for people who have lives who have been altered permanently by these disasters, but we are going to make the taxpayer pay. Do the Republicans say we are going to pay by cutting the hundreds of billions of dollars we spend on our nuclear weapons program because we all know we don't need to build any more nuclear weapons? Oh, no. They wouldn't do that. Are we going to cut the tens of billions of dollars in subsidies we give to Big Oil and Coal as they report record profits? Oh, no, we can't touch those, they say. We can't even talk about cutting those programs. What can we talk about? We can talk about, they say, cutting the clean car factory funds. We can talk about cutting the incentives to make

super-efficient cars that don't need the oil sold by potentates in Saudi Arabia and CEOs in Texas. We can talk about cutting the program that could remove the need for the very same oil that creates the greenhouse gases that are warming up the planet and causing the disasters that cost more and more money to remedy as each year goes by.

And as if all this wasn't enough, the Republicans are also waging an all-out war on the Clean Air Act. This committee and the House has already passed legislation to prevent the EPA from doing anything to reduce the amount of oil used by our cars and trucks. And this week in this committee and on the floor, we are considering bills to require endless study of the cumulative impacts of all EPA air regulations on all industries, and then just for good measure, we are going to pass legislation that repeals the regulations that have already been set, extend the deadlines for implementation of the rest and weaken the very underpinnings of the Clean Air Act.

The Republicans are providing the American people with a false choice. We do not have to choose between air quality and air conditioning. We do not have to choose between concrete and cancer. We do not have to choose between manufacturing and mercury poisoning or asthma or cardiac arrest. We do not have to choose. In their insistence that we consider the cumulative impacts of all these regulations, there are some other cumulative impacts of their actions that Republicans refuse to acknowledge.

Administrator Jackson, Republicans are cutting programs to incentivize the development of advanced technology vehicles that could run without using a single drop of oil. They also passed legislation preventing EPA from moving forward to require a 54.5-miles-per-gallon fuel economy standard by 2025. When you look at this cumulatively as Republicans say we must, do you think these actions would help or hurt our efforts to reduce our dependence on foreign oil and back out that which we take from OPEC and funds those countries' governments?

Ms. JACKSON. I think efforts to make us more dependent on gasoline hurt our Nation's energy independence, sir.

Mr. MARKEY. Cumulatively, what are the benefits of cleaning up particulate matter? Does that help or hurt our efforts to battle cancer, to battle the impact that it has upon the health of people in our country?

Ms. JACKSON. Particulate matter causes premature deaths. It doesn't make you sick. It is directly causal to dying sooner than you should. So the impacts of delaying efforts, cost-effective efforts, I might add, to address particulate matter are more people dying sooner than they should.

Mr. MARKEY. How would you compare it to the fight against cancer, reducing particulate matter?

Ms. JACKSON. Yes, I was briefed not long ago. If we could reduce particulate matter to healthy levels, it would have the same impact as finding a cure for cancer in our country.

Mr. MARKEY. Can you say that sentence one more time?

Ms. JACKSON. Yes, sir. If we could reduce particulate matter to levels that are healthy, we would have an identical impact to finding a cure for cancer.

Mr. MARKEY. That is a pretty good cumulative impact.

Ms. JACKSON. Well, and the difference is, we know how to do that.

Mr. MARKEY. And the Republicans are also proposing to delay and weaken standards that would remove toxic chemicals like mercury, benzene, cancer-causing dioxin and lead from industrial polluters. Your regulations clean up cement plants. When you look at these health effects cumulatively as Republicans insist we must and the tea party insists we must, would we be avoiding the thousands of deaths that would otherwise occur——

Mr. STEARNS. The gentleman's time has expired.

Ms. JACKSON. And that is $2 trillion in health benefits a year beginning in 2020, sir, and that is just some of the rules.

Mr. STEARNS. I thank the gentleman. I am glad he finally got to his question.

Mr. MARKEY. Well, I was asking—well, let just say this for the sake of the discussion. Mr. Bilbray did not ask his question until 1:05 after the time, and Mr. Gingrey did not ask his question until 26 seconds after his time.

Mr. STEARNS. I am glad you noticed.

Mr. MARKEY. But if you would have notified them as well, then I think I probably would have understood what the rules were.

Mr. STEARNS. And there are no rules. You can do what you want on your 5 minutes.

Mr. MARKEY. I appreciate it. Thank you.

Mr. STEARNS. Mr. Griffith from Virginia is recognized for 5 minutes.

Mr. GRIFFITH. Thank you.

When you say reduce particulate matter to levels that are healthy, what is that level?

Ms. JACKSON. I don't have it in my head right now but we will get it to you, sir.

Mr. GRIFFITH. And can you tell me when you are getting that information at what point in history we were at that level? Because isn't it not true that a lot of particulate matter exists from natural causes?

Ms. JACKSON. Some amount of fine particulate matter, but most of the natural causes of particulate matter are coarser and, you know, so dust, when you hear about dust storms. There is some particulate matter, of course, that is emitted naturally.

Mr. GRIFFITH. So if you could give me a date as to when the earth achieved that maximum healthy level, I would appreciate that, at some point back in the past. I am sure your scientists can help you with that.

In regard to mercury, we have heard a lot about mercury today but the Department of Energy says when it goes back and looks at mercury, and this was just found on the Department of Energy's Web site, that even in 1995, coal-fired power plants in the United States contributed less than 1 percent of the world's mercury in the air, and that since that time we have actually dropped, and I guess my question is, because we hear this all the time in this committee, that we must be against clean air, that we must be—you know, because we don't support all the EPA proposals that we must be for dirty air. In fact, I believe Chairman Emeritus Waxman said yesterday this was Dirty Air Week, the Republicans had declared this

Dirty Air Week in the legislature. And so I guess I have to ask, even though I know the answer in advance, you would not submit that being opposed to some of your regulations means that you are against clean air, would you?

Ms. JACKSON. It certainly depends on the regulation, sir.

Mr. GRIFFITH. You would not submit that the President is against clean air because he opposed your proposed Ozone Rule, would you?

Ms. JACKSON. No, sir.

Mr. GRIFFITH. I wouldn't think so. Or clean water. Wouldn't that be correct?

Ms. JACKSON. No.

Mr. GRIFFITH. All right. And so when people make blanket statements that because they oppose an EPA—some of us oppose an EPA regulation, that doesn't mean that we are necessarily in favor of dirty air, does it?

Ms. JACKSON. It depends on the regulation, sir.

Mr. GRIFFITH. All right. Clearly, on ozone, we wouldn't have been in that category.

And in regard also, there was a comment earlier that somebody wanted to know, you know, we call these job-killing regulations, they want to know where the jobs are, and I can submit to you some jobs from the 9th district of Virginia that have been lost by virtue of some proposed regulations if they go into full effect, but isn't it true that your own analysis shows that the boiler MACT and cement MACT proposals will in fact cost jobs. Is that not correct? They create some clean energy jobs but they also have a certain——

Ms. JACKSON. That is not entirely correct, sir. The jobs analysis for the boiler MACT——

Mr. GRIFFITH. Well, either people are going to lose jobs or they aren't. Do they lose jobs or not?

Ms. JACKSON. Well, sir, we do an analysis. There is a range, and it ranges from a gain of 6,500 jobs to a loss of 3,100. It is not a perfect science to look at this, but jobs analysis that we do, we try to be as precise as we can.

Mr. GRIFFITH. But you are aware that in regard to some of your rules that various power plants across the country have already announced shutdowns of power plants and a net loss of jobs? You are aware of that, are you not?

Ms. JACKSON. Many of those plants are making business decisions.

Mr. GRIFFITH. Are you aware that they are laying off people?

Ms. JACKSON. I am aware of the fact that plants need to make business decisions so that they can stop polluting the air.

Mr. GRIFFITH. Can I then assume that you are not—I mean, I am just asking a simple question. Either you are aware of——

Ms. JACKSON. I am aware of the announcements.

Mr. GRIFFITH. You are aware of the announcements. Thank you.

Ms. JACKSON. I don't necessarily believe their announcements are always fair or accurate.

Mr. GRIFFITH. OK. But you are aware that they have announced layoffs and communities are concerned about the layoffs of high-

paying jobs in my district, rural areas where high-paying jobs are not common? You would agree with that?

Ms. JACKSON. I am aware of their announcements, and I know that some of what is in their announcements isn't accurate or fair.

Mr. GRIFFITH. Do you think that the Department of Energy is accurate and fair when it says that only 1 percent of the mercury in the world's atmosphere is coming from coal-fired power plants in the United States of America? Are you aware of that?

Ms. JACKSON. I heard you say it. I would like to see their Web site before I agreed to it.

Mr. GRIFFITH. All right. But do you all have data that indicates similarly that since 1995 without these regulations going into effect the amounts of mercury in the air in the United States has actually diminished, and some other regulations——

Ms. JACKSON. It is a good point, sir. Almost half of the power plants in this country currently comply with the regulations that we are scheduled to adopt in November, so it can be done. It can be done cost-effectively. It is actually a matter of fairness. Some plants are emitting mercury and others have already addressed that pollution.

Mr. GRIFFITH. And in fairness, some of that deals with municipal waste incinerators, because I have never been one of those who says that the EPA doesn't have a purpose or does some good and that that is part of the reason that mercury has dropped in this country, but we are already at fairly low levels and the balance that we have to make as policymakers, as your President made on the Ozone Rule, is between deciding whether the gain is worth the cost and when the cost is people not having jobs and being in poverty as we have seen that rise in this country, you can understand why many of us are concerned about the rising poverty. You can agree that that is a negative, would you not?

Ms. JACKSON. In your considerations, I would ask you to look at benefits that are between $59 billion and $140 billion for a rule that costs $10 billion in the year 2016. That is what the benefits of the Mercury and Air Toxics Rules are estimated to be.

Mr. STEARNS. The gentleman's time has expired.

The gentleman from Louisiana, Mr. Scalise, is recognized for 5 minutes.

Mr. SCALISE. Thank you, Mr. Chairman. Thank you, Administrator Jackson.

Ms. JACKSON. What did you do to your leg?

Mr. SCALISE. I tore my ACL playing basketball last week.

Ms. JACKSON. Did you kick the TV when the Saints lost to the Packers?

Mr. SCALISE. The Packers game was a little rough, but we had redemption against the Bears and we are going to do well this weekend too.

Ms. JACKSON. That is right.

Mr. SCALISE. I am glad we can agree on that. We definitely do.

I wanted to ask you, you know, we have been talking about clean air, clean water, and all of us, I think it has been laid out very clearly, all of us support clean air and clean water. I think what we are trying to get at here is where is that balance and has there been a crossing of that balance as it relates to some of the rules

and regulations we have seen coming out of EPA. I know I am equally concerned about clean air and clean water. I am also concerned about jobs, and during the break, a lot of us went back home, got to meet with a lot of our small business owners, talking to people who are there on the front line of job creation, and there was a recurring theme I heard from every single small business owner I talked to and, you know, you ask them, what kinds of things need to happen, what can we do to help you create jobs, and surprisingly, the recurring theme was, they said the regulations and laws coming out of Washington and this administration are their biggest impediment to creating jobs, and so I think it is very important that we look at these regulations that are coming out and saying, you know, what is the justification. And it seems that a lot of times these numbers are attached and, you know, each rule and regulation is going to save lives and each rule and regulation is going to stop people from being sick, you know, and those are all lofty goals, but unfortunately, it seems like they are numbers that are being arbitrarily thrown out just to justify a radical regulation that really has nothing to do with improving health and safety and, you know, I will start with the ozone ruling. What were the justifications that you made when you came out and proposed that rule? How many lives was that going to save? How many sick days was that going to prevent?

Ms. JACKSON. The National Ambient Air Quality Standards are based on peer-reviewed data that look at the health impacts, so it is made based on determining what constitutes a safe level——

Mr. SCALISE. So for that ruling, did you have numbers assessed to how many, whether it was lives saved? Did you say how many people were not going to have to go to the emergency room? Did you have numbers like that for that rule?

Ms. JACKSON. As I recall, sir, but we will double-check and get you that data, what we look at trying to assess where, whether the number 75, 70, what have you, where in that spectrum you protect human health with an adequate margin of safety, so——

Mr. SCALISE. I would imagine when you came out with that rule and you proposed that rule, you said this is going to do some things to protect public health, right?

Ms. JACKSON. It is the implementation of the standards over time. So as we heard earlier, you pick the health-based standard and then over time you implement the standard to achieve that level.

Mr. SCALISE. And so I am using that as an example because, you know, for those of us that agree with it, before the President made his decision and came out with his Executive Order saying we are not going to go forward with that, there would have been people on the other side who said, oh, you know, you all just don't care about public health, look at all those lives we would have saved, you know, and you all are trying to block that rule from coming out, and then all of a sudden the President even says you went too far. That rule, that regulation would not have done those things. I have got to imagine—I am not going to speak for the President and you are not either, but I have got to imagine that the President had to disagree with your assessment that that would have saved lives or improved health because he wouldn't have rejected

that rule if he thought rejecting that rule would make people more sick.

And so I would just hope as the tone goes forward that as we are looking at these rules and regulations that we know are killing jobs, our job creators out there across the country are telling us how many jobs in each of their businesses these rules are killing. You know, you want to talk about health and safety, these are people that don't have jobs, they don't have health insurance, they don't have a lot of things because they don't have that job, and then you look at the assessments that are made by EPA, and even the President acknowledged clearly that the things that you are saying weren't accurate at least to his belief, our belief because he rescinded the rule. He wouldn't have rescinded the rule if he thought that was going to do something to improve health.

So I hope as we are looking at these rules we can at least have an understanding that all these things should be put on the table, and just because somebody comes out and says we are going to save 20,000 hospital visits, that doesn't mean you are going to save 20,000 hospital visits.

Mr. BILBRAY. Would the gentleman yield?

Mr. SCALISE. You said that about other things.

Mr. BILBRAY. Would the gentleman yield?

Mr. SCALISE. I would be happy to.

Mr. BILBRAY. I think in all fairness, though, the President is saying, wouldn't you agree, that really was right now with the way the economy is, the way the jobs are, now is not the time to implement this, and in all fairness, he is not saying somewhere in the future you might——

Mr. SCALISE. Well, and I will reclaim my time, because what the President is saying, if the President really thought that implementing that rule would save lives or improve people's health and stop people from going to the emergency room, I really don't think he would have gone forward with it, you know, and he can correct me, you can correct me if you have heard differently.

Ms. JACKSON. I am not going to speak for the country. I will simply say that not every deregulatory push works out well for the country or the environment. In 2009, a company called another federal agency's rules an unnecessary burden. That agency wasn't EPA, it was the Minerals Management Service, and that company was Transocean, and we know what happened there.

Mr. SCALISE. We saw that they cut corners, and that had nothing to do with——

Ms. JACKSON. No, they——

Mr. SCALISE. They actually——

Ms. JACKSON [continuing]. Protesting regulation of their work.

Mr. SCALISE. And there are companies that we all know have played by all of the rules and they are being shut down today even though they didn't do anything wrong. And so while you may want to carry out your agenda, even the President has acknowledged that you have gone too far, and we have got to be concerned about jobs.

I just want to put this into the record and ask a final question as my time is running out, specifically to talk about the Spill Prevention Containment and Countermeasure Rule that has been ex-

tended to farms, and then your agency—it was going to be a 5-year implementation. Your agency rolled that back or expedited and said in 2 years they have got to comply, meaning November of this year. Our small farmers out there are going to have put containment. They don't even know how much it is going to cost them, containment measures. Our Commissioner of Agriculture has asked your agency over a month ago if you would review—the Commissioner sent you a letter—if you would review either rescinding the rule or giving them an extension. They haven't heard back. I would hope you would look at that, and I would be happy to get you a copy of the letter, but look at the rule in general, what this is going to do, what kind of impact that regulation is going to do to our local farmers.

Ms. JACKSON. I am happy to do that, and the reason that I think we are looking at it very hard is because with the flooding in the Midwest and in other parts of the country, a lot of folks have not had time to comply with it.

[The information appears at the conclusion of the hearing.]

But it is an oil spill prevention rule as well, so——

Mr. SCALISE. Right, but in a lot of——

Mr. STEARNS. The gentleman's time has expired.

Mr. SCALISE. The States do their own containment, and I would hope you would look at that letter, and I am sure others are out there too, and look at extending that or just rescinding it altogether.

I appreciate it, and I yield back my time.

Mr. STEARNS. We will put your document in. I think the minority would like to look at your document first before we ask unanimous consent to do so.

Ms. DEGETTE. Reserving the right to object.

Mr. STEARNS. Madam Administrator, we are going to do a second round. You have been kind enough to be here—oh, Mr. Gardner, the gentleman from Colorado—I thought you had spoken, I am sorry—is recognized for 5 minutes.

Mr. GARDNER. Thank you, Mr. Chairman, and thank you, Administrator Jackson, for your time today.

I have been told that EPA's Office of Compliance and Enforcement Assurance is verbally asking active hard-rock mines to voluntarily grant blanket access to EPA personnel to conduct site investigations under CERCLA. They have been described—representatives of EPA have described the proposed inspections as part of an ongoing national enforcement initiative focused on hard-rock mining. Are these inspections related to EPA's stated intention under CERCLA 108(b) to promulgate a rule imposing additional financial assurance requirements in hard-rock mines?

Ms. JACKSON. Not by your description, sir. It sounds more like this is as a result of a national enforcement initiative to reduce pollution from mineral processing, but I can double-check that for you.

Mr. GARDNER. So they are not a part of the financial assurance?

Ms. JACKSON. Not to my knowledge but I can certainly confirm that for you.

Mr. GARDNER. And then could you clear up confusion about the reason for these inspections? Are they part of the national enforce-

ment initiative or are they to support EPA's CERCLA 108(b) rulemaking?

Ms. JACKSON. I believe they are the former, sir, but I will confirm that.

Mr. GARDNER. Is there any link between the two?

Ms. JACKSON. Not to my knowledge, sir, but I am happy to check on that for you.

Mr. GARDNER. I would appreciate that. How do these inspections relate to EPA's CERCLA Section 108(b) rulemaking?

Ms. JACKSON. I don't believe they are related, but I will double-check that for you.

Mr. GARDNER. And would you provide for the record copies of policies, guidance or other documents or records related to development by EPA of any program or initiative to identify hard-rock mining or mineral process sites that may be inspected or visited by EPA representatives and/or any contractors of the EPA under CERCLA Section 104(b) or as part of development of a rule pursuant to CERCLA that would impose financial assurance requirements on facilities in the hard-rock mining industry?

Ms. JACKSON. Certainly, sir.

Mr. GARDNER. Thank you. And do you happen to have any of that material with you today?

Ms. JACKSON. No, sir.

Mr. GARDNER. And I know the committee had called the office and warned that this question was coming. Will any of the data or information gathered during these inspections be used in the rulemaking process under CERCLA Section 108(b)?

Ms. JACKSON. I am sorry. Could you repeat the question?

Mr. GARDNER. Will any of the data or information that is gathered during these inspections be used in the rulemaking process under CERCLA Section 108(b)?

Ms. JACKSON. I don't believe so but that is the same question. I will double-check.

Mr. GARDNER. OK. And then how much money right now has been budgeted for this national hard-rock mining enforcement initiative for fiscal year 2012?

Ms. JACKSON. Let us see if I have it in any of the background I have. I don't know that I have a line item for that. If it is possible to get it, we are happy to get it for you. It is budged under our Office of Enforcement.

Mr. GARDNER. If you could get that, that would be great. And do you have any idea what is budgeted for CERCLA 108(b) rulemaking?

Ms. JACKSON. We will get you that as well.

[The information appears at the conclusion of the hearing.]

Mr. GARDNER. Thank you. And I have been told as well that these companies obviously may be facing some costs of these inspections and the companies inspected will spend considerable time working with EPA, their contractors and others showing them onsite resources necessary to gather the information, reports, meetings, EPA personnel et cetera, and will these inspected companies be expected to bear any of the costs, the direct costs for EPA personnel and EPA contractors to visit the sites inspected under this initiative?

Ms. JACKSON. Enforcement cases are generally brought for violations of the law, and when they are, the penalties are generally assessed as penalties but not necessarily unless there are court cases is reimbursement sought.

Mr. GARDNER. So these just seem to be inspections. Are you aware of this initiative at all?

Ms. JACKSON. Certainly, generally, every year the EPA acknowledges what its federal priorities are for reducing pollution and for enforcement, and this is one of our priorities.

Mr. GARDNER. So is this just an inspection or an enforcement action?

Ms. JACKSON. Well, you do an inspection, and if nothing is wrong, there is no need for enforcement.

Mr. GARDNER. So is this a plan then to go into a number of these mines in different regions just to go in and inspect?

Ms. JACKSON. Certainly. Part of our authority allows us to go in and determine compliance with federal laws.

Mr. GARDNER. And is this part of CERCLA? This initiative, is it part of your CERCLA efforts?

Ms. JACKSON. I believe they would look for violations of all environmental laws including potentially violations of CERCLA law, but it would not be limited necessarily to that. It could be the Clean Water Act, it could be the Clean Air Act.

Mr. GARDNER. So are these—do you have a listing of the mines that you intend to inspect?

Ms. JACKSON. I don't know if such a list exists, but if it does, it may well be enforcement confidential since telling someone you are coming is a good way of assuring that you may not get a true picture of what they are really doing.

Mr. GARDNER. And then just a couple questions on energy prices. Do your regulations have an impact on electricity price?

Ms. JACKSON. Yes, sir.

Mr. GARDNER. What is an acceptable price increase for electricity?

Ms. JACKSON. Well, what we generally do is look at a price increase to determine impacts on the economy and also on reliability issues, and so what we know—I can't answer your question, but what we know is that the rules that have been discussed this morning, both final and proposed, have very low impacts on electricity prices.

Mr. GARDNER. But when a rule increases electricity prices 5 percent, would that be acceptable?

Ms. JACKSON. Sir, it would depend on the rule. We look at costs and benefits and we also look at how those costs and benefits roll out over time, and often——

Mr. GARDNER. So it might be acceptable? A 5 percent increase might be acceptable?

Ms. JACKSON. It could potentially be.

Mr. GARDNER. What about 10 percent? Could a 10 percent price increase be acceptable?

Ms. JACKSON. That is a hypothetical that I simply cannot answer.

Mr. GARDNER. Who bears the burden most in our society with increased electricity prices?

Ms. JACKSON. Who bears the burden?

Mr. GARDNER. Yes, who do you think it hurts the most?

Ms. JACKSON. The ratepayers pay for electricity.

Mr. GARDNER. Does it hurt poor more than a disproportionate share of our population?

Ms. JACKSON. Of course, for people for whom energy is a large section of what they spend, then——

Mr. GARDNER. The answer is yes, increased electricity prices impact poor more than——

Mr. STEARNS. The gentleman's time has expired.

Mr. GARDNER [continguing]. The rest of the population.

Mr. STEARNS. You are welcome to answer that.

Ms. JACKSON. Yes, it can if a greater portion of their disposable income is used for energy, then they can be hurt more, certainly.

Mr. STEARNS. We are now finished the first round. We are going to have another round. As you can see, there are fewer members so it will go quicker, and I will start with my questions.

A small businessperson came up to me and talked to me about the EPA rule called the mud rule. I am not sure you or anybody else knows about it. In the event of construction of a site, there is stormwater that washes off or may wash off. EPA has stipulated exactly how construction of the site including the layout of the mud has to be, and of course, this increases the cost of construction and creates liability, particularly in light of the fact that EPA says if you don't comply, it is $37,500 every day for every infraction. Don't you think those kind of penalties are deterring business operations and it is important with a struggling economy that you don't put that fear that you could have $37,000, almost $40,000-a-day fee for how you structure mud when you are doing construction for a stormwater washout that may or may not occur?

Ms. JACKSON. Sir, the majority of water pollution in this country is caused by stormwater runoff and so the Nation's Clean Water Act asked EPA to develop national standards. It is important to note a couple of things——

Mr. STEARNS. Do you know about the mud rule?

Ms. JACKSON. Well, I know that States implement stormwater rules——

Mr. STEARNS. I mean, if you don't—I would be surprised if you do know about it. Do you know about it?

Ms. JACKSON. Of course I know about stormwater regulations.

Mr. STEARNS. No, no, about the mud rule. Have you ever heard of it?

Ms. JACKSON. Well, he may call it the mud rule but——

Mr. STEARNS. But you think it is stormwater rule? OK.

Ms. JACKSON. Sure, because when you mix water with dirt, some people call that mud, I guess.

Mr. STEARNS. But in light of the fact you just said yourself here that we have had 40 years of impact of the clean air bill and it has worked pretty good, and yet you seem to be pretty strong on increasing more regulation even with your own admission that the Clean Air Act has been working for over 40 years. I mean, it is just—but I am trying to give you an example, a specific example where the stormwater act is really creating problems and scary for small people that are in construction.

Ms. JACKSON. Well, and the $37,000 or whatever figure he cited per day, sir, I would be happy to talk to him, but those are probably the statutory maximum penalties under the Clean Water Act, and I am not aware of any specific incident where that has been levied and certainly I am happy to look into your constituents' concerns.

Mr. STEARNS. How many employees do you have?

Ms. JACKSON. We have somewhere over 17,000. I think we may be as high as 18,000.

Mr. STEARNS. I think it is almost 18,000. And what is your yearly budget?

Ms. JACKSON. It depends on you, but I believe our budget this year is $8.4 billion or $8.5 billion.

Mr. STEARNS. In those 18,000 employees, do you do town meetings? Do you ever get around to see those 18,000 employees? I mean, do you have a strong feeling that those 18,000 people are needed? I mean, we just had an admission that the Clean Air Act is working, it has worked over 40 years. Do you think we need to continue to have 18,000 employees at the EPA?

Ms. JACKSON. I think we should operate as a——

Mr. STEARNS. Do you think you should have more?

Ms. JACKSON. No, sir, I am not advocating for more employees, and in fact, I am sure as you will see in budget discussions, EPA has been losing employees.

Mr. STEARNS. Would you agree that the EPA has a responsibility to communicate with the appropriate experts when assessing the impact of its rules? I think you would agree with that.

Ms. JACKSON. Yes, sir.

Mr. STEARNS. Would you agree that the Federal Energy Regulatory Commission, FERC, is the authority on electric reliability in the federal government? Would you agree with that?

Ms. JACKSON. I think that is a fair statement.

Mr. STEARNS. Do you believe that the EPA with respect to electric reliability has the same level of expertise, engineering skills and knowledge of electricity markets and systems as FERC staff?

Ms. JACKSON. No, but I do think we know our rules better than FERC staff, so it requires us to work together to look at——

Mr. STEARNS. So you don't think FERC knows the rules better than you do?

Ms. JACKSON. No, no, I said our rules. I think they know their rules and I think we know our rules and I think we have to work together to——

Mr. STEARNS. Well, what about with respect to electric reliability?

Ms. JACKSON. Well, that is their domain and so——

Mr. STEARNS. And so you would agree. I think we have a slide here. I think it is slide number 5. If you look at the estimates—do you have a copy there? She does. I think we just gave you a copy. Look at the estimates from FERC assessing the cumulative impacts of the EPA Power Sector Rules compared to EPA's analysis. Which should the public trust?

Ms. JACKSON. Well, sir, I am familiar with that particular FERC study and I know that the chairman has already testified that it is based on bad information. It looks at proposed rules that were

never adopted and it looks at worst-case scenarios that aren't accurate, so I don't think that it should look at this data as being as accurate as EPA's in this case.

Ms. DEGETTE. Mr. Chairman, where did this chart come from? It doesn't have an attribution.

Mr. STEARNS. Is there an attribution for the chart? I think it is FERC staff that gave us this.

Let me just, before I finish here, just make an observation. On this side of the aisle, the Democrats keep saying the Republicans don't care about clean air and clean water because we oppose some EPA regulations, but I have given you the mud rule, for example, where the Republicans do object to that. You know, but the President himself has come out against these proposed ozone rules, and could you say under that scenario what the Democrats are saying, just because the President came out against the ozone rules that the President is against clean air? Is the President against clean water? Of course not. Of course not. So I think it is hyperboloid for the Democrats here to indicate that the Republicans don't care about clean air.

But the question is, that the President and I think that the Republicans agree, is the continued fading in this country that EPA regulations are continuing to hurt this economy and costing us jobs and there has to be a balance, and I think the Republicans drink the same water, we breathe the same air as Democrats, and so does the President. We don't accuse him of the things that the Democrats are accusing us of, and frankly, the President recognizes as Republicans do that we need to throttle some of these regulations so we can get this economy going again, and with that, my time is expired.

Ms. JACKSON. Mr. Chairman, the President supports the mercury and air toxic standards and he supports the Cross-State Air Pollution Rule strongly.

Mr. STEARNS. Well, I understand, but this Ozone Rule that you wanted to propose, which he has asked you to stop, is an indication to me that he can't be—because of this, you can't accuse him of being against clean air or clean water is what my point is, and the Democrats are just saying because we are against some of these regulations including something like the mud rule that, you know—I mean, it just doesn't make sense.

With that, I recognize the gentlelady from Colorado.

Ms. DEGETTE. Sorry, Mr. Chairman, we are trying to figure out the genesis of these slides that you guys have been using today. We will keep working on that.

Mr. STEARNS. I think there is attribution in all of them.

Ms. DEGETTE. Well, no, there is not, but we will figure it out.

Mr. STEARNS. Well, most of them.

Ms. DEGETTE. I don't want to take my time to niggle about the slides.

I want to ask you, Ms. Jackson, my friend from northern Colorado was asking you about, do utility rates, if they go up, do they disproportionately affect the poor, and obviously that is true if they are paying a larger percent of their income. I wonder if you could talk very briefly about the effect of pollution on the health of poor

people. Does in particular particulate pollution but other types of pollution disproportionately affect the poor, and if so, why?

Ms. JACKSON. Well, you mean their budgets, of course, and so for the same reason for those who are poor who don't have as much money to spend on health care, on either prevention or dealing with the health effects of pollution—asthma, bronchitis, of course premature death. It has a huge toll in lives and in sickness and in missed days of work, missed days of school, missed opportunities to learn.

Ms. DEGETTE. But also, as you know, I represent a very urban district, and there are large pockets of poor people in my district and I see numerous studies over the year that indicate poor people are disproportionately affected by pollution because they live in areas that tend to have more factories. In fact, we have several Superfund sites in my district, neighborhoods that have been contaminated by factories, and the children have higher incidences of asthma and other kinds of illnesses because they are closer to industrial areas. Are you aware of those studies, Ms. Jackson?

Ms. JACKSON. I am, and I agree that they show that poor people are disproportionately impacted by pollution because of where they live and because of sources of pollution in their communities.

Ms. DEGETTE. Now, Mr. Gingrey had asked you—I have noticed a trend today of sort of the seminal question gets asked after the time has expired, thereby limiting your response to that question, and Mr. Gingrey asked you a question about the health effects of particulate pollution but then he didn't let you answer the question. So I want to ask you if you can tell us right now what your answer to that question is about the health effects of lowering the amount of particulates in the air?

Ms. JACKSON. Without a doubt, it is a fact. It has been proven by independent peer-reviewed science that particulate pollution kills. It causes premature death, and that has been—that is not EPA scientists, those are independent scientists. It is subject to peer review, which is the standard by which good science is judged and it is backed up by public health officials.

Ms. DEGETTE. Now, when your agency promulgates rules, do you make up the scientific studies to support those rules or do you rely in promulgating rules on independent scientific analyses?

Ms. JACKSON. We rely on independent, peer-reviewed, often re-reviewed scientific analysis.

Ms. DEGETTE. And in my initial set of questions, I think I asked you, you also do make a cost-benefit analysis, correct?

Ms. JACKSON. That is right. All of our rules go with information on costs and benefits, and we are very proud of the fact that under this administration, we also do jobs analysis.

Ms. DEGETTE. Now, the rules that you have promulgated, do the cost-benefit analyses seem to indicate that a large number, many more jobs would be lost than the health benefits to Americans?

Ms. JACKSON. No. In fact, the job losses when they occur or estimated in these rules are minimal, and in some cases, for example, the mercury rule, the proposal, there was a 31,000 short-term construction job estimate and a 9,000 net long-term utility job increases, so those are actual job increases.

Ms. DEGETTE. Now, when you do these cost-benefit analyses, do you also account for the number of jobs that would be created in the industries that develop and manufacture the technologies to comply with the rules or are those just additional jobs that come outside of that cost-benefit analysis?

Ms. JACKSON. No. When we do the jobs analysis, we look at that, but in the benefits analysis, I don't believe we look at jobs benefits. We look at public health benefits in our benefits. I will double-check that.

Ms. DEGETTE. That would be helpful.

One last question. Mr. Bilbray seemed to imply that because unemployment is high in California right now, it is because of the environmental standards that were enacted by the State of California some 20 or 30 years ago. Has the EPA seen any connection to current unemployment in California to the California environmental standards?

Ms. JACKSON. I am unaware of any—I am not aware of any economic study or any economist who is trying to link the current unemployment status in California or anywhere in this country to EPA regulatory action.

Ms. DEGETTE. Thank you very much.

Mr. STEARNS. The gentlelady's time has expired.

The gentleman from Texas, Mr. Barton, is recognized for 5 minutes.

Mr. BARTON. Thank you, and thank Madam Administrator for still being here. We appreciate that.

I want to rephrase a question that I asked you in the first round. In your opinion, is it better to have a plant in compliance with existing regulations continue to operate or to shut that plant down because it cannot comply because of the cost of a proposed regulation?

Ms. JACKSON. In my opinion, that is rarely a choice that needs to be made either with time or through a market-based mechanism.

Mr. BARTON. Well, answer the question. Which is better? Because that is the question that hundreds, if not thousands, of individuals in the private sector are going to be deciding in the coming years if all these proposed EPA regulations go into effect.

Ms. JACKSON. Well, our job analysis doesn't show that, sir. I mean, that——

Mr. BARTON. Well, in my home State of Texas just last week, one company, one company announced the closure of two lignite coalmines and probably two coal-fired power plants in or near my Congressional district just last week.

Ms. JACKSON. I realize that and I realize what the company said, and I know the company is Luminant and, you know, I would quote the headline from the Houston Chronicle which says "Don't blame EPA over Luminant woes." Luminant has financial issues that date back far beyond the EPA public health standards.

Mr. BARTON. That is the $64 question, Madam Administrator. Is there any evidence of any criteria pollutant that is currently regulated by the Clean Air Act that is increasing in frequency in the United States?

Ms. JACKSON. Is there any—could you—I am sorry. Could you repeat it?

Mr. BARTON. Is there any evidence, monitored data evidence, of any criteria pollutant under the Clean Air Act that is increasing in density, in other words, that the air is getting dirtier anywhere in the United States?

Ms. JACKSON. No, but there are——

Mr. BARTON. No.

Ms. JACKSON [continuing]. Places where——

Mr. BARTON. No.

Ms. JACKSON [continuing]. There is nonattainment with criteria pollutant standards in the United States, Houston being a great example, Dallas another one, sir.

Mr. BARTON. In both of those cases, if the EPA had not strengthened the ozone standard in the last several years, those would be in compliance, and in any event, they are coming into compliance. So, you know, this Republican initiative in this Congress is not to roll back regulation. We are not lowering standards. We are not reducing standards. We are basically saying let us take a timeout until the economy can regain its footing, and that is what the President acknowledged when he pulled back on the ozone standard that you had announced. On that standard, Madam Administrator, did you support the President's decision to pull it back or did you oppose it?

Ms. JACKSON. I respected the decision when he made it, and we are implementing——

Mr. BARTON. I know that, but before it was made, you had some input into his decision. Did you support him rolling it back or did you oppose him rolling it back?

Ms. JACKSON. That is not the accurate question.

Mr. BARTON. It is the question I am asking.

Ms. JACKSON. I recommended something differently. He made a decision. I respect his decision.

Mr. BARTON. So you opposed his decision?

Ms. JACKSON. No, no, no. That is not right. I am implementing the decision the President made.

Mr. BARTON. I understand that. Your job is to implement——

Ms. JACKSON. I made a different recommendation. That is no secret. But I am implementing it.

Mr. BARTON. What was your recommendation?

Ms. JACKSON. I recommended a level lower than the current level of 75, sir, and it was——

Mr. BARTON. I am sorry?

Ms. JACKSON. It was 70.

Mr. BARTON. You recommended a different level?

Ms. JACKSON. That is right, sir.

Mr. BARTON. Now, I want to comment on something that Chairman Waxman said about the amendment, the Whitfield amendment. We have a requirement in that that as regulations are proposed, they use monitored data when available. Why would you oppose using monitored data when it is available as opposed to modeled data, which is not based on the real world?

Ms. JACKSON. It is not whether I oppose it if it is available. It is saying only monitoring data. In that case, you set a standard for rulemaking——

Mr. BARTON. Well, you have——

Ms. JACKSON. Let me just answer the question, Mr. Barton. That is impossible to meet and so you would forego all the health benefits——

Mr. BARTON. That is not true.

Ms. JACKSON [continuing]. For the eastern third of the country. You would indeed.

Mr. BARTON. There is not a power plant——

Ms. JACKSON. It is my expert belief——

Mr. BARTON [continuing]. Or a chemical plant——

Ms. JACKSON [continuing]. As head of the EPA is that you——

Mr. BARTON [continuing]. In this country that——

Ms. JACKSON [continuing]. Would not have a cross-state rule.

Mr. BARTON [continuing]. Isn't monitored 24/7.

Ms. JACKSON. Yes, but to determine whether or not the sulfur dioxide emissions coming from plants in Texas are affecting Illinois or affecting Louisiana, we do modeling, and that modeling is reviewed——

Mr. BARTON. That is not what the amendment says. You can use a model but you input monitored data. You input real data into the model. You don't use modeled data. That is what we are trying to get at. And in the case of this Cross-State Air Pollution Rule for Texas, it is the EPA modeled data, not the monitored data in the State of Texas or in Illinois or Michigan. The monitored data says they are in compliance. The EPA modeled data says in two cases they may not be.

Ms. JACKSON. The modeled data show that the transport from the plants in Texas are affecting and causing, will cause noncompliance downwind. Air blows across the country from west to east and the emissions in Texas, the second highest source of SO2 in the country——

Mr. BARTON. And most of the time——

Ms. JACKSON [continuing]. Affect places other than Texas.

Mr. BARTON. Most of the time in Texas, the prevailing winds are from the north to the south, Madam Administrator, not from the south to the north.

Ms. JACKSON. OK. Then you take my home area of New Orleans. I mean, yes, but it does blow. The wind blows pollution across and around the country.

Mr. BARTON. My time is expired.

Mr. STEARNS. I thank the gentleman.

The gentlelady from Illinois, Ms. Schakowsky, is recognized for 5 minutes.

Ms. SCHAKOWSKY. I wanted first to correct what I think was implicit, Mr. Chairman, in what you were saying, that somehow FERC opposed the rules that are affecting power plants, and I just want to quote some of the testimony at a September 14th hearing of our Energy and Commerce Committee. The experts did set the record straight. The Federal Energy Regulatory Commission chairman, Jon Wellinghoff, told the committee: "We do not need to stop these rules from going forward. I think these rules are appropriate.

These rules in fact do what needs to be done in this country." And FERC Commissioner John Norris testified: "I believe that the EPA has adequately addressed reliability concerns and its statutory obligations with the rules established to date and I have no reason to believe that it cannot continue to so as it finalizes proposed rules." We had former DOE Assistant Secretary for Policy saying there is no reason to delay the implementation of the Clean Air Transport Rule or Utility Toxics Rule. So we had actually heard testimony that I think counters the implication that you were making.

But here is what I want to ask you, Madam Administrator. You identified 35 regulations that will be subject to a near-term review process designed to streamline and update the rules administered by the EPA. Is that right?

Ms. JACKSON. That is right.

Ms. SCHAKOWSKY. And I am wondering if you might be able to highlight a few of the rules that you intend to update.

Ms. JACKSON. We have 16 short-term reviews that we are taking work on this calendar year, 2011. Those include equipment leak detection and repair rules to reduce the burden; that suggestion came from API, the American Petroleum Institute; increasing regulatory certainty for farmers, that is working with USDA and States; electronic reporting, which I believe came in from the regulated sector under a variety of statutes, vehicle regulations, harmonizing requirements and the list goes on. I could certainly submit it.

Ms. SCHAKOWSKY. And actually, I would like to make sure that part of the record does include, Mr. Chairman, a list of the 35 regulations that will be subject to near-term review.

Mr. STEARNS. Does the gentlelady have a copy of those?

Ms. SCHAKOWSKY. Can we get those?

Ms. JACKSON. I can certainly—can I just keep them until the hearing is over and give them to you?

Mr. STEARNS. Sure. You can certainly send them in to us.

[The information appears at the conclusion of the hearing.]

Ms. SCHAKOWSKY. So I guess the point I wanted to make is that regulatory efficiency and effectiveness is a part of your agency's processes, always has been, if I am right, a part of your processes. Is that correct?

Ms. JACKSON. It has been, but we are also complying with the President's order to do a retrospective look back and that will be done every 5 years.

Ms. SCHAKOWSKY. So can you discuss how that retrospective makes the regulatory process more efficient?

Ms. JACKSON. Well, as the President said, regulations are on the books and it makes good sense for agencies to constantly be scrubbing through them to ensure that as technology changes, as we moved into a computer age, for example, or as a great example, cars that now have secondary vapor recovery on their gas tank, having it on the actual pump, it just becomes redundant. So there is clearly opportunities which we found in our 20 public meetings and two public comment periods for places to make our rules more efficient and less burdensome.

Ms. SCHAKOWSKY. So there was some question about whether industry has that kind of input, and you actually went out and solicited that not just in the comment periods but beforehand?

Ms. JACKSON. Yes, we had 20 different meetings around the country to solicit input. We also had a Web site that went up very early on and we had two public comment periods.

Ms. SCHAKOWSKY. I also just wanted to point out that in your testimony, you report that agency reforms proposed or finalized prior to the President's Executive Order are going to save $1.5 billion over the next 5 years. So I want to congratulate you on an impressive record, and again, any implication that the EPA is looking just to maintain in place or even propose regulations that are redundant and any way not necessary to your mission is just not true. Thank you very much.

Mr. STEARNS. The gentlelady's time has expired.

The gentleman from Texas, Dr. Burgess, is recognized for 5 minutes.

Mr. BURGESS. Thank you, Mr. Chairman, and again, Administrator Jackson, let me thank you for your indulging us a second round of questions today.

You may be familiar that members of the Texas delegation on a bipartisan basis on this committee met with Mr. Sunstein of Office of Management and Budget right before the August recess concerning the Cross-State Air Pollution Rule and the seeming insensitivity to the problems that are going to exist in our State, so have you communicated with Mr. Sunstein in the Office of Management and Budget about these regulations and the burden that they impose?

Ms. JACKSON. I am aware that the meeting happened and I believe we had staff from the relevant program at the meeting.

Mr. BURGESS. And so what should members of the Texas delegation expect as a result of your discussions with Mr. Sunstein?

Ms. JACKSON. Well, we have also, not me personally but my deputy met with, I believe, members of the delegation, I believe that is right, last week but I know he also met with TCQ, ERCOT. We have several meetings, I have been in two, with Luminant itself, and we also of course have companies like NRG in Texas who say they can comply. So we are in discussions with a number of entities in Texas on that——

Mr. BURGESS. Will you provide us, the committee staff, with the minutes and memos and emails concerning those meetings between yourself and the Office of Management and Budget?

Ms. JACKSON. I didn't say I had—personal meeting? I did not have any, but is there anything with my staff, absolutely.

Mr. BURGESS. But your staff has, the agency has, and can we have the access to that information, the committee staff here?

Ms. JACKSON. I believe so, as long as it exists, we can get it to you.

Mr. BURGESS. Let me—you testified in response to an earlier question about, I think Mr. Stearns asked you about——

Ms. JACKSON. Oh, and to be clear, you mean minutes of the meeting with the Texas delegation?

Mr. BURGESS. No, minutes of meetings or communications between——

Ms. JACKSON. Oh, between us and the White House? That I am not sure we can provide, but we can certainly look and see. If we get a request——

Mr. BURGESS. I mean, it seems that if the White House is serious about regulatory reform, this is something where all parties should be anxious to work together, and it shouldn't be this adversarial relationship to try to get a problem solved. So people ask us to work together. I am asking you if we can work together to get this information so we can see how to solve a problem that is going to exist in my State. We were faced with several afternoons of possible blackouts last month. I don't want us to face real blackouts next summer because of the closure of coal-fired power plants to comply with the Cross-State Air Pollution Rule. Does that seem unreasonable?

Ms. JACKSON. No, not at all, sir.

Mr. BURGESS. Very well.

Ms. JACKSON. But I cannot promise you documents that may exist that are White House documents. They may be privileged. We can get you information regarding meetings we have had with delegation, ERCOT, TCQ and the company to the extent they are not privileged because we are in negotiations with them.

Mr. BURGESS. I would appreciate that. Of course, the White House should be anxious be they are the ones who issued the rules for regulatory relief earlier this year. So it seems like they should be anxious to work with us.

Now, you testified in answer to Chairman Stearns' question about the number of employees at EPA, and I believe the number is somewhere between 17,000 and 18,000. Can you tell us how many employees have been hired under Title 42 provisions?

Ms. JACKSON. I don't have the number directly with me but we will get it to you. I think we already have gotten it to you before, so——

Mr. BURGESS. Will you provide us that information? Actually, the information was provided to a member of the National Treasury Union in response to a Freedom of Information Act request.

The follow-up question to that is, can you provide us with a forward-looking statement as to how many Title 42 employees you are going to require in the future? How many do you anticipate having to hire within the next fiscal year?

Ms. JACKSON. Well, some of that will depend on, you know, when people decide to leave, which we can't know until they make those announcements. But from a general standpoint, Title 42, which allows us to pay certain rates to very highly qualified scientists, is very closely controlled in our agency and it goes through a process of approval to ensure that we are justified.

Mr. BURGESS. And we as the Oversight Committee would like to ensure that those rules are being—that their compliance is in existence, and some of the job descriptions or job titles don't suggest that they are highly qualified scientists. They may be, forgive me, but relatively run-of-the-mill scientists. So if we are paying top dollar for biologists in this employment environment, maybe we ought to have an additional look at that.

Mr. Chairman, I am going to ask, I have a couple of unanimous consent requests. The first is to have the letter from the Southwest Power Pool to Administrator Jackson made part of the record.

Ms. DEGETTE. Mr. Chairman, perhaps Mr. Burgess could provide us with copies of those letters to review? And so pending that, I will reserve my right to object.

Mr. BURGESS. Very well. And also, the letter to a member of the National Treasury Employee Union, Chapter 280, from the Environmental Protection Agency about the Title 42 question. I would also like to have that made——

Ms. DEGETTE. Once again, I will reserve the right to object.

Mr. BURGESS. —part of the record. Thank you, Mr. Chairman. I will reserve the right to submit additional questions in writing, and I will yield back the balance of my time.

Mr. STEARNS. The gentleman yields back. Time is expired.

The gentleman from Virginia, Mr. Griffith, is recognized for 5 minutes.

Mr. GRIFFITH. Thank you, Mr. Chairman.

Administrator Jackson, aren't you concerned that the EPA rule published on March 21, 2011, that defines secondary materials that are solid waste rather than fuels when burned is going to create a disincentive to burn alternative fuels in boilers or cement kilns?

Ms. JACKSON. I have had discussions with my staff about potential unintended consequences with that rule, and we are discussing it as recently as this week.

Mr. GRIFFITH. And so you would agree that it is probably not the best environmental result to suddenly throw lots of landfill material like tires and tons of biomass that could have been used at paper mills into the solid waste-system or into the landfills?

Ms. JACKSON. Sir, we are still discussing it. I would agree that we need to be careful that there are no unintended consequences like those you may be describing, but I also want to make sure that air pollution—that air quality is protected.

Mr. GRIFFITH. Yes, ma'am. And let me stretch out a little bit and let me ask you this. Did the Solyndra plant in California have to comply with any EPA regulations that you are aware of?

Ms. JACKSON. Sir, I am happy to look but I don't know off the top of my head.

Mr. GRIFFITH. If you would look at that and also look to see if there are any delayed implementations or modifications of any EPA regulations, I would appreciate that, if you would.

Ms. JACKSON. I am happy to get that information for you.

[The information appears at the conclusion of the hearing.]

Mr. GRIFFITH. And along those lines, were you involved in any of the discussions at the White House or the DOE in regard to Solyndra prior to 2011?

Ms. JACKSON. None, sir.

Mr. GRIFFITH. All right. I appreciate that. And I am just wondering if you had an opportunity to see the Commerce Department's analysis in regard to some of the EPA rules and regulations because while it is not available to the public, apparently there is a Commerce Department analysis that is being circulated that would indicate, particularly in regard to boiler MACT, that job losses could be between 40,000 and 60,000. Have you seen that document?

Ms. JACKSON. I have seen references to unfounded studies but I can tell you, our range is 6,500 jobs created to 3,000 jobs lost.

Mr. GRIFFITH. And most of the jobs if there is creation of jobs are going to be jobs in retrofitting the boilers. They are not going to be new manufacturing jobs. Isn't that correct?

Ms. JACKSON. Well, there are boilermakers, but there could be manufacturing of the pollution control equipment, baghouses, scrubbers. I actually met yesterday with a company that is building a factory. They make baghouses, and that is one of the technologies that would be put in place. They are hiring thousands of people I think in North Carolina.

Mr. GRIFFITH. And did I gather from your answer earlier that you all are still working on the situation with the definition of materials that are solid wastes in regard to boiler MACT and incinerators?

Ms. JACKSON. I have nothing to tell you today but you asked whether I had concern, and we are still continuing those discussions.

Mr. GRIFFITH. OK. And have you all acquired all the relevant data that you need to make those decisions?

Ms. JACKSON. If you have any, we are happy to take it, sir, especially from you, but I believe the staff have lots of data from the industry and have heard their concerns.

Mr. GRIFFITH. All right. I appreciate that and yield back my time, Mr. Chairman.

Mr. STEARNS. All right. The gentleman yields back the balance of his time.

I think we have finished. We just have some concluding remarks by the ranking member and myself, but we have a number of documents that we want to put in the record by unanimous consent. I will allow the gentlelady from Colorado to indicate which ones she has approved, and we will put them in by unanimous consent.

Ms. DEGETTE. Thank you, Mr. Chairman. Just to make a record, we have got the documents that Mr. Burgess had just referred to. One of them is a letter dated September 20, 2011, from the Southwest Power Pool. The other one is a document, Title 42 hiring practices at the U.S. EPA, that was apparently produced as the result of a FOIA request. So we won't object to those documents. There is a letter from the Louisiana Department of Agriculture and Forestry dated August 11, 2001, that Mr. Scalise had requested, and we don't object to that. There is, it looks like a page from the DOE Web site about mercury emission control R&D. We don't object to that.

Then we have what appear to be three portions of EPA documents. We have got a cover sheet on each one, and then we have got portions of the documents. I must say that I was tempted to object to these on the basis that they are just incomplete, they are just portions of it, but as long as it is with the caveat that we all understand that they are just select portions of these documents, I won't object to those.

And then finally, we have a little packet that was given to me and they are kind of different things, so I am going to reference each one. The first one is a chart. It says "Figure 6–14, Percent of Total PM-Related Mortalities Avoided by Baseline Air Quality Level." This appears to be one slide——

Mr. STEARNS. Is it possible you could approve these without——

Ms. DEGETTE. No, sir.

Mr. STEARNS [continuing]. Giving your interpretation of each one?

Mr. DEGETTE. No, I want to give a record as to what they are because some of them are subjective——

Mr. STEARNS. I mean, just list them, but you are now giving your interpretation of each one.

Ms. DEGETTE. Well, in that case, I will just object to having it put in the record.

Mr. STEARNS. Well, I don't see why you would object. These are all——

Mr. DEGETTE. Because I will tell you why, because they are from different places and I don't want people to give an inaccurate view of where they are from. The first document is one slide from a larger document on the EPA. The second page of that is a graph that was prepared by the majority committee staff. The third and fourth pages of this document are just charts or just quotes taken out of other documents prepared by the majority committee staff, and the final page 5 of that document is apparently a chart that was provided to the committee by FERC. So they are all from different sources. I just want to make that record, and with that caveat, I won't object to those, to that document.

And then I have got a couple of documents as well. There is the document August 2011 by the U.S. Environmental Protection Agency, "Improving Our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations." This contains all of the different regulations that someone had asked the Administrator to provide to this committee, so I would ask unanimous consent that that be placed in the record.

Mr. STEARNS. By unanimous consent, all the documents you have mentioned will be placed into the record.

[The information follows:]

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

September 20, 2011

Administrator Lisa P. Jackson
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Re: SPP's Review of the EPA's IPM Analysis of the Cross-State Air Pollution Rule, Docket ID No. EPA-HQ-OAR-2009-0491

Dear Ms. Jackson:

Southwest Power Pool, Inc. (SPP), in its capacity as a Federal Energy Regulatory Commission (FERC) approved Regional Transmission Organization (RTO) and a Regional Entity, is concerned that the Environmental Protection Agency (EPA) finalized the Cross-State Air Pollution Rule (CSAPR) without adequately assessing the reliability impacts of the CSAPR on the SPP region. SPP originally expressed concern with the reliability impacts of proposed regulations[1] in its July 19, 2011 comment letter to the EPA.

As required by the Energy Policy Act of 2005, FERC has approved mandatory and enforceable reliability standards promulgated by NERC with which the industry must comply. These standards were developed through a well vetted industry process identifying key requirements to ensure the bulk electric system meets an adequate level of reliability. Failure to comply with these standards can affect the ability of the power grid to operate reliably as well subject SPP and its members to financial penalties. These standards require that SPP's Transmission Planners ensure that transmission lines are not overloaded and that voltage is maintained within certain prescribed limits in the event of the failure of a single element in the system. Additionally, the standards require that Transmission Operators operate in real-time within certain limits. In order to meet the demands of the system there needs to be an adequate balance of generation and transmission availability both in the short and long term. The timing of the CSAPR regulations does not provide the SPP region with enough time to ensure that adequate balance.

Our reliability modeling[2] indicates that the CSAPR Integrated Planning Model 4.1 (IPM) results, as depicted by the EPA, are likely to cause SPP to be out of compliance with the applicable NERC standards as early as 2012. SPP's planning models identified 5.4 GW from the 48 generation units identified by the EPA with zero fuel burn in 2012 that would have been dispatched during the 2012

[1] On July 19, 2011, Nicholas A. Brown, SPP President and CEO, submitted comments to the EPA in Docket ID Nos. EPA-HQ-OW-2008-0667, EPA-HQ-OAR-2009-0234, and EPA-HQ-OAR-2011-0044, additionally providing SPP's preliminary assessment of the potential reliability impacts of proposed EPA regulations impacting generation in the SPP footprint.

[2] SPP removed all generation units in its models that consumed zero fuel in the EPA models. No other SPP model adjustments were made.

Summer Peak conditions. Our analysis revealed 220 overloads in excess of the required, 100% of emergency ratings under contingencies, and 1047 circumstances at various locations on the transmission system where voltage was below the prescribed lower limit of 90% of nominal rating. The statistics in this analysis must be viewed as being indicative, not definitive, results and are probably very conservative compared to what would be experienced in the real world should the modeled system conditions exist. An even clearer representation of reliability violations can be found by applying higher operability limits of 120% to the overloads. There were 16 such overloads on the system. Using a similar out of normal range there were 93 circumstances where voltage dropped below 85% of nominal. These "clear-cut" examples of standards violations represent the well founded concerns regarding the timeline with which the CSAPR would be instituted.

Additionally, 30 contingency scenarios did not solve, which is indicative of extreme system constraints, including the potential of cascading blackouts similar to what occurred in 2003 or which could require the shedding of firm load (that is, localized rolling black-outs initiated by utilities within the SPP region) to avoid more widespread and uncontrolled blackouts and to remain in compliance with reliability standards. Some of the contingencies could be resolved with other short-term transmission and/or resource solutions, but several could not. In those cases, SPP would be in clear violation of mandatory reliability standards and subject to penalty from FERC. However, SPP cannot be compliant with NERC's planning standards without placing its generation owners in violation of EPA standards when the unutilized units in the IPM are unavailable to SPP. Further exacerbating this situation, SPP's analysis also revealed that generation production from "small units"[3] increased from 13 to 57 units deployed. Some of these units are likely subject to the reciprocating internal combustion engines (RICE) regulations, which were not evaluated as part of this reliability study. If we look beyond the summer peak hour studied, the unavailability of approximately 11 GWs[4] of total capacity from the EPA model in SPP's footprint would likely result in additional localized reliability issues.

The result of SPP's reliability assessment of the EPA's CSAPR IPM generation dispatch indicates serious, negative implications to the reliable operation of the electric grid in the SPP region raising the possibility of rolling blackouts or cascading outages that would likely have significant impacts on human health, public safety and commercial activity within SPP. These regulations further compound the reliability impacts addressed by SPP in its July 19, 2011 comment letter, which focused on the MACT regulations to be enacted in 2014/15. The time period between finalization of the CSAPR and its effective date is too short to allow SPP and its members/registered entities to appreciate the effects of the rule and to take actions to ensure reliability.

SPP supports a more flexible approach to meeting the emission requirements under the CSAPR, as stated in a joint letter from the New York Independent System Operator, Midwest Independent System Operator, PJM Regional Transmission Organization, the Electric Reliability Council of Texas, and SPP to the EPA in August. The EPA must provide time to allow the industry to plan an approach to comply with its rules in a reliable and reasonable fashion. As it stands now, SPP and its members may be placed in the untenable position of deciding which agency's rules to violate, FERC or EPA. Putting an

[3] "Small units" denotes those units generating 25 megawatts or less per unit.

[4] Although the EPA model had additional units and capacity with zero fuel burn in 2012 (10.7 - 10.9 GW in total depending on the source of the Pmax), many of these units which were not dispatched in our 2012summer model will be needed during off-peak load periods to accommodate outages and to maintain system reliability.

industry with critical infrastructure in the position of choosing which agency's rules to violate is bad public policy. SPP suggests that the EPA delay CSAPR's effective date at least a year to allow for investigating, planning, and developing solutions to assist our members in maintaining grid reliability and compliance with both its current regulatory bodies and all of the EPA regulations that impact the electric industry.

Your prompt attention to this matter is greatly appreciated. Please do not hesitate to contact me if you have any questions or would like to discuss this matter further.

Respectfully submitted,

Nicholas A. Brown
President & CEO
Southwest Power Pool, Inc.
(501) 614-3213 • Fax: (501) 664-9553 • nbrown@spp.org

John Meyer
Chairman and Trustee
Southwest Power Pool Regional Entity

David Christiano
Trustee
Southwest Power Pool Regional Entity

Gerry Burrows
Trustee
Southwest Power Pool Regional Entity

cc: SPP Board of Directors
SPP Regional State Committee
SPP Strategic Planning Committee
State Regulators in Arkansas, Kansas, Louisiana, Missouri, Mississippi, Nebraska, New Mexico, Oklahoma, and Texas

Congressional Delegations of Arkansas, Kansas, Louisiana, Missouri, Mississippi, Nebraska, New Mexico, Oklahoma, and Texas
Governors of Arkansas, Kansas, Louisiana, Missouri, Mississippi, Nebraska, New Mexico, Oklahoma, and Texas
North American Electric Reliability Corporation
President Barack Obama
Secretary of Energy Dr. Steven Chu
Federal Energy Regulatory Commission

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Research Triangle Park, NC 27711

JUN 16 2011

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

Mr. Amer Al-Mudallal
National Treasury Employee Union Chapter 280
1200 Pennsylvania Avenue, N.W., Suite 3376 (EPA East)
Mail Code: UN200-T
Washington, D.C. 20004

RE: HQ-FOI-01433-11

Dear Mr. Al-Mudallal:

This letter is in response to your Freedom of Information Act (FOIA) request for information regarding Title 42 positions currently with the Environmental Protection Agency (EPA). Specifically, you asked:

1. How many Title 42 positions are currently employed by the EPA?
2. What are their names, titles, and offices?
3. What is the salary range for each of these Title 42 positions?
4. How many of these Title 42 positions are non-US citizens?

Please find enclosed the records responsive to your request.

If you have any questions regarding this letter, please contact Arron Helm, Deputy Director, Human Resources Management Division, at 919-541-4252.

Sincerely,

Mark McPherson
Chief of Staff
Office of Administration and Resources Management

cc: FOIA Officer

Enclosure

**Title 42 Hires with Titles and Salary Range – 06/13/11**

| Fiscal Year | Name | Lab/ Center | Title | Salary Range |
|---|---|---|---|---|
| 2006 | Richard Judson | NCCT | Research Chemist (Bioinformatics) | $118,957 - $200,000 |
| | Imran Shah | NCCT | Research Physicist (Computational Systems Biology) | $118,957- $200,000 |
| | Stephen Edwards | NHEERL | Research Biologist (Systems Biology) | $118,957- $200,000 |
| 2007 | Nicholas Ashbolt<br><br>(Australian citizen employed via visa) | NERL | Research Microbiologist | $118,957 - $200,000 |
| | Thomas Knudsen | NCCT | Research Biologist (Developmental Systems Biology) | $118,957- $200,000 |
| | David Diaz Sanchez | NHEERL | Supervisory Research Biologist | $140,556- $200,000 |
| | Robert Kavlock | NCCT | Supervisory Research Biologist | $140,556- $200,000 |
| 2008 | S. Trivikrama Rao | NERL | Supervisory Physical Scientist | $144,868- $200,000 |
| | Linda Sheldon | NERL | Physical Scientist | $144,868- $200,000 |
| | John Vandenberg | NCEA | Supervisory Research Biologist | $144,868- $200,000 |

| | | | | |
|---|---|---|---|---|
| 2009 | Albert Venosa | NRMRL | Supervisory Physical Scientist | $146,047- $200,000 |
| 2010 | John Leazer | NRMRL | Supervisory Chemist | $150,930- $200,000 |
| 2011 | Wayne Cascio | NHEERL | Supervisory Health Scientist | $149,782- $200,000 |
| | Charlene McQueen | NHEERL | Supervisory Research Biologist | $149,782- $200,000 |
| | John Rogers | NHEERL | Supervisory Biologist | $149,782- $200,000 |
| | Roy Sidle | NERL | Supervisory Physical Scientist | $145,290- $200,000 |
| | Jay Garland | NERL | Supervisory Biologist | $150,930- $200,000 |

Total Current Title 42 Hires = 17

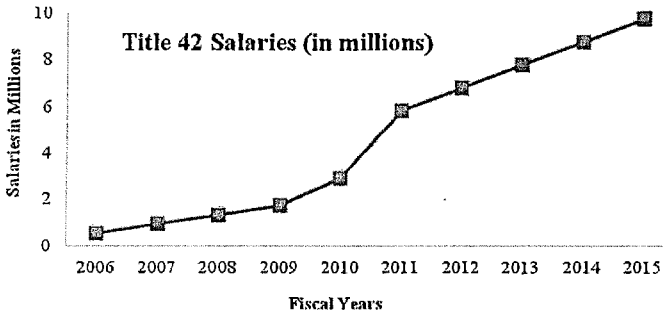
Total Non-Citizen Title 42 Hires = 1

# TITLE 42 HIRING PRACTICES AT THE US EPA

Title 42 of the United States Code (USC) Section 209 (f) – (h) gives statutory authority to the Public Health Service and the Surgeon General to hire consultants, scientists, and engineers at much higher pay than allowed under Title 5.

In a single sentence under an administrative provision of Public Law 109-54 the Environmental Protection Agency's Office of Research and Development was first granted the authority to make up to 5 appointments per year using 42 USC Sec 209, even though this statute does not cover EPA. Funding for this provision was extended through fiscal year 2015 when the Department of the Interior, Environment, and Related Agencies Appropriations Act of 2010 (H.R. 2996) was passed by the House. Currently, about fifteen appointments have been made. Currently there are a number of additional Title 42 recruitments being made by the Agency.

Representatives Joe Barton (R-Texas) and Greg Walden (R-Oregon) have previously questioned the Agency's use of the Title 42 hiring authority. Asks Barton of EPA Administrator Lisa Jackson, "We are curious how EPA can legally use statutory authority explicitly committed to the Public Health Service and the Surgeon General, particularly the special consultant authority in 209(f)." Representative Barton also expressed concern about the large retention bonuses paid to Title 42 employees, the millions in taxpayer dollars needed to pay Title 42 salaries, the extensive use of this hiring authority within HHS, and the spread of this hiring authority to other agencies. EPA's efforts to access and model the HHS Title 42 hiring authority should raise alarms, it only took HHS 10 years to make over 2000 Title 42 hires. EPA is just now beginning the fifth year of hiring.




Assuming a salary of $195,000, the chart below shows how much EPA is expecting to spend for Title 42 hires. With salary compensation limited to $250,000 per year and not to exceed $275,000 in total compensation including bonuses, using the $195,000 salary as an average is a

conservative estimate. Beginning in FY2012, the Office of Research Development will be obligated to spend nearly $7 million dollars for a handful of highly paid scientists.

AFGE Council 238 is encouraged by the efforts of Representativcs Barton and Walden. We have repeatedly expressed concerns about the agency using Title 42 authority to circumvent civil service hiring laws. Congress passed civil service hiring laws to ensure fair and equal treatment of all applicants for federal government positions. Title 42 specifically exempts ORD from using fair and open competition to fill their management positions. Title 42 also allows for a number of questionable hiring/employment practices such as the hiring of foreign nationals, creating an alternative pay system that has little public accountability, large bonuses, direct hiring without competition, and pay increases not limited by Congressional or Executive pay freezes.

Also of note, since the Agency's formation, a comprehensive study has not been completed to analyze the Agency's mission and the related number and location of employees. A complete and thorough workload analysis, followed by a workforce analysis would provide the necessary information to properly determine FTE levels for the Agency and link them to the budgct. In its most recent report, the U.S. Government Accountability Office ("GAO") reported on the continuing failure of EPA to implement workload and workforce analysis planning. Without current or reliable workforce information, EPA cannot be sure which hires are critical to achieving the agency mission. A 2010 ORD Climate Survey showed that the greatest need was in administrative support. In light of the current budget shortfalls at EPA and no agency wide direction in hiring, AFGE Council 238 recommends defunding Title 42 at EPA.

**Contact Information:** Silvia Saracco, President; AFGE Local 3347; phone: 919-541-1582.

**References:**

1. **EPA page on Title 42 hiring.**
   **http://www.epa.gov/nrmrl/jobs/title42.html**
2. **EPA Title 42 Operating Manual.**
   **http://www.epa.gov/nrmrl/jobs/pdfs/title_42_ops_manual.pdf**
3. **SAB review of Title 42 Authority at the EPA**
   **http://www.nap.edu/openbook.php?record_id=12901&page=1**

LOUISIANA DEPARTMENT OF AGRICULTURE & FORESTRY
MIKE STRAIN DVM
COMMISSIONER

August 11, 2011

Mr. Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response (OSWER)
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Mail Code: 5101T
Washington, DC 20460

Dear Mr. Stanislaus:

The Louisiana Department of Agriculture and Forestry respectfully requests an extension of the November 10, 2011 deadline for on-farm implementation of the Oil Spill Prevention, Control and Countermeasures Program (SPCC). Furthermore, I request that you reconsider implementing these measures as they will cause severe economic hardships to Louisiana farmers who have already suffered tremendous losses from both flooding as well as drought.

Agriculture is the largest sector of our state's economy. Agriculture, forestry and aquaculture comprise over 85 percent of the surface area of this state, 9.7 percent of our work force, and over 243,000 jobs. Valued at more than $30 billion, agriculture and forestry combined make up one of Louisiana's largest and most economically dependent industries. If Louisiana is forced to comply with these actions, we are certain that many in Louisiana's agriculture community cannot meet these standards without the implementation of costly engineering plans.

Louisiana agriculture and forestry has been very proactive in addressing environmental concerns. Scientifically based best management practices (BMPs) have been developed and recommendations to address on-farm fuel storage are a major component. These practices are being implemented through the Louisiana Master Farmer Program. These practices are targeted at reducing the generation and delivery of pollutants into the air and waters of the state. Our Louisiana Master Farmer Program is firmly rooted in state law, is backed by sound science and is a critical component of Louisiana's overall water resource management programs.

Additionally, extreme losses have been incurred by our farmers and ranchers subsequent to this year's droughts and excessive rains. In Louisiana, since last year, our farmers and ranchers have lost over $300 million dollars in production. These losses follow only one year after our state incurred over $1 billion in losses due to tropical storm Faye, and Hurricanes Gustav and Ike. The disaster conditions severely impacted planting schedules and already limited farm budgets, and our farmers were not in a financial position to implement the SPCC plans.

Post Office Box 631, 5825 Florida Blvd., Baton Rouge, Louisiana 70821-0631 Telephone: (225) 922-1234 Fax: (225) 922-1253 www.ldaf.la.gov

Due to the extraordinary nature of the effects of natural disasters on our state's agriculture producers, we respectfully ask that you reconsider implementation of the final SPCC rule. We stand ready to assist in addressing environmental concerns in Louisiana; however we feel that: 1) Louisiana should be allowed to exercise the authority to develop its own standards and implement them through an approved and predictable process governed by existing state law, 2) decisions should be based on good science, 3) efforts are sensitive to economic costs to producers, and 4) consideration be given to the overall impact to the economic health of farm-based communities where agriculture is the economic base of these communities.

In addition to the weather and economic challenges mentioned above a, Louisiana's agriculture industry is ill-equipped to implement the rule as sufficient guidance from EPA has not been provided as requested. Growers do not have dedicated environmental compliance officers that monitor EPA rules and regulations. Additionally, an extensive effort to identify professional engineers familiar with the SPCC rule AND willing to assist agriculture in its implementation yielded minimal to no results. Without such professionals, growers and landowners do not have the expertise to decipher this onerous unfunded EPA mandate.

Due to EPA's failure to provide and disseminate adequate guidance regarding this rule growers, who are now focused on harvesting their crops through October, will not have enough time to meet the EPA deadline.

Therefore we reiterate our request you reconsider implementing these measures or at the minimum the SPCC compliance date be extended until at least December 31, 2012 or preferably for 24 months.

Finally, in addition to the compliance date extension we request that EPA provide and disseminate to the agriculture and professional engineering community the needed guidance on the rule to ensure that our state is equipped to meet the requirements of the mandate.

Thank you for your thoughtful consideration of this request.

Sincerely,

Mike Strain DVM
Commissioner

Fossil Energy
Clean Coal & Natural Gas Power Systems
Carbon Sequestration
Hydrogen & Other Clean Fuels
Oil & Natural Gas Supply & Delivery
Natural Gas Regulation
U.S. Petroleum Reserves

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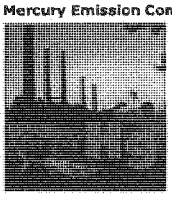
You are here: Clean Coal & Natural Gas Power Systems > Innovations for Existing Plants > *Mercury Control R&D*

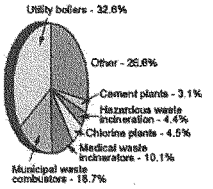
## Mercury Emission Control R&D



Trace amounts of mercury can exist in coal and other fossil fuels. When these fuels burn, mercury vapor can be released to the atmosphere where it may drift for a year or more, spreading with air currents over vast regions of the globe. In 1995, an estimated 5,500 tons of mercury was emitted globally from both natural and human sources. Coal-fired power plants in the United States contributed less than 1 percent of the total.

High levels of mercury can have a toxic effect on the nervous systems of humans. The term "mad hatter" derives from the fact the mercury was used in leather tanning to make hats in previous centuries, and some people developed nervous disorders from continuous exposure to high mercury levels.

**Sources of Mercury Emissions**




### Emissions Levels Coming Down

The amount of mercury being deposited today on land and in water is actually much lower than in recent decades. Peat cores from Minnesota, for example, show thet mercury deposition was highest in the 1950s, with levels about 10 times greater than those before 1900. By the 1980s, however, depositions had fallen to less than half of the 1950s. Emissions data from Sweden and measurements of mercury levels in birds and other animals in the United Kingdom also show a consistent pattern suggesting that mercury levels reached a peak around 1960.

Mercury emissions continued to fall in the decade of the 1990s. In 1993, U.S. yearly emissions totaled about 242 tons. By the end of the decade, emissions had declined to less than 160 tons per year.

The primary reason is that the use of mercury in batteries, fungicides and paints has been reduced. Also, municipal waste combustors, hazardous waste combustors, and medical waste incinerators have been regulated by the Environmental Protection Agency (EPA). The number of operating chlor-alkali plants has also declined from about 20 in 1990 to 12 in 2000, and those still operating have reduced their mercury use. Federal regulations reducing mercury emissions by 90 percent from municipal waste combustors and by 94 percent from medical waste incinerators were released in October 1995 and in August 1997. In 1998 mercury emissions from hazardous waste combustion facilities were also regulated.

Coal-fired power plants contribute only a small part of the total worldwide emissions of mercury. The estimated 48 tons of mercury they emit annually is about one-third of the total amount of mercury released annually by human activities in the United States.

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**PROJECT INFO**

> National Energy Technology Laboratory Web Site

**DOE-NETL Fact Sheets**

>DOE's Mercury Control R&D Program [460kB PDF]
>DOE's Mercury Control R&D Program Phase II [157kB PDF]

**PROGRAM CONTACTS**

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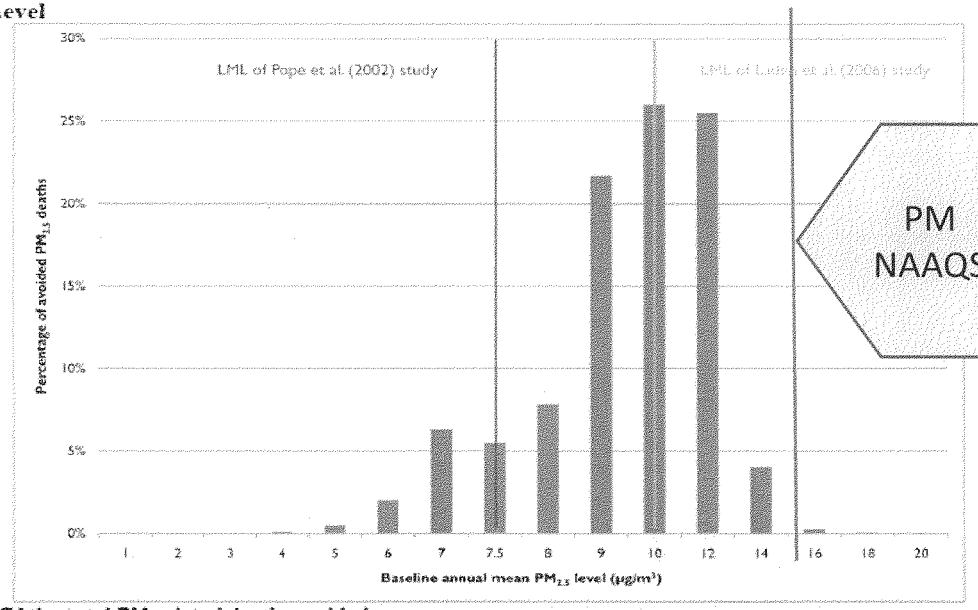
U.S. Dept. of Energy
Pittsburgh, PA 15236
412-386-6134

Committee on Energy and Commerce
Subcommittee on Oversight and Investigation
Regulatory Reform Series #7 – The EPA's Regulatory Planning, Analysis, and Major Actions
September 22, 2011
Slide Index

| Slide | Description | Date |
|---|---|---|
| 1 | Figure 6-14: Percentage of Total PM-Related Mortalities Avoided by Baseline Air Quality Level, Regulatory Impact Analysis of the Proposed Toxics Rule: Final Report, U.S. Environmental Protection Agency | March 2011 |
| 2 | Chart made by Majority Staff titled "EPA Regulatory Impact Analysis for Utility MACT Shows that EPA benefits include protecting people from air that is cleaner than the National Ambient Air Quality Standard," Information used from EPA Studies. | N/A |
| 3 | Slide References two reports of the U.S. Environmental Protection Agency<br>a. Page 73, Figure 6.2.1 Methodology Improvements Since Proposal, Bulletin 3, Lowest Measured Level (LML), Regulatory Impact Analysis: Amendments to the National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards (NSPS) for Portland Cement Manufacturing Industry: Final Report, U.S. Environmental Protection Agency; http://www.epa.gov/ttnecas1/regdata/RIAs/portlandcementfinalria.pdf<br>b. Page 34, Chapter 1-15, Regulatory Impact Analysis of the Proposed Toxics Rule: Final Report, U.S. Environmental Protection Agency; http://www.epa.gov/ttnecas1/regdata/RIAs/ToxicsRuleRIA.pdf | August 2010<br>March 2011 |
| 4 | Recommendation from external science advisors in a letter from Dr. Jonathan M. Samet, Chair, Clean Air Scientific Advisory Committee, Addressed to the Honorable Lisa Jackson, Administrator of the U.S. Environmental Agency. http://yosemite.epa.gov/sab/sabproduct.nsf/CCF9F4C0500C500F8525779D0073C593/$File/EPA-CASAC-10-015-unsigned.pdf | September 10, 2010 |
| 5 | Chart *Comparison of Predicted Retired Capacity*, created by the Federal Energy Regulation Committee Office of Electric Reliability; Provided by FERC to the House Committee on Energy and Commerce as part of FERC's July 27, 2011 document production responding to the House Committee on Energy and Commerce's May 9, 2011 information request. | N/A |

**Figure 6-14. Percentage of Total PM-Related Mortalities Avoided by Baseline Air Quality Level**

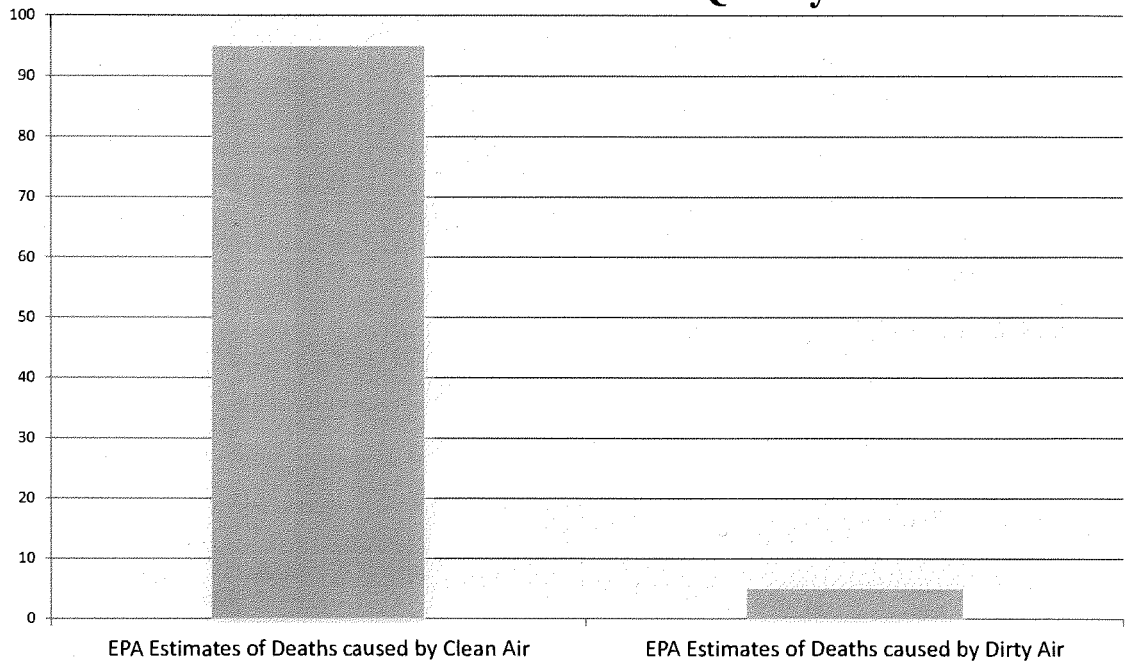



**Of the total PM-related deaths avoided:**

**86%** occur among population exposed to PM levels at or above the LML of the **Pope et al.** study.

**30%** occur among population exposed to PM levels at or above the LML of the **Laden et al.** study.

# EPA Regulatory Impact Analysis for Utility MACT shows that EPA benefits include protecting people from air that is cleaner than the National Ambient Air Quality Standard



# EPA's Methodology Change for Increases Benefits

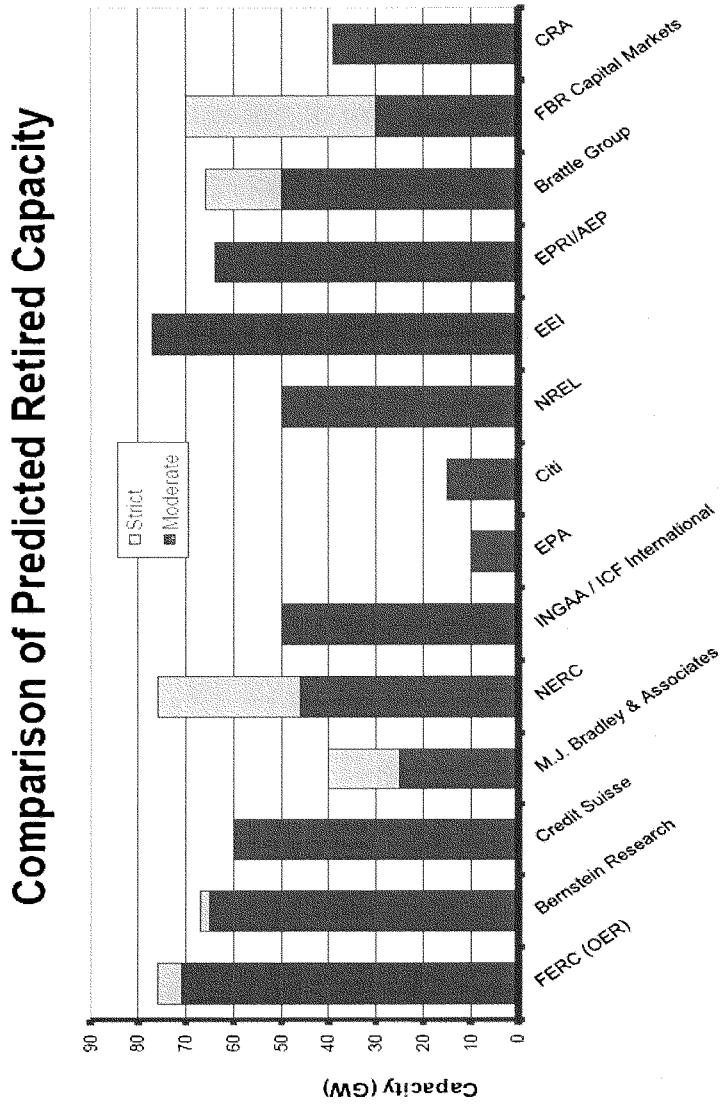
- "Consistent with the rationale outlined in the proposal RIA, EPA now estimates PM-related mortality without assuming an **arbitrary threshold** in the concentration-response function." *Cement MACT RIA, August 2010*

- "There are uncertainties related to the health impact functions used in the analysis. These include: within study variability; across study variation; the application of concentration-response (C-R) functions nationwide; extrapolation of impact functions across population; and various uncertainties in the C-R function, **including causality** and thresholds." *EPA, Utility MACT RIA, March 2011*

# Clean Air Scientific Advisory Committee Finds a Threshold is **NOT Arbitrary**

- Recommend an annual standard that is lower than the current standard, but higher than most estimated mortality

94


Comparison of Predicted Retired Capacity
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CRA
FBR Capital Markets
Brattle Group
EPRI/AEP
EEI
NREL
Citi
EPA
INGAA / ICF International
NERC
M.J. Bradley & Associates
Credit Suisse
Bernstein Research
FERC (OER)

5

# Improving Our Regulations:
# **Final Plan for Periodic Retrospective Reviews of Existing Regulations**

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By:
U.S. Environmental Protection Agency
August 2011

## Table of Contents

# 1 Overview

**Text Box 1: EPA to Undertake 35 Priority Regulatory Reviews**

In this Plan, EPA defines 35 regulatory reviews for our initial review period. Sixteen of them fit into the category of "early actions," meaning the Agency intends to propose or finalize an action to modify, streamline, expand, or repeal a regulation or related program during the 2011 calendar year. The other 19 reviews are longer term actions, whereby we will review the regulations in question and assess whether revisions are needed. See section 2 of this Plan for details on each of the 35 reviews.

EPA developed this *Final Plan for Periodic Retrospective Reviews of Existing Regulations* (the Plan) in response to President Obama's charge in Executive Order 13563 for each federal agency to "develop...a...plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."[1] The Executive Order (EO) also enumerates a number of principles and directives to guide agencies as they work to improve the Nation's regulatory system, which the Agency intends to use to guide regulatory reviews and related EPA activities.

Though EPA and its partners have made great progress in protecting the environment, the Agency is committed to continual improvement. EPA has a long history of thoughtfully examining its existing regulations to make sure they are effectively and efficiently meeting the needs of the American people. Both statutory and judicial obligations have compelled some of our reviews. Others arise from independent EPA decisions to improve upon existing regulations. In fact, of EPA's current regulatory workload, almost two-thirds of our activity is a review of an existing regulation.[2] Just as EPA intends to apply the principles and directives of EO 13563 to the priority actions listed in section 2 of this Plan, we intend to likewise apply the EO's principles and directives to the regulatory reviews that appear in the *Regulatory Agenda*.

EO 13563 is an opportunity to take a fresh look at the Agency's approach to protecting human health and the environment and an opportunity to modernize our regulatory program. What should a 21st century regulatory program look like? How can we better understand the impacts of existing regulations? How do we determine which regulations should be modified, streamlined, expanded, or repealed to be more effective and less burdensome? How can EPA improve collaborations with our partners such as state, local, and tribal governments? What new tools should the Agency employ to improve environmental quality? The initiatives and regulatory reviews described in this Plan are intended to help us thoroughly modernize regulations that are priorities right now, regulations we intend to review as a matter of course

[1] "Improving Regulation and Regulatory Review (Executive Order 13563)." 76 FR 3821 (January 21, 2011). Available from: the Government Printing Office's Federal Digital System (FDsys): http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf; Accessed: 08/15/11.

[2] This estimate is based on active actions published in EPA's *Spring 2011 Semiannual Regulatory Agenda*, and does not include actions in the "Completed" or "Long Term" rulemaking stages.

because of statutory or judicial requirements, and regulations brought to our attention by the public.

The current Plan describes a large number of burden-reducing, cost-saving reforms, including 35 priority initiatives. Some of these have recently been completed; others are in process; still others are in their earliest stages. The potential economic savings are significant. For example, a recent final rule exempts milk producers from regulations designed to protect against oil spills; that rule will save $145 million - $148 million annually. A recently proposed rule would eliminate redundant air pollution control requirements now imposed on gas stations; that rule would save $87 million annually. Taken as a whole, recent reforms, already finalized or formally proposed, are anticiapted to save up to $1.5 billion over the next five years. Other reforms described here, including efforts to streamline requirements and to move to electronic reporting, could save more.

EPA emphasizes that Executive Order 13563 calls not for a single exercise, but for "periodic review of existing significant regulations." It explicitly states that "retrospective analyses, including supporting data, should be released online wherever possible." Consistent with the commitment to periodic review and to public participation, EPA intends to continue to assess its existing significant regulations in accordance with the requirements of Executive Order 13563. EPA welcomes public suggestions about appropriate reforms. If, at any time, members of the public identify possible reforms to modify, streamline, expand or repeal existing regulations, EPA intends to give those suggestions careful considcration.

## 1.1 A 21st century approach to environmental protection

During our 40-year history, EPA and our federal, state, local, tribal, and community partners have made enormous progress in protecting the Nation's health and environment through EPA's regulatory and stewardship programs. However, just as today's economy is vastly different from that of 40 years before, EPA's regulatory program is evolving to recognize the progress that has already been made in environmental protection and to incorporate new technologies and approaches that allow us to accomplish our mission more efficiently and effectively. A central goal, consistent with Executive Order 13563, is to identify methods for reducing unjustified burdens and costs.

High-speed information technologies allow real-time reporting of emissions and provide unprecedented opportunities for transparency and public involvement in matters affecting local environmental conditions. These technological advances allow us to better track environmental progress, apply innovative approaches to compliance and reduce regulatory costs. New emission control technologies allow greatly improved environmental performance. Citizens' interest in living sustainably has grown, and the marketplace increasingly values green products.

EPA's evolving regulatory program builds upon these nationwide trends, and improvements to our regulatory program should be made not only through our retrospective reviews but also prospectively. Therefore, EPA intends to apply the principles and directives of EO 13563 to both retrospective reviews of existing regulations and the development of new regulations. While this Plan focuses on retrospective reviews, which are enumerated in section 2, it is

important to understand the broader context within which the reviews are being conducted. During our retrospective reviews, EPA intends to seek ways to promote program effectiveness and burden reduction through the following broad initiatives:

- Electronic reporting,
- Improved transparency,
- Innovative compliance approaches, and
- Systems approaches and integrated problem-solving.

### 1.1.1 Electronic reporting

First, EPA intends to replace outdated paper reporting with electronic reporting. Agency reporting requirements are still largely paper-based, which is inefficient and unnecessarily costly and resource-intensive for reporting entities and states, and ineffective for compliance monitoring and assurance. To reduce these burdens, increase efficiency and effectiveness, improve compliance and reduce pollution over the long-term, the Agency needs a comprehensive plan to convert to 21st century electronic reporting technology while maintaining data security and confidentiality. This will require some short-term investments of time and technology development, but is expected to provide substantial long-term benefits for industry, states, EPA, and the public. A number of the specific regulatory reviews outlined in section 2 of this Plan contain as an essential element a shift to electronic submission of information. In addition to these specific proposals, EPA intends to move away from paper reporting and modernize EPA reporting processes as follows:

- By conducting a targeted review to convert key existing paper reporting requirements to electronic reporting, perhaps through an omnibus rule. As part of this targeted review, EPA may identify some outdated paper reporting requirements that can be eliminated or streamlined once electronic reporting is in place. For example, we are developing a proposed rule for converting existing selected paper-based National Pollutant Discharge Elimination System (NPDES) reporting obligations to a national electronic reporting format. The NPDES e-reporting rule will allow us to eliminate the current annual and quarterly reporting requirements from the states since this information will be generated by the NPDES data systems. The rule will also require the regulated community to submit their Discharge Monitoring Reports (DMRs) electronically reducing the need for manual data entry. These changes represent a significant reduction in paper-based reporting required to be managed and reported by the states. EPA could convert existing paper-based reporting by regulated facilities for other environmental programs to a similar nationally consistent electronic reporting format.

  Several program areas in EPA either have recently added electronic reporting requirements to their regulations or have recently proposed adding this requirement. EPA recently promulgated the following Clean Air Act (CAA) rules that require electronic reporting: Coal Preparation and Processing Plants rule (74 FR 51950, Oct. 8, 2009); the Portland Cement rule (75 FR 54970, Sept. 9, 2010); and the Gold Mine Ore rule (76 FR 9450, Feb. 17, 2011). EPA is considering expanding the electronic reporting concept to existing rules in additional program areas under the Safe Drinking Water Act

(SDWA), parts of the CAA, or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

- By developing a strategy for ensuring that new rules incorporate the most efficient electronic reporting techniques.

- By encouraging private sector development of reporting tools to drive innovation, reduce costs, and help regulated entities to comply. Based on the successful Internal Revenue Service model for enabling private vendors to build reporting tools, EPA intends to conduct a proof-of-concept pilot project to see if private vendors could create electronic tools for regulated entities to electronically report their environmental compliance data using an open platform approach. If feasible, this could create opportunities for innovation by private sector entrepreneurs to develop such electronic tools along with incentives for starting and growing companies to commercialize them and create new jobs.

### 1.1.2 Improved Transparency

Second, in order to improve regulatory effectiveness, EPA intends to enhance transparency by striving to expand public disclosure of pollution, compliance, and other regulatory information to more efficiently provide information to the public upon which choices can be made. Disclosure of pollution, compliance, and other regulatory information can drive better results for health and the environment, and provides communities with information they need about environmental problems that affect them. Improved transparency can help to level the playing field by helping facilities, governments, and the public know what is being accomplished or required in other locations. Both when reviewing existing regulations and when developing new regulations, EPA intends to seek ways to expand public disclosure of pollution, compliance, and other regulatory information to improve the actual results of regulatory requirements and more efficiently provide the public with information necessary to participate in the regulatory process.

**Text Box 2: EPA Creatively Structures Regulations to Efficiently and Cost Effectively Increase Compliance**

EPA already has experience demonstrating that creative approaches can increase compliance while reducing cost. For example, we learned in the 1970's that the most effective way to ensure compliance with new unleaded gasoline requirements was not widespread inspections, but simply changing the size of the nozzle used to fill gas tanks. Following the 1996 Safe Drinking Water Act amendments, researchers found that the simple requirement of mailing Consumer Confidence Reports to consumers resulted in a 30-50% increase in utilities' compliance rates with drinking water requirements in Massachusetts. While we are aware that the provision of Consumer Confidence Reports is a means of increasing compliance, we are also aware that their production and distribution can be burdensome on water purveyors and states. EPA intends to review these reporting requirements to determine if burden may be reduced while compliance is maintained or increased; this review is described in detail later in the Plan.

### 1.1.3 Innovative Compliance Approaches

Third, the Agency intends to reduce pollution by improving compliance with EPA regulations in ways that are more effective and efficient while reducing burden. EPA will seek ways to achieve greater compliance both when reviewing existing regulations and when developing new regulations. Effective

enforcement of environmental regulations promotes the welfare of Americans by protecting the air we breathe and the water we drink, and assuring that complying facilities are not at a competitive disadvantage with those that violate the law. However, due to the sheer number of regulated facilities, the increasing contributions of large numbers of smaller sources to important environmental problems, and federal and state budget constraints, we can no longer rely primarily on the traditional single facility inspection and enforcement approach to ensure compliance across the country. EPA needs to embed innovative mechanisms in the structure of its rules to do a better job of encouraging compliance on a wide scale. (See text box 2.)

To supplement traditional compliance approaches, EPA plans to routinely structure federal regulations and permits as effectively as possible to achieve compliance, through adequate monitoring requirements, public disclosure, information and reporting mechanisms, and other structural flexibilities, including self-certification, and third-party verification.

### 1.1.4 Systems Approaches and Integrated Problem-Solving

Fourth, the Agency intends to design a 21st century approach to environmental regulation by using systems approaches and integrated problem-solving strategies to accelerate pollution prevention and other beneficial environmental outcomes. A primary way to promote pollution prevention and sustainable outcomes is through broader adoption of problem-solving approaches that bring to bear all relevant tools – regulatory and non-regulatory – to provide integrated and

**Text Box 3: Promoting the Green Economy and Innovation**

Pollution prevention efforts across EPA have helped protect children and families in this country from exposure to harmful pollutants and has significantly reduced the amount of contaminants released into the environment. These ongoing efforts include Energy Star, WasteWise, Plug-In To eCycling, WaterSense, and our Green Electronics, Green Chemistry, Green Engineering, Design for the Environment (DfE), and Economy, Energy and Environment (E3) programs. EPA intends to improve coordination among these programs to maximize their effectivenss.

EPA engaged the National Academy of Sciences (NAS) to convene national experts and prepare a report on how to make sustainability operational at EPA. One charge to the academy was to identify the critical tools, methods, and scientific approaches needed to advance sustainability. While the concept of sustainability science has evolved over the past two decades, it has not been formerly incorporated into EPA's operational framework. The NAS Report (the so-called Green Book) was made publically available on August 2. EPA has begun to review the recommendations and will aim for timely responses in the months ahead.

**Text Box 4: Integrated Problem Solving: A Drinking Water Example**

EPA is seeking a new approach to expand public health protection for drinking water by going beyond the traditional framework that addresses contaminants one at a time. The Agency has conducted a national conversation to identify better ways to address contaminants in groups, improve drinking water technology, and more effectively address potential risks to give Americans greater confidence in the quality of their drinking water.

EPA is focused on four principles that will provide greater protection of drinking water. These are:

- Address contaminants as groups rather than one at a time so that enhancement of drinking water protection can be achieved cost-effectively.
- Foster development of new drinking water technologies to address health risks posed by a broad array of contaminants.
- Use the authority of multiple statutes to help protect drinking water.
- Partner with states to share more complete data from monitoring at public water systems (PWS).

comprehensive solutions to priority environmental problems.

EPA's research and development activities can help provide a strong scientific foundation for innovative solutions. Strategic sequencing of regulations as they are developed will allow us to consider the cumulative impacts of our rules and to regulate more efficiently. Use of systems and life cycle analyses allows us to pinpoint the most effective points for policy intervention. Applying the full spectrum of policy tools available to the Agency can maximize environmental results while reducing costs. (See text box 3.)

Another example where the Agency has successfully applied this integrated approach is in the CAA area source rule for auto body shops. A technology based control limit was complemented by a non-regulatory pollution prevention approach. Partners in the *Design for Environment's* Safer Product Labeling Program developed an alternative solvent that does not require emissions control technology, thus providing industry a way to avoid the costs of installing pollution control equipment by using alternative chemicals. A third example is EPA's current efforts to develop an integrated approach to drinking water protection. (See text box 4.)

**Text Box 5: Integrated Problem Solving: Green Infrastructure and Management of Municipal Wastewater Systems**

EPA continues to work closely with many communities to develop pragmatic and effective solutions, including green infrastructure (GI) and traditional engineering that address both long-term and daily management of their wastewater systems. EPA recognizes the need to provide municipalities with flexibility to implement GI so that the solutions can be sustained over the long term and communities can realize the multiple benefits of GI, including neighborhood enhancements, green jobs, and energy savings. EPA also incorporates flexibility into both performance criteria and implementation schedules as evidenced by recent settlements with the cities of Kansas City, Cleveland, and St. Louis. More information on St. Louis appears below. For information on:

- Cleveland, see: http://www.epa.gov/agingepa/press/epanews/2010/2010_1222_2.htm
- Kansas City, see: http://epa.gov/compliance/resources/cases/civil/cwa/kansascity.html

***St. Louis, MO*** - The St. Louis proposed consent decree, includes a $100 million green infrastructure storm water retrofit program, focused in low income neighborhoods. This will reduce CSO flows to the Mississippi River by 10 percent annually or approximately 85 million gallons per year, beyond the gray infrastructure portion of the remedy. The green infrastructure program will start with a pilot project to determine the most effective green infrastructure techniques, such as green roofs, green streets and green parking retrofits.

One final example of EPA's commitment to integrated solutions is EPA's strong support and promotion of the use of green infrastructure (GI) approaches to manage wet weather through infiltration, evapotranspiration, and rainwater harvesting. EPA is using GI in National Pollutant Discharge Elimination System (NPDES) permits, as well as remedies designed to comply with the Clean Water Act (CWA), recognizing that green infrastructure can be a cost-effective, flexible, and environmentally-sound approach to reduce stormwater runoff and sewer overflows and to meet CWA requirements. Green infrastructure also provides a variety of community benefits including economic savings, green jobs, neighborhood enhancements and sustainable communities. Because of these benefits, EPA is working with communities around the country to incorporate green designs into NPDES permits and enforcement agreements. (See text box 5.)

## 1.2 A more efficient approach to regulation

EPA recognizes that there is potential for regulatory overlap and contradiction between various jurisdictional requirements. (See Executive Order 13563, section 3, on integration and innovation.) In this setting, regulations often appear to be excessive. Businesses are concerned with inconsistency and duplication across varying jurisdictions. The Agency is seeking ways to introduce greater efficiencies into our regulatory program and achieve greater harmonization among related regulations, both among EPA regulations and among the regulations of other federal, state, local, and tribal agencies. With the broad initiatives outlined previously, as well as the regulatory reviews described in section 2, EPA will look for ways to protect human health and the environment more efficiently and effectively.

As an example, and consistent with Executive Order 13563, section 3, EPA is examining ways to harmonize its vehicle regulations with those of California and other federal agencies in the following areas:

1. Fuel economy labeling with the California Air Resources Control Board (CARB) and the Federal Trade Commission;
2. Vehicle greenhouse gas standards and fuel-economy standards in conjunction with the Department of Transportation (DOT) and CARB; and
3. Vehicle testing and compliance standards with CARB.

**Text Box 6: Making Transportation More Sustainable: A Flexible Systems Approach**

The substantial emission reductions achieved through vehicle and fuel standards depends on extensive collaboration between EPA and vehicle, engine, and fuel manufacturers; state and local governments; transportation planners; and individual citizens. EPA takes a systems approach, setting standards for both vehicles and fuels. For example, the Vehicle Tier 2 standards were combined with low sulfur gasoline standards to enable cleaner vehicle technologies. This results in greater emissions reductions at lower costs. Vehicle, engine, and fuel regulations include a number of flexibilities to help industry achieve the standards and reduce compliance costs, such as averaging, banking and trading, early credits, phase-in schedules, exemptions, and hardship relief. Compliance reports by vehicle manufacturers, fuel producers and others are virtually all submitted electronically. This flexible approach to mobile source emission control is responsible for greatly reducing mobile source air pollution during the last 30 years.

The transportation industry has responded to this flexible systems approach with improvements to engine and vehicle technologies that help to make transportation more sustainable. These improvements include:

- Designing highly efficient combustion systems to minimize exhaust pollution.
- Introducing vapor recovery systems to capture evaporating gasoline.
- Using computer technologies to monitor and control engine performance.
- Developing effective "after treatment" technologies, such as catalytic converters and particulate filters, that remove pollutants from the exhaust stream before they can escape into the atmosphere.
- More recently, reducing greenhouse gases and improving fuel economy through engine improvements like gasoline direct injection and use of turbochargers, increased production of hybrids and initial commercialization of electric vehicles.

Another example is described in the text box 6. By using a flexible systems approach to vehicle and fuel regulations, EPA has spurred a sustainable transportation market and given the industry the flexibility to design innovative technological responses to regulatory requirements.

The technological advances of the Information Age also provide an opportunity to make environmental protection more data-driven and analytically rigorous while still collecting data and analyzing performance in a more efficient way. (As an example, see text box 7.) As the costs of acquiring, analyzing, and disseminating data is reduced, it becomes easier for EPA to cost-effectively achieve its mission. EPA is committed to moving the regulatory process into alignment with the opportunities presented by new information technology. Simultaneously, EPA is working to be responsive to President's memorandum "Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments."[3] This memorandum is complementary to EO 13563 as it encourages agencies to identify ways to reduce unnecessary regulatory and administrative burdens on state, local and tribal partners, and redirect resources to services that are essential to achieving better outcomes at lower cost.

**Text Box 7: Technological Advances Lead to Cheaper and Cleaner Outcomes: Onboard Diagnostics**

By capitalizing on advances in information technology for vehicle diagnostics, the Agency has helped to achieve cheaper and cleaner outcomes in our automotive emissions control program. Vehicles are equipped with a "Check Engine Light" that illuminates if a component failure could cause emission problems. The use of Onboard Diagnostic Systems (OBD) has resulted in dramatic improvements in the performance and operation of motor vehicles, reducing emissions significantly, reducing costs associated with emission control, and improving durability and maintenance. OBD systems set the dashboard light which is visible to the owner at the point in time either a malfunction of an emission related component or an actual emission problem occurs. This provides a vehicle owner the opportunity to fix the problem when it occurs shortening the amount of time the problem exists. In addition, in areas with inspection and maintenance programs vehicles with such a light on must be repaired prior to passing the inspection. In both cases OBD identifies potential emission problems prior to the point in time such problems would have been identified by prior testing technologies. It has also made it easier for motorists and repair technicians to identify and correct problems as they arise, before problems compound and develop into more serious and costly situations. As a result of Clean Air Act requirements, all 1996 and newer cars and trucks were required to include onboard diagnostic systems (OBD) that use sensors and computer technology to monitor the performance of the engine and emission control systems on vehicles. EPA issued regulations to implement the OBD program in 1993.

A simple OBD scan tool can now determine if there are problems with the emission control system and can replace equipment costing 100 times more. Correspondingly, the cost of vehicle inspection has dropped from around $25 per vehicle to about $10 per vehicle in most areas doing only OBD testing, leading to major savings to motorists. Vehicle emissions inspections are also conducted much more quickly, saving time for motorists.

EPA recently expanded the implementation of OBD to include heavy-duty vehicles. It is anticipated that OBD systems will reduce emissions from this segment of the vehicle fleet, reduce costs associated with controlling heavy-duty vehicle emissions, and improve the quality and longevity of emission related repairs on such vehicles.
For more information, see:

- "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines (Final Rule)." 58 FR 9468 (February 19, 1993). Print.

## 1.3 Conduct of reviews

On a predictable, transparent, five-year cycle, EPA intends to ask the public to nominate additional regulations for review and intends to commit to new

[3] "Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments, February 28, 2011 (Presidential Memorandum from President Barack Obama to Heads of Executive Departments and Agencies)" *Daily Compilation of Presidential Documents*, No. 201100123. Available from: FDsys, http://www.gpo.gov/fdsys/pkg/DCPD-201100123/pdf/DCPD-201100123.pdf; Accessed: 08/15/11.

reviews to supplement those described in this Plan. As explained in section 4 of this Plan, future review priorities will be determined by:

- Comments gathered from the public, other federal agencies, and EPA experts;
- The expertise of the EPA offices writing the regulations;
- Agency and Administration priorities, such as judicial rulings, emergencies, etc.;
- The principles and directives of EO 13563; and
- Agency resources.

EPA plans to use the *Semiannual Regulatory Agenda* and relevant portions of the EPA website to regularly report on the reviews that are underway.

With regard to EPA's initial list of initiatives and retrospective reviews, and with regard to future reviews, the Agency intends to reduce costs, promote simplification, and to:

- **Maintain focus on EPA's mission.** First and foremost, EPA intends to focus our regulatory reviews on protecting human health and safeguarding the environment as efficiently and effectively as possible.

- **Meet the Agency's current obligations.** This Plan recognizes the Agency's existing statutory and judicial requirements for regulatory reviews. As EPA moves forward, we intend to ensure that resources continue to be available to meet these mandatory obligations while still addressing the many discretionary reviews identified in this Plan. As we conduct regulatory reviews, EPA will follow any statutory and/or judicial requirements that apply to the particular regulation(s) under review. Statutes may affirmatively require the Agency to consider specific factors in reviewing regulations or contain express limitations on the factors the Agency may take into account.

- **Make the Plan predictable.** EPA managers, who are responsible for budgeting for the Plan, as well as EPA staff who implement it and external stakeholders who want to participate, need to be able to forecast and plan for the upcoming work.

- **Make the Plan flexible and responsive to priority needs**. Despite the desire to keep to a predictable schedule, EPA retains the discretion to modify the schedule as new priorities, emergencies, resource constraints, and other considerations arise.

- **Follow statutorily mandated procedural requirements.** This Plan establishes the means by which EPA intends to select candidates for regulatory review, but once a regulation is selected, the Agency intends to follow our established, comprehensive regulatory development process to discern what, if any, revisions are necessary and to develop the revisions. The Agency intends to follow the procedures set out in, and conduct the analyses required by, the Administrative Procedure Act, other applicable administrative statutes, applicable Executive Orders, and internal EPA rulemaking procedures that constitute the legal and policy framework for EPA's rule development activities. In revising regulations, EPA intends to follow its established policies to provide meaningful opportunities for public involvement, evaluate direct and indirect

public health and environmental implications, and analyze the benefits and costs of its rules.

- **Provide leadership regarding environmental justice issues.** Consistent with EO 12898 and the Administrator's priorities, EPA also intends to continue its leading role on environmental justice matters to ensure that, in the development of its regulations, EPA considers overburdened communities and vulnerable populations, as well as the potential for adverse disproportionate impacts to low income, minority, and tribal populations. Further EPA intends to continue advancing environmental justice across the federal government through the actions outlined in *Plan EJ 2014's* draft implementation plans, the Agency's overarching strategy for integrating environmental justice in its programs, policies and activities, as well as through its review of other federal EO 13563 plans.

- **Provide leadership regarding children's health issues.** Consistent with EO 13045, EPA's Children's Health Policy, EPA's FY 2011-2015 Strategic Plan, and the Administrator's priorities, EPA will continue to lead efforts to protect children from environmental health risks. To accomplish this, EPA intends to use a variety of approaches, including regulation, enforcement, research, outreach, community-based programs, and partnerships to protect pregnant women, infants, children, and adolescents from environmental and human health hazards. The Agency's strategy for integrating children's health protection is described in EPA's FY 2011-2015 Strategic Plan, Cross-Cutting Fundamental Strategy, "Working for Environmental Justice and Children's Health." EPA utilizes the document, "Guide to Considering Children's Health When Developing EPA Actions," to implement EO 13045 and EPA's Policy on Evaluating Health Risks to Children.[4]

- **Strengthen intergovernmental partnerships.** Consistent with the principles underpinning EO 13132 (Federalism), and in recognition of the fact that environmental professionals at the state, local, and tribal government level play a critical role in the implementation of federal environmental regulations, EO 13563 - through its rule identification and revision processes - provides EPA and its intergovernmental partners with an opportunity to further strengthen their working relationship and, thereby, more effectively pursue their shared goal of protecting the nation's environmental and public health.

[4] United States. Environmental Protection Agency. *Guide to Considering Children's Health When Developing EPA Actions."* Washington: EPA, October 2006. Available from: EPA website, http://yosemite.epa.gov/ochp/ochpweb.nsf/content/ADPguide.htm/$File/EPA_ADP_Guide_508.pdf; Accessed: 08/15/11.

## 2 Regulations We Plan to Review

EPA intends to undertake 35 regulatory reviews for this, our initial review period. Of these, EPA is statutorily required to conduct two; all of the rest are discretionary reviews that may make EPA's regulatory program more effective or less burdensome. Sixteen of them fit into the category of "early actions," meaning the Agency intends to take a specific step which could lead to modifying, streamlining, expanding, or repealing a regulation or related program during the 2011 calendar year. The other 19 reviews are longer term actions; the Agency intends to review the regulations in question and assess whether revisions are needed. Each action is described in this section, and the next milestone for each action is included where available.

It is important to keep in mind that the 35 reviews in this section are our priority activities for meeting the principles of EO 13563, but the Agency is undertaking many more reviews than this, and it is expected that a number of these will reduce costs. Of the approximately 200 active actions that are listed in EPA's *Spring 2011 Semiannual Regulatory Agenda*, roughly 60% are reviews of existing regulations.[5]

Although many of these ongoing reviews already meet the spirit and principles of EO 13563, the Agency is also considering the thoughtful public comments we received during our public involvement process (described in section 3). Those, too, are serving to inform the reviews. EPA views EO 13563 as an opportunity to improve the way the Agency does business – to help create a more efficient, 21st century regulatory program.

The Agency has recently completed a number of actions, consistent with Executive Order 13563, that are illustrative of efforts we intend to pursue under this Plan:

**Text Box 8: Meeting the Principles of EO 13563: The Spill Prevention, Control, and Countermeasure (SPCC) Rule**

The SPCC amendments for the dairy industry are a good example of how the Agency strives to meet the principles of the EO, such as minimizing cumulative burden, maximizing net benefits, eliminating direct regulation when alternatives exist, and simplifying and harmonizing regulations across federal agencies. On January 15, 2009, EPA proposed amendments to the SPCC rule to tailor and streamline requirements for the dairy industry by excluding from the SPCC requirements milk containers and associated piping and appurtenances. The rule proposed to address concerns raised specifically by the dairy farm sector on the applicability of the SPCC requirements to milk containers. In April 2011, EPA finalized this action and excluded all milk and milk product containers, and associated piping and appurtenances, from the SPCC requirements, including an exclusion of the capacity of these milk and milk product containers from a facility's total oil storage capacity calculation to determine if the facility is subject to SPCC. EPA estimates that dairy farms and milk product manufacturing plants will incur savings of $145 - 148 million per year (2010$).

For more information, see:

- "Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule— Amendments for Milk and Milk Product Containers; Final Rule," 76 FR 21652. Available from: FDsys http://www.gpo.gov/fdsys/pkg/FR-2011-04-18/pdf/2011-9288.pdf; Accessed 08/15/2011.

[5] This estimate is based on active actions published in EPA's *Spring 2011 Semiannual Regulatory Agenda*, and does not include actions in the "Completed" or "Long Term" rulemaking stages.

- The Spill Prevention, Control, and Countermeasure (SPCC) amendments for the dairy industry are a good example of a review which met EO principles such as minimizing cumulative burden, maximizing net benefits, and simplifying and harmonizing regulations across federal agencies, while producing annual cost savings of $145 to $148 million (in 2010 dollars (2010$)).[6] (See text box 8.)

- On March 29, 2011, EPA finalized a regulation[7] pertaining to alternative fuel conversions of vehicles and engines. The regulation responded to concerns that the approval process for converting gasoline or diesel vehicles to operate on alternative fuels (e.g., natural gas, propane, alcohol, or electricity) is too costly and cumbersome. The Agency adopted a new approach that streamlines and simplifies the process by which manufacturers of clean alternative fuel conversion systems may qualify for exemption from the CAA prohibition against tampering. The new options reduce some economic and procedural impediments to clean alternative fuel conversions while maintaining environmental safeguards to ensure that acceptable emission levels from converted vehicles and engines are sustained. For light-duty engines, the broad average cost of compliance for one certificate prior to the issuance of this regulation was about $43,687 (2010$); but as a result of EPA's regulatory review, the estimated cost under the same assumed conversion scenario would be about $36,177 for new light-duty engines and $12,972 for intermediate-age and older light-duty engines. For heavy-duty engines, the cost savings are expected to be even greater. Total annual cost savings are estimated at $1.1 million (2010$).

- On July 15, 2011, EPA finalized a regulation that modified the Lead Renovation, Repair and Painting Rule.[8] Common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children. To protect against this risk, on April 22, 2008, EPA issued the Lead Renovation, Repair, and Painting Program rule (Lead RRP) requiring the use of lead-safe practices and other actions aimed at preventing lead poisoning.[9] Under the rule, beginning April 22, 2010, contractors performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. On May 6, 2010, EPA proposed additional requirements designed to ensure that renovation work areas are adequately cleaned after renovation work is

[6] Cost savings estimates provided in the final rule are in 2009$. All cost savings estimates in this Plan are presented in 2010$ and therefore may differ from those presented in the rule's original analyses.
[7] "Clean Alternative Fuel Vehicle and Engine Conversions (Final Rule)." 76 FR 19830 (April 08, 2011). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-2011-04-08/pdf/2011-7910.pdf; Accessed: 08/15/11.
[8] "Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program (Final Rule)." 76 FR 47918 (August 05, 2011). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-2011-08-05/pdf/2011-19417.pdf; Accessed: 08/15/11.
[9] "Lead; Renovation, Repair, and Painting Program (Final Rule)." 73 FR 21692 (April 22, 2008). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-2008-04-22/pdf/E8-8141.pdf; Accessed: 08/15/11.

finished and before the areas are re-occupied.[10] The proposed rule would have added requirements including dust wipe testing after renovations and additional cleaning, if needed, designed to ensure that renovation work areas meet clearance standards before re-occupancy. The cost of EPA's proposed additional testing requirements were between $278 million to $300 million per year (2010$).[11] After carefully weighing the issues and considering the comments from over 300 stakeholders, EPA has determined that there are currently no data or information that call into question the reliability, safety, and efficacy of the lead safe work practices established in the 2008 RRP rule. Therefore, EPA did not finalize additional "clearance" requirements that contractors obtain lead-dust testing and laboratory analysis of the results for renovation jobs. EPA believes that if certified and trained renovation contractors follow EPA's 2008 RRP rule by using lead-safe work practices and following the cleaning protocol after the job is finished, lead-dust hazards will be effectively reduced.

- Working in coordination with DOT, EPA finalized changes to the fuel economy label that consumers see on the window of every new vehicle in dealer showrooms.[12] This summer, EPA and the National Highway Traffic Safety Administration (NHTSA) unveiled the most dramatic overhaul to fuel economy labels since they were introduced 35 years ago. When the new labels start to appear in showrooms and online, shoppers will have more information at their fingertips than ever before. The redesigned label, representing a harmonized and coordinated effort with DOT, will provide the public with new information on vehicles' fuel economy, energy use, fuel costs, and environmental impacts. For the first time, for instance, comparable fuel economy and environmental ratings will be available for all new vehicles, including advanced technology vehicles like electric cars. Consumers will be able to make comparisons – car by car – to ensure they have the best information to help save on fuel costs and reduce emissions.

- In June 2011, EPA issued direct final amendments to the air toxic standards for the plating and polishing national emission standards for hazardous air pollutants (NESHAP). Toxic air pollutants, or air toxics, are known or suspected to cause cancer and other health problems. Area sources are smaller facilities who emit less than the "major source" threshold of 10 tons per year of pollution, but whose emissions jointly contribute to pollution problems. The direct final amendments clarify that the plating and polishing NESHAP does not apply to any bench-scale activities. It was not our intent to include those activities in the original rule because these emissions are too small to accurately measure and it would be an unreasonable burden to the public to do so. Bench-scale is defined to be any operation that is small enough to be performed on a bench, table, or similar structure so that the equipment is not directly contacting the floor. The

[10] "Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program (Proposed Rule)." 75 FR 25038 (May 06, 2010). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-2010-05-06/pdf/2010-10102.pdf; Accessed: 08/15/11.

[11] To achieve comparable estimates across regulations, this cost savings estimate was updated to 2010$. The analysis for this particular rulemaking originally used 2009$.

[12] "Revisions and Additions to Motor Vehicle Fuel Economy Label (Final Rule)." 76 FR 39478 (July 06, 2011). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-2011-07-06/pdf/2011-14291.pdf; Accessed: 08/15/11.

direct final amendments also make several technical corrections and clarifications to the rule's text to reduce misinterpretations. These corrections and clarifications do not make material changes in the rule's requirements. The Direct Final Rule published June 20, 2011, along with a related proposal that invited public comments.

These sorts of efforts, where we worked with stakeholders and other agencies to achieve a positive outcome for the regulated community while protecting human health and the environment, is what the Agency will strive to replicate in the priority activities described later in this section. EPA expects to realize substantial cost and burden reductions as a result of a number of our reviews. Table 1 provides cost and other savings estimates associated with our completed reviews and draft cost savings estimates for some of the ongoing priority reviews described in the rest of this section. We estimate that EPA will achieve between $309.1 and $360.1 million (2010$) in costs savings annually from the four completed and proposed retrospective reviews listed in Table 1. Taken as a whole, recent reforms, already finalized or formally proposed, are anticipated to save up to $1.5 billion over the next five years. Keep in mind that there are a total of five completed and 35 ongoing regulatory reviews in this Plan. EPA expects the total cost savings of all of the reviews to be greater than shown in this table; however, we are unable to provide draft cost saving estimates for many of our ongoing reviews since it is too soon in the review process.

**Table 1: Savings Estimates from Review of EPA Regulations**

| Review | Cost Savings (Millions 2010$) |
|---|---|
| Completed | |
| Spill Prevention, Control and Countermeasure amendments for the dairy industry | $145 - $148 |
| Alternative fuel conversions of vehicles and engines | $1.1 |
| Proposed | |
| Vehicle vapor recovery systems (#2.2.1) | $87 |
| E-Manifest (#2.2.4) | $76- $124 |
| Total | $309.1 - $360.1 |
| Reexamined Proposal | |
| Lead Renovation, Repair and Painting Program clearance standards | $278 - $300 |
| Draft Estimates from Ongoing Reviews | |
| Consumer confidence reports for primary drinking water regulations (#2.2.6) | $1 |
| National Pollutant Discharge Elimination System (NPDES): coordinating permit requirements and removing outdated requirements (#2.1.8) | $1.6 |

## 2.1 Early actions

Of the 35 priority regulatory reviews presented in this section, the following 16 are early actions that are intended to yield in 2011 a specific step toward modifying, streamlining, expanding, or repealing a regulation or related program. Asterisks (**) preceding the heading of a review indicate those reviews which were suggested during the public comment periods held for this Plan.

1. ** Gasoline and diesel regulations: reducing reporting and recordkeeping
2. ** Equipment leak detection and repair: reducing burden
3. Regulatory certainty for farmers: working with the U.S. Department of Agriculture (USDA) and states
4. ** Modern science and technology methods in the chemical regulation arena: reducing whole-animal testing, reducing costs and burdens, and improving efficiencies
5. ** Electronic online reporting of health and safety data under the Toxic Substances Control Act (TSCA); Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and Federal Food, Drug, and Cosmetic Act (FFDCA): reducing burden and improving efficiencies
6. ** National Priorities List rules: improving transparency
7. Quick changes to some TSCA reporting requirements: reducing burden
8. ** National Pollutant Discharge Elimination System (NPDES): coordinating permit requirements and removing outdated requirements
9. ** National primary drinking water regulations – Long Term 2 Enhances Surface Water Treatment: evaluating approaches that may maintain, or provide greater, public health protection
10. ** Combined Sewer Overflows (CSOs) and integrated planning for wet weather infrastructure investments: providing flexibilities
11. ** Vehicle regulations: harmonizing requirements for:
    a. Greenhouse gas and fuel economy standards
    b. Vehicle emission standards
12. Multiple air pollutants: coordinating emission reduction regulations and using innovative technologies
13. ** NSPS reviews and revisions under the CAA: setting priorities to ensure updates to outdated technologies
14. ** CAA Title V Permit programs: simplifying and clarifying requirements
15. Innovative technology: seeking to spur new markets and utilize technological innovations
16. ** The costs of regulations: improving cost estimates

### 2.1.1 **[13] Gasoline and diesel regulations: reducing reporting and recordkeeping

**Reason for inclusion**: EPA intends to review existing gasoline and diesel regulations that apply to fuel producers, ethanol blenders, fuel distributors, and others for areas where recordkeeping and reporting obligations can be modified to reduce burden. This is consistent with EO 13563's directive to relieve regulatory burden.

**Background**: EPA intends to conduct this review in conjunction with the rulemaking on the next set of vehicle emission and fuel standards, known as "Tier 3 motor vehicle emission and fuel standards," informed by public comments received in the EO 13563 public outreach process.

[13] Asterisks (**) preceding the heading of a review indicate those reviews which were suggested during the public comment periods held for this Plan.

**Next step**: EPA expects to propose modifications to gasoline and diesel regulations in late 2011.

### 2.1.2 ** Equipment leak detection and repair: reducing burden

**Reason for inclusion**: The associated actions are included in the EO Plan so that EPA can reduce the burden on industry and streamline leak detection and repair (LDAR) programs. This is done in support of EO 13563, which promotes innovative technologies while upholding EPA's mission to protect human health and the environment. These goals are expected to be achieved by creating uniform equipment leak standards and removing regulatory overlap.

**Background on the action**: Currently, there are many rules (both NESHAP and NSPS) applicable to sources in the Chemical and Petroleum Refining sectors that establish LDAR requirements. These rules often vary, but generally include requirements for periodic monitoring via Method 21, which specifies the use of a hand-held probe to detect leaks.

Two primary efforts are underway with respect to LDAR. First, we are developing "Uniform Standards" for Equipment Leaks. These standards are intended to establish uniform equipment leak definitions, monitoring frequencies and uniform requirements for reporting, recordkeeping, and repair. A referencing subpart, such as the Chemical Sector rule or the Refinery Sector rule would then point to the LDAR Uniform Standards. The end result is expected to be a consistent set of requirements across these industries.

The second effort is the Alternative Work Practice (AWP) to Detect Leaks from Equipment, which was promulgated in 2008 as a voluntary AWP for LDAR. The AWP includes using an optical gas imaging camera and annual Method 21 screening for leak detection. We received a request for administrative reconsideration of the AWP from the American Petroleum Institute in 2009 to remove the Method 21 requirement. We are currently considering our response.

**Next step**: We are currently considering comments received on the AWP petition. We intend to evaluate the comments related to the proposed Oil and Gas NSPS, using this feedback to respond to the AWP petition.

We plan to propose the Equipment Leak Uniform Standards in fall 2011.

### 2.1.3 Regulatory certainty for farmers: working with the U.S. Department of Agriculture (USDA) and states

**Reason for inclusion**: EPA intends to work with USDA and state governments to explore flexible, voluntary approaches for farmers to achieve water quality improvements, consistent with EO 13563's directives of achieving greater coordination across agencies and allowing for flexibility.

**Background**: In conjunction with USDA and several states, EPA is exploring "certainty" mechanisms that encourage farmers to implement voluntary practices that reduce impacts on

water quality. In particular, if farmers' actions result in quantifiable and verifiable improvements in water quality and resource conservation, EPA and USDA could work with states to develop programs that can provide assurances that the farmers' actions are, for a reasonable, fixed period of time, consistent with state plans to improve water quality. EPA and USDA's efforts are intended to allow states flexibility to increase farmers' and other landowners' interest and willingness to adopt the most effective land stewardship practices by providing incentives that increase the pace and extent to which resource conservation and verifiable water quality improvements are achieved.

**Next step**: EPA expects that the project will be up and running at the state level with USDA partners by the end of the calendar year.

### 2.1.4 ** Modern science and technology methods in the chemical regulation arena: reducing whole-animal testing, reducing costs and burdens, and improving efficiencies

**Reason for inclusion**: This review is included in the Plan because EPA intends to seek ways to more efficiently assess the health and environmental hazards, as well as the exposure potential, of chemicals while reducing costs and burdens. Reducing the costs associated with whole-animal testing is consistent with EO 13563's directive to relieve regulatory burden.

**Background**: The identification, evaluation, and regulation of chemicals to protect human health and the environment is central to EPA's mandate. Given the challenge of assessing more chemicals with greater speed and accuracy, and to do so using fewer resources and experimental animals, new approaches in biological and computational sciences are needed to ensure that relevant information is available to meet the challenges of prioritization, targeted testing, and risk assessment.[14]

Prioritization can focus resources on chemicals that are believed to pose the greatest risk to human health and/or the environment. There are also many chemicals for which a substantial amount of information is known about hazard and/or exposure, but more testing is needed. A more efficient science-based approach to determine testing needs for these chemicals can reduce the use of experimental animals and testing burdens, as well as facilitate the timely development of risk assessments and ultimately informed and timely regulatory decisions that are based on sound science.

EPA is drafting a work plan to develop and move towards adoption of new science-based approaches like computational toxicology tools to:

[14] See also the 2007 report from the National Research Council. Citation: ---. National Research Council of the National Academies. *Toxicity Testing in the 21st Century: A Vision and a Strategy*. Washington: National Academies Press, 2007. Available from: The National Academies Press website, http://www.nap.edu/openbook.php?record_id=11970; Access: 08/15/11.

- Prioritize chemicals for risk assessment/management purposes. The objective is to identify chemicals or groups of chemicals with the highest potential for exposure and/or human health/environmental effects and focus resources on those chemicals.
- Develop the tools to base chemical risk management decisions about potential human health and ecological risks on sufficient, credible data and on information that is tailored around the specific compound as well as the needs of the risk assessment and risk management decisions.

This work plan is expected to describe the major steps needed to develop and transition to the decision support tools (i.e., computational toxicology methods) for priority setting and targeted testing, and is expected to propose three case studies relevant to industrial chemicals, water contaminants, and pesticides. In addition, EPA intends to identify the steps needed to satisfy the validation requirements related to regulatory acceptance of these new approaches for use in screening under the Endocrine Disruptors Screening Program (EDSP) in the near future.

Next step: In 2011, EPA intends to expand its efforts to engage interested stakeholders in this project.

### 2.1.5 ** Electronic online reporting of health and safety data under the Toxic Substances Control Act (TSCA); Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and Federal Food, Drug, and Cosmetic Act (FFDCA): reducing burden and improving efficiencies

Reason for inclusion: This review is included in the Plan so that EPA can explore ways to reduce regulatory burden by transitioning from paper-based reporting to electronic reporting for industries that report chemical-related health and safety data under TSCA, FIFRA, and FFDCA. Existing TSCA regulations tied to this review include the 2010 TSCA Section 5 Premanufacture and Significant New Use Notification Electronic Reporting rule and the 2011 TSCA Inventory Update Reporting Chemical and Data Reporting rule.

Background: EPA currently collects a variety of chemical-specific health and safety data under several different regulations issued pursuant to TSCA, FIFRA, and FFDCA. When consulting with the public as this Plan was developed, industry suggested that electronic online reporting could help to reduce overall reporting and recordkeeping burdens, although some also expressed concern that the information continue to be protected as statutorily required. EPA has already begun efforts to incorporate online electronic reporting of information it collects under the TSCA regulations. Furthermore, we initiated an electronic reporting pilot project several years ago that accepted electronic copies of some pesticide information submitted under FIFRA and FFDCA. As part of our current retrospective review, we intend to consider lessons learned from stakeholders involved in this pilot project and identify a timeline and process for expanding the project.

Estimated potential cost or burden reduction: Online electronic reporting can reduce burden and costs for the regulated entities by eliminating the costs associated with printing and mailing

this information to EPA, while at the same time improving EPA's efficiency in reviewing regulations. The regulated community has indicated that these savings could be substantial.

**Next steps**: Later this year, the Agency expects to propose revisions to implement electronic reporting for the submission of health and safety data under TSCA. Additionally, within the next 12 months, EPA intends to develop a workplan to consider electronic reporting options under FIFRA and FFDCA for pesticide information. For the consideration of electronic reporting options for pesticide submissions, in 2011 EPA intends to begin developing a workplan for completing this review effort.

### 2.1.6 ** National Priorities List rules: improving transparency

**Reason for inclusion**: This review is part of the Plan so that EPA can consider ways to further ensure meaningful and substantial state involvement in decisions to place sites on the National Priorities List (NPL), in keeping with EO 13563's directive to provide an "open exchange of information and perspectives among State, local, and tribal officials."

**Background**: When consulting with the public as this Plan was developed, the National Governors Association commented on the need for EPA to share information that we rely upon to determine whether sites should be placed on the NPL. The NPL is the list of national priorities among the sites with known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States and its territories. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation. EPA is working to improve state and other stakeholder involvement to ensure that information is available to support Superfund listing determinations or other state or federal cleanup options.

Since state environmental agencies conduct roughly half of the Superfund site assessment reports completed each year, states' environmental staff are generally aware of specific site conditions as sites move towards the NPL listing phase. For those reports not produced by states, EPA routinely makes them available to the state partners so that both parties have the information necessary to hold collaborative discussions on the need for potential NPL listing. EPA intends to redouble its effort to make sure states, tribes, and other stakeholders are fully informed regarding EPA's NPL process.

**Next step**: EPA intends to address this programmatic concern through the ongoing Integrated Cleanup Initiative from the third quarter of fiscal year 2011 through the first quarter of FY 2012.

### 2.1.7 Quick changes to some TSCA reporting requirements: reducing burden

**Reason for inclusion**: EPA is developing a proposal to make a few quick changes to three existing reporting requirements under TSCA. The changes are intended to reduce reporting burdens and to clarify reporting to provide for more efficient review of health and environmental data and more effective protection of public health and the environment. This is consistent with EO 13563's directive to reduce regulatory burden.

**Background**: The anticipated changes involve 40 CFR 790.5, entitled "Submission of Information;" 40 CFR 792.185, entitled "Reporting of Study Results;" and 40 CFR 712.28, entitled "Forms and Instructions." The changes under consideration include:

- the elimination of the requirement for 6 copies to be submitted, replaced by submission of a single electronic copy;
- the addition of a requirement for including "Robust Summaries" of test results with the submission of test data; and
- the use of the Inventory Update Reporting Form to format the submission of preliminary assessment information in response to chemical information rules.

**Next step**: EPA expects to propose changes to reporting requirements by the end of 2011.

### 2.1.8 ** National Pollutant Discharge Elimination System (NPDES): coordinating permit requirements and removing outdated requirements

**Reason for inclusion**: EPA intends to review the regulations that apply to the issuance of NPDES permits, which are the wastewater permits that facility operators must obtain before they discharge pollutants to any water of the United States. EPA intends to revise or repeal outdated or ineffective regulatory requirements for wastewater facilities, which is consistent with EO 13563's directive to "determine whether...regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome."

**Background**: EPA plans to review NPDES permitting regulations in order to find provisions that are outdated or ineffective. EPA expects the review to most likely focus on:

a) eliminating inconsistencies between regulations and application forms;
b) improving the consistency between the application forms;
c) updating the application forms to address current program practices;
d) clarifying the existing regulations and modifying or repealing permitting, monitoring, and reporting requirements that have become obsolete or outdated due to programmatic and technical changes that have occurred over the past 20 years; and
e) modifying permit documentation and objection procedures to improve the quality and transparency of permit development.

As an example of an outdated regulation which could be changed to reduce burden, as well as improve transparency and public access to information, EPA is considering whether to revise the public notice requirements to allow a state to post notices and draft NPDES permits under the Clean Water Act on their state agency websites in lieu of traditional newspaper posting.

**Estimated potential cost or burden reduction**: EPA estimates that public notice of draft permits in newspapers for NPDES major facilities, sewage sludge facilities and general permits

currently costs approximately $1.6 million per year[15] (this excludes the costs of preparing the content of the NPDES public notice, and the costs of the other methods to provide notice besides newspaper publication, such as direct mailing). Any savings from EPA's planned rule, however, are likely to be less than this amount. The new rule would allow, but not require states and the Federal Government to use electronic public notice instead of newspaper publication. Some states would continue to publish at least some notifications in newspapers. In addition, there would be offsetting costs to provide electronic notice, and EPA does not currently have estimates of those costs.

**Next step**: EPA expects to propose modifications to NPDES permit regulations by the end of 2011.

### 2.1.9 **National primary drinking water regulations - Long Term 2 Enhanced Surface Water Treatment: evaluating approaches that may maintain, or provide greater, public health protection

**Reason for inclusion**: EPA intends to evaluate effective and practical approaches that may maintain, or provide greater protection of, the water treated by public water systems and stored prior to distribution to consumers. EPA plans to conduct this review expeditiously to protect public health while considering innovations and flexibility as called for in EO 13563.

**Background**: The purpose of the Long Term 2 Enhanced Surface Water Treatment (LT2) rule is to reduce illness linked with the contaminant *Cryptosporidium* and other disease-causing microorganisms in drinking water. The rule supplements existing regulations by targeting additional *Cryptosporidium* treatment requirements to higher risk systems. This rule also contains provisions to reduce risks from uncovered finished water reservoirs and to ensure that systems maintain microbial protection when they take steps to decrease the formation of disinfection byproducts that result from chemical water treatment.

LT2 requires public water systems that store treated water in open reservoirs to either cover the reservoir or treat water leaving the reservoir to inactivate viruses, *Giardia*, and *Cryptosporidium*.[16] This requirement applies to all public water systems, regardless of what treatment or filtration methods are used, because the requirements address open reservoirs that store drinking water that has already been treated and is intended to be distributed directly to consumers without further treatment. The LT2 uncovered finished water reservoir requirement is intended to protect against the potential for re-contamination of treated water with disease causing organisms, specifically *Cryptosporidium*, *Giardia*, and viruses.

[15] EPA used $1,000 (in 2010$) as the publication cost for a public notice in a newspaper. We assume that there are 1,600 NPDES permit actions that require public notice via newspaper publication each year; thus, we arrive at the $1.6 million per year estimate.

[16] "National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule (Final Rule)." 71 FR 654 (5 January 2006). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-2006-01-05/pdf/06-4.pdf; Accessed: 08/15/11.

The 1996 Amendments to the Safe Drinking Water Act (SDWA) require EPA to review the existing national primary drinking water regulations at least every six years and revise the regulations as appropriate. Section 300g-1 specifies that any revision must maintain or provide for greater protection of the health of persons.[17] EPA plans to review the LT2 regulation as part of the upcoming Six Year Review process using the protocol developed for this effort. As part of the review, EPA would assess and analyze new data/information regarding occurrence, treatment, analytical methods, health effects, and risk from all relevant waterborne pathogens to evaluate whether there are new or additional ways to manage risk while assuring equivalent or improved protection, including with respect to the covering of finished water reservoirs. Also, EPA intends to explore best practices that meet the SDWA requirements to maintain or improve public health protection for drinking water, while considering innovative approaches for public water systems.

**Next step**: The review process for LT2 is expected to begin in 2011 when EPA begins to update the 6-year review protocol to address microbial issues. Further, EPA plans to hold stakeholder meetings on LT2 in 2012, and before the end of 2011 expects to issue a Federal Register notice with more information about these meetings.

### 2.1.10 ** Combined Sewer Overflows (CSOs) and integrated planning for wet weather infrastructure investments: providing flexibilities

**Reason for inclusion:** This review is included in the Plan so that EPA can gather additional information on how we can better promote Green Infrastructure (GI), ensure practical and affordable remedies to CSO violations, and identify additional approaches with accountability to ensure that communities can see noticeable improvements to their water quality and reduced risks to human health through prioritizing infrastructure investments. When consulting with the public as this Plan was developed, several commenters requested that EPA address CSOs.

**Background:** EPA believes that the incorporation of GI and other innovative approaches into CSO long term control plans can result in improved water quality while potentially saving taxpayers money when compared to traditional approaches and providing additional benefits to communities. Many communities are exploring and implementing GI solutions to help address their storm water and wastewater control needs. For example, New York and Philadelphia have developed GI plans and are discussing with EPA how these plans can best help to meet their wastewater management needs now and into the future. Some communities have also expressed an interest in evaluating CSO investments along with other wastewater and stormwater investments to determine the most cost effective approach to improving water quality.

[17] 42 USC sec. 300g-1(b)(9) (2009). Note: Laws such as the Safe Drinking Water Act (SDWA) are codified in the *U.S. Code*. Some people may be more familiar with the public law citation for this section, which is SDWA Sec. 1412(b)(9). The text of 42 USC sec. 300g-1(b)(9) is available from: FDsys, http://www.gpo.gov/fdsys/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap6A-subchapXII-partB-sec300g-1.pdf; Accessed: 08/15/11.

Next steps: In fall 2011, EPA intends to initiate a process to conduct additional outreach with respect to how to improve the implementation of the CSO Policy. In particular, EPA intends to support and encourage the use of green infrastructure as part of an integrated approach to reduce stormwater flows in the CSO system and develop an approach for prioritizing wet weather investments into integrated permitting or other vehicles with accountability. In addition, EPA intends to consider approaches that allow municipalities to evaluate all of their CWA requirements and develop comprehensive plans to meet these requirements.

### 2.1.11 ** Vehicle regulations: harmonizing requirements

Reason for inclusion: EPA intends to review existing vehicle regulations for areas where greater harmonization with California and the U.S. Department of Transportation (DOT) can be achieved. This is in keeping with EO 13563's directive to achieve greater coordination across federal agencies to reduce redundant regulatory requirements.

Background: Activities to achieve greater harmonization among vehicle regulations include:

- **Vehicle greenhouse gas and fuel-economy standards compliance harmonization with DOT and CARB** – EPA and NHTSA are developing a joint rulemaking to propose greenhouse gas (GHG) and Corporate Average Fuel Economy (CAFE) standards for model years 2017-2025 light-duty vehicles. Harmonizing compliance could include streamlining reporting and credit trading systems and updating testing protocols to meet the needs of all three agencies. As part of this process, EPA and DOT intend to take comment on opportunities to further harmonize compliance requirements of the two agencies. This was recommended by an auto industry representative during the public comment process for this Plan.

- **Vehicle and fuel standards compliance harmonization with CARB** – EPA plans to assess and take comment on opportunities to harmonize testing and compliance requirements with CARB's vehicle emission standards. This review is expected to be done in conjunction with the rulemaking on the next set of vehicle and fuel standards, known as Tier 3 motor vehicle emission and fuel standards, informed by public comments received during the public outreach process.

Next steps: EPA intends to propose GHG standards in September 2011. Also, EPA expects to propose new vehicle and fuel standards in late 2011.

### 2.1.12 Multiple air pollutants: coordinating emission reduction regulations and using innovative technologies

Reason for inclusion: EPA intends to explore ways to reduce emissions of multiple air pollutants through the use of technologies and practices that achieve multiple benefits, such as controlling hazardous air pollutant emissions while also controlling particulate matter and its

precursor pollutants. This is in keeping with EO 13563's directives to harmonize related regulatory requirements and to promote innovation.

**Background**: EPA intends to issue a proposed rulemaking for the Maximum Achievable Control Technology (MACT) Risk and Technology Review for Pulp and Paper Industry (Subpart S). It is important that the Kraft NSPS and other MACT regulations for the pulp and paper industry be considered together to account for the interactions and collateral benefits or dis-benefits between the emitted criteria air pollutants and hazardous air pollutants (HAPs). Subpart S is under court ordered deadlines so coordination opportunities are limited. However, the greatest opportunity to address multiple air pollutants, enhance innovation, and reduce regulatory compliance efforts would be with a combined rulemaking where Kraft NSPS and Subpart MM regulations are considered together. Both regulations focus on combustion sources, and EPA intends for them to immediately follow the Subpart S rulemaking.

This industry-specific "sector approach" is intended to:

- Avoid "stranded" costs associated with piecemeal investment in control equipment for individual pollutants from multiple, successive rulemakings.
- Tailor results based on source-specific fuel inputs (e.g., non-condensable gases, wastewater treatment residuals) versus general inputs (e.g., coal, wood, oil, gas).
- Promote industry-specific technology-based solutions (e.g., energy efficiency).
- Provide flexibility in compliance alternatives.

EPA intends to take a similar approach for the chemical sector. We intend to perform a risk and technology review for the following MACT standards: miscellaneous organic national emission standards for hazardous air pollutants (MON), ethylene, pesticide active ingredients, polyether polyols, polymers and resins IV, and organic liquid distribution. We also intend to conduct the periodic technology review for the hazardous organic national emission standards for hazardous air pollutants (NESHAP) (HON). Furthermore, we are evaluating emissions from vinyl chloride facilities (covered by the HON) to see if additional emissions limitations are needed. Finally, we plan to review the five chemical sector NSPS and consolidate these requirements into a single sector rule. We currently plan to revise these MACT and NSPS rules to point to a set of uniform standards for equipment leaks, wastewater, tanks , control devices, and heat exchangers. Through this coordinated approach, we intend to establish consistent requirements across the entire chemical industry.

**Next step**: Proposed rules are anticipated in December 2011 for pulp and paper and November 2011 for the chemical industry rules.

### 2.1.13 ** New Source Performance Standards (NSPS) reviews and revisions under the CAA: setting priorities to ensure updates to outdated technologies

**Reason for inclusion**: This review is included in the Plan to ensure that EPA prioritizes NSPS reviews to focus on those that, in keeping with EO 13563, promote innovative technologies while upholding EPA's mission to protect human health and the environment.

**Background**: The CAA requires EPA to review and update NSPS every eight years for over 70 different industrial source types. In conducting such reviews in the past, the usefulness of the reviews varied greatly across the different source types. For some source types, we have seen significant improvements in processes and emission control technologies, along with significant numbers of new sources. For others, we found little change in prevailing technologies and/or little growth in the industry. Accordingly, we intend to establish priorities for the review and revision of NSPS based on the opportunities for meaningful improvements in air quality and public health, giving lesser importance to those categories where little or no opportunity for such improvements realistically exists. This approach is intended to make the NSPS review process more efficient, so that both public and private resources can be focused where it makes the most sense.

**Next step**: EPA intends to issue an Advanced Notice of Proposed Rulemaking projected for summer of 2011 that presents an approach that includes a streamlined process to consider whether an NSPS requires a review. If the standard remains effective in meeting the requirements of the CAA, then we would not conduct a review and redirect both public and private resources to the rules that provide the greatest public health protection and are most likely to warrant revision.

### 2.1.14 ** CAA Title V Permit programs: simplifying and clarifying requirements

**Reason for inclusion**: EPA intends to review the Title V implementation process to determine whether changes can be made to simplify and clarify the process for industry, the public, and government resources, which is in keeping with EO 13563's directive to simplify regulatory requirements.

**Background**: Operating permits are legally enforceable documents that permitting authorities issue to air pollution sources after the source has begun to operate. As required under Title V of the CAA, most large sources and some smaller sources of air pollution are required to obtain an operating permit. A Title V permit lists all of the air quality-related rules and requirements that apply to the particular source, and specifies how compliance will be monitored. States are required to give public notice of the draft permits and some permit revisions, and typically post permits on their websites. This provides transparency in the permitting process and minimizes misunderstandings between the source, regulatory agencies, and the public living around the source.

The Title V program was the focus of many of the public comments received as part of the outreach EPA conducted as it developed this Plan. EPA continues to draw on the Title V implementation ideas generated by its Clean Air Act Advisory Committee (CAAAC), including those developed by a CAAAC task force in 2006.[18] Taking advantage of advice and ideas from

[18] ---. Environmental Protection Agency. *Final Report to the Clean Air Act Advisory Committee: Title V Implementation Experience.* Washington: EPA, April 2006. Available from: the EPA website, http://www.epa.gov/oar/caaac/tvtaskforce/title5_taskforce_finalreport20060405.pdf; Accessed: 08/15/11.

all of these sources, EPA intends to review the Title V implementation process to determine whether changes can be made to help all permitting participants understand the program better. EPA also intends to streamline the process to be more efficient in terms of industry, public, and government resources. Among other things, EPA may consider electronic filing of applications, including supporting material such as reports.

**Estimated potential cost or burden reduction**: Although potential cost reductions associated with this action cannot be predicted until the areas for improvement are identified, EPA believes the improvements will reduce burden on the public, the permitting agencies and the permittees. The changes are intended to also increase transparency in the process as well as give greater certainty to the permittees. EPA recently completed a rulemaking to help streamline the implementation of the Title V program which resulted in an estimated total annual cost savings of approximately $32,000,000 (2010$).[19] This action should realize a benefit of $200 to $300 per permit revision when fully implemented, or approximately $3,000,000 to $5,000,000 (2010$) for each cycle of permit renewal nationally.

**Next step**: EPA intends to begin the review process to implement this recommendation during the fall/winter of 2011.

### 2.1.15 Innovative technology: seeking to spur new markets and utilize technological innovations

**Reason for inclusion**: This review is part of the Plan to evaluate how best EPA can "seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation" per EO 13563.

**Background**: Available and affordable technology choices define the potential range of environmental solutions for many environmental problems. Moreover, technology innovation can lead not only to better environmental outcomes, but better economic opportunities and outcomes, too. EPA efforts in the past 40 years have spurred technology developments responsible for profound improvements in environmental protection through preventing, reducing, and sequestering pollutants, and monitoring environmental conditions. EPA has a number of efforts underway to promote innovative technology including the following:

- During retrospective reviews and new rulemakings, EPA intends to assess innovative technology to help encourage continued development of new sustainable technologies to achieve improved environmental results at lower costs. Such innovative technologies

[19] As an example of potential cost savings associated with this review, EPA considered an existing rule that was implemented as a result of recommendations made by the 2006 Clean Air Act Advisory Committee (CAAAC) Task Force. The Flexible Air Permitting rule (FAP), implemented in October 2009 (74 FR 51418 (October 06, 2009), available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-2009-10-06/pdf/E9-23794.pdf), revises the air permitting program under Title V. This final rule is illustrative of the policy improvements that the retrospective review aims to achieve, as it clarifies existing requirements and allows regulated entities to seek additional flexibility for their Clean Air Act permits.

will foster new market opportunities for green technology and infrastructure and will also provide new opportunities for the creation of more flexible and cost-effective means of compliance. The first step in this process is to conduct a technology opportunity and market assessment of two pending regulations in order to begin developing a framework for considering such information during the regulatory process.[20]

- Monitoring and testing certification procedures and regulations are often codified and then, over time, can become outdated. Where feasible, EPA plans to continue to make changes to update monitoring and testing protocols through flexible approaches such as alternative method approval procedures, which can allow more immediate use of new methods based on new scientifically sound technology that meet legally supported criteria. In future rulemakings, EPA intends to continue to augment codified protocols by utilizing established requirements, such as the National Technology Transfer Advancement Act, to add by reference, methods developed by voluntary consensus organizations, where appropriate.

- EPA has taken steps already to support technological innovation in the water sector through cooperation with a newly formed regional water technology cluster. The water technology innovation cluster intends to develop and commercialize innovative technologies to solve environmental challenges and spur sustainable economic development and job growth through the expansion, creation, and attraction of water technology companies and investment. EPA co-hosted a workshop with the regional Water Technology Innovation Cluster (WTIC) on May 23, 2011, where the Agency worked to identify major challenges and technology needs faced by the different water sectors.

**Next steps**: EPA intends to begin a technology opportunity and market assessment of two regulations by the end of fiscal year 2011.

### 2.1.16 ** The costs of regulations: improving cost estimates

**Reason for inclusion**: EPA intends to evaluate why and to what degree compliance cost estimates developed prior to the issuance of a regulation (ex-ante compliance costs) differ from actual compliance costs realized after a regulation takes effect (ex-post compliance costs). EO 13563 requires each agency to use the best available techniques to quantify anticipated, present, and future costs of its regulations as accurately as possible. The overall goal of this project is to improve EPA's ability to estimate ex-ante compliance costs to increase regulatory efficiency.

[20] For more information, see EPA's FY 2011 Strategic Action Plan for Advancing Science, Research and Technological Innovation. Citation: ---. Environmental Protection Agency. "Advancing Science, Research, and Technological Innovation," in *FY2011 – 2015 EPA Strategic Plan*, pp. 32 – 33. (Publication No. EPA-190-B-10-002). Washington, EPA: September 2010. Available from: the EPA website, http://www.epa.gov/planandbudget/strategicplan.html; Accessed: 08/15/11.

**Background**: EPA intends to explore, through an analysis initially focusing on 5 rules, possible sources of uncertainty and reasons why ex-ante cost estimates and estimates of ex-post costs diverge. One of the goals of the project is to determine if any systematic biases exist in EPA's ex-ante cost estimates, and if so, why. One potentially important reason for the difference between ex-ante and ex-post costs is unanticipated technological innovation that occurs between the time a rule is promulgated and when the regulated community must begin complying with the regulation. While we recognize that benefits estimates may also change as a result of technological innovation, we will focus our analysis here on costs with the overall goal of identifying ways EPA can improve estimates of compliance costs to better inform regulation.

The five rules included in this study are:

- National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring;[21]
- National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Pulp, Paper, and Paperboard Category;[22]
- Revision of Standards of Performance for Nitrogen Oxide Emissions From New Fossil-Fuel Fired Steam Generating Units; Revisions to Reporting Requirements for Standards of Performance for New Fossil-Fuel Fired Steam Generating Units; [23]
- Emission Standards for Locomotives and Locomotive Engines;[24] and
- Methyl Bromide Critical Use Nomination for Preplant Soil Use for Strawberry Fruit Grown in Open Fields (Submitted in 2003 for the 2006 Use Season).[25]

**Next step**: The Agency plans to complete a draft report on the first five rules by fall 2011.

## 2.2 Longer term actions

The 19 regulatory reviews listed here are part of EPA's initial list of 35 priority regulatory reviews. These actions are on a longer term schedule relative to the early actions listed in the previous section. Descriptions for each follow. Asterisks (**) preceding the heading of a review

[21] "National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring (Final Rule)." 66 FR 6976 (January 22, 2001). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-2001-01-22/pdf/01-1668.pdf; Accessed: 08/15/11.

[22] "National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Pulp, Paper, and Paperboard Category: Final Rules." 63 FR 18504 (April 15, 998). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-1998-04-15/pdf/98-9613.pdf: Accessed; 08/15/2011.

[23] "Revision of Standards of Performance for Nitrogen Oxide Emissions From New Fossil-Fuel Fired Steam Generating Units; Revisions to Reporting Requirements for Standards of Performance for New Fossil-Fuel Fired Steam Generating Units: Final Rule." 63 FR 49442 (September 16, 1998). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-1998-09-16/pdf/98-24733.pdf; Accessed: 08/15/2011.

[24] "Emission Standards for Locomotives and Locomotive Engines: Final Rule." 63 FR 18978 (April 16, 1998). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-1998-04-16/pdf/98-7769.pdf: Accessed: 08/15/2011.

[25] "Protection of Stratospheric Ozone: Process for Exempting Critical Uses From the Phaseout of Methyl Bromide." 69 FR 76982 (December 23, 2004). Available from FDsys, http://www.gpo.gov/fdsys/pkg/FR-2004-12-23/pdf/04-27905.pdf: Accessed: 08/15/2011.

indicate those reviews which were suggested during the public comment periods held for this Plan.

1. Vehicle fuel vapor recovery systems: eliminating redundancy
2. ** New Source Performance Standards (NSPS) under the CAA for grain elevators, amendments: updating outmoded requirements and relieving burden
3. ** Sanitary Sewer Overflow (SSO) and peak flow wet weather discharges: clarifying permitting requirements
4. ** E-Manifest: reducing burden
5. Electronic hazardous waste Site ID form: reducing burden
6. ** Consumer confidence reports for primary drinking water regulations: providing for the open exchange of information
7. ** Reporting requirements under Section 303(d) of the Clean Water Act (CWA): reducing burden
8. ** Export notification for chemicals and pesticides: reducing burden and improving efficiencies
9. ** Water quality trading: improving approaches
10. ** Water quality standard regulations: simplifying and clarifying requirements
11. ** State Implementation Plan (SIP) process: reducing burden
12. ** National primary drinking water regulations for lead and copper: simplifying and clarifying requirements
13. Adjusting threshold planning quantities (TPQs) for solids in solution: reducing burden and relying on scientific objectivity
14. Integrated pesticide registration reviews: reducing burden and improving efficiencies
15. ** Certification of pesticide applicators: eliminating uncertainties and improving efficiencies
16. ** Polychlorinated biphenyls (PCB) reforms: improving efficiencies and effectiveness
17. ** Hazardous waste requirements for retail products: clarifying and making the program more effective
18. Contaminants under the Safe Drinking Water Act (SDWA): coordinating regulatory requirements
19. **Section 610 reviews: coordinating requirements

### 2.2.1 Vehicle fuel vapor recovery systems: eliminating redundancy

**Reason for inclusion:** This ongoing retrospective review is included in the Plan because EPA intends to seek burden reductions for gas stations by eliminating regulatory requirements that call for the use of redundant technology. This review is in keeping with EO 13563's directive to eliminate redundant requirements.

**Background:** Onboard refueling vapor recovery technology on today's gasoline-powered vehicles effectively controls harmful air emissions as cars and trucks refuel, thereby eliminating the need for controls at the gas pump. This ongoing review is intended to eliminate the gas

dispenser-based vapor control requirements that have become redundant due to this onboard technology, and thereby relieve states of the obligation to require pump-based Stage II vapor recovery systems at gasoline stations. EPA issued a proposed rule on July 15, 2011.[26]

**Estimated potential cost or burden reduction**: Taking into consideration the costs associated with the removal of vapor recovery equipment and the use of less expensive conventional equipment on the gasoline dispensers, as well as the reductions in record-keeping requirements and other operating costs, EPA estimates the long-term cost savings associated with this rule to be approximately $87 million per year (2010$).

**Next step**: EPA intends to issue a final rule in summer 2012.

### 2.2.2 **[27] New Source Performance Standards (NSPS) under the CAA for grain elevators, amendments: updating outmoded requirements and relieving burden

**Reason for inclusion**: This review is part of the Plan because EPA intends to evaluate the technology that is used to determine the regulation's stringency, in keeping with EO 13563's directive to revise or repeal outmoded or burdensome regulatory requirements.

**Background**: EPA is undertaking this review in response to comments from the NSPS Subpart DD Coalition, which is made up of six organizations: the Corn Refiners Association, the North American Millers' Association, the National Council of Farmer Cooperatives, the National Grain and Feed Association, the National Oilseed Processors Association, the USA Rice Federation, and the National Oilseed Processors Association. The comments call on EPA to review the NSPS for grain elevators which was promulgated in 1978 and last reviewed in 1984. The Coalition comments that the basis EPA used to determine applicability and rule stringency have changed fundamentally, and that a review is needed.

EPA agrees that since promulgation there have been a number of changes in the technology used for storing and loading/unloading grain at elevators. Moreover, the rule has seen increased activity of late, due to the increase in ethanol production that has led to increased corn production and grain storage. For these reasons, EPA intends to review the existing NSPS for grain elevators to ensure the appropriate standards are being applied consistently throughout the industry.

**Next step**: We expect to propose amendments by December 2012.

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[26] "Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver (Proposed Rule)." 76 FR 41731 (July 15, 2011). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-2011-07-15/pdf/2011-17888.pdf; Accessed: 08/15/11.

[27] Asterisks (**) preceding the heading of a review indicate those reviews which were suggested during the public comment period helds for this Plan.

### 2.2.3 ** Sanitary Sewer Overflow (SSO) and peak flow wet weather discharges: clarifying permitting requirements

**Reason for inclusion**: This review is included in the plan so that EPA can gather additional information about the most effective way to manage wastewater that flows through municipal sewage treatment plants during heavy rains or other wet weather periods that cause an increase in the flow of water (these are collectively known as "peak flows"). EPA intends to evaluate options that are appropriate for addressing Sanitary Sewer Overflows (SSOs) and peak flow wet weather discharges and determine if a regulatory approach, voluntary approach, or other approach is the best path forward. This is consistent with EO 13563's directive to clarify regulatory requirements.

**Background**: During periods of wet weather, wastewater flows received by municipal sewage treatment plants can significantly increase, which can create operational challenges for sewage treatment facilities. Where peak flows approach or exceed the design capacity of a treatment plant they can seriously reduce treatment efficiency or damage treatment units.

One engineering practice that some facilities use to protect biological treatment units from damage and to prevent overflows and backups elsewhere in the system is referred to as "wet weather blending." Wet weather blending occurs during peak wet weather flow events when flows that exceed the capacity of the biological units are routed around the biological units and blended with effluent from the biological units prior to discharge. Regulatory agencies, sewage treatment plant operators, and representatives of environmental advocacy groups have expressed uncertainty about National Pollutant Discharge Elimination System (NPDES) requirements concerning peak flows.

In June and July 2010, EPA held listening sessions to gather information on issues associated with SSOs and peak flow wet weather discharges.[28] EPA received extensive verbal and written comments. Subsequently, EPA held a stakeholder workshop on July 14 and 15, 2011,[29] in which designated representatives from the following stakeholder organizations participated in a facilitated discussion on the issues most important to them in regulating SSOs and peak flow discharges:

- Association of State and Interstate Water Pollution Control Administrators,
- National Association of Clean Water Agencies,
- American Rivers,
- Natural Resources Defense Council,
- Cahaba River Society, and

[28] "Stakeholder Input; National Pollutant Discharge Elimination System (NPDES) Permit Requirements for Municipal Sanitary Sewer Collection Systems, Municipal Satellite Collection Systems, Sanitary Sewer Overflows, and Peak Wet Weather Discharges From Publicly Owned Treatment Works Treatment Plants Serving Separate Sanitary Sewer Collection Systems (Notice)." 75 FR 30395 (June 01, 2010). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-2010-06-01/pdf/2010-13098.pdf; Accessed: 08/15/11.

[29] "Notice of EPA Workshop on Sanitary Sewer Overflows and Peak Wet Weather Discharges; Notice," 76 FR 35215 (June 16, 2011). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-2011-06-16/pdf/2011-15003.pdf; Accessed: 08/15/11.

- Water Environment Federation.

In addition to the designated representatives, over 70 members of the public attended the workshop.

The workshop provided representatives of key stakeholder groups an opportunity to provide their view on potential NPDES requirements for SSOs and peak flows at publicly owned treatment works (POTWs) served by sanitary sewers. All of the representatives at the workshop supported an EPA rulemaking to clarify NPDES permit requirements for SSOs that addressed reporting; recordkeeping; public notice; capacity, management, operation and maintenance (CMOM) programs; and requirements for municipal satellite collection systems. While there was agreement on core provisions that should be included in NPDES permits and the need to regulate municipal satellite collection systems, stakeholders had differing views on a number of issues, including which if any basement backups should be reported, whether to excuse or allow SSOs caused by extreme events, and the appropriate role of peak excess flow treatment facilities located in the collection system. Stakeholders also discussed the use of high-efficiency side-treatment of wet weather diversions around secondary treatment units.

**Next Step**: By summer 2012, EPA intends to consider the comments received from our workshop participants in determining next steps.

### 2.2.4 ** E-Manifest: reducing burden

**Reason for inclusion**: EPA is exploring ways to reduce burden for hazardous waste generators, transporters, and permitted waste management facilities by transitioning from a paper-based reporting system to electronic reporting. This is consistent with EO 13563's directive to reduce regulatory burden.

**Background**: Currently, hazardous waste generators, transporters, and permitted waste management facilities must complete and carry a 6-ply paper manifest form as the means to comply with the "cradle-to-grave" tracking requirements required for off-site hazardous waste shipments under Section 6922(a)(5) of the Resource Conservation and Recovery Act (RCRA) statute.[30] EPA and our stakeholders advocate developing electronic hazardous waste manifesting services that EPA would host as a national system. This electronic system would allow stakeholders the option of using electronic manifests in lieu of the current 6-ply paper forms. Stakeholders recommended in 2004 that EPA develop a national electronic manifest system hosted by the Agency as a means to implement a consistent and secure approach to completing, submitting, and keeping records of hazardous waste manifests electronically.

[30] 42 USC sec. 6299(a)(5) (2009). Note: Laws such as RCRA are codified in the *U.S. Code*. Some people may be more familiar with the public law citation for this section, which is RCRA Sec. 3002(a)(5). The text of 42 USC sec. 6299(a)(5) is available from: FDsys, http://www.gpo.gov/fdsys/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap82-subchapIII-sec6922.pdf; Accessed: 08/15/11.

Electronic manifests could be downloaded to mobile devices, and tracking data distribution could be carried out electronically. Waste handlers could accomplish nearly real-time tracking of waste shipments, EPA and states could maintain more effective oversight of hazardous waste shipments, data quality and availability would be greatly improved, and the Agency could collect and manage manifest data and Biennial Reporting data much more efficiently. The hazardous waste industry is on record supporting a user fee funded approach to developing and operating the e-Manifest system, and the Administration supports establishing an e-Manifest system.

**Estimated potential cost or burden reduction**: The development of a national e-Manifest system would entail total intramural and extramural system development costs ranging from $11.5 million to $20.7 million, depending on the chosen system design. For EPA's preferred system design option, involving mobile PC devices that link to and exchange manifest data with a national system, system development costs would total about $11.3 million (2010$) and average annual operation and maintenance costs would total about $3.6 million (2010$). EPA believes that such a system would produce annual savings to waste handlers and regulators ranging between $76 million and $124 million (2010$).

**Next steps**: In the FY 2012 President's Budget EPA requested $2 million to begin the development of an electronic hazardous waste manifest system. The Administration also submitted to Congress a legislative proposal to collect user fees to support the development and operation of this system. As part of the regulatory review plan, EPA proposes including the efforts to finalize the rule that will allow tracking of hazardous waste using the electronic manifest system.

### 2.2.5 Electronic hazardous waste Site ID form: reducing burden

**Reason for inclusion**: EPA is exploring ways to reduce burden for hazardous waste generators, transporters, and permitted waste management facilities by transitioning from a paper-based site ID application system to an electronic application system. This is consistent with EO 13563's directive to reduce regulatory burden.

**Background**: RCRA requires individuals who (1) generate or transport hazardous waste or (2) operate a facility for recycling, treating, storing, or disposing of hazardous waste, to notify EPA or their authorized state waste management agency of their regulated waste activities and obtain a RCRA Identification (ID) Number. The RCRA ID Number is a unique identification number, assigned by EPA or the authorized state waste management agency, to hazardous waste handlers (see categories described above) to enable tracking of basic site information and regulatory status.

Currently, the Hazardous Waste Site ID form is an electronically-fillable PDF form. However, after a facility types in their information, the facility must print the form, sign it, and then mail it to the state or EPA Region. This is because the Site ID form requires a facility operator's wet signature. Similar to submitting tax forms online, this process can be streamlined if EPA can enable Site ID forms to be signed and submitted electronically. Electronically submitting Site ID forms would: 1) save in mailing costs; 2) enable better data quality as the data would be entered by the facility itself; 3) increase efficiency of the notification process as the facility could easily

review its past submissions and submit updates to the Site ID form (rather than repeatedly filling out the form again and again); and 4) enable states and EPA to receive the updated data faster.

As every Small Quantity Generator facility; Large Quantity Generator (LQG) facility; and Treatment, Storage, and Disposal (TSD) facility is required to use the Site ID form to obtain an EPA ID number and to submit changes to facility information, electronically submitting Site ID forms could potentially impact 50,000-100,000 facilities nationwide. In 2010, there were 97,610 submissions. As part of the Biennial Report, LQG and TSD facilities have to re-notify every two years. State renewals are state-specific, but it is noted that several states require annual re-notifications.

**Next step**: EPA estimates an electronic Site ID form could be implemented within a year after the decision is made to move forward.

### 2.2.6 ** Consumer confidence reports for primary drinking water regulations: providing for the open exchange of information

**Reason for inclusion**: This action is included in the Plan so that EPA can explore ways to promote greater transparency and public participation in protecting the Nation's drinking water, in keeping with EO 13563's directive to promote participation and the open exchange of information.

**Background**: Consumer Confidence Reports are a key part of public right-to-know in the SDWA. The Consumer Confidence Report, or CCR, is an annual water quality report that a community water system is required to provide to its customers. Community Water Systems (CWSs) serving more than 10,000 persons are required to mail or otherwise directly deliver these reports. States may allow CWSs serving fewer than 10,000 persons to provide these reports by other means. The report lists the regulated contaminants found in the drinking water, as well as health effects information related to violations of the drinking water standards. This helps consumers make informed decisions.

As stakeholders discussed during the development of this Plan, there has been a major increase and diversity in communication tools since 1998. EPA will consider reviewing the Consumer Confidence Report Rule to look for opportunities to improve the effectiveness of communicating drinking water information to the public, while lowering the burden of water systems and states. One example suggested by water systems is to allow electronic delivery through e-mail, thereby reducing mailing charges. This may also improve the readership of CCRs.

**Estimated potential cost or burden reduction**: EPA estimates a cost savings of approximately $1,000,000 (2010$) per year, based on the anticipated reduction in postage and paper costs for systems serving ≥10,000 customers.[31]

[31] "Agency Information Collection Activities; Proposed Collection; Comment Request; Public Water System Supervision Program (Renewal); EPA ICR No. 0270.43, OMB Control No. 2040–0090," 73 FR 32325 (June 6, 2008). Available from FDsys, http://www.gpo.gov/fdsys/pkg/FR-2008-06-06/pdf/E8-12709.pdf; Accessed: [cont'd. on next page]

**Next step**: EPA estimates that a retrospective review of the CCR could be completed within 12-16 months after the review cycle begins in fiscal year 2012.

### 2.2.7 ** Reporting requirements under Section 303(d) of the Clean Water Act (CWA): reducing burden

**Reason for inclusion**: EPA intends to explore ways to reduce the burden on state governments when reporting on the quality of the Nation's water bodies, per EO 13563's directive to reduce regulatory burden.

**Background**: On April 1 of every even numbered year, states report to EPA on the status of the nation's waters to fulfill reporting requirements under CWA sections 303(d) and 305(b). The requirement for states to report on the condition of their waters every two years under Section 305(b) is statutory. However, the requirement for states to identify impaired waters that need a Total Maximum Daily Load (TMDL) every two years under Section 303(d) is regulatory. States have raised concerns that reporting this information every two years is a significant administrative burden.

**Next step**: EPA intends to work with the public and states to identify alternative approaches for reducing the burden associated with water quality reporting requirements and to evaluate the impact of changing this reporting cycle under either or both CWA Sections 303(d) and 305(b). EPA plans to review this activity by June 2012.

### 2.2.8 ** Export notification for chemicals and pesticides: reducing burden and improving efficiencies

**Reason for inclusion**: EPA intends to explore ways to reduce regulatory burden on pesticide exporters and the foreign countries monitoring the exports, in keeping with EO 13563's directive to reduce regulatory burden.

**Background**: The regulations issued pursuant to Section 12(b) of TSCA specify export notification requirements for certain chemicals subject to regulation under TSCA Sections 4, 5, 6, and 7. The purpose of the export notification requirements of Section 12(b) of TSCA is to ensure that foreign governments are alerted when EPA takes certain regulatory actions on chemical substances being exported from the United States to those foreign countries, and to communicate relevant information concerning the regulated chemicals. In addition, Section 17(a) of FIFRA requires that the foreign purchaser of a pesticide that is not registered by EPA sign a statement, prior to export, acknowledging that the purchaser understands that the pesticide

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08/15/11. The total annual cost estimate of delivering CCRs as bill inserts for systems serving ≥ 10,000 customers was reported in 2007$ and adjusted for inflation with the GDP deflator, providing a total annual cost estimate of $1 million (2010$). This figure is considered potential cost savings, because water systems could avoid these paper delivery expenses as a result of electronic CCR reporting.

is not registered for use in the United States and cannot be sold in the United States. The purpose of the export notification requirements of Section 17(a) is to ensure that foreign purchasers and the regulatory authorities in the importing country know these pesticides do not have an EPA registration; EPA registration carries a high degree of significance in other countries. Under both the TSCA and FIFRA regulations, the export notifications must be transmitted to an appropriate official of the government of the importing country, and is intended to provide them with notice of the chemical's export and other relevant information, e.g. the chemical's regulatory status in the U.S. and whether other information is available about the chemical.

During the public involvement process for this Plan, industry reported that these export notification requirements have resulted in a significant, and growing, number of export notifications, which is burdensome both for them, and also for EPA and the receiving foreign countries. Yet industry suggested that these requirements do not appear to provide comparable benefits to public health or the environment.

EPA intends to review the implementing regulations to determine whether there are any opportunities to reduce overall burden on exporters, the Agency, and receiving countries, while still ensuring that the statutory mandates are followed. For example, EPA is considering whether some or all of the transaction could be accomplished through electronic media and whether other changes to the process could provide efficiencies that would benefit all parties.

**Next step**: EPA is currently developing a workplan for completing this review effort within the next 12 months. The Agency intends to identify a timeline and process for engaging stakeholders in this review.

### 2.2.9 ** Water quality trading: improving approaches

**Reason for inclusion**: EPA intends to review the 2003 Water Quality Trading Policy to determine whether revisions could help increase adoption of market-based approaches, in which trading is a leading example, to increase the implementation of cost-effective pollutant reductions. This is in keeping with EO 13563's directive to reduce burden and the principle of maximizing net benefits.

**Background**: In 2003, EPA issued its final Water Quality Trading Policy,[32] which provides a framework for trading pollution reduction credits to promote cost-effective improvements in water quality, consistent with the goals and requirements of the Clean Water Act (CWA). This policy has been a success in encouraging states and stakeholders to give greater attention to market-based approaches for achieving water quality-based pollutant reductions beyond the technology-based requirements of the Act, as well as ancillary environmental benefits including carbon sequestration, habitat protection, and open space preservation. Based upon public input

[32] See EPA's 2003 Water Quality Trading Policy. Citation: ---. Environmental Protection Agency. "Water Quality Trading Policy." Washington: EPA, January 13, 2003. Available from: the EPA website, http://water.epa.gov/type/watersheds/trading/tradingpolicy.cfm; Accessed: 08/15/11.

and EPA's support and review of water quality trading programs over the past eight years, EPA believes that significant, cost-effective pollutant reductions, particularly from non-point sources, remain untapped, and will explore ways to revise the policy to reflect new understanding and innovation. One area of innovation being considered by many stakeholders is stormwater trading.

EPA intends to begin this process with a workshop or other forum to solicit ideas from the public on barriers to trading and other market-based approaches under the current policy, and ways to reduce these barriers.

Next step: EPA intends to begin this process with a workshop or other forum to be held in 2012.

### 2.2.10 ** Water quality standard regulations: simplifying and clarifying requirements

Reason for inclusion: EPA intends to review water quality standard (WQS) regulations to identify ways to improve the Agency's effectiveness in helping restore and maintain the Nation's waters and to simplify standards. This is consistent with EO 13563's directive to simplify regulatory requirements.

Background: Water Quality Standards are the foundation of the water quality-based pollution control program mandated by the Clean Water Act. The WQS define the goals for a waterbody by designating its uses, setting criteria to protect those uses, and establishing provisions such as antidegradation policies to protect waterbodies from pollutants. Since the current WQS regulation was last revised in 1983, a number of issues have been raised by stakeholders or identified by EPA in the implementation process that could benefit from clarification and greater specificity. The proposed rule is expected to provide clarity in six key program areas (summarized in greater detail below), and EPA intends to better achieve program goals by providing enhanced water resource protection and clearer and simplified requirements.

Key policy issues associated with the action:

1. **Administrator's determination that new or revised WQS are necessary:** Establish a more transparent process for the Administrator to announce a determination that new or revised WQS are necessary under Section 303(c)(4)(B) of the Act.
2. **Designated uses:** Ensure states and tribes are striving to meet water quality goals even where full attainment of Clean Water Act standards is unattainable.
3. **Triennial review requirements:** Ensure states' and tribes' WQS are continuously updated and reflect EPA's latest criteria recommendations.
4. **Antidegradation:** Enhance state and tribal implementation of antidegradation and help better maintain and protect high quality waters.
5. **Variances to WQS:** Provide regulatory flexibility and boundaries to allow states and tribes to achieve water quality improvements before resorting to a use change.
6. **Authorizing compliance schedules:** Clarify that, in order to issue compliance schedules, states and tribes must first authorize compliance schedules in their WQS.

**Next step**: EPA intends to propose a targeted set of revisions to the WQS regulation in early winter 2011/2012, and a final rulemaking in early summer 2012.

### 2.2.11 ** State Implementation Plan (SIP) process: reducing burden

**Reason for inclusion**: EPA intends to reduce hard copies, ensure that certain hearings are held only when needed, minimize the number of expensive newspaper advertisements providing public notice, and explore the potential for certain regulatory changes to be made with less process. This is in keeping with EO 13563's directive to reduce regulatory burden. The improvements to the SIP development process that are under consideration as a result of these actions are expected to reduce cost and burden to states and EPA Regional Offices. These actions should help to simplify the process, and are expected to conserve state and federal resources. Improvements such as reduced newspaper publication and hard copy submittals, elimination of unnecessary public hearings, and increased use of letter notices are expected to result in an ongoing cost savings. To the extent that final decisions on SIPs are made more quickly as a result of the process improvements, they are expected to provide greater certainty to stakeholders and to the general public.

**Background**: EPA and states are working together to review the administrative steps that states must follow when they adopt and submit plans to meet the requirements of the Clean Air Act. These plans describe how areas with air quality problems will attain and maintain the National Ambient Air Quality Standards.

EPA recently shared a number of simplifying changes to SIPs with the states via guidance.[33] These changes will minimize or eliminate (1) formal hearings on matters of no public interest, (2) expensive advertisements in newspapers with low readership, and (3) shipment of multiple hard copies of documents. Additionally, a state-EPA working group is considering (1) training tools that would assist states developing nonattainment SIPs for the first time, and (2) ways to provide states with information that will better equip them to deal with SIPs (e.g. SIP status/approval information, information on innovative measures).

We are also considering additional changes:

- Exploring options for reducing the paper submittals of SIP revisions in favor of electronic submittals.
- Determining whether and how the process for making minor plan revisions might be simplified.

**Next step**: The timeframes for these milestones will be determined at a later date.

[33] "Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of "Letter Notices," April 6, 2011 (Memorandum from Office of Air and Radiation Deputy Assistant Administrator Janet McCabe to EPA Regional Administrators)." Available from: the EPA website. http://www.epa.gov/glo/pdfs/20110406mccabetoRAs.pdf; Accessed 08/15/11.

### 2.2.12 ** National primary drinking water regulations for lead and copper: simplifying and clarifying requirements

**Reason for inclusion**: Efforts to revise the Lead and Copper Rule (also referred to as the LCR) have been ongoing but this review is part of the Plan because EPA intends to seek ways to simplify and clarify requirements imposed on drinking water systems to maintain safe levels of lead and copper in drinking water. This is in keeping with EO 13563's directive to simplify regulatory requirements.

**Background**: On June 7, 1991, EPA published LCR to control lead and copper in drinking water.[34] The treatment technique for the rule requires community water systems and non-transient non-community water systems to monitor drinking water at customer taps. If lead and copper concentrations exceed action levels in more than 10% of customer taps sampled, the system must undertake a number of additional actions to reduce lead levels. If the action level for lead is exceeded, the system must also inform the public about steps they should take to protect their health.

While LCR is an important means for reducing children's exposure to lead, stakeholders have commented that the rule is hard to understand and implement. Under the LCR review, EPA has been evaluating ways to improve public health protections provided by the rule as well as streamline rule requirements by making substantive changes based on topics that were identified in the 2004 National Review of the LCR.

**Next step**: EPA currently expects to issue a proposed rulemaking in 2012.

### 2.2.13 Adjusting threshold planning quantities (TPQs) for solids in solution: reducing burden and relying on scientific objectivity

**Reason for inclusion**: EPA intends to revise TPQs for chemicals that are handled as non-reactive solids in solution. EPA is undertaking this review in order to align regulatory requirements with best available science and reduce regulatory burden, as called for in EO 13563.

**Background**: The extremely hazardous substances (EHSs) list and its TPQs, developed pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA), are intended to help communities focus on the substances and facilities of most immediate concern for emergency planning and response.[35] EPA is considering an alternative approach for the TPQs for chemicals on the EHSs list that are handled as non-reactive solids in solution. EPA is pursuing this approach in part based on industry's request to revisit the TPQ rationale for the chemical

[34] ---. Environmental Protection Agency. "Lead and Copper Rule: A Quick Reference Guide." (Publication No. EPA-816-F-08-018). Washington: EPA, June 2008. Available from: the EPA website, http://water.epa.gov/lawsregs/rulesregs/sdwa/lcr/upload/LeadandCopperQuickReferenceGuide_2008.pdf; Accessed: 08/15/11.

[35] More information about TPQs for EHSs: http://www.epa.gov/oem/content/epcra/epcra_ammend.htm.

paraquat dichloride (handled as a solid in aqueous solution). These regulatory revisions reflect EPA's use of best current science, and offer streamlining for facilities while maintaining environmental safeguards since solids in solutions are less likely to be dispersed into the air in event of an accidental release and have less impact on the off-site community.

**Next step**: EPA intends to complete a final rule by fall 2012.

### 2.2.14 Integrated pesticide registration reviews: reducing burden and improving efficiencies

**Reason for inclusion**: EPA is reviewing the pesticide registration process, outlined in Section 3 of FIFRA, as well as other FIFRA requirements, in order to achieve efficiencies for pesticide producers and other registrants, the public, and the Agency, in keeping with EO 13563's directive to relieve regulatory burden.

**Background**: Under the FIFRA, EPA reviews all current pesticide registrations every 15 years to ensure they continue to meet the protective FIFRA standard in light of new information and evolving science. To efficiently manage this very large effort, we are bundling chemicals by classes of pesticides with similar modes of operation or uses (e.g., neonicitinoids, pyrethroids). This has significant efficiency benefits for registrants, the public, and EPA, such as:

- **Cost savings resulting from evaluating similar chemicals at the same time** – Instead of EPA reviewing data and developing multiple independent risk assessments for individual chemicals, a number of similar chemicals can be cost-effectively evaluated at the same time. Registrants have greater certainty of a "level playing field" as the policies and state-of-the-science are the same at the time all of the pesticides in a class are evaluated. Registrants can form task forces to share the cost of producing data and to negotiate the design of any special studies required for a family of pesticides.

- **Higher quality and more comprehensive assessment of cumulative impacts** – Grouping classes of pesticides for consideration enhances our ability to meet our responsibilities in areas such as considering the impacts on endangered species and consulting with the Fish and Wildlife Service (FWS) in the Department of the Interior and the National Marine Fisheries Service in the National Oceanic and Atmospheric Administration (NOAA) in the Department of Commerce. Because FWS and NOAA could also consider a class of pesticides on a common timeframe, there is a greater likelihood that they would recommend consistent Reasonable and Prudent Alternatives in their Biological Opinions should consultation be required, which would provide benefits to pesticide registrants and users.

- **Reduced burden for registrants by minimizing redundant data submissions and allowing comprehensive discussion of issues and risk management approaches** – For instance, a registrant task force could coordinate production of data for common degradates, and possibly demonstrate to the Agency how data for a subset of pesticides in a class could be bridged to provide sufficient information for the entire class of pesticides.

- **Enhanced public participation** – Bundling chemicals can also benefit public participation in the registration review process. Rather than tracking actions, providing data and providing input on individual chemicals, the public can more effectively engage on entire groups of chemicals.

- **More flexible prioritization** – Bundling chemicals for review makes it easier to adjust priorities if circumstances demand. If new information or risk concerns demonstrate the need for accelerated review, it is easier to adjust resources and schedules when similar chemicals are already grouped together for action. For instance, when California accelerated their re-evaluation of pyrethroid registrations after the publication of new stream sediment monitoring data, the Agency was in a position to coordinate data requirements and study designs with California because it had already scheduled the registration review of pyrethroids as a class for the near future.

Next step: Some near-term examples of this chemical bundling include initiating registration reviews for the neonicotinoid insecticides and sulfonylurea herbicides in the next 12-18 months.

### 2.2.15 ** Certification of pesticide applicators: eliminating uncertainties and improving efficiencies

Reason for inclusion: EPA intends to review regulations for certification and training of pesticide applicators (40 CFR 171) to help clarify requirements and modify potentially redundant or restrictive requirements, in keeping with EO 13563's directive to reduce regulatory burden.

Background: By law, certain pesticides may be applied only by or under the direct supervision of specially trained and certified applicators. Certification and training programs are conducted by states, territories, and tribes in accordance with national standards. EPA has been in extensive discussions with stakeholders since 1997, when the Certification and Training Assessment Group (CTAG) was established. CTAG is a forum used by regulatory and academic stakeholders to discuss the current state of, and the need for improvements in, the national certified pesticide applicator program. In July of 2004, well over a million private, state, federal, and tribal commercial certified applicators had active pesticide applicator certificates in the U.S.

Based on extensive interactions with stakeholders, EPA has identified the potential for streamlining activities which could reduce the burden on the regulated community by promoting better coordination among the state, federal, and tribal partnerships; clarifying requirements; and modifying potentially redundant or restrictive regulation. This review would also consider strengthening the regulations to better protect pesticide applicators, the public, and the environment from harm due to pesticide exposure. In addition, resources and time permitting, EPA intends to consider the use of innovative technology tools (e.g., investigation of the use of educational tools such as web based tools), including consideration of the need to ensure communication and training is available to non-English speakers.

Next step: EPA intends to propose improvements to these regulations in 2012.

### 2.2.16 ** Polychlorinated biphenyls (PCB) reforms: improving efficiencies and effectiveness

**Reason for inclusion**: EPA intends to examine existing PCB guidance and regulations to harmonize regulatory requirements related to harmful PCB uses and to PCB cleanup. This is in keeping with EO 13563's directive to simplify and harmonize rules.

**Background**: EPA regulations governing the use of PCBs in electrical equipment and other applications were first issued in the late 1970s and have not been updated since 1998. EPA has initiated a rulemaking to reexamine these ongoing PCB uses with an eye to ending or phasing out uses that can no longer be justified under Section 6(e) of the Toxics Substances and Control Act (TSCA), which requires that EPA determine certain authorized uses will not present an unreasonable risk of injury to health and the environment. In addition, EPA recognizes that its cleanup program for PCBs may create barriers to the timely cleanup of sites that are contaminated with PCBs and other toxic constituents under EPA's other cleanup programs. Thus, EPA intends to look for opportunities to improve PCB regulations and related guidance to facilitate quicker and more effective PCB cleanups, for example with respect to PCB-contaminated caulk. EPA has already started looking for opportunities to improve PCB cleanup guidance and intends to work with states to identify areas for focus and plans to describe those results in future updates of our retrospective reviews.

**Next step**: EPA intends to look in the future (not earlier than 2013), after guidance revision opportunities are completed, at whether there are remaining issues that need regulatory revisions to facilitate quicker and more effective PCB cleanups.

### 2.2.17 ** Hazardous waste requirements for retail products: clarifying and making the program more effective

**Reason for inclusion**: A national retailer submitted comments on the regulatory review plan and outlined during the public listening sessions a number of issues that retailers face in complying with the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. EPA intends to gather data that could, in the future, inform a potential review of RCRA hazardous waste requirements to determine how they might be clarified or modified for retail products, consistent with EO 13563's directive to make regulatory programs more effective or less burdensome.

**Background**: Retailers face uncertainty in managing the wide range of retail products that may become wastes if unsold, returned, or removed from shelves for inventory changes. The issues raised include how to determine when unsold materials and materials returned by consumers become waste, how to make hazardous waste determinations for the many different kinds of materials that may become waste, and how the regulations apply to pharmaceuticals from retail pharmacies.

**Next steps**: The Agency is taking several steps to address these issues. First, EPA intends to review its regulations to determine whether to issue guidance in the short term concerning certain pharmaceutical containers.

Second, EPA intends to review the data and information in our possession about pharmaceutical products that may become wastes to address these issues as part of a rulemaking on pharmaceutical waste management.

Third, EPA intends to analyze relevant information to identify what the issues of concern are, what materials may be affected, what the scope of the problem is, and what options may exist for addressing the issues. EPA would then determine what future actions, if any, may be appropriate based on EPA's evaluation of the data gathered.

### 2.2.18 Contaminants under the Safe Drinking Water Act (SDWA): coordinating regulatory requirements

**Reason for inclusion**: EPA intends to coordinate drinking water regulatory requirements and regulate more cost-effectively by addressing contaminants as groups.

**Background**: On March 22, 2010, EPA announced a new Drinking Water Strategy, which was aimed at finding ways to strengthen public health protection from contaminants in drinking water.[36] This collaborative effort across EPA program offices is intended to streamline decision-making and expand protection under existing laws, and to enable EPA to provide more robust public health protection in an open and transparent manner, assist small communities to identify cost and energy efficient treatment technologies, and build consumer confidence by providing more efficient sustainable treatment technologies to deliver safe water at a reasonable cost. To obtain input on the strategy, EPA held four public listening sessions around the country, hosted a web-based discussion forum, and met with the National Drinking Water Advisory Council. In addition, EPA held a web dialogue and stakeholder meeting focused on the first goal of the strategy. The first goal of the strategy is to address contaminants as groups rather than one at a time, so that enhancement of drinking water protection can be achieved cost-effectively.

The Agency announced in February 2011 that it plans to develop one national drinking water regulation (NDWR) covering up to sixteen carcinogenic Volatile Organic Compounds (VOCs). EPA intends to propose a regulation to address carcinogenic contaminants as groups rather than individually in order to provide public health protections more quickly and also allow utilities to more effectively and efficiently plan for improvements. This action is part of the Agency's Drinking Water Strategy to help streamline implementation of drinking water rules for the regulated community.

**Next step**: EPA expects to issue a proposed rulemaking in the fall of 2013.

[36] See http://water.epa.gov/lawsregs/rulesregs/sdwa/dwstrategy/index.cfm

### 2.2.19 **Section 610 reviews: coordinating requirements

**Reason for inclusion**: This review is included in the Plan because EPA intends to coordinate retrospective reviews that arise from a variety of statutory and Presidential mandates. Where appropriate, EPA intends to coordinate our small business retrospective reviews, required by Section 610 of the Regulatory Flexibility Act, with other required reviews (e.g., under the Clean Air Act). This will aid in meeting EO 13563's directive to reduce or eliminate redundant, inconsistent, or overlapping requirements.

**Background**: Under Section 610 of the Regulatory Flexibility Act, EPA is required to review regulations that have or will have a significant economic impact on a substantial number of small entities (SISNOSE) within ten years of promulgation. Section 610 specifically requires review of such regulations to determine the continued need for the rule; the nature of complaints or comments received concerning the regulation from the public since promulgation; the complexity of the regulation; the extent to which the rule overlaps, duplicates or conflicts with other federal regulations, and, to the extent feasible, with state and local government regulations; and the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. These areas effectively promote many of the same principles of transparency, streamlining, and flexibility outlined in EO 13563. To the extent practicable, EPA plans to use the opportunity under this Plan to combine our Section 610 reviews with other reviews.

**Next steps**: EPA's upcoming 610 reviews include:

- National Pollutant Discharge Elimination System Permit Regulation and Effluent Guidelines and Standards for Concentrated Animal Feeding Operations due by February 2013;
- NESHAP: Reinforced Plastic Composites Production due by April 2013; and
- Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel due by June 2014.

# 3 Public Involvement and Agency Input for this Plan

EPA developed this Plan by gathering input from the public during two public comment periods, one of which was held before the preliminary Plan was released and one held afterwards. We also sought input from the Agency's subject matter experts who, outside of this retrospective review effort, often interact with businesses, states, and other regulated entities, as well as other stakeholders interested in EPA regulations. In parallel efforts, we sought to learn how public stakeholders and Agency experts would recommend designing EPA's *Preliminary Plan for Periodic Retrospective Reviews of Existing Regulations*. The regulatory reviews described in section 2 respond to a number of the comments submitted by the public both in this forum and in public outreach efforts conducted by EPA.

## 3.1 Public involvement in developing this Plan

Through EPA's public involvement process, the Agency gathered verbal and written public comments on the design of the Plan and on regulations that should be candidates for retrospective review. EPA opened two public comment periods during the development of this Plan. The first was held from February 18, 2011, to April 4, 2011 and gathered the public's written comments on how the Plan should be designed. During the first comment period, EPA also held a series of meetings to gather additional input. The second comment period was held from May 26, 2011, to June 27, 2011. It was held after the release of EPA's preliminary Plan and invited additional public comments on the Plan.

### 3.1.1 Public Comment Period #1

EPA posted the "Improving Our Regulations" website (http://www.epa.gov/improvingregulations) on February 18, 2011. The site provided direct links to a total of fifteen dockets established in Regulations.gov where members of the public could submit written comments about how EPA should design the Plan during the first comment period. Many commenters also suggested regulations as candidates for retrospective review. Fourteen of the dockets allowed the public to submit ideas by:

- Issue or impact:
  - Benefits and costs (Docket # EPA-HQ-OA-2011-0158)
  - Compliance (EPA-HQ-OA-2011-0166)
  - Economic conditions / market (EPA-HQ-OA-2011-0167)
  - Environmental justice / children's health / elderly (EPA-HQ-OA-2011-0168)
  - Integration and innovation (EPA-HQ-OA-2011-0161)
  - Least burdensome / flexible approaches (EPA-HQ-OA-2011-0165)
  - Science / obsolete / technology outdated (EPA-HQ-OA-2011-0162)
  - Small business (EPA-HQ-OA-2011-0164)
  - State, local and tribal governments (EPA-HQ-OA-2011-0163)
- Program area:
  - Air (EPA-HQ-OA-2011-0155)
  - Pesticides (EPA-HQ-OA-2011-0157)
  - Toxic substances (EPA-HQ-OA-2011-0159)
  - Waste (EPA-HQ-OA-2011-0160)

- Water (EPA-HQ-OA-2011-0154)

A fifteenth docket collected general comments (EPA-HQ-OA-2011-0156) that spanned more than one issue/impact or program area. Also, we established an email account where members of the public could submit their ideas: ImprovingRegulations.SuggestionBox@epa.gov. And finally, EPA issued a *Federal Register* (FR) notice[37] to ensure that people who lacked Internet access could read EPA's call for public comment.

The website, dockets, and FR notice included guiding questions based on the principles of EO 13563 and EPA's priorities. The Agency provided these questions to guide the public in formulating their ideas, not to restrict their comments. (See the questions in the appendix.)

Written comments were initially solicited from February 18 – March 20, 2011. After hearing many requests from the public to extend the comment period, EPA extended the due date to April 4, 2011. Hundreds of submissions were made to the public dockets. To advertise the public comment process and the public meetings, we issued a press release, publicized on our Open Government website and other key websites, and posted on the Agency's Facebook and Twitter pages.

### 3.1.2 Public Meetings

Verbal comments were solicited at a series of twenty public meetings. On March 14, EPA held a day-long public meeting in Arlington, Virginia, focused on all aspects of the Plan. The first half of the day focused on how to design the Plan. The second half was divided into targeted, concurrent sessions that focused on five areas: air, pesticides, toxic substances, waste, and water. Additionally, EPA held nineteen more town halls and listening sessions targeting specific programs areas (e.g. solid waste and emergency response) and EPA Regions. In total, approximately 600 members of the public attended.

### 3.1.3 Public Comment Period #2

The preliminary version of this Plan was released on May 26, 2011. That same day, in keeping with OMB guidance,[38] EPA opened a second public comment period that ended on June 27,

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[37] EPA issued a *Federal Register* (FR) notice on February 23, 2011, to announce the first public comment period and public meeting. EPA subsequently issued a second FR notice on March 18th to extend the first comment period. The respective citations are:

- "Improving EPA Regulations; Request for Comment; Notice of Public Meeting (Request for comment; notice of public meeting)." 76 FR 9988 (February 23, 2011). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-2011-02-23/pdf/2011-4152.pdf; Accessed: 08/15/11.
- "Extension of Comment Period: EPA's Plan for Retrospective Review Under Executive Order 13563 (Extension of comment period.)" 76 FR 14840 (March 18, 2011). Available from: FDsys, http://www.gpo.gov/fdsys/pkg/FR-2011-03-18/pdf/2011-6413.pdf; Accessed: 08/15/11.

[38] "Retrospective Review of Existing Regulations, April 25, 2011 (Memorandum from Office of Information and Regulatory Affairs Administrator Cass R. Sunstein)." Available from: the Office of Management and Budget, website: http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-19.pdf; Accessed 08/15/2011.

2011. The second comment period gave the public the opportunity to provide written comments after reading the preliminary document. During this second comment period, the public could submit comments via our general comments docket (EPA-HQ-OA-2011-0156). In total, between this comment period and the first one, EPA received over 800 comments.[39]

Although EPA is unable to conduct – all at one time – the many reviews that were suggested during our two public comment periods and in the public meetings, the comments will be retained in our publicly accessible Regulations.gov dockets and EPA intends to once again review the comments in the future five-year review periods described in section 4.

## 3.2 Agency input into this Plan

While EPA's public involvement process was underway, the Agency also engaged in an extensive process to tap the expertise of regulatory professionals throughout EPA and complement ideas gathered from the public. A cross-Agency workgroup helped craft the Plan and collected nominations for retrospective reviews from EPA's rule-writing experts, as well as those who work on regulatory enforcement and compliance. Staff and managers in EPA's ten Regional offices hold responsibilities for executing EPA's programs within the Nation's states, territories, and tribal nations. The Regions also assisted with the design of the Plan and indentified regulations that should be candidates for retrospective review.

Moreover, EPA combined efforts in the development of this Plan during preparation of the *Spring 2011 Semiannual Regulatory Agenda.* The Agenda describes a broad universe of regulatory activities under development or review, as well as recently completed regulations. This comprehensive report of regulations currently under development includes a number of activities that EPA identified as responsive to EO 13563. EPA has a long history of reviewing regulations and related activities in an effort to continually improve its protection of human health and the environment. It is the Agency's ongoing responsibility to listen to regulated groups and other stakeholders, rely on EPA expertise and quality scientific and economic analyses, address petitions for regulatory revisions, and otherwise respond to public and internal cues that indicate when reviews are necessary.

EPA determined which ongoing activities listed in our upcoming *Spring 2011 Semiannual Regulatory Agenda* are themselves a retrospective review. While some of these regulatory reviews are required by statute, many others are being examined by EPA as a discretionary measure. EPA intends to apply the principles and directives of EO 13563 to these ongoing reviews.

[39] The preliminary version of this plan stated that EPA received over 1,400 public submissions during the first round of public comments. Between the development of the preliminary plan and this final version, the www.Regulations.gov system changed how submissions are counted; therefore, the total number decreased.

# 4 EPA's Plan for Future Periodic Regulatory Reviews

EPA has selected an initial list of regulations that are expected to be reviewed during our first review period. However, EO 13563 also calls for "a...plan, consistent with law and its resources and regulatory priorities, under which the agency will ***periodically*** review its existing significant regulations..." (emphasis added).[40] Consistent with the commitment to periodic review and to public participation, the EPA intends to continue to assess its existing significant regulations in accordance with the requirements of Executive Order 13563. We welcome public suggestions about appropriate reforms. If, at any time, members of the public identify possible reforms to modify, streamline, expand or repeal existing regulations, we will give those suggestions careful consideration. This section of the Plan therefore defines a process that EPA intends to use for predictable, transparent future reviews, to be conducted every five years.

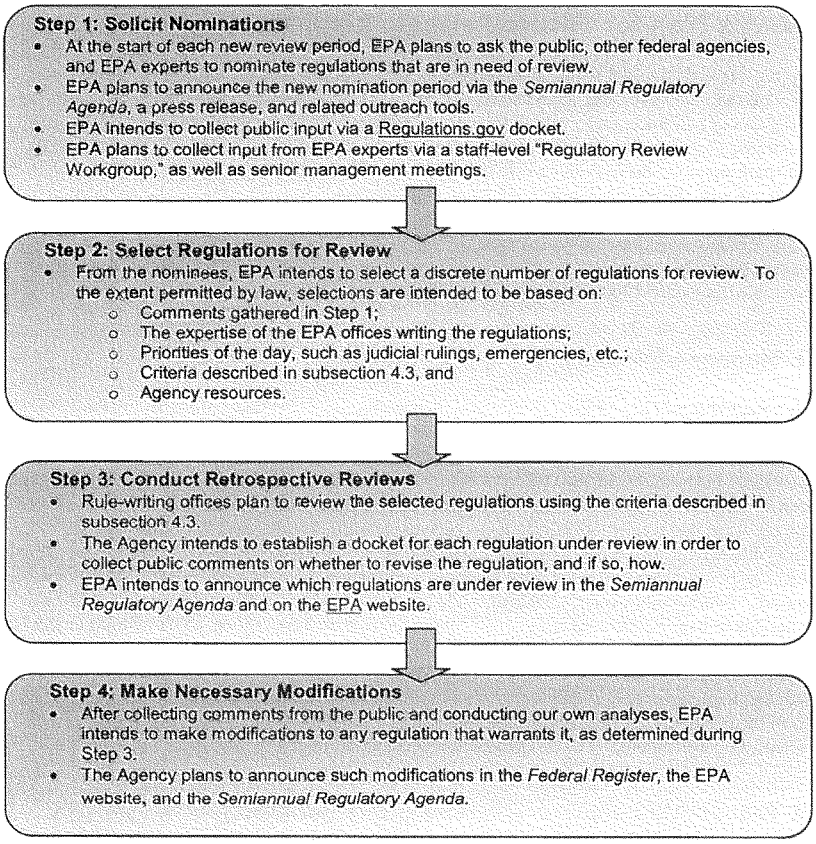
## 4.1 Management and oversight of the Plan

EPA's Regulatory Policy Officer (RPO) was responsible for developing this Plan for the EPA Administrator. Going forward, the RPO intends to manage and oversee the execution of future retrospective reviews; report on EPA's progress; and evaluate the Plan. EPA's RPO is the Associate Administrator for the Office of Policy. Organizationally, the Office of Policy (OP) is situated in the EPA Administrator's office and is independent from those parts of EPA that routinely write and implement regulations (such as the Office of Air and Radiation and the Office of Chemical Safety and Pollution Prevention). OP is not a regulatory development office, but it is responsible for a number of regulatory coordination, management, policy, and review functions. Among other tasks, OP reviews the economic and scientific underpinnings of regulations to help ensure consistency and sound decision-making, serves as the Administrator's regulatory policy advisor, and liaises with the Office of Management and Budget and the Office of Federal Register to ensure interagency review and publication of regulatory documents. Given OP's role providing regulatory analysis, advice, and management – independent of other offices' responsibility to promulgate and implement regulations – it is fitting that the RPO oversees the implementation of this plan and the execution of future retrospective reviews.

## 4.2 Process for conducting retrospective reviews

EPA plans to ask the public about our full range of regulations – soliciting comments on what the public recommends for review – on a five-year cycle. The RPO also intends to ask for input from EPA's subject matter experts who, outside of this retrospective review effort, often interact with businesses, states, and other regulated entities, as well as other stakeholders interested in EPA regulations. Every five years, the Agency intends to follow a four-step process for retrospective reviews:

[40] "Improving Regulation and Regulatory Review (Executive Order 13563)." 76 FR 3821 (January 21, 2011). Available from: the Government Printing Office's Federal Digital System (FDsys): http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf; Accessed: 08/15/11.




In each review period, the first three steps are expected to take approximately one year to complete, giving the Agency the remaining four years, or more if needed, to complete modifications as warranted.

## 4.3 Criteria for regulatory reviews

In each review period, EPA intends to use the principles and directives of EO 13563 both to help determine which of the suggested regulations should be reviewed (Step 2 in subsection 4.2) and to evaluate regulations under review (Step 3 in subsection 4.2) Consistent with applicable

statutory requirements, during Step 2, the Agency intends to assess in a general way whether the principle or directive is likely to have a bearing on the regulation's review; while during Step 3, the Agency intends to analyze each regulation more fully and answer the questions that appear under each heading below.

For example, the first principle listed in EO 13563 is: "[T]o the extent permitted by law, each agency must, among other things propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify)."[41] This principle corresponds to the "Benefits justify costs" heading below. To the extent permitted by law, during Step 2, EPA intends to answer a general question such as "Are there benefit and cost estimates related to this regulation that warrant review at this time?" If yes, then during Step 3, the Agency intends to conduct a benefit-cost analysis to understand if the benefits of continuing the regulation still justify its costs.

- **Benefits justify costs**
  - Now that the regulation has been in effect for some time, do the benefits of the regulation still justify its costs?

- **Least burden**
  - Does the regulation impose requirements on entities that are also subject to requirements under another EPA regulation? If so, what is the cumulative burden and cost of the requirements imposed on the regulated entities?
  - Does the regulation impose paperwork activities (reporting, recordkeeping, or third party notifications) that could benefit from online reporting or electronic recordkeeping?
  - If this regulation has a large impact on small businesses, could it feasibly be changed to reduce the impact while maintaining environmental protection?
  - Do feasible alternatives to this regulation exist that could reduce this regulation's burden on state, local, and/or tribal governments without compromising environmental protection?

- **Net benefits**
  - Is it feasible to alter the regulation in such a way as to achieve greater cost effectiveness while still achieving the intended environmental results?

- **Performance objectives**
  - Does the regulation have complicated or time-consuming requirements, and are there feasible alternative compliance tools that could relieve burden while maintaining environmental protection?
  - Could this regulation be feasibly modified to better partner with other federal agencies, state, local, and/or tribal governments?

[41] *Ibid.*

- **Alternatives to direct regulation**
  - Could this regulation feasibly be modified so as to invite public/private partnerships while ensuring that environmental objectives are still met?
  - Does a feasible non-regulatory alternative exist to replace some or all of this regulation's requirements while ensuring that environmental objectives are still met?

- **Quantified benefits and costs / qualitative values**
  - Since being finalized, has this regulation lessened or exacerbated existing impacts or created new impacts on vulnerable populations such as low-income or minority populations, children, or the elderly?
  - Are there feasible changes that could be made to this regulation to better protect vulnerable populations?

- **Open exchange of information**
  - Could this regulation feasibly be modified to make data that is collected more accessible?
  - Did the regulatory review consider the perspectives of all stakeholders?

- **Coordination, simplification, and harmonization across agencies**
  - If this regulation requires coordination with other EPA regulations, could it be better harmonized than it is now?
  - If this regulation requires coordination with the regulations of other federal or state agencies, could it be better harmonized with those regulations than it is now?

- **Innovation**
  - Are there feasible changes that could be made to the regulation to promote economic or job growth without compromising environmental protection?
  - Could a feasible alteration be made to the regulation to spur new markets, technologies, or jobs?
  - Have new or less costly methods, technologies, and/or innovative techniques emerged since this regulation was finalized that would allow regulated entities to achieve the intended environmental results more effectively and/or efficiently?

- **Flexibility**
  - Could this regulation include greater flexibilities for the regulated community to encourage innovative thinking and identify the least costly methods for compliance?

- **Scientific and technological objectivity**
  - Has the science of risk assessment advanced such that updated assessments of the regulation's impacts on affected populations such as environmental justice communities, children or the elderly could be improved?
  - Has the underlying scientific data changed since this regulation was finalized such that the change supports revision to the regulation?

- Has the regulation or a portion(s) of the regulation achieved its original objective and become obsolete?
- Does the regulation require the use of or otherwise impose a scientific or technical standard? If so, is that standard obsolete or does it otherwise limit the use of updated or improved standards?

## 4.4 Public involvement in future review periods

Just as the public has been involved in the development of this Plan, EPA plans to routinely involve the public in our periodic retrospective review process. The Agency intends to ensure regular public involvement by:

- **Starting each review period by soliciting input from the public** – As we did for this initial review period, EPA intends to collect public comments at the start of each five-year review period to begin identifying nominees for regulatory review. This public involvement process is described in section 4.2.

- **Using the existing tools to aid the public in tracking our review activities.** EPA plans to publicize our regulatory review schedule in the *Semiannual Regulatory Agenda*. In this twice yearly publication, we plan to announce upcoming review periods and provide status updates of the reviews underway. At this time, EPA expects to begin its next review period in spring 2016.

  Between the twice yearly publications of the *Semiannual Regulatory Agenda*, EPA will provide updates to Agency reviews on relevant portions of the EPA website. For example, EPA intends to link the tracking tools for this Plan to EPA's Open Government website for seamless integration of the Agency's retrospective review efforts and broader transparency efforts. Also, EPA will share information about the plan on http://www.epa.gov/improvingregulations/.[42]

- **Making data and analyses available, whenever possible.** Data.gov catalogs federal government datasets and increases the ability of the public to easily find, download, and use datasets that are generated and held by the federal government. EPA will strive to make available, to the extent possible, the raw data used to conduct retrospective analyses on www.data.gov. The Agency also intends to continue to provide access to underlying analyses in the Regulations.gov docket established for a regulation.

- **Providing notice-and-comment opportunities as the Agency makes modifications to regulations.** As is typically the case for new rulemakings, EPA intends to issue a Notice of Proposed Rulemaking (NPRM) for each modification resulting from a retrospective

[42] This is the web address for the "Improving Regulations" website referenced in section 3 of this plan. The website will be redesigned over time to incorporate ongoing updates to EPA's efforts.

review, during which the Agency would invite public comment on the proposed modifications.

- **Providing ways to contact EPA's RPO staff.** At any time, the public may submit a comment to RPO staff members about the Agency's Plan via the general comments docket (EPA-HQ-OA-2011-0156). The Agency intends to make the docket easily accessible on its website and in all materials and media related to the Plan.

## 4.5 Reporting on each review period

As touched on in subsection 4.4, EPA intends to regularly report on its progress. EPA plans to report on the regulations under review, as well as modifications resulting from the reviews, by using EPA's *Semiannual Regulatory Agenda.* Also, the Agency intends to provide more frequent updates on relevant portions of the EPA website and link online information to EPA's Open Government website for seamless integration of the Agency's retrospective review efforts and broader transparency efforts.

## 4.6 Frequency of review periods

EPA plans to begin a new retrospective review period every five years. The first review period is expected to last from spring 2011 to spring 2016, the next period would then span spring 2016 to spring 2021, and subsequent periods would continue on five-year cycles. EPA intends to begin each review period with a public solicitation, during which time EPA would ask the public to nominate any of the Agency's existing regulations for retrospective review. The public nomination process would be coupled with an internal effort to capture the nominations of EPA experts.

At any time, EPA maintains the discretion to add to the list of nominated rules gathered from the public, and EPA intends to select regulations for review using considerations that go beyond those identified by the public. (See the considerations described in step 2, subsection 4.3.) The Agency may choose to make changes to respond to public suggestions, judicial rulings, emergencies, or other unexpected issues.

## 5 Evaluation of the First Review Period

In late 2016, as directed by OMB, EPA plans to lead an evaluation of the first review period to identify the best practices and areas of improvement for the Plan. Among other things, EPA plans to evaluate:

- Whether the criteria used for retrospective reviews (listed in subsection 4.3) should be expanded or otherwise modified.
- The resources required to conduct the first review period, and the feasibility / consequences of expending the same level of resources on an ongoing basis.
- The results of the review (e.g., how many regulations were revised? in what ways?).

The results of this evaluation will be made available to the public via an announcement in EPA's *Regulatory Agenda*, as well as the other, regular reporting mechanisms described in subsection 4.5.

## 6 Contact Information

For more information about EPA's Plan and retrospective reviews, contact RPO staff at:

Email: ImprovingRegulations.SuggestionBox@epa.gov

Mail:
Regulatory Policy Officer
Re: Retrospective Review of Regulations
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, Northwest (Mail Code 1803A)
Washington, DC 20460

## Appendix: Questions offered during the public comment period to help the public formulate their comments

The following questions – both general questions and questions categorized by issue or impact – were published on EPA's Improving Our Regulations website and added to the fifteen dockets that collected public comments during EPA's first public comment period that ran from 02/18/2011 to 04/04/2011. EPA provided this non-exhaustive list of questions to help the public formulate their ideas; these questions were not intended to restrict the issues that the public may wish to address.

### General Questions

- How should we identify candidate regulations for periodic retrospective review?
- What criteria should we use to prioritize regulations for review?
- How should our review plan be integrated with our existing requirements to conduct retrospective reviews?
- How often should we solicit input from the public?
- What should be the timing of any given regulatory review (e.g., should a regulation be in effect for a certain amount of time before it is reviewed)?

### Questions Specific to an Issue or Impact

**Benefits and Costs**
(Regulations.gov Docket #EPA-HQ-OA-2011-0158)

- Which regulations have high costs and low benefits? What data support this?

- Which regulations could better maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity)? What data support this? What quantitative and qualitative benefits and costs justify your suggestion (recognizing that some benefits and costs are difficult to quantify)?

**Compliance**
(EPA-HQ-OA-2011-0166)

- Which regulations have complicated or time consuming requirements? To what extent are alternative compliance tools available? Could the regulations be modified to improve compliance? What data support this?

- Which regulations or regulated sectors have particularly high compliance? How could the factors or approaches that lead to high compliance be utilized in other regulations and sectors? What data is available to support this?

**Economic Conditions/ Market**
(EPA-HQ-OA-2011-0167)

- Which regulations have impacted an industry sector(s) that was hard hit by high unemployment in the past three years? What changes to the regulation would promote economic growth or job creation without compromising environmental protection? What data support this?

- How can regulations spur new markets, technologies, and new jobs? What suggestions do you have to support this idea?

- Which regulations have impeded economic growth in an affected industry sector? What information is available to support this? How could the regulations be modified to improve both economic growth and environmental protection? What data support this?

- Where can EPA examine market-based incentives as an option to regulation? What program would you design that utilizes market-based incentives and ensures environmental objectives are still met?

- How can a regulation be improved so as to create, expand or transform a market?

- Which regulations could be modified so as to invite public/private partnerships, and how?

**Environmental Justice / Children's Health / Elderly**
(EPA-HQ-OA-2011-0168)

- Which regulations have exacerbated existing impacts or created new impacts on vulnerable populations such as low-income or minority populations, children, or the elderly? Which ones and how? What suggestions do you have for how the Agency could change the regulations? What data support this?

- Which regulations have failed to protect vulnerable populations (minority or low-income, children or elderly) and why?

- Which regulations could be streamlined, modified, tightened, or expanded to mitigate or prevent impacts to vulnerable populations (minority or low-income, children or elderly)? What suggestions do you have for changing the regulations? What data support this?

**Integration and Innovation**
(EPA-HQ-OA-2011-0161)

- Which regulations could achieve the intended environmental results using less costly methods, technology, or innovative techniques? How could the regulations be changed? What data support this?

- Which regulations could be improved by harmonizing requirements across programs or agencies to better meet the regulatory objectives? What suggestions do you have for how the Agency can better harmonize these requirements?

- Which regulations have requirements that are overlapping and could be streamlined or eliminated? What suggestions do you have for how the Agency could modify the regulations? Be specific about how burden can be reduced from gained efficiencies related to streamlining the requirements.

- What opportunities exist for the Agency to explore alternatives to existing regulations? How can these alternatives be designed to ensure that environmental objectives are still met?

**Least Burdensome / Flexible Approaches**
(EPA-HQ-OA-2011-0165)

- Which regulations have proven to be excessively burdensome? What data support this? How many facilities are affected? What suggestions do you have for reducing the burden and maintaining environmental protection?

- Which regulations impose paperwork activities (reporting, recordkeeping, or 3rd party notifications) that would benefit from online reporting or electronic recordkeeping? Tell us whether regulated entities have flexibility in providing the required 3rd party disclosure or notification. What data support this? What suggestions do you have for how the Agency could change the regulation?

- Which regulations could be made more flexible within the existing legal framework? What data support this? What suggestions do you have for how the Agency could change the regulations to be more flexible?

**Science / Obsolete / Technology Outdated**
(EPA-HQ-OA-2011-0162)

- Which regulations could be modified because the underlying scientific data has changed since the regulation was issued, and the change supports revision to the original regulation? What data support this? What suggestions do you have for changing the regulations?

- Which regulations have achieved their original objective and have now become unnecessary or obsolete? What data support this? What suggestions do you have for how the Agency could modify, streamline, expand, or repeal the regulation?

- Have circumstances surrounding any regulations changed significantly such that the regulation's requirements should be reconsidered? Which regulations? What data support this? What suggestions can you provide the Agency about how these regulations could be changed?

- Which regulations or reporting requirements have become outdated? How can they be modernized to accomplish their regulatory objectives better? What data support this? What suggestions do you have for how the Agency could change the regulations?

- Which regulations have new technologies that can be leveraged to modify, streamline, expand, or repeal existing requirements? What data support this? What suggestions do you have for how the Agency could change these regulations?

**Small Business**
(EPA-HQ-OA-2011-0164)

- Which regulations have large impacts on small businesses? How could these regulations be changed to reduce the impact while maintaining environmental protection? Are there flexible approaches that might help reduce these impacts? Which of these regulations have high costs and low benefits? What data support this?

- Are there any regulations where flexible approaches for small businesses have proven successful and could serve as a model? Where else and how could these approaches be utilized?

**State, Local and Tribal Governments**
(EPA-HQ-OA-2011-0163)

- Which regulations impose burden on state, local or tribal governments? How could these regulations be changed to reduce the burden without compromising environmental protection?

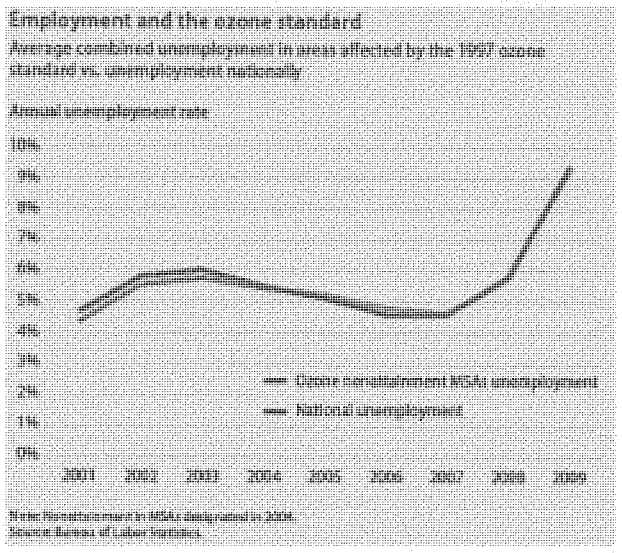
- What opportunities are there within existing regulations to better partner with state, local and/or tribal governments? If so, do you have suggestions for how to better utilize those opportunities?

THINKPROGRESS
CLIMATE PROGRESS

# Study Finds No Tradeoff Between Clean Air Standards and Jobs: Big Oil's Smoggy Notions Proved False — Again

By Climate Guest Blogger on Aug 18, 2011 at 11:12 am

## CAP Analysis Disproves Claims About the Economic Effects of Strengthened Ozone Protections




*CAP analysis finds that, contrary to industry claims, EPA's 1997 ozone standard had no significant effect on national employment (or economic growth, see figure below).*

**by Daniel J. Weiss, Arpita Bhattacharyya, and Raj Salhotra**

The White House is completing its interagency review of the Environmental Protection Agency's updated ground-level ozone standard to protect public health. This will be the first improvement in the standard, which sets a protective, health-based limit to ozone levels in the air we breathe, since 1997. By law the new standard must

reflect the latest science, which includes a better understanding of the impact that ozone has on the lungs and hearts of children, seniors, those suffering from respiratory ailments, and healthy adults as well.

Some of the companies required to reduce their pollution have made exaggerated claims about the alleged economic impact of these new public health protections, as with nearly every public health safeguard EPA has issued over the past 40 years. The pending ozone standard is no exception, with Big Oil leading the charge against it by claiming the new protections would wreak economic havoc. Similar claims were made when the 1997 health standards were set. **This Center for American Progress analysis of economic data found that industries' predictions about the economic impact of the 1997 ozone standard did not occur**. This suggests that their recent, similar attacks on the pending ozone standard also lack credibility.

CAP evaluated the economic growth and employment rates metropolitan areas experienced after they were put into "nonattainment" (or violation) for the first time due to the 1997 standard. Our analysis determined that contrary to industries' predictions, **the areas with smog levels exceeding the health standards for the first time experienced very similar economic growth to the nation as a whole. Employment rates were very similar to the national rate.**

Average GDP per capita in the metropolitan areas in nonattainment grew by .07 percent from 2004-2008, while it grew by .87 percent nationwide—less than a 1 percent difference. Unemployment in those areas grew by 2.21 percent from 2004-2008, while unemployment nationwide grew by 2.3 percent. In other words, unemployment grew by slightly more across the nation than in the 54 areas affected by the 1997 ozone standard. This data makes it clear that the economic attacks on the 1997 ozone standard by Big Oil, the Chamber of Commerce, the National Association of Manufacturers, and the Business Roundtable were undeniably false.

**Smog is a silent killer**

Ground-level ozone, commonly known as smog, is formed when a harmful mix of pollutants including volatile organic compounds such as benzene and nitrogen oxides, combine in the presence of sunlight. Even at low levels, smog can aggravate asthma, increase susceptibility to respiratory illnesses, and cause lung damage with repeated exposure. Children, seniors, and those with asthma or other respiratory ailments are particularly vulnerable to smog's effects. Smog levels are the worst on extremely hot days.

The Air Quality Index is an "index for reporting daily air quality. It tells you how clean or polluted your air is." The measurements, taken at local air quality monitors, correspond to one of six color-coded categories. Code Orange days have air pollution levels that are "unhealthy for sensitive groups" such as children, seniors, and those suffering from respiratory ailments. They should stay indoors on these days. Code Red days have air pollution levels that unhealthy for all populations, including normal healthy adults. Everyone should avoid the outdoors on Code Red days.

The heat has been so extreme this year that half the days this summer (June-August) were designated Code Red somewhere in the United States. There has been a Code Orange every day this summer some place. California, for example, had 18 Code Red days and 63 Code Orange days so far. Texas had 8 Code Red das and 19 Code Orange days, and Virginia 3 Code Red days and 22 Code Orange days. A recent Natural Resources Defense Council analysis also reports there have been 2, 012 Code Orange days in 252 cities, suburbs, and national parks from January 1, 2011 through August 8, 2011.

**Modernizing the smog health standard based on best science**

Protecting people from ozone has been a central mission of the Clean Air Act since its passage in 1970. EPA established its first smog standard in 1971 to protect people from dirty air. The standard was strengthened in 1997 based on the latest science to 84 parts per billion as measured over an eight-hour period.

The Clean Air Scientific Advisory committee, made up of scientists and medical professionals, recommended in 2008 that the standard again be strengthened based on recent scientific and health research. In a letter to then-EPA administrator Stephen Johnson, they wrote:

> "The CASAC [Clean Air Scientific Advisory Committee] — as the Agency's statutorily-established science advisory committee for advising you on the national ambient air quality standards — *unanimously recommended* decreasing the primary standard to within the range of 0.060–0.070 ppm." (Emphasis original)

The Bush administration rejected the CASAC recommendation and instead proposed a less protective standard. Recently, Sen. Tom Carper (D-DE) asked EPA Administrator Lisa Jackson about the Bush proposal. She responded that the proposed Bush standards "were not legally defensible given the scientific evidence in the record for the rulemaking, the requirements of the Clean Air Act and the recommendation of the CASAC."

Administrator Jackson resumed the process of setting a modern health standard that reflected the best science. In July EPA sent its proposal to the White House Office of Management and Budget where it is undergoing interagency review. Recently, 14 medical groups, including the American Academy of Pediatrics, the American Association of Cardiovascular and Pulmonary Rehabilitation, and the American College of Preventive Medicine also recently urged President Barack Obama to update the standard:

> "To safeguard the health of the American people, help to save lives, and reduce health care spending, we support the most protective standard under consideration: 60 parts per billion (ppb) averaged over eight hours."

The medical groups noted that setting a new ozone standard would save 12,000 lives per year and also cited multiple studies showing that ozone can kill people.

A more protective smog standard also has the overwhelming support of Americans, according to a bipartisan poll sponsored by the American Lung Association. Most respondents also believe that updating the smog standard would help the economy.

> "And by a 20-point margin (including a 14-point margin in Ohio and Florida), voters believe that updated EPA smog standards will boost, rather than harm, job creation by encouraging innovation and investment in new technologies."

**Big Oil and allies sing same sad song**

While the administration debates whether to provide more protection for Americans from smog, industry and business groups are pressuring the White House to reject EPA's proposal by using the same arguments today as they did 14 years ago when the EPA proposed the current standard. Big Oil, coal, utility and other companies, along with the lobbyists at the Chamber of Commerce, Business Roundtable, and other pressure groups have all launched efforts to block more protective health standards. These and other industry groups decry the EPA's push to strengthen the smog standard, claiming that it will drastically hurt the economy and lead to job losses.

Let's take a look at the claims that industry is making now about the updated, science-based ozone standard, and what they said the last time EPA updated the health standard in the late 1990s. Then we will review the CAP analysis, which found that economic growth and employment was generally unaffected after implementation of

the 1997 standards, despite industries' fevered predictions.

**It's the same old song**

**1997 and 2011 business and industry group claims on impacts of ozone health standard**

| Lobby group | 1997 claims | 2011 claims |
|---|---|---|
| American Petroleum Institute | API's 1996 study that concluded "It is clear that implementation of a one-exceedance form of either a 0.08 or 0.09 ppm eight-hour ozone standard **will have significant socio-economic impacts on U.S. society.**"Comment to the EPA, March 12, 1997<br><br>A-95-58-IV-D-2233 (link unavailable)<br><br>"EPA has rushed to judgment a rulemaking that is unjustified on a scientific basis and **is so far-reaching in its potential impact on every sector of the economy** and every level of government that adequate time for review to consider the wisdom of taking such an action is of the utmost importance." | "Fewer businesses would invest in new projects, all of which would mean fewer new jobs," said Khary Cauthen, American Petroleum Institute's director of federal relations."It's pretty simple, it's purely discretionary and it sits on the president's desk," said American Petroleum Institute President Jack Gerard. "He now has the choice: jobs or no jobs, it's up to him." |
| Business Roundtable | Supporters of protection from air pollution for children, seniors, and asthmatics "won't be satisfied until we're in horses and buggies and have no industries in our state." Spokesperson for Gov. John Engler (R-MI). | "If a company cannot meet the requirements, then it must either shelve its plans and the jobs the plans would create, or move to another part of the country where it will be in compliance," said John Engler, former Michigan governor and now president of the Business Roundtable. |
| Chamber of Commerce | "Many of the new 'nonattainment areas' have no experience in dealing with such stringent regulations, thus many businesses will move to 'cleaner' districts or relocate to other states." The California Chamber of Commerce. | "These new out-of-cycle EPA standards create tremendous uncertainty and threaten business investment decisions and hiring decisions... when the private sector is burdened with unnecessary regulations, businesses can't invest and hire," said Bruce Josten, the Chamber's executive vice president for Government Affairs. |
| National | The proposed standards would restrict | "By moving forward with raising the |

| | | |
|---|---|---|
| Association of Manufacturers | "using one's fireplace and using a power mower to shooting off fireworks and enjoying back-yard barbecues on the Fourth of July." President of the National Association of Manufacturers.Comment to the EPA, December 30, 1996. Growth rates for cities may not be sustainable if manufacturing jobs and other small business jobs are not created. | standards on ozone levels, the EPA is only adding economic turmoil to the nation's struggling job market."The proposed ozone standard could result in millions of lost jobs costs." National Association of Manufacturers, or (NAM) President and CEO Jay Timmons. |

John Engler, former Michigan governor and now president of the Business Roundtable claims that "If a company cannot meet the requirements, then it must either shelve its plans and the jobs the plans would create, or move to another part of the country where it will be in compliance."

This is a less colorful statement about the pending standard than Gov. Engler's spokesman made in 1996 about the pending standard. He falsely claimed that supporters of protection from air pollution for children, seniors, and asthmatics "won't be satisfied until we're in horses and buggies and have no industries in our state."

The American Petroleum Institute—Big Oil's lobbying muscle—also predicts doom and gloom if the administration adopts the updated standard. "The ozone benefits are illusory, greatly inflated and would be dwarfed by the costs. The standards may not be achievable and, worse, could destroy millions of American jobs," said API Director of Regulatory and Scientific Affairs Howard Feldman. "It's hard to imagine something that would harm our economy more than these standards." In other words, Big Oil believes that the ozone rule would harm the economy *more* than defaulting on our debt, another financial crisis like 2008, or the Great Recession that began that fall.

These complaints echo API's economic concerns in 1997. It commented to EPA on the proposed 1997 rule that "EPA has rushed to judgment a rulemaking that is unjustified on a scientific basis and is so far-reaching in its potential impact on every sector of the economy and every level of government that adequate time for review to consider the wisdom of taking such an action is of the utmost importance."

Jay Timmons, president and CEO of the National Association of Manufacturers, joined the industry chorus who believe that economic devastation is imminent if EPA adopts the 2011 proposal. "By moving forward with raising the standard on ozone levels, the EPA is only adding economic turmoil to the nation's struggling job market. The proposed ozone standard could result in millions of lost jobs."

Back in 1997, the president of the National Association of Manufacturers ridiculously predicted even more drastic outcomes. He claimed that the proposed standard would restrict

"using one's fireplace and using a power mower to shooting off fireworks and enjoying back-yard barbecues on the Fourth of July."

No predictions of rage and ruin are complete without the Chamber of Commerce adding its voice. This July, Bruce Josten, the Chamber of Commerce's executive vice president for Government Affairs said "These new out-of-cycle EPA standards create tremendous uncertainty and threaten business investment decisions and hiring decisions... when the private sector is burdened with unnecessary regulations, businesses can't invest and hire."

This prediction is similar to the California Chamber of Commerce's concerns from 1997, which asserted that "Many of the new 'nonattainment areas' have no experience in dealing with such stringent regulations, thus

many businesses will move to 'cleaner' districts or relocate to other states."[1]

**CAP analysis of economy, jobs data finds 1997 predictions false**

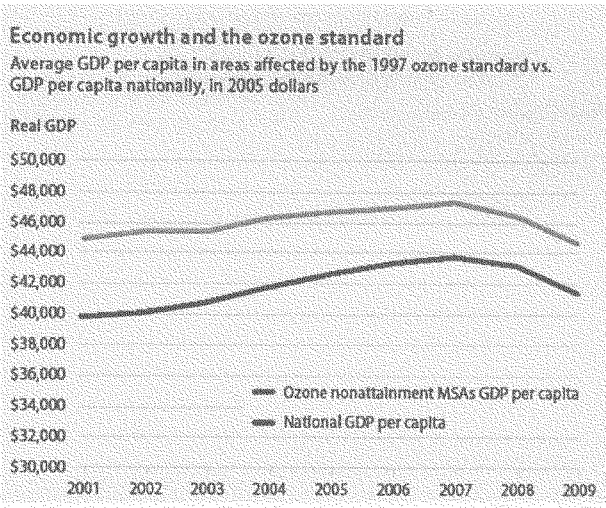
These fears were completely unfounded. CAP examined the economic growth and employment that occurred in the metropolitan areas that were designated as "nonattainment" because they had air pollution levels that exceeded the 1997 ozone standard. (Due to legal challenges by industry, and delays by the Bush administration, these areas were not designated until 2004.) We reviewed the Bureau of Labor Statistics data on the 54 areas that were in nonattainment for the first time under the new 1997 standard, since most of the current complaints focus on areas that will be designated in nonattainment for the first time after the issuance of the new, more protective standard.

The Clean Air Act requires the EPA to designate areas as either attaining or not attaining the federal air health standard for ozone. When an area is designated in nonattainment, state and local governments have three years to draft and submit a state implementation plan, or SIP, to the EPA explaining how they will reduce the pollution emissions that make up ground-level ozone. The development of the state plan must include engagement with the public and is generally a mix of control devices, monitoring, modeling, emission inventories, and other policies.

Metropolitan areas that do not reduce their pollution enough to meet the health standard may have to further reduce emissions from existing sources, lose funding for transportation projects, and ultimately have EPA, and not the state, in charge of meeting the health standard.

The analysis examined real GDP per capita of the metropolitan statistical areas, or MSAs, with counties designated as nonattainment in 2004 (when the 1997 standard went into effect) and found that while some showed higher or lower GDP growth, overall GDP growth in these MSAs followed the nationwide economic trend, although these areas had larger average per capita GDP to begin with.

A number of new nonattainment areas experienced greater or similar economic growth as the nation did from 2004-2007, including Charlotte, Denver, Las Vegas, Louisville, Phoenix, Raleigh, and San Diego. Meanwhile, areas in states that were suffering from an overall economic decline—such as Michigan and Ohio—generally grew more slowly than the overall economy.




Evaluation of a combined average unemployment rate in these places found that it tracked very closely with national unemployment rate. There do not appear to be significant job losses beyond anything that the economy was already suffering from. This data puts to rest the false claim Rep. Fred Upton (R-MI) made in 1997 that the new standard would "wreak havoc on economic growth, jobs, and even personal lifestyles."

(The graphs comparing the individual MSAs to the national economy can be found here.)

**Don't confuse us with the facts**

Despite the extremely limited economic impact of the 1997 ozone standard improvement, industry and business groups are again up in arms about the potential economic impact on areas that will be affected by a more protective standard. While any impediment to growth in the current economic climate should be a real concern, the aforementioned data shows that the fear of drastic economic harm due to a stronger standard is unwarranted. Strengthening the ozone standard in 1997 did not lead to the economic devastation that industry and business groups predicted yet the same groups are making the same arguments in the lead up to the decision on EPA's current proposal for a stronger standard.

Eight senators led by Sen. Sheldon Whitehouse (D-RI) publicly provided a fact check on Big Oil and allies' disinformation campaign. They wrote President Obama countering the economic claims of the industry and business groups.

"(P)olluters are ignoring 40 years of data demonstrating that clean air investments are good for public health and the economy. In fact, gross domestic product has increased 210 percent since the Clean Air Act was passed in 1970, while at the same time we have reduced air pollution by more than 60 percent.

"Further, the Clean Air Act has created jobs, spurred a multi-billion dollar trade surplus in environmental technology for American businesses, and provided enormous public health benefits relative to investment in pollution control technology."

The administration is expected to finalize the smog standard very soon. Industry and business groups will undoubtedly continue their strong opposition to protecting the health of millions of Americans on the grounds that it will hurt the economy. Installing new scrubbers and controls will cost money, but will also create jobs. After the establishment of previous safeguards, industry has found ways to meet them much more cheaply than their rhetoric predicted.

History shows that the new ozone health standard is unlikely to have much negative economic impact, but will save thousands of lives and billions of dollars in lower health care costs. The Obama administration must ignore the tired, disproven pleadings of big oil and other special interests, and instead set an ozone health standard based on the science to provide additional protection to all Americans.

**Sources and methodology**

Our analysis used the EPA Greenbook Data to determine the counties and corresponding 54 Metropolitan Statistical Areas, or MSAs, that were newly designated in nonattainment of the eight-hour ozone standard in 2004, which is when the 1997 standard finally took effect.

The average real GDP per capita of all nonattainment MSAs was calculated by totaling real GDP of all the MSAs in nonattainment using data from the Bureau of Economic Analysis and dividing by the total population of all the MSAs using data from the U.S. Census Bureau. National real GDP per capita came from University of Chicago's Economics Department.

Unemployment data for the MSAs come from the Bureau of Labor Statistics. Average unemployment was calculated by totaling the number of unemployed in all the nonattainment MSAs and dividing by the total number in the labor force. National unemployment rates are also from the Bureau of Labor Statistics.

**– Daniel J. Weiss, Arpita Bhattacharyya, and Raj Salhotra.** *Thanks to Valeri Vasquez, Special Assistant for Energy Policy, and interns Brennan Alvarez, Ciera Crawley, and Ben Smithgall for their help with this analysis.*

**Endnote**

[1] Brief Amicus Curiae of Pacific Legal Foundation and California Chamber of Commerce in Support of Cross Petitioners American Trucking Associations, Inc., et al.

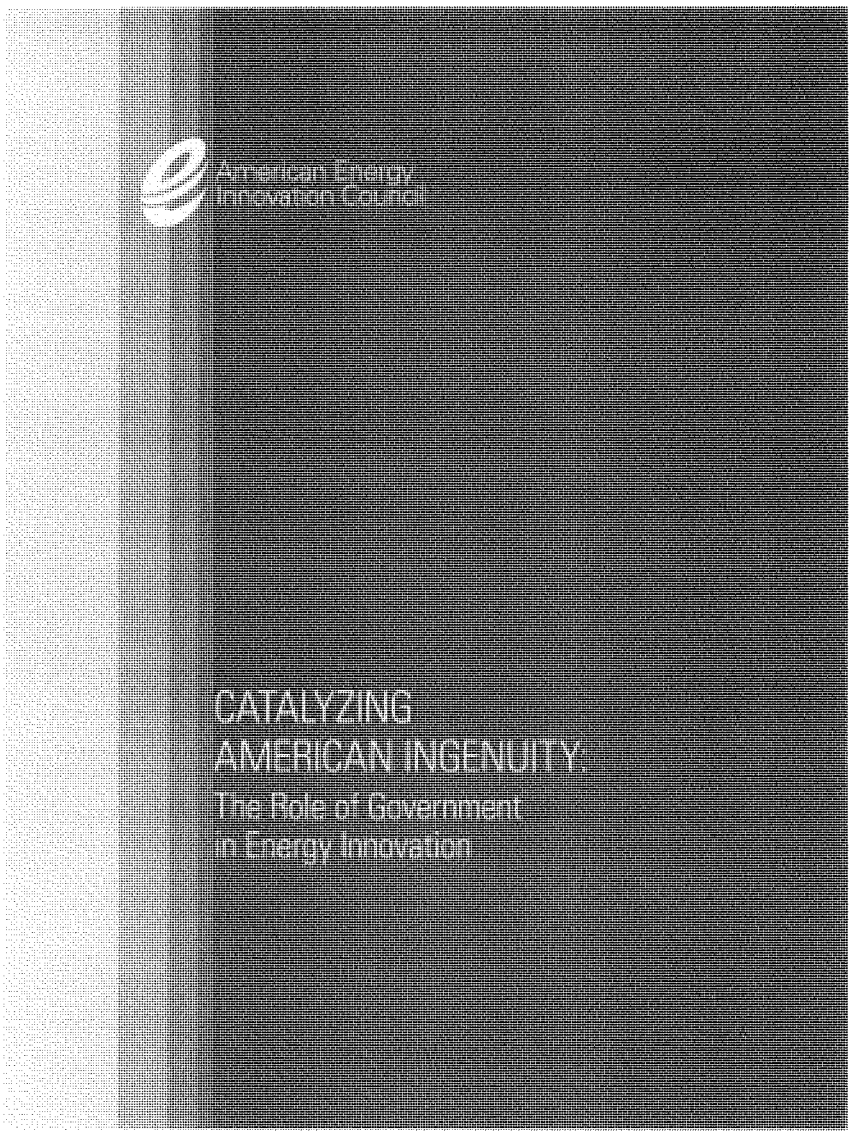
Ms. DEGETTE. Then I have two final documents, Mr. Chairman. These are both the studies that I mentioned in my opening statement about the positive job effect that environmental regulations can have, and I would ask—we have showed those to your staff and I would ask unanimous consent that those be entered into the record.

Mr. STEARNS. And they all have sources, right?

Ms. DEGETTE. Yes, sir.

Mr. STEARNS. By unanimous consent, so ordered.

[The information follows:]


American Energy
Innovation Council
CATALYZING
AMERICAN INGENUITY:
The Role of Government
in Energy Innovation

## ABOUT THE AMERICAN ENERGY INNOVATION COUNCIL

www.americanenergyinnovation.org

American Energy Innovation Council

### Who we are

American Energy Innovation Council (AEIC) members are **Norm Augustine**, former chairman and chief executive officer of Lockheed Martin; **Ursula Burns**, chairman and chief executive officer of Xerox; **John Doerr**, partner at Kleiner Perkins; **Bill Gates**, chairman and former chief executive officer of Microsoft; **Charles O. Holliday**, chairman of Bank of America and former chairman and chief executive officer of DuPont; **Jeff Immelt**, chairman and chief executive officer of GE; and **Tim Solso**, chairman and chief executive officer of Cummins Inc. The AEIC is staffed and hosted by the Bipartisan Policy Center.

### Our mission

The mission of the American Energy Innovation Council is to foster strong economic growth, create jobs in new industries, and reestablish America's energy technology leadership through robust, public investments in the development of clean energy technologies.

BIPARTISAN POLICY CENTER

### About the Bipartisan Policy Center

Founded in 2007 by former Senate Majority Leaders Howard Baker, Tom Daschle, Bob Dole and George Mitchell, the Bipartisan Policy Center (BPC) is a non-profit organization that drives principled solutions through rigorous analysis, reasoned negotiation, and respectful dialogue. With projects in multiple issue areas, BPC combines politically-balanced policymaking with strong, proactive advocacy and outreach. For more information, please visit our website: www.bipartisanpolicy.org.

## EXECUTIVE SUMMARY

Innovation is the core of America's economic strength and future prosperity. New ideas and technological advances fundamentally shape our quality of life. They are the key to fostering sustained economic growth, creating jobs in new industries, and continuing America's global leadership.

Throughout the history of the United States, the federal government has played a central role in catalyzing and driving innovation and technology development in a variety of strategic areas—defense, health, agriculture, and information technology, to name a few—and it has often done so with strong results.

However, of all the sectors in the economy where innovation has a critical role to play, the energy sector stands out. Ready access to reliable, affordable forms of energy is not only vital for the functioning of the larger economy, it is vital to people's everyday lives. It also significantly impacts the country's national security, environmental well-being and economic competitiveness.

# Executive Summary

Unfortunately, the country has yet to embark on a clean energy innovation program commensurate with the scale of the national priorities that are at stake. In fact, rather than improve the country's energy innovation program and invest in strategic national interests, the current political environment is creating strong pressure to pull back from such efforts.

Increasingly, three principal arguments are being made against an increased federal role in energy innovation:

- Energy innovation should be the responsibility of the private sector.
- If there is a role for government in energy innovation, our current federal government is not equipped to invest taxpayer dollars wisely and in a way that is likely to yield real results.
- Even if there is a government role and government programs are organized and empowered to achieve success, there isn't any money to fund these activities in this fiscal climate.

**Based on history and on our own experiences leading innovative companies, we don't subscribe to any of these arguments.**

## 1. Why does government need to play a role in supporting energy innovation?

- Although we agree that the private sector is and will continue to be an important source of innovation, we believe the federal government has an integral role to play in advancing energy innovation.
- The U.S. government has a long and successful history of supporting publicly-funded research and development (R&D) projects that foster the development of new technologies.
- History shows that support for innovations that serve a fundamental national interest cannot be left to the private sector alone for two primary reasons:
  - Private markets generally do not exist for certain benefits, such as providing for a strong military, improving public health, and protecting the environment.
  - The private sector has tended to systematically under-invest in R&D relative to the potential gains to society— even where a market for the desired technology exists—because it is difficult for any individual firm to monetize all the benefits of these types of investments.
- The energy sector in particular has suffered from under-investment in research, development and demonstration (RD&D), for three main reasons:
  - Energy is not valued in and of itself, but rather for the goods and services it provides. This means that product differentiation does not drive innovation in energy supply options in the same way that it would for other types of products and services.
  - Many energy technologies are capital-intensive and long-lived, with the result that many require significant up-front cash with a slow return. Slow turnover of capital assets combined with the need for large up-front investments mean that the sector as a whole is subject to a high degree of inertia, a tendency to avoid risk, and domination by incumbent firms.
  - Energy markets are not perfectly competitive, due to regulatory uncertainty, market fragmentation, and distortions introduced by past policies—all of which generally slow the adoption of innovative technology.
- Government-funded R&D programs in a number of areas— such as defense, health, agriculture, and information technology (IT)— have enabled the United States to lead not just in specific technologies but in entire industries. Unfortunately, federal efforts thus far in support of clean energy R&D have been inadequate to the task and paltry in comparison with other sectors.
- We strongly recommend increased government support and leadership to develop and demonstrate new energy technologies to meet this century's challenges.

## 2. How should the government play a constructive role in energy innovation?

- To enhance U.S. leadership in clean energy technologies, the federal government must not only maintain a robust effort across the innovation continuum, but it must also promote an environment that favors innovation throughout the energy economy.

- The United States is fortunate to have a number of strong assets—celebrated national labs and universities, world-class entrepreneurs, a sophisticated financial industry, a legal system that protects the sanctity of contracts, and large technology and energy companies with the skills to scale technologies—ready to contribute to energy innovation. But the country lacks a defined sense of national purpose around this issue and a strategy for building innovative energy systems.

- Looking at past examples of government innovation and drawing from our own private-sector experience, we believe three principles should guide the U.S. government's innovation programs:
  - Focus on specific market failures in areas that can make a significant impact on strategic priorities.
  - Catalyze private-sector competition by providing incentives aligned with strategic outcomes.
  - Use the most cost-efficient actions to facilitate positive outcomes.

- Drawing on these three principles and building on our previous report, we recommend five concrete actions to improve the effectiveness of the U.S. energy innovation program:

**A. Develop and implement a comprehensive, government-wide Quadrennial Energy Review (QER)** that seeks to align the capacities of the public and private sectors. The QER should pinpoint key market failures and technology chokepoints in order to better orient federal programs and resources.

**B. Support "innovation hubs"** that concentrate resources and knowledge and thereby accelerate the development of new technologies. We strongly support the direction of U.S. Department of Energy (DOE) Innovation Hubs, Bioenergy Research Centers and Energy Frontier Research Centers and believe they should receive full funding.

**C. Support and expand the new Advance Research Projects Agency–Energy (ARPA–E).** As we have noted previously, ARPA–E challenges and empowers innovators across a range of technology pathways. By nearly all accounts, it appears that ARPA-E is being managed as a highly efficient, risk-taking, results-oriented organization. At a minimum, ARPA–E should receive at least $300 million per year. Going forward, investments in ARPA–E should be prioritized and increased.

**D. Make DOE work smarter along the ARPA-E model.** DOE has a critical role to play but needs to evolve beyond its current program structure and culture to be maximally effective. We argue for "ARPA-izing" a larger portion of DOE and the national labs by expanding some of the new authorities, tools and processes that are embodied in ARPA–E to other parts of the agency.

**E. Develop a first-of-a-kind technology commercialization engine along the lines of the proposed Clean Energy Development Administration (CEDA).** Previously, we called for a new government-backed institution dedicated to overcoming financing hurdles for new advanced, commercial-scale energy technologies. We believe the CEDA legislation aligns with our original recommendation and would mobilize significant private-sector capital to bridge the transition from demonstration to commercialization.

### 3. How Can the U.S. Government Pay for Energy Innovation in a New Era of Fiscal Austerity?

- There is no way to make the progress this country requires without increasing federal support for energy innovation across the entire innovation continuum. Even in these challenging fiscal times, we believe that underfunding energy innovation would be a grave mistake. Supporting innovation is an investment, not a cost.

- We previously called for a three-fold increase in annual energy innovation investments and maintain that such a

level should be our country's target over the next decade. At the same time, the AEIC fully understands the gravity of the nation's current fiscal situation.

- As a result, we see an urgent need for a new energy innovation funding regime that accounts for current budgetary realities, but still ensures that our nation makes targeted, smart, basic investments in its energy future. We must develop a funding regime that is dedicated, consistent, and not beholden to annual appropriations. In general, federal funds for energy innovation should originate from revenues from the energy sector itself rather than from general revenues.

- We have identified a number of options that could provide funding for energy innovation investments that are commensurate with our original recommendations. These options include:

  – Diverting a portion of royalties from domestic energy production;

  – Reforming and redirecting energy industry subsidies;

  – Collecting a charge on sales of electricity;

  – Levying fees on other energy or pollution sources; and

  – Streamlining DOE.

- AEIC does not advocate for one revenue option over another; the only unacceptable option is to fail to make these investments. The resources to support increased innovation investments are available. Wise investments in a new generation of energy technologies are not only justified, but vital to our future. We urge our political leaders to direct them appropriately.

# The Payoff

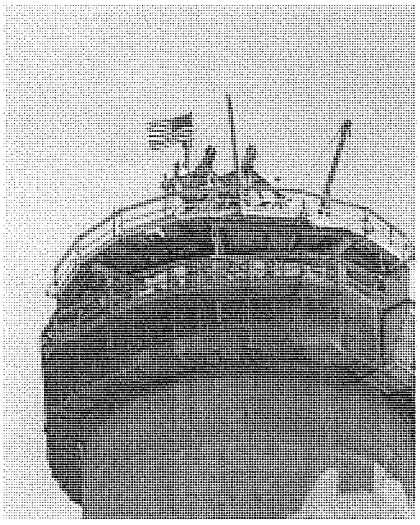
We know the federal government has a vital role to play in energy innovation. We know the federal energy innovation system can be structured effectively to achieve real results. And we know there are several ways to pay for public investments in this domain.

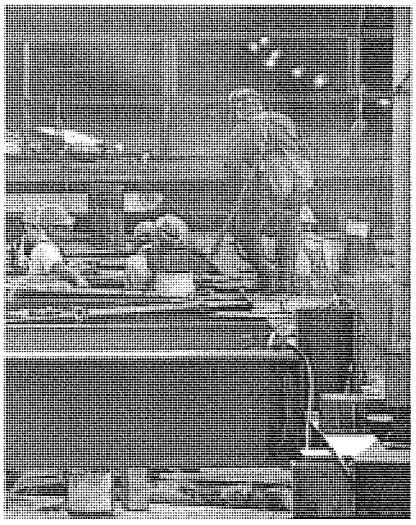
If the U.S. fails to invent new technologies and create new markets and new jobs that will drive the transformation and revitalization of the $5 trillion global energy industry, we will have lost an opportunity to lead in what is arguably the largest and most pervasive technology sector in the world. However, if the U.S. successfully innovates in clean energy, our country stands to reap enormous benefits.

It is time to put aside partisan interests and embark, as a nation, on a path to achieving our clean energy goals.

# NEW JOBS — CLEANER AIR

## Employment Effects Under Planned Changes to the EPA's Air Pollution Rules





**February 2011**
*A Ceres Report*

Ceres

PERI
University of Massachusetts Amherst

**Authored by**
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**Ceres** is a national coalition of investors, environmental groups, and other public interest organizations working with companies to address sustainability challenges such as climate change and water scarcity. Ceres directs the Investor Network on Climate Risk, a group of 95 institutional investors and financial firms from the U.S. and Europe managing nearly $10 trillion in assets.

The **Political Economy Research Institute (PERI)** is an economic policy research organization affiliated with the University of Massachusetts, Amherst. PERI conducts academic research that is directly engaged with crucial economic policy issues. PERI has broad, and intersecting, areas of specialty: macroeconomics, financial markets and globalization; labor markets (especially low-wage work, both in the U.S. and globally); economic development (with a particular focus on Africa); the economics of peace; and environmental economics.

**Acknowledgments**

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**Cover Photo Credits**

Smokestack with the American flag: PSNH
Workers in hard hats: PSEG

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## FOREWORD

The U.S. electric power sector is changing and modernizing in response to societal and market forces. Power companies face a business imperative to meet increasing pressures for cleaner, more efficient energy that will safeguard public health and protect the world's climate.

These forces are already transforming the industry. Significant capital investment has been flowing in recent years to cleaner technologies such as renewable energy, energy efficiency and natural gas-fired generation. Investment to clean up and modernize the nation's existing fossil fuel generation fleet has already begun to contribute to a cleaner energy future.

New air pollution rules expected this year from the U.S. Environmental Protection Agency will further accelerate these trends. And – as this new Ceres report shows - they will have a major added benefit: significant job creation.

Meeting new standards that limit sulfur dioxide, nitrogen oxides, mercury and other pollutants will create, in the report's own words, "a wide array of skilled construction and professional jobs" – from the electricians, plumbers, laborers and engineers who will build and retrofit power plants all across the eastern U.S., to operation and maintenance (O&M) employees who will keep the modernized facilities running.

The report finds that investments driven by the EPA's two new air quality rules will create nearly 1.5 million jobs, or nearly 300,000 jobs a year on average over the next five years – and at a critical moment for a struggling economy. The end product will be an upgraded, cleaner American industry, along with good paying jobs and better health for the nation's most vulnerable citizens.

For this report, researchers at the University of Massachusetts' Political Economy Research Institute carefully gauged the job impacts of pending and proposed EPA rules, using independent models and conservative assumptions. Its findings are especially good news for the many states, such as Ohio, Michigan, Pennsylvania, Virginia and Missouri, that are most dependent on traditional fossil fuel energy and most worried about traditional industrial jobs losses.

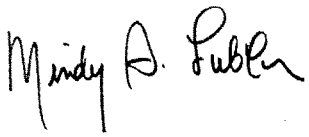
America's status as one of history's great economic powerhouses has long depended on our willingness and ability to reinvest and innovate when changing times tell us it's time to retool. We've seen throughout our history that clean technology investments – whether to clean our rivers, improve our air quality or compete in the emerging low-carbon global economy – have long-term benefits that far outweigh the upfront costs.

Since 1970, investments to comply with the Clean Air Act have provided $4 to $8 in economic benefits for every $1 spent on compliance, according to the nonpartisan Office of Management and Budget. Since the passage of the Clean Air Act Amendments in 1990, U.S. average electricity rates (real) have remained flat even as electric utilities have invested hundreds of billions of dollars to cut their air pollution emissions. During the

same period, America's overall GDP increased by 60 percent in inflation-adjusted terms. The bottom line: clean air is a worthwhile investment.

Significant change is often unsettling, never without short-term costs and some dislocation. But failing to change, especially now, offers much grimmer prospects. We are entering – in fact have already entered – a great global industrial and economic realignment toward clean energy. The greatest benefits, for both today's families and future generations, will flow to those who anticipate these changes, and take proactive steps to respond.

For our electric power sector and the workers tied to it, this report outlines why this path makes sense.



Mindy S. Lubber
President of Ceres

## EXECUTIVE SUMMARY

Clean air safeguards have benefitted the United States tremendously. Enacted in 1970, and amended in 1990, the Clean Air Act ("CAA") has delivered cleaner air, better public health, new jobs and an impressive return on investment—providing $4 to $8 in benefits for every $1 spent on compliance.[1]

History has proven that clean air and strong economic growth are mutually reinforcing. Since 1990, the CAA has reduced emissions of the most common air pollutants 41 percent while Gross Domestic Product increased 64 percent.[2] Clean air regulations have also spurred important technological innovations, such as catalytic converters, that helped make the United States a world leader in exporting environmental control technologies.

This study, prepared by the University of Massachusetts' Political Economy Research Institute (PERI), demonstrates how new air pollution rules proposed for the electric power sector by the Environmental Protection Agency ("EPA") will provide long-term economic benefits across much of the United States in the form of highly skilled, well paying jobs through infrastructure investment in the nation's generation fleet. Significantly, many of these jobs will be created over the next five years as the United States recovers from its severe economic downturn.

Focusing on 36 states[3] in the eastern half of the United States, this report evaluates the employment impacts of the electric sector's transformation to a cleaner, modern fleet through investment in pollution controls and new generation capacity and through retirement of older, less efficient generating facilities. In particular, we assess the impacts from two CAA regulations expected to be issued in 2011: the Clean Air Transport Rule ("Transport Rule") governing sulfur dioxide ($SO_2$) and nitrogen oxide (NOx) emissions from targeted states in the eastern half of the U.S.; and the National Emissions Standards for Hazardous Air Pollutants for Utility Boilers ("Utility MACT") rule which will, for the first time, set federal limits for hazardous air pollutants such as mercury, lead, dioxin, and arsenic. Although our analysis considers only employment-related impacts under the new air regulations, the reality is these new standards will yield numerous other concrete economic benefits, including better public health from cleaner air, increased competitiveness from developing innovative technologies and mitigation of climate change. Moreover, increased employment during this critical five year period will also benefit severely stressed state budgets through increased payroll taxes and reduced unemployment benefit costs.

1. Office of Management and Budget (OMB). Informing Regulatory Decisions: 2003 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities. Office of Information and Regulatory Affairs, Office of Management and Budget. Washington DC. 2003.

2. U.S. Environmental Protection Agency. Our Nation's Air - Status and Trends through 2008. February 2010.

3. As depicted on the map in Figure 2, the Eastern Interconnection also includes the District of Columbia and small portions of Wyoming, Montana, New Mexico, and Texas. A small portion of South Dakota is within the Western Interconnection.

To estimate the job impacts, this study used a forecast of future pollution control installations, construction of new generation capacity, and coal plant retirements from a December 2010 study prepared by two researchers at Charles River Associates ("CRA").[4] Applying stringent EPA compliance requirements, including an assumption that the Utility MACT rule will require pollution controls on all coal-fired power plants by 2015, that study projected that between 2010 and 2015 the power sector will invest almost $200 billion on capital improvements, including almost $94 billion on pollution controls and over $100 billion on about 68,000 megawatts of new generation capacity. Constructing such new capacity and installing pollution controls will create a wide array of skilled, high-paying jobs, including engineers, project managers, electricians, boilermakers, pipefitters, millwrights and iron workers.

## Key findings:

- As detailed in Table ES.1 below, between 2010 and 2015, **these capital investments in pollution controls and new generation will create an estimated 1.46 million jobs or about 291,577 year-round jobs on average for each of those five years.**

**Table ES.1. Aggregate Employment Estimates from Capital Improvements: Construction, Installation, and Professional Jobs (between 2010 and 2015)**

| | DIRECT | DIRECT + INDIRECT |
|---|---|---|
| Pollution controls | 325,305 | 683,734 |
| New generation capacity | 312,617 | 774,151 |
| TOTAL | 637,922 | 1,457,885 |

*Note: All values reported in "job-years". One job-year equals one year of full-time employment.*

- As described in Table ES.2, transforming to a cleaner, modern fleet through retirement of older, less efficient plants, installation of pollution controls and construction of new capacity **will result in a net gain of over 4,254 operation and maintenance (O&M) jobs across the Eastern Interconnection.** Distribution of these O&M jobs will vary from state-to-state, depending on where coal plants are retired (O&M job reduction) and where new generation capacity is installed (O&M job gains).

4. "A Reliability Assessment of EPA's Proposed Transport Rule and Forthcoming Utility MACT", Shavel and Gibbs, CRA, December 16, 2010.

**Table ES.2. Employment Estimates of Net O&M Jobs Associated with Capital Improvements and Retirement of Coal Generation**

| | DIRECT | DIRECT + INDIRECT |
|---|---|---|
| Pollution controls | 7,170 | 14,077 |
| New generation capacity | 4,106 | 8,061 |
| Retirement of coal generation | (9,109) | (17,884) |
| NET TOTAL | 2,167 | 4,254 |

- Over the five years, investments in pollution controls and new generation capacity will create significant numbers of new jobs in each of the states within the Eastern Interconnection, more than offsetting any job reductions from projected coal plant closures.
  - The largest estimated job gains are in Illinois, (122,695), Virginia, (123,014), Tennessee, (113,138), North Carolina (76,966) and Ohio (76,240).[5]
  - In states with net O&M job reductions, projected gains in capital improvement jobs will provide enough work to fully offset the O&M job reductions.
  - The construction of pollution controls will create a significant, near-term increase in new jobs. O&M job reductions are likely to occur later in the period.

5. All values reported in "job-years". One job-year equals one year of full-time employment.

Mr. STEARNS. We have concluded our questioning. We are going to adjourn shortly. Does the gentlelady from Colorado have any concluding remarks?

Ms. DEGETTE. Yes, sir, I do. I just want to reiterate our thanks to the Administrator for coming today, and I would also like to note after having sat here for now almost 3 hours, I haven't heard any evidence that the EPA regulations that are being proposed are actually having a detrimental effect on jobs in this country, and in fact, as the studies I just entered into the record indicate, thousands of new jobs in the clean energy environment will be created in addition to the thousands and thousands of lives that will be saved because of better environment, and the millions of people whose other respiratory illnesses and so on will be diminished because of these.

So I just want to say it is easy to talk about regulatory reform, and nobody in this room including Administrator Jackson believes that we should have overly burdensome regulations. On the other hand, we need to look clearly at science when determining what those regulations should be and we need to balance in a scientific and careful way job creation and the preservation of public health. I think that is what the EPA is trying to do. I commend them for a very difficult, difficult evaluation and I urge them to keep it up because we need to protect the health of Americans while at the same time preserving our economy and creating jobs. Thank you.

Mr. STEARNS. I thank the gentlelady.

I would just say in conclusion that the fact that the President opposed the EPA's proposed Ozone Rule would demonstrate that what the gentlelady indicated earlier, that the President also is worried about over-regulation coming from EPA and he had to step in, and I think Republicans are glad that he shares our same opinion.

I think it was clearly demonstrated by Mr. Barton from Texas that the EPA has hurt jobs in Texas. He cited a couple power plants. The EPA Administrator thinks that is not true but the evidence is that it has killed two large companies over there and he also talked about plants in his Congressional district.

I think the third point we pointed out is that no one is accusing anyone of trying to dirty America, whether it water or air. We are all on the same team. But we believe that over-regulation by the EPA's 18,000-plus employees could damage the economy, and obviously the President agrees. What we worry about is the EPA must be justifying regulation by claiming benefits much, much larger than the science advisors' estimates of public health risk, and that violates the Executive Order and kills jobs. The President issued an edict from the White House saying he wants to roll back regulations. EPA is making an effort. I ask them to continue to do so.

And with that, the subcommittee is adjourned.

[Whereupon, at 12:00 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

**Subcommittee on Oversight and Investigation**
**Regulatory Reform Series #7-**
**The EPA's Regulatory Planning, Analysis, and Major Actions**
**October 13, 2011**

**The Honorable Cliff Stearns**

**2. EPA has gone to great lengths to advertise the fact that it is saving $88 million with its regulations eliminating the Stage II requirement for gas stations. This assumes that states in the Ozone Transport Region will be able to eliminate Stage II, when in fact that may not be the case. Assuming states in the OTR cannot eliminate Stage II, how much less than $88 million will in fact be saved?**

EPA's estimate of potential cost savings is based on the fact that all states, including those in the OTR, could choose to remove Stage II after EPA establishes a waiver date. Because an existing state Stage II program is part of the state implementation plan (SIP) for ozone, the CAA requires a state to develop and submit a SIP revision to remove an existing SIP program. EPA is developing additional guidance for states on submitting approvable SIP revisions, including guidance to OTR states on satisfying the CAA's independent requirement to implement measures capable of achieving reductions comparable to those achievable by Stage II. Because much of the highway vehicle fleet already reduces gasoline refueling emissions through Onboard Refueling Vapor Recovery (ORVR) technology, we do not expect that states will have substantial difficulty obtaining EPA approval of SIP revisions seeking to phase out redundant Stage II programs.

**3. The Proposed Rule to eliminate the Stage II requirement for gas stations, as I understand it, would not allow certain states in the so-called "ozone transport region" to eliminate Stage II. This is based on a fifteen year old guidance document that does not account for the fact that Stage II causes more emissions when anyone driving a car built after the year 2000 fills up its tank. When does EPA plan on updating this document so all states can eliminate this clearly unnecessary requirement?**

The Proposed Rule would eliminate only one of the two independent CAA provisions that require states in the Ozone Transport Region (OTR) to implement Stage II gasoline vapor recovery programs. States in the OTR are subject to a separate requirement under section 184(b)(2) of the CAA to implement measures capable of achieving comparable emissions reductions to those achievable by Stage II. The CAA does not provide the Administrator with authority to waive this independent requirement. The section 202(a)(6) waiver authority that is being exercised by EPA in the Proposed Rule only applies to the section 182(b)(3) requirement.

EPA last issued guidance on the CAA section 184(b)(2) OTR requirement in 1995 ("Stage II Comparability Study for the Northeast Ozone Transport Region," EPA-452/R-94-011; January 1995), and nearly all OTR states chose to implement Stage II in covered areas rather than adopt different comparable measures. EPA is developing additional guidance for OTR states on satisfying the CAA's independent requirement to implement measures capable of achieving

reductions comparable to those achievable by Stage II. In light of continuing growth of the vehicle fleet equipped with onboard refueling vapor recovery systems (ORVR) , we do not expect that OTR states seeking to phase out Stage II programs will have substantial difficulty demonstrating comparability consistent with the CAA section 184(b)(2) requirement.

**4. The EPA has clearly stated that the Stage II requirement for gas stations is a redundant, unnecessary regulation. Please describe all of the steps that must take place before a state in the Ozone Transport region is permitted to eliminate Stage II.**

Because an existing state Stage II program is part of the state implementation plan (SIP) for ozone, the CAA requires a state to develop and submit a SIP revision to remove an existing SIP program. EPA is developing additional guidance for states on submitting approvable SIP revisions, including guidance to OTR states on satisfying the CAA's independent requirement to implement measures capable of achieving reductions comparable to those achievable by Stage II. Because much of the highway vehicle fleet already reduces gasoline refueling emissions through ORVR technology, we do not expect that OTR states seeking to phase out Stage II programs will have substantial difficulty demonstrating comparability consistent with the CAA section 184(b)(2) requirement.

**5. The week before this hearing, three state public utility commissioners- Georgia, Missouri, and West Virginia- each testified before the Energy and Power Subcommittee that their respective state commissions have not had any coordination with EPA regarding the proposed power sector rules.**

**a. Why has EPA failed to coordinate with state PUCs?**
**b. Do you agree that a key component of the President's Executive Order is public participation and information sharing with local governments and other stakeholders?**
**c. Does this indicate you are not adhering to the Executive Order principles when it comes to power sector rules?**

As part of the development of regulations EPA seeks to invite public comment from all interested stakeholders. State agencies are among the important constituencies that we reach out to. For example, in developing the power plant rules, EPA reached out to PUCs on several occasions:

- In December of 2009, Gina McCarthy travelled to Dallas to give a keynote address at the winter meeting of the National Association of Regulatory Utility Commissioners (NARUC), an association comprised of the Commissioners from utility regulatory bodies (such as public utility commissions and public service commissions) in each state. In her talk Ms McCarthy spoke about the upcoming power plant rules and the role of that the PUCs would play in implementation. At that meeting Ms McCarthy also spoke at a breakfast for interested State commissioners in more detail about these subjects.
- The EPA also participates in the Eastern Interconnection States Planning Council (EISPC). EISPC represents the 39 states and 8 Canadian Provinces located within the Eastern Interconnection electric transmission grid. State representatives include PUC representatives. EPA staff gave a presentation on August 26. 2010 entitled "EPA's Power Sector Rulemakings"

- In February 2011 at a NARUC winter meeting in Washington, DC. Ms McCarthy spoke about the rules that would become CSAPR and MATS in some detail. She talked about the role that the State Commissioners would play in implementation of the rule including encouraging energy efficiency and demand response as a part of implementation, and encouraging early planning and action on the part of the power generating companies to assure timely compliance.
- Ms McCarthy also participated on a panel discussion for an audience of state regulators at the National Electricity Forum sponsored by NARUC and DOE on the impact of environmental regulations on the electricity system.
- EPA staff participated in two webinars sponsored by NARUC for State commissioners and their staffs. The purpose was to brief them on the power plant rules and to take their questions. These were held on September 24 and October 15 of 2010.
- On August 30, 2011 EPA in conjunction with DOE organized a webinar for state utility commissioners, air offices and energy offices in the Southeast to discuss EPA rules for the power sector.
- EPA staff also participated in a series of three meetings organized by the Bipartisan Policy Center in conjunction with NARUC and NESCAUM on the power sector regulations that were under development.

We have reached out to the public power providers which include municipal power providers to hear their concerns. This effort has been ongoing, beginning with meetings that Ms McCarthy hosted early on in her tenure at EPA to get their input. We have also received additional input from local governments at hearings and in the public comment process.

EPA did receive comments from some PUCs on CSAPR and from others on MATS, although Georgia, Missouri and West Virginia were not among them. They were, of course, welcome to do so if they so chose. NARUC submitted comments on MATS as well.

**6. Although there has been no formal coordination between EPA and FERC, FERC nevertheless made several recommendations for EPA to consider when evaluating the reliability impacts of its proposed rules. Did EPA heed any of the following suggestions offered by FERC:**

**a. Did EPA complete a cumulative analysis?**

The agency routinely configures regulatory analyses to gauge the effect of new policies or programs from a baseline which reflects other established policies and programs. In the case of the MATS rule, for example, the incremental effect of MATS was evaluated using a baseline which reflected CSAPR and other established environmental regulatory requirements for affected sources. The RIA for MATS, therefore, is a cumulative analysis in that it reflects the cumulative effect of rules on the books as well as the proposed new rule being evaluated. The results of the MATS analysis found that even with CSAPR and other established environmental protection rules in effect, electricity prices are expected to remain well within historical levels. With both MATS and CSAPR and other rules in place, retail electricity prices in 2015 and 2020 are projected to be lower than they were in 2010, with the 2010 price level itself more than 20 percent lower than observed 30 years ago. The effect of MATS on natural gas process is also expected to be minimal, with natural gas prices only increasing by 0.3 to 0.6 percent on average over the time horizon of 2015 to 2030. Our analysis of

the final MATS rule projects that MATS and CSAPR combined will result in only a modest level of power plant retirements and will not adversely affect capacity reserve margins in any region of the country. Finally, the agency believes that many of the purported cumulative analyses that others have performed have made inaccurate assumptions about the requirements of rules that have not yet been finalized, notably by assuming requirements under the Clean Water Act Section 316(b) cooling water intake rule that are significantly more stringent than what has been proposed.

**b. Coordinate with regional and local planning entities?**

EPA met with a variety of regional and local planning entities throughout the development of its power sector rulemakings, including multiple Regional Transmission Organizations (RTOs), multiple regional entities of the North American Electric Reliability Corporation (NERC), and several utilities whose vertical integration in cost-of-service areas includes planning responsibilities (such as American Electric Power, Entergy, and the utilities that are part of Southern Company).

**c. Evaluate important regional and local reliability concerns, such as localized transmission constraints; transmission flows on the grid; reactive power deficiencies related to closures; loss of frequency response; black start capability; and transmission deliverability?**

EPA recognizes the importance of these local issues for maintaining the reliability of the grid and has continued to consult with NERC, FERC and other organizations with key roles in ensuring that the power system remains reliable. These are the organizations that conduct, on a routine and ongoing basis, the detailed economic and engineering studies within individual regions to plan for changes to the power grid that are needed for continued reliable operation. EPA's role is to develop environmental regulations that protect public health and welfare in a manner that is consistent with maintaining an adequate generating resource base with which power grid operators can manage local reliability. EPA uses the IPM model to project regulatory impacts that address resource adequacy and transmission across 32 regions in the US; these regions generally correspond to subregions of the North American Electric Reliability Corporation (NERC) regions. IPM modeling also captures, consistent with the efficient operation of the electric sector in practice, the least-cost method of meeting energy and peak demand requirements over a specified time considering regulatory and market conditions in each of these regions (e.g., emission limits, transmission capabilities, RPS requirements, fuel market constraints, etc.). It does not replicate all of the local detail involved in managing local transmission or other local grid issues such as reactive power. This modeling allows EPA to inform its environmental rulemaking with data on regional power system operations, represented in detail in IPM. It provides information on emissions, wholesale energy prices, power sector costs, changes in fuel consumption and generation technology, capacity and dispatch projections, and reserve margins. A reserve margin is a measure of the system's generating capability above the amount required to meet the net internal demand (peak load) requirement. In practice each NERC region has a reserve margin requirement, expressed as a percent, that encourages electric suppliers in a region to build beyond peak requirements to ensure reliability. The reserve margin constraints in IPM depict these reliability standards that are in effect in each NERC region, and ensure that that regulatory and operational requirements are met only through means that ensure grid reliability and maintain reserve capacity levels equal to or greater than the target planning reserve margin. The IPM power sector details associated with the reserve margins and

environmental constraints are available to regional reliability authorities, who undertake the actions needed to ensure the reliability of the power grid as the environmental regulations are implemented.

**d. Account for construction and permitting barriers that could push out the timelines for when a new generation would come on-line?**

EPA considers the time it takes to plan, permit and construct new generation, which our modeling with IPM would capture whenever new capacity is projected to be necessary for maintaining the reliability reserve margins required in each region in accordance with NERC standards. The EPA modeling includes construction times for new generation that match assumptions used by the Energy Information Administration. At present, the relatively recent construction of significant new natural gas generating capacity, coupled with current economic conditions, has resulted in very large reserves of capacity in many of the regions of the country. As a result, we project a very limited need for new capacity in the near future, even under scenarios where certain existing capacity is projected to withdraw from service.

**e. How do you account for the fact that renewables are not a one-to-one replacement for coal-fired baseload capacity?**

EPA recognizes that some current forms of renewable electricity have variable production and are not on-demand resources, a distinct difference from fossil fuel-fired generation. EPA's power sector modeling determines each regional capacity reserve margin in a way that appropriately reflects the types of capacity available, including variable sources of renewable generation. EPA allows only a certain portion of intermittent renewable capacity to count against reserve margins, which set forth how much capacity must be available to meet peak demand and which vary by power region. In that sense, renewable capacity only gets "partial credit" in EPA's modeling to ensure that our projected scenarios maintain each region's reliability reserve margin planning targets. EPA uses information from each Regional Transmission Organizations and/or Independent System Operator to determine appropriate capacity credit for intermittent sources of energy. This capacity credit is consistent with AEO 2010 and depicted in Tables 4-20 through 4-22 in the IPM documentation.

**7. Executive orders issued since President Clinton set forth several criteria for agencies adopting regulations, such as maximum net benefits, least cost, feasibility and other factors. How does the agency apply these requirements when it makes a decision:**

**a. To enter a Consent Decree with an environmental group; and**
**b. To issue a regulation as part of a judicial settlement with an environmental group?**

The decision to settle a case does not, nor does a settlement agreement or consent decree itself, trigger requirements under the relevant executive orders. Although a settlement agreement or consent decree may include a commitment to undertake a rulemaking, EPA does not commit in its settlements to any final, substantive outcome to any such rulemaking. EPA fully complies with all applicable executive orders during each rulemaking process, irrespective of whether the rulemaking was initiated as a result of a settlement agreement or consent decree.

**8. Under section l(b)(9) of Executive Order 12866, your agency is required to seek the views of appropriate state and local officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Do you ensure that you incorporate the views of state and local governments before taking regulatory action?**

Yes.

**9. How does the agency apply the following requirements when it makes a decision:**
**a. To enter a Consent Decree with an environmental group?**
**b. To issue a regulation as part of a judicial settlement with an environmental group?**

Please see response to Question 10.

**10. Section 6(a)(1) of Executive Order 12866 requires EPA, before issuing a notice of proposed rulemaking, to seek the involvement of those who are intended to benefit from and those expected to be burdened by your regulatory actions. How does the agency apply this requirement when it makes a decision:**

**a. To enter a Consent Decree with an environmental group?**
**b. To issue a regulation as part of a judicial settlement with an environmental group?**

As explained above, the decision to settle a case does not, nor does a settlement agreement or consent decree itself, trigger any requirements under Executive Order 12866. When EPA intends to issue a regulation based on a commitment under a settlement agreement or consent decree, we apply the directives contained in applicable executive orders (including Section 6(a)(1) of Executive Order 12866) to that rulemaking in the same manner as we do with any rulemaking. EPA routinely seeks the involvement of those who are intended to benefit from and those expected to be burdened by regulatory actions in the process of developing the regulatory proposal.

**11. While the petitions for review challenge EPA's amended NSPS for petroleum refineries, (NSPS J and Ja), EPA has agreed in the settlement to propose NSPS regulations for subparts Db, De, GGG and QQQ of 40 C.F.R. Pt. 60. How did these separate standards become part of the settlement when they were not included in the petition for review?**

**a. Did EPA seek to include these separate standards in the settlement?**
**b. Who is on record as having requested their inclusion?**
**c. What was the stated reason for including the standards in the settlement agreement?**
**d. Did EPA object to their inclusion because they were not referenced in the petition for review?**
**e. On what grounds did EPA accept their inclusion?**
**f. Did EPA consult with any other federal agency (besides DOJ) prior to releasing the draft settlement agreement?**
**g. Did DOJ objeet at any point to their inclusion? Why not?**

As reflected in the Settlement Agreement, it is EPA's view that "it will be more effective to address greenhouse gases and various other pollutants from refineries in a comprehensive manner rather than just addressing such pollutants from those affected facilities that are subject

to regulation under NSPS subparts J and Ja." Settlement Agreement at 3. This position reflects the Agency's view that coordination of these rules would allow the Agency to most efficiently and rationally address its statutory obligations. Such an approach has the added benefit of providing regulatory certainty to facilities, and allowing them to make compliance decisions with a full picture of their potential impacts.

As set forth in the Settlement Agreement, Petitioners were willing to provide a longer schedule for such a comprehensive action than they would have agreed to for an action covering only subparts J and Ja:

> "WHEREAS, the State and Environmental Petitioners desire that EPA complete its reconsideration of GHG standards of performance for refineries as expeditiously as possible, but agree that allowing additional time for EPA to complete a rulemaking that follows the comprehensive approach discussed above is warranted in light of the potentially greater emissions reductions possible through such an approach, when compared to a rulemaking addressing only the remaining issues on reconsideration for NSPS subparts J and Ja;"

Settlement Agreement at 3.

The settlement also addressed a number of EPA's other outstanding legal vulnerabilities. Prior to entering into negotiations, EPA had faced requests from environmental petitioners over several of the standards that were eventually addressed by the Settlement Agreement. Specifically, with respect to industrial boilers (subparts Db and Dc), an August 20, 2010 letter from environmental petitioners asked that "EPA identify and commit to a reasonable schedule for issuing revised standards that limit greenhouse gas emissions from new and existing [Db and Dc units]." Moreover, the Agency had missed the 8-year review cycle, required under Section 111(b)(1)(B) of the Clean Air Act, for subpart QQQ and was vulnerable to a mandatory duty suit over this standard as well.

Consistent with EPA practice, the Settlement Agreement was submitted to OMB for its review and, pursuant to Section 113(g) of the Clean Air Act, DOJ was given the opportunity to withhold its consent to the settlement both before and after public comment on it.

**12. As part of the settlement, EPA also agreed to review the risk and technology standards for refineries under 40 C.F.R. pt. 63, subpart. UUU, which implements completely different provisions of the Clean Air Act (CAA §§ 112(d)(6) and (f)(2)) for setting and reviewing maximum achievable control technology emission standards. How did these statutory provisions become part of the settlement agreement when they were not included in the petition for review?**

**a. Who is on record as seeking their inclusion in the settlement agreement, and on what grounds?**

**b. Did EPA staff or DOJ object to their inclusion given that they were not included in the petition for review?**

As explained in the preceding answer, EPA made the reasonable judgment that a broader settlement to address greenhouse gases and various other pollutants from refineries in a comprehensive manner and to resolve a number of outstanding legal vulnerabilities was the most effective and efficient approach for EPA to address its statutory obligations.

**13. Does EPA normally include standards in settlement agreements that are not part of the petition for review, thereby stripping the Administration of discretion in determining the schedule for issuing the standards?**

Although most settlement agreements address issues arising in a single litigation, the agreement in this case allowed the EPA to manage the risks of multiple potential litigations and to get more time to finalize the standards that were the subject of the petition than the petitioners otherwise would have agreed to, while also allowing the Agency to appropriately and rationally address emissions from refineries. Additionally, although the Agency takes very seriously the deadlines negotiated into a settlement agreement, the Agency does not completely relinquish discretion to proceed on a different schedule if a very important issue arises as the rulemaking process unfolds. In this case, the petitioner's remedy is to reactivate the litigation.

**14. Doesn't this action reinforce the view that EPA may be inviting the petitions in order to agree to regulatory deadlines that prevent others in the Administration from participating in the decision making process?**

No. The EPA did not invite or otherwise encourage these petitions, nor were others in the Administration prevented from participating in the decision making process. First, the Assistant Attorney General in the U.S. Department of Justice's Environment and Natural Resources Division approves any settlement entered into by the EPA. In addition, the proposed settlement agreement was submitted to the Office of Management and Budget for review prior to being finalized. Finally, as is the case with any settlement in litigation against the EPA under the Clean Air Act, the proposed settlement agreement was subject to public notice and comment - pursuant to Section 113(g) of the Clean Air Act - prior to being finalized.

**15. Does the Settlement Agreement in essence sanction an end-run around the standard regulatory setting process, in a manner intended to benefit only one group of parties -- the States and Environmental Groups -- at the expense of the regulated industry?**

No. Under the agreement in question, the EPA committed to develop a proposed rule and to take final action on that proposal only after going through the notice and comment process required for any rule of this nature under the Clean Air Act. The settlement agreement does not commit the EPA to any final substantive outcome in such rulemaking process

**16. In addition to broadening the scope of the refinery GHG settlement agreement to include rules which were not raised in the petition for review, EPA also agreed to**

**aggressive schedules for rulemaking that do not appear to provide sufficient time for EPA to analyze requested data, develop a rule based on that analyzed data and allow for sufficient interagency review.**

At the time, the EPA believed that the time frames contemplated by the settlement agreement would be sufficient for the relevant analysis and review; issuance of a proposed rule, however, has been delayed for a variety of reasons that were not anticipated at settlement.

**17. In issuing its GHG reporting rule, EPA stated that the purpose of the rule was to collect accurate and timely data to inform future policy decisions. However, because EPA was unable to deliver the appropriate electronic reporting tool, the Agency deferred GHG reporting until September 30, 2011, less than four months before the deadline for issuing its proposed GHG NSPS refinery rule.**

**a. Has EPA provided the appropriate electronic reporting tool for refinery GHG emissions to all regulated parties? If yes, when did this occur? If not, when does EPA expect to do so?**

EPA launched the Electronic Greenhouse Gas Reporting Tool (e-GGRT) on August 22, 2011, for reporting greenhouse gas information. Entities required to report under the Greenhouse Gas Reporting Program (40 CFR Part 98) were given six weeks to submit their 2010 report, due on September 30, 2011.

**b. When does EPA currently expect to receive data from the new reporting tool?**

EPA received greenhouse gas data for 2010 from 29 source categories (including petroleum refining) on September 30, 2011.

**c. How many months or years of data will EPA have received by December 10, 2011?**

By December 10, 2011, EPA will have received greenhouse gas data from petroleum refineries for the entire year of 2010 (as noted above in Question 17b, EPA received this data on September 30, 2011).

**d. How much time will EPA have to evaluate that data before developing proposed GHG standards?**

We have been working to develop GHG options based on data reported in the information collection request for refineries and other sources of available information. We expect to confirm our approach and proposal with the data that become available through the reporting rule before the proposed rule is signed.

**e. Doesn't this schedule suggest that the data will have very little role if any at all in shaping the Administration's decisions regarding the proposed rule?**

We do not expect drastic differences between GHG emissions from the reporting rule and the data collected through the information collection request.

**18. Similarly, on March 31, 2011, EPA also issued an extensive Information Collection Request with the expressed purpose of gaining information to support this rulemaking. The ICR has three separate due dates in May, June, with the last in August 2011.**

**a. How much of the industry succeeded in submitting the required reporting data on time?**

Almost all of the refining companies met the May 31 and June 30 submission dates for Component 1 (process data) and Component 2 (emissions inventory) of the ICR. The exception consists of a few small refiners for whom we gave until the end of July to submit Component 2 information. As of the end of February 2012, EPA received responses from all refineries expected to submit data for Components 1 (process data) and Component 2 (emissions inventory). For Component 3 (distillation feed sampling), the EPA has received data from all but 10 facilities, and has received 72 responses to Component 4 (stack test reports). Some facilities informed us of delays as a result of factors such as scheduled equipment down times, insufficient equipment operating time necessary for testing, and delays in analyses from labs..

**b. How many separate individual data entries were received?**

We received Component 1 and Component 2 data from all 148 refineries. Each refinery responded to approximately 400 questions from Component 1 and was requested to submit any available tests they had conducted within the last 5 years. For the Component 2 emission inventory data, we asked each refinery to report emissions on each of approximately 50 emissions units per refinery, and provided them with a protocol to use for estimating those emissions. In addition, as noted above, we have crude analyses (Component 3) from all but about 10 refineries, and about 72 stack test reports (Component 4).

**c. Has EPA had sufficient time to review and analyze this data from these requests?**

We have conducted a quality assurance check on Component 1 data and compiled that information into a database to use for rule development. For Component 2, EPA also consolidated the information into a database, and EPA conducted an extensive QA review of the data to correct errors, such as using Google Earth to correct latitudes and longitudes (e.g., incorrectly located plants and lat/longs outside plant property boundaries), information reported in wrong units (e.g., tons instead of pounds), and filling in gaps where pollutant emissions were missing. We are currently in the process of using these data to conduct our risk assessment and to develop and cost regulatory options. We are currently analyzing and compiling data received from Components 3 and 4.

**d. When will regulated parties and other interested stakeholders be allowed to review the collected data?**

The refineries claimed almost all of the information submitted in response to Component 1 to be confidential business information, so we will not be able to make that information available to the public. We do anticipate having summarized information available in the public docket for review during the comment period on the proposal. We do plan to make Component 2 emissions

inventory data available to the public by proposal and are working to make that information available ahead of the proposal. Some of the test reports submitted in response to Component 4 were claimed as confidential because they contained process information. However, we plan to make the non-confidential test reports available through the public docket as soon as we can. Most of the crude analyses provided in response to Component 3 were claimed to be confidential.

**e. When will there be opportunities to correct any data errors?**

We have already been following up with the companies as we review the data to confirm information where questions arose, and in several cases, they helped us correct the data. The companies will have an opportunity to provide corrected and updated information during the public comment period on the proposal, based on their ability to review the data made public in the docket.

**19. Given the December 10, 2011 deadline in the consent agreement, how much time will OMB and other agencies, such as the Small Business Administration and the Department of Energy, have to review the proposal?**

EPA has not met the December 10, 2011 settlement agreement deadline and we have not yet updated the settlement agreement. We anticipate that these agencies will have a few weeks to review the rule proposal. We have been working with representatives from SBA and OMB on a Small Business Regulatory Enforcement Act (SBREFA) review panel for the rule. As part of this effort, we have participated in outreach meetings with small business representatives and have briefed them on our rule development.

**The Honorable Michael C. Burgess**

**1. On what basis can you assure the Subcommittee that these rules will not make instances of rolling blackouts more common?**

EPA's resource adequacy analysis continues to demonstrate that only a modest amount of generating capacity will become uneconomic to operate under the MATS standards, and removal of this capacity will not adversely affect capacity reserve margins in any region of the country. In addition, new capacity will be added between now and 2015. The analysis projects that, as a result of MATS, plant operators will choose to retire less than one half of one percent (4.7 gigawatts (GW)) of the more than 1,000 GW that make up the nation's electric generating capacity. This retiring generation capacity is an average of more than fifty years old, relatively inefficient, and does not have modern pollution controls installed. It should be noted that over the last few years low natural gas prices and an aging coal generation fleet have been pushing the industry towards less reliance on coal and greater reliance on natural gas.

EPA's power sector modeling considers the impact of regulations on the resource adequacy of the power grid at a regional level, using 32 regions across the United States that generally correspond to subregions of the North American Electric Reliability Corporation (NERC) regions used for reliability planning. At present, many regions have excess capacity

available above their required reserve margins. Our analyses project that even under the regulations proposed or finalized to date, regional reliability authorities will continue to have access to an adequate generating resource base with which they can flexibly operate the power system in accordance with reliability requirements to maintain service to power consumers.

EPA's analysis is supported by other detailed studies, including independent analyses by the Department of Energy (DOE) and outside groups such as the Bipartisan Policy Center. David Sandalow, DOE Assistant Secretary for Policy and International Affairs, summarized the DOE analysis as "demonstrat[ing] that new EPA rules – which will provide extensive public health protections from an array of harmful pollutants – should not create resource adequacy issues[1]." The DOE study found that, even under a stringent "stress test," using very conservative assumptions, "overall supply-demand balance for electric power in each region examined would be adequate" and "mechanisms exist to address such reliability concerns or other extenuating circumstances on a plant-specific or more local basis.[2] In addition, a recent Congressional Research Service report (January 2012)[3] reviewed industry data on planning reserve margins and potential retirement of units that do not currently meet the standards and concluded, based on these data "that, although the rule may lead to the retirement or derating of some facilities, almost all of the capacity reductions will occur in areas that have substantial reserve margins."

EPA took steps in the final MATS standards to address stakeholder concerns that compliance with MATS could not be achieved within the maximum three-year compliance date authorized under the statute. In the final rule, EPA described in detail the wide range of situations where we believe an additional year for compliance could be granted by permitting authorities. This fourth year - in addition to the three years provided to all sources - is provided by the Clean Air Act as needed to complete installation of control technologies. EPA suggests that permitting authorities make this fourth year broadly available to sources that require it to complete their compliance activities, including installing pollution control equipment, constructing on- or off-site replacement power, and upgrading transmission. EPA is also encouraging the fourth year to be available as needed to units that continue to operate for reliability purposes while other units are installing pollution controls. As described in more detail below, EPA will engage in outreach to states and permitting authorities to help ensure that the fourth year for compliance is broadly available and that the process for sources to request and states to grant the extensions is clear and straightforward. As a result, EPA estimates that sources generally will have until spring of 2016 to comply – one year longer than our analysis indicates is necessary for most sources.

Although EPA's analysis indicates that most, if not all, sources can comply within three years, and that the fourth year should be available in the broad range of situations described above, EPA is also providing a clear pathway for units that are shown to be critical for electric reliability to obtain a schedule to achieve compliance within up to an additional year beyond the

[1] http://energy.gov/articles/energy-department-releases-study-electricity-system-ahead-proposed-epa-air-quality

[2] U.S. Department of Energy, December 2011, "Resource Adequacy Implications of Forthcoming EPA Air Quality Regulations."

[3] James E. McCarthy, January 9, 2012. "EPA's Utility MACT: Will the Lights Go Out?" http://www.eenews.net/assets/2012/01/19/document_gw_03.pdf

four years mentioned above. This pathway is set forth in a policy memorandum from EPA's Office of Enforcement and Compliance Assurance.[4] As stated above, EPA believes there will be few, if any, situations in which this pathway will be needed. In addition, in the unlikely event that there are situations where sources cannot come into compliance on a timely basis that do not fall into any of these categories, EPA will address them on a case-by-case basis, at the appropriate time, to determine the appropriate response and resolution. This is consistent with its longstanding historical practice under the Clean Air Act.

As part of the Administration's commitment to maximize flexibilities under the law, MATS was accompanied by a Presidential Memorandum that directs EPA to take a number of steps to ensure continued electric reliability. These steps include: 1) working with State and local permitting authorities to make the additional year for compliance with MATS provided under section 112(i)(3)(B) of the Clean Air Act broadly available to sources; 2) working with the Department of Energy, the Federal Energy Regulatory Commission, State utility regulators, Regional Transmission Organizations, the North American Electric Reliability Corporation and regional electric reliability organizations, other grid planning authorities, electric utilities, and other stakeholders, as appropriate to promote early, coordinated, and orderly planning; and 3) making available to the public, including relevant stakeholders, information that describes the process for identifying circumstances where electric reliability concerns might justify allowing additional time to comply. EPA is in the process of taking a number of steps to implement the directives in this memo.

EPA is actively engaging power plants and other entities that will be involved in getting power plants retrofitted while maintaining the reliability of the electric grid. EPA has held, and will continue to hold, a series of discussions with the Department of Energy, the Federal Energy Regulatory Commission, State utility regulators, Regional Transmission Organizations, the North American Electric Reliability Corporation, regional electric reliability organizations, and other grid planning authorities to promote early compliance planning, to support orderly implementation of the MATS standards, and to ensure that any potential, localized reliability concerns are identified and addressed.

There have been a number of flawed studies alleging that upcoming EPA regulations will result in substantial power plant retirements, drastically increased electricity costs, and negative economic impacts. While the particulars of these analyses differ, in general they share a number of serious flaws that call their conclusions into question. These studies often make assumptions about the requirements of the EPA rules that are inconsistent with, and dramatically more expensive than, EPA's actual proposed or final rules. Second, within many of these evaluations, the projected retirements are caused by regulations other than MATS and are exacerbated by incorrect or unrealistic assumptions about these other rules. In one case, the assessment assumes that EPA's cooling water rule will lead to 100 percent of units installing closed cycle cooling systems—an option EPA rejected in its proposal. Third, in reporting the number of retirements, many analyses fail to differentiate between plant retirements attributable to the EPA rules and

[4] EPA Memorandum December 16, 2011. "The Environmental Protection Agency's Enforcement Response Policy For Use of Clean Air Act Section 113(a) Administrative Orders in Relation To Electric Reliability and the Mercury and Air Toxics Standard" http://www.epa.gov/compliance/resources/policies/civil/erp/mats-erp.pdf

inefficient and costly plants that are already scheduled for retirement because owners make the business decisions to close them. Many of these studies use overly pessimistic assumptions about the capability of control technology to meet the standards. This is especially true in the case of dry sorbent injection (DSI). Many of these studies do not consider DSI capable of meeting the acid gas standard and assume that the flue gas desulfurization (FGD), which is much more expensive, will be needed on all plants. Also, many analyses do not account for the many tools, including new generation, demand response, energy efficiency, energy storage and transmission upgrades that can be used to maintain reliability.

**2. What studies are underway to look at the cumulative effect of all of the EPA regulations on electrical reliability, not just in Texas where we have our own reliability council, but across the country?**

Please see the answer to the previous question.

**3. Did the EPA consult with anyone at Office of Management and Budget or the White House before moving forward in taking over the Texas flexible permitting program under the Clean Air Act?**

When disapproving in full a proposed change to a federally approved State Implementation Plan (SIP), EPA consults with the Office of Management and Budget (OMB) on whether OMB wishes to review the action. This action was determined not to be a "significant regulatory action" subject to review by the Office of Management and Budget under EO 12866 (75 FR 41333, July 15, 2010). Additionally, EPA did not 'take over' the Texas flexible permitting program. EPA determined that the flexible permit program could not be federally approved as a part of the Texas SIP. Companies currently holding flexible permits are correcting them through the Texas Commission on Environmental Quality (TCEQ) permit program, not through an EPA permit program.

**4. The EPA is now issuing its own permits to utilities in Texas, displacing the State agencies that have been responsible for that historically, the first time to my knowledge that the EPA has taken over a State system. Did EPA consult with Office of Management and Budget on regulations for the permits it is issuing in lieu of the State-based permits?**

At present, EPA acts as a permitting authority in Texas only for greenhouse gas preconstruction permits. Texas continues to act as the principal permitting authority for preconstruction permits by addressing all pollutants other than greenhouse gases under the EPA-approved Prevention of Significant Deterioration (PSD) permitting program in its State Implementation Plan (SIP). EPA has not taken any action to change that arrangement. There have been other occasions in the past when EPA was required under the Clean Air Act to become the permitting authority for some or all of a particular states' preconstruction permit obligations. In this case, EPA was required to become a partial permitting authority for Texas after Texas became the only State in the country that informed EPA that it did not have and would not seek authority to issue greenhouse gas preconstruction permits for major GHG sources. In order for major industrial expansion projects to proceed in compliance with the Clean Air Act, by notice dated May 3, 2011, EPA issued a final rule that ensures businesses in Texas will be able to seek and obtain the air permits required

under the Act for new or expanding projects that increase greenhouse gas (GHG) emissions. 76 Fed. Reg. 25178. (This final rule replaced a similar interim final that EPA had promulgated by notice dated December 30, 2010, 75 Fed. Reg. 82246.). EPA determined that it made an error when it originally approved the Texas PSD permitting SIP because the state of Texas did not address how the program will apply to pollutants newly subject to regulation and did not provide assurances that the program has adequate legal authority to apply to such pollutants. The partial disapproval of the Texas SIP authorized EPA to issue a Federal Implementation Plan (FIP) for Texas. Under the GHG FIP, EPA is the permitting authority for GHG emissions from sources in Texas that must obtain PSD permits only until the state submits and EPA approves a SIP that includes provisions to regulate GHG. States are best suited to issue PSD permits addressing GHG emissions from sources. They have longstanding experience working together with industrial facilities under their jurisdiction to process PSD permit applications. EPA intends to delegate the authority to issue GHG permits to states if the State requests such delegation. EPA will continue to provide guidance and act as a resource for the state of Texas as we work together to make the various required permitting decisions for GHG emissions and will work with the state to develop authority to issue permits for GHG emissions if it wishes.

The rules EPA issued to put a FIP in place, authorizing EPA to issue GHG permits in Texas, were submitted for interagency review by OMB under EO 12866. Through this process, the OMB was made aware of the regulatory steps we were taking and the reasons for them.

**5. In my part of Texas, there is of course some controversy over the production of natural gas and there are issues that are being worked out at the federal, State, and local level. Still EPA's administrator in region 6 has made public statements that he is going to be much more actively involved in the regulation of this industry. The industry employs 100,000 in my area of north Texas. Are there active discussions within the EPA to take greater involvement at the federal level in these activities? If so, how are you going to justify that with the President's call for greater streamlining of burdensome regulations?**

The promise of increased availability of cleaner burning natural gas has great potential for the country strategically, economically, and environmentally. In developing this resource, responsible answers for how to protect the air and the water need to be developed.

With respect to national regulation, on August 23, 2011, the EPA proposed consolidated changes to the New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) for the oil and gas industry. The comment period for this rule closed on November 30, 2011, and under a court order, EPA must take final action by April 3, 2012. The proposed rule estimates that the combined changes are expected to reduce hazardous air pollutants emissions by 38,000 tons, volatile organic chemicals by 540,000 tons, and methane emissions by 3.4 million tons (76 Fed. Reg. 57791, August 23, 2011). The proposal also estimates that industry would save $45 million in revenues associated with NSPS changes (Id.), because these engineering changes will allow the operations to recover more marketable product. We are in the process of reviewing the comments received on the proposed rule and will revise these figures, as necessary, to account for the requirements of the final rule.

On September 27, 2011, EPA extended the phase-in of reporting of greenhouse gases for this sector in consideration of the need for time for the oil and gas industry to develop best available monitoring methods reflecting a responsible regulatory response to industry issues.

Congress has clearly indicated its intent that permitting oil and gas drilling activities and regulating the use of water resources for drilling and hydraulic fracturing should be conducted at the state and local levels, and there are no discussions within EPA to seek to change that. However, because Congress amended the Safe Drinking Water Act definition of "underground injection" to exclude hydraulic fracturing related to oil, gas, or geothermal production activities, except when diesel fuels are used, an underground injection control permit is required for the injection of diesel fuels for these purposes. EPA's Office of Water recently put out a clarification to this point, and Region 6 has provided input into that process.

In most cases in Texas, flowback waters from hydraulic fracturing and produced waters are disposed through injection wells permitted through the state's EPA authorized UIC Class II program, for which EPA does have oversight authority. EPA can also respond to releases to surface water or underground sources of drinking water under the enforcement authorities granted to it by Congress under such statutes as the Clean Water Act or the Safe Drinking Water Act. Finally, at the request of Congress, EPA is conducting a national study of potential impacts to water resources from hydraulic fracturing. This includes a case study of reported impacts in Wise and Denton Counties, Texas, as well as record reviews of other, randomly selected Texas wells which were hydraulically fractured.

These activities are consistent with the Administration's overall work to encourage responsible development practices for natural gas. Ongoing Administration actions include providing better information to the public; support for research and development; developing a framework for responsible production on public lands; and putting basic Federal pollution controls in place to supplement, not duplicate, State regulations.

**6. The Business Roundtable in June of this year under the President's request submitted to the President some issues that they thought might help in job creation. The Roundtable specifically mentioned the EPA's moves against Texas flexible permitting program as one of the major examples of the Administration's hostility--their words--towards growth. What has EPA, OMB, and the White House done in response to the Business Roundtable's suggestion to remove the EPA's restrictions on the Texas flexible permitting program?**

The flexible permit program was never approved by EPA in Texas, nor did any State operate a similar flexible permitting program for issuing permits. Approximately 130 flexible permits were issued by Texas to both minor and major industrial sources, including some of the largest air pollution sources in the state. After many meetings with flexible permit holders and TCEQ in 2009 and 2010, a permit transition process was developed where businesses could obtain Clean Air Act and SIP compliant permits from the TCEQ. Last summer, EPA announced that all almost all flexible permit holders had agreed to move forward to have the state issue compliant permits to them. In addition, EPA is continuing to work cooperatively with TCEQ and individual companies which are transitioning individual permits from the flexible permit program to a currently approved SIP permit program that will meet the PSD requirements of the

federal Clean Air Act. Also, Texas has adopted revised Flexible Permit Program regulations in response to EPA's disapproval action, but it has not submitted those rules to EPA for approval

**7. Under the ethanol mandate that was accelerated in December of2007, E15 is now, we are told, going to be mandated by the EPA. Can you provide us with the testing that has been done in both vehicles and small engines utilizing 15 percent ethanol? Can you provide us with information on the testing done to date and the testing methodology that was employed?**

It is important to note at the outset that EPA is not mandating the use of E15. The partial waivers that EPA issued in response to a request by ethanol producers allow, but do not require, the introduction into commerce of gasoline containing up to 15 volume percent ethanol (E15) for use in Model Year (MY) 2001 and newer light-duty motor vehicles (i.e. cars, light-duty trucks and other passenger vehicles). Any decisions to bring E15 to market are up to market participants to make.

EPA based its waiver decisions on all relevant studies and information, and the Agency made this information available to the public in the docket for the waivers at www.regulations.gov, docket identification number EPA-HQ-OAR-2009-0211. The decision documents (see 75 FR 68094, November 4, 2010, and 76 FR 4662, January 26, 2011) summarize and discuss all of the relevant studies and information, and the docket includes reports that outline the testing methodology of the various studies as well as test data from the Department of Energy's extensive Catalyst Durability test program. See in particular subsection i. DOE Catalyst Study Overview on page 68105 of the November 4, 2010, Federal Register notice; and subsection i. Description of DOE Catalyst Study for MY2001–2006 Motor Vehicles on p. 4669 of the January 26, 2011, Federal Register notice.

**8. Can you provide for the committee how many EPA employees are receiving pay under Title 42 exceptions? Have you placed a limit of pay under Title 42 and what is the total amount of the Title 42 program costing the federal taxpayer within the Environmental Protection Agency's budget?**

In FY 2011, EPA had a total of 17 Title 42 employees. There are no salary caps imposed by 42 U.S.C 209(f) or (g) or by Public Law 111-8, but EPA's own internal Agency guidance provides that the total compensation paid to any Title 42 employee may not exceed a specified fixed total per annum. As of March 2010, the aggregate amount that EPA had paid in excess of $153,000 for all of the Title 42 salaries since the inception of the program was $179,387.70.

**The Honorable Phil Gingery**

**1. According to the most recent Particulate Matter Risk Assessment, EPA estimates "that total PM2.5-related premature mortality ranges from 63,000 and 88,000" each year above lowest measured level. But EPA's recent transport rule estimate of benefits, which involve almost all PM, notes that the mortality ranges between 130,000 and 320,000 deaths per year. That is quite different from EPA's own Risk Assessment. Could you please explain**

**the difference? Why does EPA monetize a dramatically higher number than are identified in the peer-reviewed Risk Assessment?**

Response: It is important to note that the CSAPR RIA estimate you reference in your question describes the overall public health burden of recent levels of $PM_{2.5}$ and ozone relative to policy relevant background levels,[5] and not the number of avoided premature deaths associated with emission reductions required by the CSAPR, which are estimated separately and reported in Table 5-17 of the CSAPR RIA.[6]

The most recent Quantitative Health Risk Assessment for Particular Matter and the CSAPR RIA provide similar estimates of the $PM_{2.5}$-related mortality. As you note in your letter, in the *Quantitative Health Risk Assessment for Particulate Matter,* EPA estimated that "total $PM_{2.5}$-related premature mortality [resulting from 2005 $PM_{2.5}$ levels] ranges from 63,000 (39,000—87,000) ($95^{th}$ percentile confidence interval) to 88,000 (49,000—130,000), respectively; in each case we estimated deaths per year down to the lowest measured levels (LMLs) in each epidemiological study" (pg G-2). In this same report, EPA also estimated 110,000 to 360,000 $PM_{2.5}$-related mortalities attributable to 2005 $PM_{2.5}$ levels relative to policy relevant background levels, which in most locations is well below the LML from the epidemiology studies. This estimate is comparable to the total $PM_{2.5}$–related mortality estimates cited in the CSAPR RIA of 130,000 to 320,000 premature $PM_{2.5}$-related deaths, which also are based on policy relevant background levels. The estimates reported in the CSAPR RIA are slightly different, because they were generated using more recent air quality information.

While we have higher confidence in the estimate of health impacts associated with exposure to $PM_{2.5}$ concentrations above the LML in the underlying epidemiology studies, the available evidence supports a no-threshold model. This means that it is appropriate to include estimates of mortality associated with exposure to even relatively low levels of $PM_{2.5}$, while acknowledging that there is some additional uncertainty regarding the magnitude of health effects attributable to these exposures. Thus, while we have the highest confidence that $PM_{2.5}$-related mortality impacts in 2005 were at least 63,000 to 88,000, as reported in the PM risk assessment, the best estimates for characterizing the overall public health burden of recent levels of $PM_{2.5}$ and ozone is the estimate of 130,000 to 320,000 premature deaths as summarized in the CSAPR RIA.

**The Honorable Morgan Griffith**

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[5] Fann N, Lamson AD, Anenberg SC, Wesson K, Risley D, Hubbell B. 2012. "Estimating the national public health burden associated with exposure to ambient $PM_{2.5}$ and ozone." *Risk Analysis.* 32(1): 81-95. DOI: 10.1111/j.1539-6924.2011.01630.x

[6] U.S. Environmental Protection Agency. 2011. *Regulatory Impact Analysis for the Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States.* Office of Air and Radiation. June 2011. Available on the Internet at: http://epa.gov/airtransport/pdfs/FinalRIA.pdf.

**1. Question that Administrator promised to respond to during the hearing: When you say reduce particulate matter to levels that are health, what is that level?**

**a. At what point in history was the level last reached?**

EPA's approach to estimating health benefits is driven by the scientific evidence regarding the health effects associated with $PM_{2.5}$ exposure at various concentration levels. EPA relies on the *Integrated Science Assessment (ISA) for Particulate Matter* (U.S. EPA, 2009) as the scientific basis for the determination that inhalation of $PM_{2.5}$ is causally associated with premature death. The conclusion in the final PM ISA, which has been peer reviewed by the Congressionally-mandated, independent Clean Air Science Advisory Committee, is that the scientific literature provides no evidence of a threshold below which health effects associated with exposure to fine particles – including premature death - would not occur (U.S. EPA, 2009).[7] In addition, in their peer review of the Section 812 Second Prospective Study of the Clean Air Act, the Health Effects Subcommittee of the Congressionally-mandated Advisory Council on Clean Air Compliance Analysis fully supported EPA's use of a no-threshold model to estimate the mortality reductions associated with reduced PM exposure.[8] EPA recently summarized the scientific review statements related to the issue of thresholds in the concentration-response function for $PM_{2.5}$ mortality in a Technical Support Document appended to several recent RIAs.[9]

In setting primary (health-based) national ambient air quality standards (NAAQS) that are requisite to protect public health with an adequate margin of safety, EPA's task is to establish standards that are neither more nor less stringent than necessary for that purpose, see Whitman v. American Trucking Assn's, 531 U.S 457, 473 (2001). The Clean Air Act, however, does not require the Administrator to establish a primary NAAQS at a

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[7] U.S. Environmental Protection Agency - Science Advisory Board. 2009a. *Review of EPA's Integrated Science Assessment for Particulate Matter (First External Review Draft, December 2008).* EPA-CASAC-09-008. May. Available at http://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/73ACCA834AB44A10852575BD0064346B/$File/EPA-CASAC-09-008-unsigned.pdf

8 "The HES fully supports EPA's decision to use a no-threshold model to estimate mortality reductions. This decision is supported by the data, which are quite consistent in showing effects down to the lowest measured levels. Analyses of cohorts using data from more recent years, during which time PM concentrations have fallen, continue to report strong associations with mortality. Therefore, there is no evidence to support a truncation of the [concentration-response function]." U.S. Environmental Protection Agency – Science Advisory Board (U.S. EPA-SAB). 2010. *Review of EPA's DRAFT Health Benefits of the Second Section 812 Prospective Study of the Clean Air Act.* EPA-COUNCIL-10-001. Page 13. Available on the Internet at http://yosemite.epa.gov/sab/sabproduct.nsf/0/72D4EFA39E48CDB28525774500738776/$File/EPA-COUNCIL-10-001-unsigned.pdf

9 U.S. Environmental Protection Agency. 2010. *Technical Support Document: Summary of Expert Opinions on the Existence of a Threshold in the Concentration-Response Function for PM2.5-related Mortality.* Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, Research Triangle Park, NC. June. Available on the Internet at: www.epa.gov/ttn/ecas/regdata/Benefits/thresholdstsd.pdf.

zero risk-level, but rather at a level that reduces risk sufficiently as to protect public health with an adequate margin of safety. See *Lead Industries v. EPA*, 647 F.2d at 1156 n. 51. In addressing the requirement for an adequate margin of safety, EPA considers such factors as the nature and severity of the health effects involved, the size of at-risk populations, the strengths and limitations of the scientific evidence and related uncertainties, and whether discernible thresholds have been identified below which health effects do not occur. Standards are established to provide protection for a representative sample of persons comprising at-risk populations rather than to the most susceptible single person in such groups. Even in areas that meet the current standards, individual members of at-risk populations may at times experience health effects related to air pollution. The absence of evidence of a threshold below which health effects would not occur is one factor that the Administrator takes into consideration in selecting a NAAQS, including the level of the NAAQS, that in her judgment is sufficient to protect the public from the risks of adverse health effects, with an adequate margin of safety, but is not more stringent than necessary.

**Mr. Barton has requests for studies on health benefits from proposed and final rules, which he says he's asked about at several hearings. He mentioned studies that were 10 or 15 years old. The Administrator said she would check and get the documentation.**

RESPONSE:

The health benefits, and the studies on which we base these health benefits, can be found in the Regulatory Impact Analysis that accompanies each rule. EPA has prepared a summary table (below) with links to the RIAs for a number of Clean Air Act Rules issued since January 20, 2009.

| Rule | Link to Document on EPA's Website |
|---|---|
| **Existing Stationary RICE NESHAP** | |
| Proposal Compression Ignition/Spark Ignition RIA (2/27/2009) | http://www.epa.gov/ttn/ecas/regdata/RIAs/riceproposalriafinalversion.pdf |
| Final Compression Ignition RIA (2/22/2010) | http://www.epa.gov/ttn/ecas/regdata/RIAs/CIRICENESHAPRIA2-17-10cleanpublication.pdf |
| Final Spark Ignition RIA (8/10/2010) | http://www.epa.gov/ttn/ecas/regdata/RIAs/riceriafinal.pdf |
| **Cement NESHAP and NSPS** | |
| Proposal RIA (4/21/2009) | http://www.epa.gov/ttn/ecas/regdata/RIAs/portlandcementria_4-20-09.pdf |
| Final RIA (8/9/2010) | http://www.epa.gov/ttn/ecas/regdata/RIAs/portlandcementfinalria.pdf |
| **C3 Marine Rule** | |
| Proposal RIA (6/1/2009) | http://www.epa.gov/otaq/regs/nonroad/marine/ci/420d09002.pdf |
| Final RIA (12/1/2009) | http://www.epa.gov/otaq/regs/nonroad/marine/ci/420r09019.pdf |
| **$NO_2$ NAAQS** | |
| Proposal RIA (7/2/2009) | http://www.epa.gov/ttn/ecas/regdata/RIAs/proposedno2ria.pdf |
| Final RIA (1/22/2010) | http://www.epa.gov/ttn/ecas/regdata/RIAs/FinalNO2RIAfulldocument.pdf |
| **2012-16 Light Duty Vehicle Rule** | |
| Proposal RIA (9/29/2009) | http://www.epa.gov/otaq/climate/regulations/420d09003.pdf |
| Final RIA (5/7/2010) | http://www.epa.gov/otaq/climate/regulations/420r10009.pdf |
| **$SO_2$ NAAQS** | |
| Proposal RIA (11/16/2009) | http://www.epa.gov/ttn/ecas/regdata/RIAs/pso2full11-16-09.pdf |
| Final RIA (6/2/2010) | http://www.epa.gov/ttn/ecas/regdata/RIAs/fso2ria100602full.pdf |
| **Ozone NAAQS Reconsideration Proposal** | |
| Proposal RIA (1/6/2010) | http://www.epa.gov/ttn/ecas/regdata/RIAs/s1-supplemental_analysis_full.pdf |
| **Boiler NESHAP and Area Source Rule** | |

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|---|---|
| Proposal RIA (5/6/2010) | http://www.epa.gov/airquality/combustion/docs/boilerria20100429.pdf |
| Final RIA (2/23/2011) | http://www.epa.gov/ttn/ecas/regdata/RIAs/boilersriafinal110221_psg.pdf |
| **Solid Waste Incineration Units NSPS and Emission Guidelines** | |
| Proposal RIA (5/6/2010) | http://www.epa.gov/airquality/combustion/docs/ciswiria20100429.pdf |
| Final RIA (2/23/2011) | http://www.epa.gov/ttn/ecas/regdata/RIAs/ClSWIRIAfinal110221_psg2.pdf |
| **Cross-State Air Pollution Rule** | |
| Proposal RIA (7/6/2010) | http://www.epa.gov/ttn/ecas/regdata/RIAs/proposaltrria_final.pdf |
| Final RIA (7/12/2011) | http://www.epa.gov/airtransport/pdfs/FinalRIA.pdf |
| **2014-18 Heavy Duty Vehicle Rule** | |
| Proposal RIA (11/30/2010) | http://www.epa.gov/otaq/climate/regulations/420d10901.pdf |
| Final RIA (8/9/2011) | http://www.epa.gov/otaq/climate/documents/420r11901.pdf |
| **Sewage Sludge Incineration Units NSPS and Emission Guidelines** | |
| Proposal RIA (10/4/2010) | http://www.epa.gov/ttn/ecas/regdata/RIAs/ssiria.pdf |
| Final RIA (2/23/2011) | http://www.epa.gov/ttn/ecas/regdata/RIAs/ssiria110201.pdf |
| **Mercury and Air Toxics Standards (Utility NESHAP and NSPS)** | |
| Proposal RIA (3/21/2011) | http://www.epa.gov/ttn/ecas/regdata/RIAs/ToxicsRuleRIA.pdf |
| **Chlor Alkali Plants NESHAP** | |
| Proposal RIA (6/29/2011) | http://www.epa.gov/ttn/ecas/regdata/RIAs/mercurycell.pdf |
| **Ferroalloys RTR** | |
| Proposal RIA (11/8/2011) | http://www.epa.gov/ttn/ecas/regdata/RIAs/eo12866_ferroalloys_ria_2060_aq11finalforproposal.pdf |

With regard to health studies, as one example in the Cross-State Air Pollution Rule (CSAPR) we used two long-term prospective cohort studies to estimate the number of fine particle ($PM_{2.5}$)-related deaths avoided due to the implementation of this rule. The first study is the extended analysis of the American Cancer Society cohort by Pope and colleagues published in 2002.[1] The second is an extended analysis of the Harvard Six Cities cohort by Laden and colleagues published in 2006.[2]

[1] Pope, C.A., III, R.T. Burnett, M.J. Thun, E.E. Calle, D. Krewski, K. Ito, and G.D. Thurston.2002. "Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution." *Journal of the American Medical Association* 287:1132-1141.

[2] Laden, F., J. Schwartz, F.E. Speizer, and D.W. Dockery. 2006. "Reduction in Fine Particulate Air Pollution and Mortality." *American Journal of Respiratory and Critical Care Medicine* 173:667-672.

Our approach to quantifying the benefits of air quality improvements in general, and our reliance on the two studies mentioned above in particular, has been thoroughly reviewed by independent scientific bodies including the National Research Council[3] and Advisory Council on Clean Air Compliance Analysis.[4] The benefits estimates also rely on rigorous, peer-reviewed methodologies grounded firmly in a vast body of research related to the health effects of air pollution. Our benefits assessment methods have been extensively peer reviewed and supported by the National Academies of Science and several panels of the independent EPA Science Advisory Board.[5]

**Mr. Murphy requested for the Committee "any studies that show a causal or associative relationship between fine particulate matter and deaths at levels below what EPA calls lowest measured level"... The Administrator said she would provide whatever science show the correlation.**

RESPONSE:

EPA's approach to estimating health benefits is driven by the scientific evidence regarding the health effects associated with $PM_{2.5}$ exposure at various concentration levels. EPA relies on the *Integrated Science Assessment (ISA) for Particulate Matter* (U.S. EPA, 2009) as the scientific basis for the determination that inhalation of $PM_{2.5}$ is causally associated with premature death. The conclusion in the final PM ISA, which has been peer reviewed by the Congressionally-mandated, independent Clean Air Science Advisory Committee, is that the scientific literature provides no evidence of a threshold below which health effects associated with exposure to fine particles – including premature death - would not occur (U.S. EPA, 2009).[6] In addition, in their peer review of the Section 812 Second Prospective Study of the Clean Air Act, the Health Effects Subcommittee of the Congressionally-mandated Advisory Council on Clean Air Compliance Analysis fully supported EPA's use of a no-threshold model to estimate the mortality reductions associated with reduced PM exposure.[7] EPA recently summarized the

[3] National Research Council. 2002. *Estimating the Public Health Benefits of Proposed Air Pollution Regulations.* Committee on Estimating the Health-Risk-Reduction Benefits of Proposed Air Pollution Regulations. Washington, D.C.: National Academies.

[4] Advisory Council on Clean Air Compliance Analysis, 2010. *Review of EPA's DRAFT Health Benefits of the Second Section 812 Prospective Study of the Clean Air Act.* EPA-COUNCIL-10-001. June. Available on the Internet at http://yosemite.epa.gov/sab/sabproduct.nsf/0/72D4EFA39E48CDB2852577450073877 6/$File/EPA-COUNCIL-10-001-unsigned.pdf

[5] See, e.g., reports cited n. 4 and 5 above.

[6] U.S. Environmental Protection Agency - Science Advisory Board. 2009a. *Review of EPA's Integrated Science Assessment for Particulate Matter (First External Review Draft, December 2008).* EPA-CASAC-09-008. May. Available at http://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/73ACCA834AB44A10852575BD0064346B/$File/EPA-CASAC-09-008-unsigned.pdf

7 "The HES fully supports EPA's decision to use a no-threshold model to estimate mortality reductions. This decision is supported by the data, which are quite consistent in showing effects down to the lowest measured levels.

scientific review statements related to the issue of thresholds in the concentration-response function for $PM_{2.5}$ mortality in a Technical Support Document appended to several recent RIAs.[8]

In setting primary (health-based) national ambient air quality standards (NAAQS) that are requisite to protect public health with an adequate margin of safety, EPA's task is to establish standards that are neither more nor less stringent than necessary for that purpose, see Whitman v. American Trucking Assn's, 531 U.S 457, 473 (2001). The Clean Air Act, however, does not require the Administrator to establish a primary NAAQS at a zero risk-level, but rather at a level that reduces risk sufficiently as to protect public health with an adequate margin of safety. See *Lead Industries v. EPA,* 647 F.2d at 1156 n. 51. In addressing the requirement for an adequate margin of safety, EPA considers such factors as the nature and severity of the health effects involved, the size of at-risk populations, the strengths and limitations of the scientific evidence and related uncertainties, and whether discernible thresholds have been identified below which health effects do not occur. Standards are established to provide protection for a representative sample of persons comprising at-risk populations rather than to the most susceptible single person in such groups. Even in areas that meet the current standards, individual members of at-risk populations may at times experience health effects related to air pollution. The absence of evidence of a threshold below which health effects would not occur is one factor that the Administrator takes into consideration in selecting a NAAQS, including the level of the NAAQS, that in her judgment is sufficient to protect the public from the risks of adverse health effects, with an adequate margin of safety, but is not more stringent than necessary.

**Ms. Blackburn asked regarding EPA pesticide labeling rule whether there was any type of economic impact study conducted before rule went into effect and " how many jobs it was projected to create"? The Administrator said she would get specifics on the rule.**

RESPONSE: In her questions, Congresswoman Blackburn referred specifically to Buckman Labs, a Tennessee-based company, and the company's compliance with an EPA regulation. The regulation at issue here is the Pesticide Container and Containment rule, which was finalized on August 26, 2006. The compliance date for the label requirements was extended twice, most recently to August 16, 2011. The labeling changes that affect Buckman and other registrants include:

(1) improved cleaning instructions for containers, which helps ensure that containers are properly cleaned before they are emptied or recycled;

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Analyses of cohorts using data from more recent years, during which time PM concentrations have fallen, continue to report strong associations with mortality. Therefore, there is no evidence to support a truncation of the [concentration-response function]." U.S. Environmental Protection Agency – Science Advisory Board (U.S. EPA-SAB). 2010. *Review of EPA's DRAFT Health Benefits of the Second Section 812 Prospective Study of the Clean Air Act.* EPA-COUNCIL-10-001. Page 13. Available on the Internet at http://yosemite.epa.gov/sab/sabproduct.nsf/0/72D4EFA39E48CDB28525774500738776/$File/EPA-COUNCIL-10-001-unsigned.pdf

8 U.S. Environmental Protection Agency. 2010. *Technical Support Document: Summary of Expert Opinions on the Existence of a Threshold in the Concentration-Response Function for PM2.5-related Mortality.* Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, Research Triangle Park, NC. June. Available on the Internet at: www.epa.gov/ttn/ecas/regdata/Benefits/thresholdstsd.pdf.

(2) instructions to limit or prevent the improper reuse of container, to minimize the potential for accidental exposure to pesticides or damage from cross contamination; and

(3) better instructions for recycling or reconditioning containers, to facilitate the reuse or recycling of the containers wherever feasible.

In addition, the label changes require the label to identify the container as a nonrefillable container or a refillable container, which is essential to the successful implementation of the refillable container and repackaging regulations.

EPA listened to the concerns of the regulated community and the label upgrade deadline was extended twice because companies stated they could not comply by the deadlines. Thus, the compliance deadline was five years after the date the rule was published. EPA also provided streamlined procedures so that companies could make the changes by notification, thus eliminating any waiting period. If there were changes that needed to take place by amendment, EPA typically processed those actions within two to three months. The new container related label statements apply to pesticides that are released for shipment (basically packaged and labeled) after August 16, 2011, so containers that had already been released for shipment could continue to be sold or distributed indefinitely. Accordingly, there is no need to recall or relabel the products that were already in the distribution chain. Buckman is associated with over 150 products, so they would need to phase in the changes.

EPA did a detailed economic analysis for the pesticide container and containment rule. More information about the rule is available at http://www.epa.gov/opp00001/regulating/containers.htm.

**Dr. Burgess referenced a letter from the Southwestern Power Pool and requested EPA's response to that letter. The Administrator said she would snpply the response if it exists.**

RESPONSE: EPA has not responded to the letter from the Southwestern Power Pool, which was a request for reconsideration and stay of EPA's Cross-State Air Pollution Rule (CSAPR). On December 30, 2011, the United States Court of Appeals for the D.C. Circuit stayed the Cross State Rule pending resolution of litigation challenging it. The Court order imposing the stay did not discuss the merits of the challenges. EPA believes CSAPR is legally sound and will continue defending it vigorously. While the stay is in effect, power plants will not have to comply with the rule until the stay is lifted. Pursuant to the Court's order, the Clean Air Interstate Rule (CAIR), which was to be replaced by CSAPR as of January 1, 2012, is now in effect.

**Mr. Scalise asked for the justification for the proposed ozone NAAQS, did EPA have numbers for how many lives would be saved, how many fewer emergency room visits, etc. The Administrator said she would double check and get back with answers and the data.**

RESPONSE: Information on the benefits of the proposed rule is available in the Supplement to the March 2008 Regulatory Impact Analysis (RIA), available on the web at: http://www.epa.gov/ttn/ecas/regdata/RIAs/s1-supplemental_analysis_full.pdf

On September 2, 2011, the Office of Management and Budget returned the draft final rule for the reconsidered 2008 ozone National Ambient Air Quality Standards (NAAQS) from interagency review. EPA is proceeding with implementation of the current ozone NAAQS of 0.075 ppm (or 75 parts per billion).

**Mr. Gardner asked relating to EPA inspections of hard-rock mines and the Administrator agreed to confirm and provide the following:**

**a. Are the inspections related CERCLA 108 (b) and EPA's stated intention to promulgate a rule to impose additional financial assurance requirements?**

Response: No. EPA's mineral processing enforcement initiative is intended to clean up our communities and reduce human health and environmental risks from toxic and hazardous waste while bringing mining and mineral processing facilities into compliance with the law. The enforcement initiative is not related to the Hardrock Mining Financial Responsibility rulemaking which is intended to lessen the likelihood of large taxpayer financed cleanups and help to ensure that the polluter pays for cleanup.

Background on the CERCLA Section 108(b) rulemaking: Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, directs the President (delegated to EPA by Executive Order) to develop requirements that classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. In 2009, EPA identified classes of facilities within the hardrock mining industry as those for which the Agency will first develop financial responsibility requirements under Section 108(b).

**b. What is the reason for the inspections, to support CERCLA 108 (b) or are they part of national enforcement initiative, is there a link?**

Response: The inspections are intended to bring mining and mineral processing facilities into compliance with the law as part of EPA's mineral processing enforcement initiative, and are not related to the CERCLA § 108 (b) Hardrock Mining Financial Responsibility rulemaking..

**c. How do inspections relate to CERCLA 108(b)?**

Response: See above response to (b). The CERCLA 108(b) rule will support EPA's "Polluter Pays" principle, by helping to ensure that the costs of any necessary cleanup be borne by the companies responsible for the facility in the first place, instead of making taxpayers bear this risk. The inspections are not part of the rulemaking.

**d. Provide for the record copies of policies, guidance or other records related to development by EPA of any program or initiative to identify hard-rock mining or mineral process sites that may be inspected or visiting by EPA representatives and/or any contractors of the EPA under CERCLA section 104(e) or as part of development of a rule**

**pursuant to CERCLA that would impose financial assurance requirements of facilities in the hard-rock mining industry.**

Response: The Mining and Mineral Processing National Initiative inspections conducted by OECA and the Regions are not part of the CERCLA 108(b) rulemaking. Any inspections are intended to bring mining and mineral processing facilities into compliance with all applicable environmental laws. If you desire further information about this matter, please contact Josh Lewis with the Office of Congressional and Intergovernmental Relations at 202-564-2095.

**e. Will any data or information gathered during these inspections be used in the rulemaking process under CERCLA 108(b)?**

Response: EPA does not intend at this time to use the information gathered in the Mining and Mineral Processing National Initiative inspections to support the CERCLA 108(b) Hardrock Mining Financial Responsibility rulemaking.

**f. How much money right now has been budgeted for the national hard-rock mining enforcement initiative for fiscal year 2012?**

EPA's enforcement initiative pertains to mineral processing as discussed above in our response to question d. EPA does not formulate or allocate the enforcement and compliance assurance budget by media program or national initiative, therefore, we cannot provide a separate budget for mineral processing compliance and enforcement activities. We distribute resources to our headquarters and regional offices under each of our cross-media program projects (e.g., civil enforcement, compliance monitoring, etc.).

**g. What is budgeted for CERCLA 108(b) rulemaking?**

Response: In FY 2011, a total of $2.3 million in Superfund dollars and 5 FTE were directed to the 108(b) regulatory process. Based upon the complexity of the rule and the need to coordinate closely with our federal and state partners in the mining area, at this time, we do not have specific estimates for FY 2012 and FY 2013.

**In response to Ms. Schakowsky and Mr. Stearns: the Administrator said she would supply the list of 35 regulations the will be subject to new-term review.**

RESPONSE: Below is the list of regulations, broken into two lists: early actions and longer term actions. For additional information, see pages 18 and 32 of EPA's "Improving Our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations" on the web at http://www.epa.gov/improvingregulations/documents/eparetroreviewplan-aug2011.pdf

Early Actions
1. ** Gasoline and diesel regulations: reducing reporting and recordkeeping
2. ** Equipment leak detection and repair: reducing burden

3. Regulatory certainty for farmers: working with the U.S. Department of Agriculture (USDA) and states
4. ** Modern science and technology methods in the chemical regulation arena: reducing whole-animal testing, reducing costs and burdens, and improving efficiencies
5. ** Electronic online reporting of health and safety data under the Toxic Substances Control Act (TSCA); Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and Federal Food, Drug, and Cosmetic Act (FFDCA): reducing burden and improving efficiencies
6. ** National Priorities List rules: improving transparency
7. Quick changes to some TSCA reporting requirements: reducing burden
8. ** National Pollutant Discharge Elimination System (NPDES): coordinating permit requirements and removing outdated requirements
9. ** National primary drinking water regulations – Long Term 2 Enhances Surface Water Treatment: evaluating approaches that may maintain, or provide greater, public health protection
10. ** Combined Sewer Overflows (CSOs) and integrated planning for wet weather infrastructure investments: providing flexibilities
11. ** Vehicle regulations: harmonizing requirements for:
a. Greenhouse gas and fuel economy standards
b. Vehicle emission standards
12. Multiple air pollutants: coordinating emission reduction regulations and using innovative technologies
13. ** NSPS reviews and revisions under the CAA: setting priorities to ensure updates to outdated technologies
14. ** CAA Title V Permit programs: simplifying and clarifying requirements
15. Innovative technology: seeking to spur new markets and utilize technological innovations
16. ** The costs of regulations: improving cost estimates

Longer Term Actions:
1. Vehicle fuel vapor recovery systems: eliminating redundancy
2. ** New Source Performance Standards (NSPS) under the CAA for grain elevators, amendments: updating outmoded requirements and relieving burden
3. ** Sanitary Sewer Overflow (SSO) and peak flow wet weather discharges: clarifying permitting requirements
4. ** E-Manifest: reducing burden
5. Electronic hazardous waste Site ID form: reducing burden
6. ** Consumer confidence reports for primary drinking water regulations: providing for the open exchange of information
7. ** Reporting requirements under Section 303(d) of the Clean Water Act (CWA): reducing burden
8. ** Export notification for chemicals and pesticides: reducing burden and improving efficiencies
9. ** Water quality trading: improving approaches
10. ** Water quality standard regulations: simplifying and clarifying requirements
11. ** State Implementation Plan (SIP) process: reducing burden
12. ** National primary drinking water regulations for lead and copper: simplifying and clarifying requirements

13. Adjusting threshold planning quantities (TPQs) for solids in solution: reducing burden and relying on scientific objectivity
14. Integrated pesticide registration reviews: reducing burden and improving efficiencies
15. ** Certification of pesticide applicators: eliminating uncertainties and improving efficiencies
16. ** Polychlorinated biphenyls (PCB) reforms: improving efficiencies and effectiveness
17. ** Hazardous waste requirements for retail products: clarifying and making the program more effective
18. Contaminants under the Safe Drinking Water Act (SDWA): coordinating regulatory requirements
19. **Section 610 reviews: coordinating requirements

** indicates those reviews which were suggested in one or more public comments.

**Mr. Griffith asked for EPA to identify whether the Solyndra plant in California had to comply with EPA regulations and if there were any delayed implementation or modifications of any EPA regulations. The Administrator said she would get the information.**

RESPONSE:
In California, the California Air Resources Board (CARB) delegates authority of Clean Air Act stationary source air pollution programs to the 35 regional air quality districts. In the Bay Area, the Bay Area Air Quality Management District (BAAQMD) issues air permits to sources within its nine county jurisdiction. Solyndra, located in Fremont, California, is within the Bay Area Air Quality Management District's (BAAQMD) jurisdiction. EPA's understanding from BAAQMD is that Solyndra had permits for six separate sites (though two closed in 2009). Please contact BAAQMD for further information.

**Mr. Murphy noted that he had asked Administrator Jackson at the March 2011 hearing to provide EPA's evaluation of whether or not Pennsylvania's laws regarding natural gas are adequate or enforcement is adequate.**

The Pennsylvania Department of Environmental Protection (PADEP) is currently the primary permitting authority for affected oil and gas sources operating within the Marcellus Shale regions of Pennsylvania. EPA is responsible for developing additional regulations which we anticipate PADEP will have the lead for implementing. EPA's Mid-Atlantic Regional Office conducts inspections; takes enforcement actions; works with PADEP to resolve any compliance issues which may arise; and provides oversight of the state's enforcement program as a whole. EPA will continue to assist PADEP in implementing existing regulations while providing assistance in other areas, as necessary.

During this fiscal year, EPA plans to conduct 15-20 on-site inspections of natural gas compressor stations located in the Marcellus Shale regions of Pennsylvania. In addition, EPA is in the early stages of developing a plan that will focus on the collection and analysis of air quality data from oil and gas drilling operations. PADEP has performed short-term ambient air monitoring studies

at various Marcellus Shale Natural Gas extraction locations. EPA Region III has developed a longer-term ambient air monitoring plan that builds upon and dovetails with the PADEP studies to determine what, if any, impacts are seen for certain air pollutants at select areas impacted by Marcellus Shale natural gas extraction operations.

**Dr. Burgess asked about EPA coordination with FERC, specifically with regard to FERC recommendations concerning EPA's reliability analysis, and requested all relevant memos, communications, letters, emails relating to EPA coordination and implementation of FERCs recommendations. The Administrator said she would. [To the extent this overlaps with the Committee's 5/9/2011 letter request, please identify and provide information not captured in that request or subsequent to the response covered by that request]**

Please see EPA's two responses to the Committee's November 8, 2011 letter. The first response was sent on December 8, 2011; the second on February 27, 2012.

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