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S. HRG. 113–701

HEARING ON THE NOMINATION OF GINA McCARTHY TO BE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

APRIL 11, 2013

Printed for the use of the Committee on Environment and Public Works



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ONE HUNDRED THIRTEENTH CONGRESS
FIRST SESSION

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HEARING ON THE NOMINATION OF GINA McCARTHY TO BE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

THURSDAY, APRIL 11, 2013

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The full committee met, pursuant to notice, at 10 a.m. in room 406, Dirksen Senate Office Building, Hon. Barbara Boxer (chairman of the full committee) presiding.

Present: Senators Boxer, Vitter, Barrasso, Sanders, Inhofe, Carper, Fischer, Merkley, Wicker, Cardin, Sessions, Udall, Boozman, and Gillibrand.

Also present: Senators Warren and Cowan.

OPENING STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. The Committee will come to order.

We have members who have other obligations, we have a vote at 11. The plan is, we are going to start off with opening statements from the Chairman, the Ranking Member. Then we are going to move to the two people who are introducing Gina McCarthy, then we are going to move to colleagues in order of arrival as we usually do.

We are going to have to break, I figure about 11:10, to make it to the floor, and then we will reconvene at 11:45. Because I think people are going to want to see the outcome of the vote and so on. So we will be working as long as we can, then we will reconvene at 11:45.

I will open it up with my statement. Statements are going to be at least 6 minutes.

Today, I welcome the President's nominee for Administrator at the Environmental Protection Agency, Gina McCarthy. Gina, you are one of the best qualified nominees ever to come before this Committee. Your combination of experience, intelligence, energy, expertise and integrity will make you a most effective EPA Administrator.

Now, this is the second time you have been nominated for a top position at EPA. Previously, you were confirmed by the Senate without a recorded "no" vote.

Why do I believe this nominee is the right person to take the helm at EPA? She has over three decades of public service at the local, State, and Federal levels. At a time when there can be a bit-

ter divide in Washington, she has shown a strong bipartisan spirit. She has worked for both Republicans and Democrats: Republican Governor of Connecticut, Jodi Rell, three Republican Governors of Massachusetts, Paul Cellucci, Jane Swift, and Mitt Romney; and a Democratic President, Barack Obama.

Because of her common-sense approach to protecting public health, Gina McCarthy has received support from businesses, health officials, environmental organizations, and scientists. I would ask unanimous consent to place into the record the letters and statements of support for Gina. Without objection.

[The referenced information follows:]

Alaska Wilderness League • American Rivers • Center for American Progress Action Fund • Center for Biological Diversity • Ceres • Clean Water Action • Conservation Law Foundation • Defenders of Wildlife • Earth Day Network • Earthjustice • Environment America • Environmental Defense Fund • Environmental Law and Policy Center • Friends of the Earth • Green for All • Interfaith Power & Light • League of Conservation Voters • Massachusetts Climate Action Network • Moms Clean Air Force • National Audubon Society • National Parks Conservation Association • Natural Resources Defense Council • Ocean Conservancy • Oceana • Physicians for Social Responsibility • Protect Our Winters • Safe Climate Campaign • Sierra Club • Southern Environmental Law Center • The Nature Conservancy • The Trust for Public Land • The Wilderness Society • US Climate Action Network • Voces Verdes • Voices for Progress

April 10, 2013

United States Senate
Washington, DC 20510

Dear Senator:

On behalf of our millions of members and supporters, we write to strongly support President Obama's nomination of Assistant Administrator Gina McCarthy to head the United States Environmental Protection Agency (EPA). Ms. McCarthy has a solid, bipartisan record of successfully working to protect our air and water. We believe she is exceptionally well-qualified to fill this critical position.

Ms. McCarthy brings to the table 25 years of experience working on environmental issues, both at the state and federal level and under Democratic as well as Republican administrations. Prior to her current role as head of EPA's Office of Air and Radiation, she served as the Commissioner of the Connecticut Department of Environmental Protection under Republican Governor Jodi Rell. Before that, Ms. McCarthy spent 25 years as an environmental official in Massachusetts working for five governors from both parties, including Governor Mitt Romney. In this nearly three decade career of fighting for clean air, clean water, public health and environmental justice, Gina McCarthy has gained a reputation for being engaging, effective and committed to bringing diverse stakeholders together to achieve meaningful environmental protections.

Our country, and indeed our entire planet, will face unprecedented environmental challenges in the coming years. Americans deserve an EPA Administrator who is committed to enforcing the laws on the books and working with Congress and the Administration to continue EPA's record of success. While serving in her role as Assistant Administrator for the Office of Air and Radiation, Gina McCarthy has overseen some of the most significant and life-saving environmental achievements to come out of EPA in decades. These include last year's landmark safeguards against mercury and air toxics from power plants, a proposal to rein in dangerous industrial carbon pollution from new power plants, clean car standards that represent the largest step our country has ever taken to reduce carbon pollution, and a strengthening of limits on

deadly fine particulate matter. The result is tens of thousands of lives saved and billions of dollars of health care costs avoided annually.

We very much look forward to working with Ms. McCarthy to continue protecting our children and families from the dangers of air pollution, water pollution and the many other industrial and household toxics that threaten our health and safety. We appreciate your consideration of our strong support and would be happy to speak with you should you have any questions or concerns.

Sincerely,

Alaska Wilderness League
American Rivers
Center for American Progress Action Fund
Center for Biological Diversity
Ceres
Clean Water Action
Conservation Law Foundation
Defenders of Wildlife
Earth Day Network
Earthjustice
Environment America
Environmental Defense Fund
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DEP Chief Gina McCarthy To Work for President Barack Obama

By Christopher Keating on March 12, 2009 5:15 PM | Permalink | Comments (3) E-MAIL...A STORY

Gina McCarthy, the state's environmental protection commissioner, will be nominated by President Barack Obama to be the assistant administrator for air and radiation at the U.S. Environmental Protection Agency. Obama announced his intention Thursday to make the nomination.

Governor M. Jodi Rell, who hired McCarthy after a nationwide search in 2004 to succeed Arthur Rocque, hailed McCarthy for her years of service in the state.

"Gina McCarthy is doing an outstanding job for the citizens of Connecticut," Rell said. "Her leadership on climate issues is nationally respected, so it comes as no surprise that the Obama administration would reach out to Commissioner McCarthy, a dedicated public servant with tremendous talent and passion. While we certainly would hate to lose her in Connecticut, it is reassuring to know she would be working to preserve and improve the environment for all Americans."

The White House released the following background on McCarthy:

"McCarthy came to the Connecticut DEP from the Commonwealth of Massachusetts, where she worked on environmental issues at the state and local level for 25 years in a variety of high-ranking positions. Just prior to joining the Connecticut DEP, she served as the Deputy Secretary of Operations for the Massachusetts Office of Commonwealth Development, a "Super Secretariat" that coordinates policies and programs of that state's environmental, transportation, energy and housing agencies. In 1990, Governor Dukakis appointed McCarthy as Chair of the Council to oversee the review of a proposed hazardous waste incinerator in the Boston area."

McCarthy was among four professionals named by Obama on Thursday to various key posts in the administration.

"Each of these individuals brings a unique talent and dedication to the causes we are tackling every day in my administration," Obama said. "Together they bring decades of public service and diverse backgrounds that will serve the American people well as we work to take on the big challenges of our time like strengthening our economy, achieving energy independence, and making our government the most accessible and transparent in history. I am grateful that they have agreed to serve in these capacities."

Categories: Barack Obama, M. Jodi Rell
Tags: Barack Obama, Gina McCarthy, M. Jodi Rell

3 Comments

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Jon Lender, Christopher Keating and Daniela Altimari provide insightful and in-depth coverage of Connecticut politics .. read more

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EPA:
If air chief loves a brawl, she's come to the right place

Robin Bravender, E&E reporter
Greenwire: Friday, November 13, 2009

U.S. EPA air chief Gina McCarthy has a thick Boston accent, a shock of cropped white hair and a penchant for a good fight.

"I cannot shy away from controversy," she told a panel of EPA advisers recently. "I don't know if it's my Irish blood, but I love it. I love disagreements. I love the democratic process. If I'm in a room where everybody agrees, I start to nod off."

That is lucky for McCarthy, 55, whose job as the nation's top air regulator has her in what may be the world's hottest spot: the center of a political free-for-all over climate regulation and other air pollution policies.

As President Obama's nominee for the air office post, McCarthy got a whiff of how contentious her new job could be before she was even confirmed by the Senate. Republican Sen. John Barrasso of Wyoming stalled the vote on her confirmation for nearly a month last spring to protest EPA's movement toward using the Clean Air Act to regulate greenhouse gases.

Barasso's "hold" prevented McCarthy from being present at the White House Rose Garden in May when Obama announced the first-ever national greenhouse gas emissions standard on cars and trucks.

"I was at home awaiting confirmation, really ticked off that it was my opportunity to meet the president, and I was not in that garden," she said.

"So much got done before I got here. I finally called up [EPA Administrator] Lisa Jackson, and I said, 'If you don't get these people off my back, I'm never coming there, because you are making all these commitments and dumping them on my lap, and I'm supposed to implement them. I'm supposed to at least get the pleasure of the announcement.'"

McCarthy quickly made up for lost time when she finally moved in June into her fifth-floor office at EPA headquarters, the Ariel Rios Building on Pennsylvania Avenue.

McCarthy and her staff quickly rolled out several climate policies in response to the Supreme Court's 2007 *Massachusetts v. EPA* decision, which gave the agency the authority to regulate greenhouse gases as air pollutants.

PROFILE: GINA MCCARTHY

McCarthy

Age: 55

Position: Assistant administrator of the Office of Air and Radiation, U.S. EPA

Career: Health agent in Canton, Mass.; environmental officer in Stoughton, Mass.; member and executive secretary of the Massachusetts Hazardous Waste Facility Site Safety Council; executive director of the administrative council at the state's Executive Office of Environmental Affairs; Massachusetts' assistant secretary of pollution prevention, environmental business and technology; undersecretary of policy at the Massachusetts Executive Office of Environmental Affairs; deputy secretary of operations at the Office for Commonwealth Development; commissioner, Connecticut Department of Environmental Protection

Family: Husband, Kenneth McCarey; three children, Daniel, Maggie and Julie

Distractions: Boston Red Sox games, watching the "Barefoot Contessa" cooking show and walking her two dogs

Environmentalists have hailed the proposals, which they say were long overdue, while conservative lawmakers and many industry groups have accused EPA of attempting to impose new regulations that would cripple a struggling economy.

But McCarthy, a veteran regulator and a pioneer in a Northeastern regional program to curb global warming emissions, has taken criticism and praise in stride.

"Even if there's controversy, I'm going to make the decision, and people are going to be happy in one instance and unhappy in the next," she said in an interview. "But that's the job I've been given and the job I'm going to embrace."

'I definitely challenge people'

McCarthy has a long to-do list.

At the top of the list are redoing a series of Bush-era rules that were tossed out in court, pioneering a national program to curb greenhouse gas emissions and keeping pace with federal deadlines for pollution programs -- deadlines the agency has consistently failed to meet in the past.

To have a shot at getting it all done, she will need the loyalty of EPA's career staffers, many of whom were disenchanted with the Bush administration's controversial air policies.

"What a breath of fresh air," said an EPA air employee who was not authorized to speak to the press and spoke on background. "She comes to us with much greater knowledge than most of the people that have been in that position recently."

The employee continued, "The most obvious difference is that she takes seriously the mission of the agency to protect public health and the environment. That is her agenda -- it's not to minimize the burden on industry, it's to protect people and the environment, and that makes all the difference in the world."

Diane Chisnall Joy, assistant director of the Connecticut Department of Environmental Protection's Bureau of Outdoor Recreation, called McCarthy -- who had led the state DEP -- a leader who values the opinions of her staff and works tirelessly. "She was always there to support the work that we did and never, ever failed to thank us," she said.

McCarthy admits she's "somewhat demanding" of her staff.

"I definitely challenge people," she said. "But hopefully, I am working harder than anybody else, and so people won't resent the fact that I want them to work hard, as well."

Working 12-hour days is not unusual for her. She typically arrives at the office around 8 a.m. When her husband is in town, she gets up early to walk their two dogs -- Tyson, a golden retriever, and Emma, whom she describes as a "little, poopy dog" her daughter handed off when she went to college. Tyson, who would chew on the family's ears when she was a puppy, was named after the ear-biting heavyweight boxer Mike Tyson.

McCarthy usually leaves the office around 8 or 9 p.m. She goes home to the Pentagon City neighborhood of Arlington, Va., eats dinner and starts plugging away to make sure she's caught up on her e-mails, she said.

She finds it remarkable that her boss, Jackson, is just as work-obsessed as she is. "I will e-mail her at 11 o'clock at night, and at 11:01 I'll get an answer," McCarthy said.

McCarthy's staff can also expect to get those late-night notes.

"I've told them that they must stop returning my e-mails at 2 in the morning, because it creeps me out," she said.

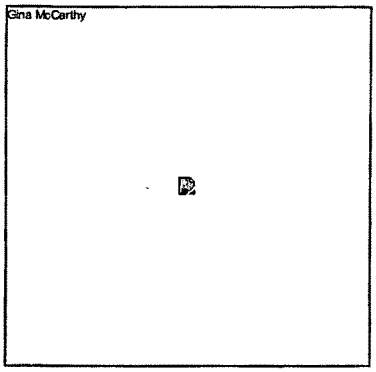
New England roots

McCarthy grew up in Canton, just outside of Boston, in a working-class Irish Catholic family.

She still lives in Canton and has found it hard to tear herself away from her native Massachusetts, no matter where her work takes her.

McCarthy studied social anthropology as an undergraduate at the University of Massachusetts, Boston. She went to Tufts University for graduate work, receiving joint degrees in science and environmental health engineering and planning and policy.

McCarthy spent 25 years working on environmental issues in her home state in a variety of positions at the state and local levels. She moved to Connecticut in 2004 when Gov. Jodi Rell (R) appointed her commissioner of the state DEP. She got a studio apartment a few blocks from her office in Hartford, but she went home at least once during the week and during the weekend. "I realized," she said, "that I just wasn't gonna move."



EPA air regulator Gina McCarthy brings candor and fine-tuned negotiating skills to her high-profile post. Photo by Robin Bravender.

When McCarthy took the EPA post in Washington, "for the most part, I started out going home every weekend," she said. Her husband, Kenneth McCarey, works from home as a wholesale floral salesman, so he sometimes comes to visit for stretches of several weeks.

"I like having him here, but I'm still lonely to go home," she said. The couple has three grown children -- ages 22, 23 and 25 -- who all live in the Boston area. "Every time I go home, it's an occasion for me and somewhat of an occasion for them," she said. "They like Sunday dinner."

McCarthy likes to cook for her kids when they come home. "I come from ... many generations of Irish people. We're meat and potato people, so I don't think that I'm the most creative cook, but I do love the 'Barefoot Contessa,'" she said, referring to the Food Network cooking show. "I could watch her endlessly."

But with two kids who are vegetarians and another who only eats chicken if she eats any meat, cooking can get complicated. "So for a meat and potato person, I have to get creative when my kids come," she said.

Passion for public health

You can learn a lot about McCarthy by looking at her early jobs, said Seth Kaplan, vice president for climate advocacy at the New England-based Conservation Law Foundation who worked extensively with McCarthy during her work at the state level.

She started her career in 1980 as the first full-time health agent in Canton. In 1984, she began working for the board of health in the neighboring town of Stoughton and eventually became the town's first environmental officer.

"She fundamentally has been on the ground thinking about and caring about and trying to take care of the public health of citizens," Kaplan said.

He compared her path to that of someone who started out driving a bus and ended up running the transit agency. "There's a special kind of knowledge that comes from having been the line person that I think infuses what she does."

When she was in graduate school, McCarthy gravitated toward health policy courses more than environmental work. "I've always been interested in health consequences," she said. "I see that as being the primary driver for my interest in environmental work, which is why air quality stuff as well as climate interests me tremendously -- because I see those as having really direct and very large health consequences associated with them."

In 1985, Massachusetts Gov. Michael Dukakis (D) appointed McCarthy to serve as a member of a state hazardous waste safety council responsible for reviewing and permitting hazardous waste facilities. From there, she began working her way up in the Massachusetts government, holding key environmental posts under Republican Govs. William Weld, Paul Cellucci, Jane Swift and Mitt Romney.

Reputation

McCarthy's federal appointment was met with broad acclaim from state regulators and environmentalists and with cautious optimism from many industry leaders.

As the head of Connecticut's DEP, McCarthy helped coordinate a multi-state effort to create the Regional Greenhouse Gas Initiative (RGGI), the nation's first mandatory cap-and-trade program. She also won praise for her work on the state's No Child Left Inside program, as well as her efforts to restore the Long Island Sound and Connecticut's parks and forests.

Connecticut environmentalists were sad to see her go.

"We really were disappointed and ticked off when she left," said John Calandrelli, state program director of Connecticut's Sierra Club chapter. "She's very smart, has very good, high energy. She's a spark plug."

Although her tenure in Connecticut was short, she did very well working under tight budget constraints, said Calandrelli, adding that he wouldn't mind seeing her return to resume her job at DEP someday. "We were making big progress when Gina was here," he said.

A March editorial in the *Hartford Courant* said, "There's no other way to put this: Gina McCarthy will be a big loss."

DEP under McCarthy did come under fire in 2007 after a *Courant* article accused the agency of consistently lagging on enforcement action against chronic water polluters.

"We're trying to make that turn" toward stronger enforcement, then-Commissioner McCarthy told the *Courant*, "but we have some serious backlogs to contend with."

The March editorial noted that McCarthy inherited some of those enforcement problems and called her a "pragmatist who tried to bring companies into compliance without putting them into bankruptcy."

McCarthy has a reputation for being honest and straightforward when dealing with industry.

In Connecticut, McCarthy dealt with industry "very fairly," said Eric Brown, associate counsel for the Connecticut Business and Industry Association. She's "very genuine," Brown said. "The person you sit down with is the person she is."

Mary Beth Gentleman, an industry attorney at Foley Hoag's Boston office, spent time negotiating across the table from McCarthy when she was a Massachusetts official.

"In the negotiations that I participated in with Gina, the outcome was workable, practical, somewhat painful," Gentleman said, "but she got both environmental advocates and the company I was representing -- moved us from a deadlock position to a solution."

McCarthy has shown a willingness to listen to and understand industry's legitimate concerns, said Jeff Holmstead, former EPA air chief under the George W. Bush administration and now an industry lawyer. But, he added, "I wouldn't necessarily characterize her as industry-friendly. There's no doubt she believes in fairly aggressive regulation of industry."

McCarthy doesn't see herself that way.

"I never really thought of myself as a regulator," McCarthy said. "I actually am a strong believer in markets. I really think our job is to make sure that the work we do is valued and priced in the markets appropriately. And so I am a true believer in democracy -- in having government intervene when it needs to end not when it doesn't."

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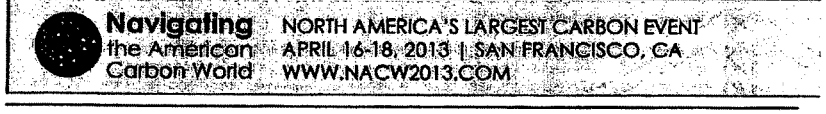


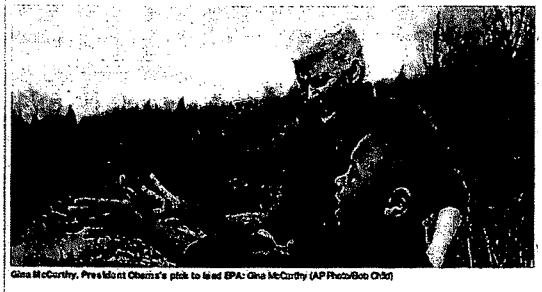
more connections with Ronald Brownstein

NationalJournal

PEOPLE

Gina McCarthy, Obama's 'Green Quarterback,' Has a History of Working With Industry

by Coral Davenport
Updated: March 4, 2013 | 11:37 a.m.
March 4, 2013 | 10:00 a.m.



Gina McCarthy, President Obama's pick to lead EPA: Gina McCarthy (AP Photo/Bob Child)

Gina McCarthy, President Obama's pick to lead the Environmental Protection Agency, has been called the president's "green quarterback" for her efforts to tackle industrial pollution. But she also has a reputation as a political pragmatist who works well with industry and listens to concerns. If confirmed to succeed Lisa Jackson at EPA, she will become the face of Obama's sweeping ambitions to tackle climate change as a legacy issue and will write rules that will force the coal industry to change its ways.

McCarthy has spent the past four years working hard on clean-air rules, as Jackson's right-hand woman on clean air and climate-change policy. If confirmed, however, McCarthy would likely take on an even more prominent role than Jackson, as EPA prepares to take on a new slate of aggressive new regulations to cut climate-change pollution from the nation's coal-fired power plants, a task unprecedented in sweep and scope, and one fraught with legal and political complications.

For her efforts in Obama's first term to cut pollution from industrial polluters, Jackson became a frequent political target for Republicans, who attacked her -- and Obama -- for waging a "war on coal" with "job-killing regulations." The attacks will likely increase against McCarthy, if she takes on an even more ambitious regulatory agenda.

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However, throughout McCarthy's long career as an environmental regulator, she has developed a reputation as a political pragmatist who works with and listens to the polluting industries – even as she writes rules that will force them to change the way they do business.

An Irish Catholic from Massachusetts with a thick South Boston accent, a ready sense of humor, and a tough-talking style, McCarthy would come to the job after 30 years of working on environmental regulations at the state and federal levels. During Obama's first term, it's been McCarthy who has done the real work of writing and rolling out clean air rules.

From 2004 to 2009, McCarthy was head of Connecticut's EPA. Before that, she spent 25 years working as a health and environmental-protection official for Massachusetts, during which she worked for five governors from both parties—including Mitt Romney, who tasked her with authoring a state climate-change plan.

Environmentalists cheered when McCarthy was named to her current position. But she also has a surprisingly good reputation in the energy industry—even among coal-fired electric utilities and automakers, groups that traditionally love to hate EPA.

"At EPA, as a regulator, you're always asking people to do things they don't want to do," said Charles Warren, a top EPA official in the Reagan administration who now represents industries, such as steel companies, at Kramer Levin Naftalis & Frankel. "But Gina's made an effort to reach out to industries while they're developing regulations. She has a good reputation."

Also frequently praised by both greens and CEOs is her sense of humor; she has been known to defuse even adversarial congressional grilling with a well-timed laugh line.

But McCarthy comes with built-in enemies. She'll face a fiery confirmation hearing from Republicans on the Senate Environment and Public Works Committee. The panel's top Republican, Sen. David Vitter of Louisiana, and senior Republican member John Barrasso of Wyoming hail from states where oil and coal production are big parts of the economy— and where EPA regulations are viewed as straight-up job-killers.

Vitter has already launched a public campaign of sorts against McCarthy, questioning the scientific methods used in EPA's regulatory agenda. And in 2009, Barrasso initially blocked McCarthy's nomination to her current slot at EPA, in part because of concerns about her approach to regulating greenhouse gases that cause climate change.

McCarthy had told Barrasso that if small-scale polluters sued EPA in the wake of climate-change regulations, she would meet directly with the litigants. "That's the EPA's solution—to sit down over a cup of coffee and ask lawyers for special-interest groups not to sue?" scoffed Barrasso in a Senate floor speech at the time.

Los Angeles Times | ARTICLE COLLECTIONS

-- Back to Original Article

Clean-air chief Gina McCarthy seen as likely pick to head EPA

Environmental advocates say her nomination could come as early as next week. McCarthy has served as the head of the EPA's clean-air division since 2009.

February 15, 2013 | By Neela Banerjee, Los Angeles Times

WASHINGTON -- President Obama is expected by environmental advocates to name Gina McCarthy, the controversial chief of the Environmental Protection Agency's air pollution arm, to head the agency.

The nomination of McCarthy, 58, who has served as the head of the EPA's clean-air division since 2009, could come as early as next week, according to officials of three environmental groups. Her boss, Lisa Jackson, left the administrator's post Thursday.

McCarthy's nomination is likely to draw fire from congressional Republicans. Over the last four years, they have attacked the EPA's new regulations to cut air pollution, including emissions of greenhouse gases, as job-killing government overreach.

Obama's choice of McCarthy also would signal that he is poised to make good on the more aggressive rhetoric he has used lately about the urgency of addressing climate change, environmentalists said.

During his State of the Union address Tuesday, Obama departed from his past cautiousness to make a moral case for tackling climate change. He challenged Congress to cut greenhouse gas emissions, but said he would use his authority if it failed to take action.

"If he were to pick Gina, it means he really means it," said Jody Freeman, a Harvard law professor and former White House counselor for energy and climate change who worked closely with McCarthy from 2009 to 2010.

"I think she is focused like a laser beam on being a smart and effective regulator. She's not interested in anything that's not practical, and she understands perfectly the president's agenda," Freeman said.

The White House declined to comment on the possibility of a McCarthy nomination.

"The EPA air administrator is well situated to lead the agency, if only because some of the most costly and wide-sweeping decisions come from the air office," said Scott Segal, a lawyer with Bracewell & Giuliani, a Houston law firm that often represents energy companies.

"That said, Gina McCarthy is engaging, effective and willing to listen to the regulated community -- even if we don't always agree with her final rules," he said.

A Boston native, McCarthy served under four Massachusetts governors before being picked by former Gov. Mitt Romney as one of his top environmental staffers there. But she left shortly afterward to serve as commissioner of Connecticut's environmental protection department from 2004 to 2009, where she helped implement a regional scheme to trade carbon credits to reduce greenhouse gas emissions from power plants.

McCarthy began her tenure with the Obama administration's EPA after the Supreme Court issued a landmark decision enabling the agency to regulate emissions of carbon dioxide, the main driver of climate change.

By May 2009, McCarthy's office of air and radiation had hammered out a plan with the White House, the auto industry, states like California, environmentalists and the United Auto Workers union to boost fuel efficiency considerably in passenger vehicles from 2012 to 2016.

In 2011, the EPA rolled out a second phase of fuel economy standards that would increase average fuel economy to 54.5 miles per gallon by 2025.

Under McCarthy, the air office also issued unprecedented rules to curtail emissions of mercury and carbon dioxide from new power plants. Her unit's work stirred the ire of many in industry and their state and congressional allies, who argued that the rules were too onerous.

That led to many appearances by McCarthy at often testy congressional hearings, solid preparation for the EPA administrator in light of the aggressive agenda that Obama said he would now pursue. Most of her office's regulations withstood many legal challenges. But a long-awaited rule to cut smog-forming ozone was scuttled by the president himself in 2011.

The second-term EPA will have to make final the rules on carbon emissions from new power plants, and it faces demands from environmentalists to issue similar standards for existing plants, the biggest emitters of greenhouse gases in the U.S.

neela.banerjee@latimes.com



Union of Concerned Scientists
Citizens and Scientists for Environmental Solutions

April 10, 2013

Dear Senator:

On behalf of more than 400,000 supporters and a network of more than 18,000 scientists at the Union of Concerned Scientists (UCS), I am writing to urge you to support the nomination of Ms. Regina McCarthy to be the Administrator of the U.S. Environmental Protection Agency (EPA).

Ms. McCarthy is uniquely qualified to be the next Administrator of EPA. In her 30 year career she has repeatedly demonstrated her ability to use sound science and thoughtful stakeholder collaboration to craft effective, yet flexible, public policy responses to pressing public health and environmental problems. Before being unanimously confirmed to be Assistant Administrator for Air and Radiation at the Agency by the Senate in June 2009, Ms. McCarthy served at the state level for both Democrat and Republican governors. Her experience as a state environmental regulator means that she has the background to appreciate that the federal government must work cooperatively with the states to achieve health, economic, and environmental objectives. Since joining the EPA, Ms. McCarthy has worked to ensure that regulations rely on the best science to provide the maximum benefit at the least possible cost.

Under Ms. McCarthy's direction, the agency finalized the first ever air emission standards for mercury and air toxics, which were more than 10 years in the making. This standard was strongly supported by public health groups because it is expected to prevent up 11,000 premature deaths, 4,700 heart attacks, and 130,000 cases of childhood asthma every year. Working with stakeholders, McCarthy structured the regulation to give the utility industry the flexibility to comply with this new rule at the least possible cost.

As Assistant Administrator for Air and Radiation, Ms. McCarthy helped craft the strong vehicle standards that will nearly double the fuel economy of the American vehicle fleet by 2025— standards that were widely endorsed by auto manufacturing companies, in part because of her attention to practical considerations. In 2030, these standards, covering model years 2012 to 2025, will cut oil use by 3.1 million barrels a day, cut emissions of heat-trapping gases by 570 million metric tons and save consumers approximately $140 billion.

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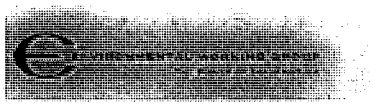
During her tenures in both Massachusetts and Connecticut, Ms. McCarthy became acutely aware of the climate changes already underway in the Northeast. The Union of Concerned Scientists collaborated with more than 50 scientific experts based from Maine to Pennsylvania to prepare the Northeast Climate Impacts Assessment and then presented those findings to governors and agency officials throughout the region. Ms. McCarthy understood how dangerous these changes would be to the health and economic well-being of the entire country. When the Supreme Court affirmed the EPA's authority to control carbon emissions by upholding the law's endangerment finding in 2009, Ms. McCarthy was well positioned to lead the science-based effort to develop the first carbon rule for new power plants.

Ms. McCarthy—with the benefit of a Master of Science in Environmental Health Engineering from Tufts University and tours of duty as a top state environmental protection official, as well as her current role as Assistant Administrator for EPA's Office of Air and Radiation—has consistently grounded her decisions in the best available science.

She is a public servant of the highest integrity. I urge you to support the nomination of Ms. Regina McCarthy to be the next Administrator of the U.S. Environmental Protection Agency.

Sincerely,

Kevin Knobloch
President



EWG Applauds Nomination Of Gina McCarthy To Head EPA

Contact: Alex Formuzis (202) 667-6982 alex@ewg.org
FOR IMMEDIATE RELEASE: MONDAY, MARCH 4, 2013

Washington, D.C. – President Obama's selection of Gina McCarthy as administrator of the Environmental Protection Agency "is a bold choice that reflects the president's strong commitment to protecting public health and the environment," Environmental Working Group (EWG) Executive Director Heather White said today.

If confirmed, McCarthy, an EPA veteran, would succeed Administrator Lisa P. Jackson, who resigned the position in December after enacting the most sweeping protections for air quality in two decades during Obama's first term.

EWG's White said:

"Ms. McCarthy is a bold, strong choice for EPA Administrator. She understands that environmental protection is critical to public health and a vibrant economy. We congratulate Ms. McCarthy on her nomination. If she is confirmed, it is our hope that she will follow the path Administrator Jackson has set in protecting the public from the risks posed by toxic chemicals and push Congress to overhaul the failed Toxic Substances Control Act. Other top priorities for the next Administrator should include concrete steps to reduce harmful agricultural chemicals that foul our waterways and drinking water, apply rigorous science to determine how fracking for oil and natural gas affects water and air quality, and continue to push policies that reduce our greenhouse gas emissions.

"McCarthy has had a long and tested career at both the state and federal levels pushing for common-sense policies that protect our air, land and water, and she has demonstrated her willingness to hear from all sides during these important debates.

"Environmental Working Group stands ready to help Ms. McCarthy and the Obama administration as they work to address some of the most pressing environmental and public health problems of our time."

McCarthy currently serves as assistant administrator for EPA's Office of Air and Radiation.

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Michigan grassroots groups: Obama EPA Nominee Gina McCarthy an excellent choice

Washington, DC - Today, a coalition of Michigan grassroots groups supporting federal clean air and climate change safeguards announced their support for Gina McCarthy, President Obama's nominee to head the Environmental Protection Agency (EPA).

The groups issued the following joint statement:

"Our Michigan grassroots organizations think Gina McCarthy is an excellent choice to lead the EPA. McCarthy is a clean air, climate and public health champion. She led the EPA's development of historic clean air protections, including: the first ever proposed carbon pollution standards for new power plants; the first carbon limits for vehicles; as well as lifesaving updates of standards that limit deadly soot, mercury and other toxic pollution.

"The Senate easily confirmed McCarthy by a voice vote in 2009 to head the clean air division of EPA. With her experience and qualifications, her nomination to lead the EPA should be no different and should receive support from Senators on both sides of the aisle.
"In Gina McCarthy, the President has made another outstanding choice to lead the EPA as it continues to work to protect our air, our water and our climate. Her nomination is also important because of the EPA's efforts to protect the Great Lakes and issue clean air standards that will help Michigan's farmers avoid extreme weather events like the drought we experienced last year."

The following groups have signed onto the statement:
Environment Michigan
Moms Clean Air Force
Clean Water Action

Published On:
03/06/2013 - 17:27
Contact Name:
Nic Clark
Contact Email:
nclark@cleanwater.org

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Tags: Michigan democracy energy environmental health global warming toxics water

Business Leaders Support Gina McCarthy's Nomination to EPA

For Immediate Release: March 4, 2013

WASHINGTON, DC (March 4, 2013) — The American Sustainable Business Council (ASBC), which represents more than 165,000 businesses nationwide, released a statement today in support of the nomination of Gina McCarthy to head the EPA. The statement praised her approach of working in partnership with the business community and her interest in applying market-based solutions to environmental problems.

> The American Sustainable Business Council applauds the nomination of Gina McCarthy as Administrator of the U.S. EPA. Ms. McCarthy can provide the strong leadership needed at EPA to address issues that will move the nation toward a more sustainable economy, including pushing forward on clean air, climate change mitigation, safer chemicals and green chemistry, and working collaboratively with the business community to solve environmental challenges.
>
> Ms. McCarthy has demonstrated as a regulator that economic prosperity is not at odds with environmental protection. We are pleased to note that she has a track record of often looking to market tools to create environmental solutions. While Assistant Administrator at EPA's Office of Air and Radiation, she was an advocate for crafting environmental policies that not only reduced harmful emissions, but also increased market certainty and investments in clean energy. The American Sustainable Business Council, representing over 165,000 businesses and more than 300,000 business professionals, looks forward to working with Ms. McCarthy as EPA Administrator to advocate for policies that simultaneously benefit the environment and the U.S. business sector.

The American Sustainable Business Council and its member organizations represent more than 165,000 businesses nationwide, and more than 300,000 entrepreneurs, executives, managers, and investors. The council includes chambers of commerce, trade associations, and groups representing small business, investors, microenterprise, social enterprise, green and sustainable business, local living economy, and women and minority business leaders. ASBC informs and engages policy makers and the public about the need and opportunities for building a vibrant and sustainable economy. www.asbcouncil.org

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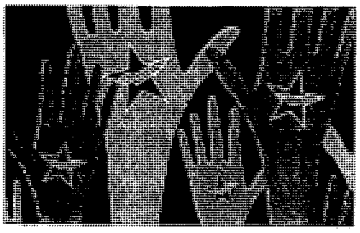

PRESS RELEASES

LCV ON NOMINATION OF GINA MCCARTHY AS EPA DIRECTOR

FOR IMMEDIATE RELEASE
Contact: Jeff Gohringer, (202) 454-4573 or jeff_gohringer@lcv.org

04 Mar 2013 | Vanessa Kritzer
WASHINGTON, DC – The League of Conservation Voters (LCV) President Gene Karpinski released this statement following news that President Obama will nominate Gina McCarthy to head the Environmental Protection Agency (EPA):

> "Gina McCarthy cares about progress not partisanship. She's worked for administrations from both parties and made extraordinary progress protecting the air we breathe and defending public health. Republicans and Democrats easily confirmed Gina McCarthy as head of the EPA's clean air division, and we hope they move swiftly to confirm her as head of the agency. We look forward to working with her to combat the climate crisis, protect our air and water, and advance chemical policy reform."

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PRESIDENT MAKES NOMINATIONS FOR U.S. SECRETARY OF ENERGY AND EPA ADMINISTRATOR

Monday, March 4, 2013
Contact:
Maggie Kao, 202-675-2384

Washington, D.C. -- Today, President Obama nominated EPA Assistant Administrator and air quality expert Gina McCarthy for U.S. Environmental Protection Agency Administrator and nuclear physicist Ernest Moniz for U.S. Secretary of Energy.

In response, Michael Brune, Sierra Club Executive Director, issued the following statements:

"We welcome the nomination of Gina McCarthy to head the Environmental Protection Agency. Assistant Administrator McCarthy has a strong record of protecting the health and safety of millions of Americans by limiting dangerous pollution in our air and supporting programs that help get America's kids outside.

"As head of the EPA's clean air division, Assistant Administrator McCarthy forged bipartisan coalitions to finalize strong clean air safeguards and historic fuel efficiency standards, and as Commissioner of the Connecticut Department of Environmental Protection, she led the state's "No Child Left Inside" campaign.

"The Sierra Club thanks outgoing EPA Administrator Lisa Jackson for her four years of outstanding service, and we look forward to working with Assistant Administrator McCarthy on critical issues such as prioritizing environmental justice and finalizing additional clean air protections, including carbon pollution standards for new and existing sources and Tier 3 cleaner tailpipe standards."

///

"The Sierra Club congratulates Mr. Moniz on his nomination to lead the U.S. Department of Energy. The Department will continue to play a critical role on the decisions that determine how we power our economy and our future.

"In his role as Secretary of Energy, we urge Mr. Moniz to prioritize clean, renewable energy as climate solutions over destructive fossil fuels and boondoggles like liquefied natural gas exports.

"We would stress to Mr. Moniz that an 'all of the above' energy policy only means 'more of the same,' and we urge him to leave dangerous nuclear energy and toxic fracking behind while focusing on safe, clean energy sources like wind and solar.

"The Sierra Club commends the outgoing Sec. Chu for his service, and we look forward to working with Mr. Moniz to solidify a safe, clean energy future for Americans."

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Sierra Club Media Contacts

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Executive Director Michael Brune

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Statement of EDF President Fred Krupp

On today's nominations for EPA Administrator and Secretary of Energy

March 4, 2013

Contact:
Eric Pooley, 212-616-1329, epooley@edf.org
Sharyn Stein, 202-572-3396, sstein@edf.org

"Today, the President chose experienced and well-respected nominees who will be important additions to his Administration.

"I am delighted that Gina McCarthy has been nominated to be our nation's next EPA Administrator. As her strong record demonstrates, she is a thoughtful leader known for advancing environmental protections that bolster the nation's health and economy.

"As head of EPA's national air office, Ms. McCarthy led the development of historic national emission standards for the mercury discharged from power plants, and helped forge new greenhouse gas and fuel economy standards for passenger vehicles. She has worked with both parties, including serving as a key environmental official under Mitt Romney when he was Governor of Massachusetts. She is well known for listening and responding to the concerns of both environmental advocates and industry stakeholders, and for pursuing a regulatory approach that is flexible, reasonable and cost-effective.

"In a recent *National Journal* article, the vice president of the Alliance of Automobile Manufacturers, Gloria Berquist, described Ms. McCarthy as 'a pragmatic policymaker' who combines 'aspirational environmental goals' with 'real-world economics.' I couldn't agree more.

"Ernest Moniz is also an impressive choice. He has many qualities that will make him an excellent Secretary of Energy, including deep expertise, broad experience, a pragmatic approach to problems, and an enthusiasm for creating a clean energy future for America.

"As a theoretical physicist from MIT and a member of the President's Council of Advisors on Science and Technology, Dr. Moniz will help ensure that the nation's energy decisions are based on sound science. He has shown that he understands the complexities of the nation's energy challenges, as well as the connections among the energy choices we make, the health of our communities and environment, and the opportunities for growth and jobs from clean energy innovation.

"Dr. Moniz has repeatedly observed that just because the environmental challenges of shale gas are manageable that does not

mean that they are yet managed. As there is work that remains to be done to ensure the safety of communities living around oil and gas development, and to address the air pollution issues that go beyond the local neighbors, his perspective will be important in the national conversation.

"I look forward to working with Ms. McCarthy and Dr. Moniz in their new roles as we strive to address the challenges facing America."

- Fred Krupp, President of Environmental Defense Fund

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Environmental Defense Fund (edf.org), a leading national nonprofit organization, creates transformational solutions to the most serious environmental problems. EDF links science, economics, law and innovative private-sector partnerships. Connect with us on Twitter and Facebook.

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★★★★
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Clean Water Action Welcomes McCarthy EPA Nomination



WASHINGTON, DC – Clean Water Action today praised President Obama's nomination of Gina McCarthy to be the Administrator of the US Environmental Protection Agency (EPA), calling her a "non-partisan professional with 25 years of experience who will protect our health and our environment."

McCarthy served as Deputy Administrator for Air and Radiation under outgoing EPA Administrator Lisa Jackson. At EPA, she helped develop critical clean air standards, including rules limiting mercury and air toxics pollution and cutting greenhouse gas emissions from new power plants along with the historic fuel efficiency and emission standards for cars. She also served in the Administrations of Republican Governors William Weld, Paul Cellucci, Jane Swift and Mitt Romney of Massachusetts and Jodi Rell of Connecticut.

"We've worked with Gina throughout her career in New England, where she has an incredible track record as a champion of community health," commented Cindy Luppi, Clean Water Action's New England Regional Director. "As a result of her work, there is less mercury pollution, less power plant pollution and even more innovative approaches to clean air and water across the board here in New England."

"Gina McCarthy's commitment to non-partisan solutions to ensure our water is drinkable, air is breathable, and communities are healthy will be a strong asset," said Clean Water Action President, Robert Wendelgass. "Her ability to work with both sides of the aisle will help make sure EPA is allowed to implement the vital programs needed to protect our environment."

EPA has an ambitious set of initiatives in process, noted Lynn Thorp, Clean Water Action's National Campaigns Director. Those include steps to restore Clean Water Act protection for small streams and wetlands, cut greenhouse gas emissions and protect vulnerable populations from air pollution.

"Gina McCarthy has the experience needed to keep EPA effective protecting our air and water," Thorp said. "She understands that clean air and water are essential for healthy people and strong economies. We look forward to her confirmation and to working with her."

Clean Water Action is the nation's largest grassroots group focused on water, energy and environmental health. With 1 million members, Clean Water Action works for clean, safe and affordable water, prevention of health-threatening pollution, and creation of environmentally-safe jobs and businesses. Clean Water Action's nonpartisan campaigns empower people to make democracy work.

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RIL 2013, 8:58 AM

irming a New Boss at EPA

Trip Van Noppen



McCarthy is a sound choice for the job



hy will be a vital player in the o protect our families and ment. *(EPA)*

This week a Senate committee will hold a nomination hearing for Gina McCarthy to replace Environmental Protection Agency Administrator Lisa Jackson.

Gina McCarthy, the EPA assistant administrator for air and radiation, is a sound choice for the job. Given her background and experience, the Senate should move expeditiously to confirm her.

For more than 25 years Gina McCarthy worked with politicians from both parties, including a stint as Gov. ey's energy and climate advisor in Massachusetts. In 2009 Republican and cratic senators easily confirmed McCarthy by a voice vote to head the clean air in of EPA.

McCarthy is a dedicated environmental professional with a history of working on lt issues including climate change. We share her vision of an energy-efficient imy which creates sustainable jobs.

rthy has earned a reputation as a pragmatist who seeks the views of environmentalists gulated industries before taking action. It won't surprise me at all when Earthjustice is to and challenges a decision she makes, but at least we know our side will be heard.

McCarthy's work to protect public health is noteworthy. She helped to establish lark new clean car emissions standards. She also helped create a rule that protect es and kids from the harmful effects of mercury pollution from existing power plants.

top of her agenda should be a few major issues of particular interest to Earthjustice ill help protect public health and, especially, our children.

gency's first order of business should be to adopt limits on industrial carbon pollution power plants, which account for the biggest share of our carbon pollution.

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ıd, the EPA should finalize the Clean Water Act jurisdiction policy to reverse the Bush ilistration's policy that excluded many waterways from Clean Water Act protections.

:PA should also set federally enforceable safeguards for coal ash disposal at more l,300 coal-fired power plants.

rthy will be a vital player in the effort to protect our families and environment. It is t that the Senate move quickly to confirm her.

ıustice will be live-tweeting the confirmation hearing before the Senate Environment ıblic Works committee this Thursday starting at 10:30 a.m. Eastern.
e follow along on Twitter at @Earthjustice.

ıte and Energy Health and Toxics Headquarters air Bush administration Clean Act coal coal ash congress Environmental Protection Agency mercury ıle change

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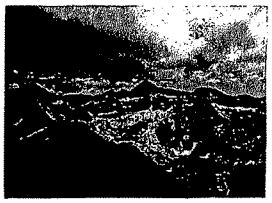

Within Sequoia National Park is Mineral King, the splend mountain wilderness in which Earthjustice took its first steps. 40 years later, we are as committed as ever to t legacy that started there: using the law to protect the wildlife and landscapes that shape our nation's charac Welcome to Mineral King Valley.

NWF: EPA Nominee a Strong Advocate for America's Conservation Heritage

President Obama nominates Gina McCarthy as head of EPA

03-04-2013 // Miles Grant

President Barack Obama will reportedly nominate Gina McCarthy to serve as administrator of the Environmental Protection Agency. McCarthy is currently Assistant Administrator for EPA's Office of Air and Radiation.

Larry Schweiger, president and CEO of the National Wildlife Federation, said today:

"Gina McCarthy has decades of experience working across party lines with officials at the local, state and federal levels to protect our air, water, wildlife, public health and the jobs that depend on them. Whether as serving as Mitt Romney's top environmental advisor or as the key broker of a historic agreement between unions, industry, states and environmental groups to boost fuel economy, Gina McCarthy has proven herself to be fair and pragmatic while determined to carry out her responsibilities under the law.

"Gina McCarthy is a passionate advocate for reconnecting children with nature and outdoor education. As Commissioner of the Connecticut Department of Environmental Quality in 2006, McCarthy launched the successful 'No Child Left Inside' program that continues to get thousands of kids and families outside today.

"The Environmental Protection Agency will need her leadership as it continues working to confront the climate crisis. President Obama has made clear that he prefers to work with Congress to find bipartisan compromise on climate action. In the face of continued failure by Congress to meaningfully act on climate change, it's essential that the Environmental Protection Agency continue to use Clean Air Act authority to limit industrial carbon pollution."

The climate crisis is the single biggest threat to wildlife this century, according to a new National Wildlife Federation report, *Wildlife in a Warming World*.

Take Action



Protect Caribou from Dirty Oil
Speak up for caribou by urging President Obama to stop the Keystone XL pipeline once and for all.

Take Action

ENVIRONMENT AMERICA

Environment America Applauds Nomination of Gina McCarthy for EPA Administrator (/news/ame/environment-america-applauds-nomination-gina-mccarthy-epa-administrator)

Contact
Nathan Willcox (/staff/ame/nathan-willcox),
Environment America

For Immediate Release
Monday, March 4, 2013

Washington, D.C. — Later today, President Obama is expected to nominate Gina McCarthy for the next administrator of the U.S. Environmental Protection Agency, replacing outgoing Administrator Lisa Jackson. McCarthy is currently the assistant administrator for the Office of Air and Radiation at the EPA, and previously held top environmental positions in Massachusetts and Connecticut. Margie Alt, executive director for Environment America, issued the following statement in response:

"America's air, water, open spaces and public health will be in good hands with Gina McCarthy. McCarthy's stellar work under two Republican governors as well as her excellent work over the past four years at the EPA is proof that when it comes to protecting our health and environment, it isn't about who you work for or what party you represent. It's about whether you can get the job done. And Gina McCarthy can get the job done. I urge senators to support her nomination so that she can get to work tackling the environmental challenges facing us today.

"During her tenure Administrator Jackson ushered through several historic initiatives, including new, cleaner car standards that represent the biggest step the U.S. has ever taken to get off oil and tackle global warming, the first-ever federal limits on mercury pollution from power plants, and the first-ever proposed federal limits on carbon pollution from power plants—all while enduring numerous attacks from polluters and their allies in Congress. Gina McCarthy was integral in securing several of these victories, building on her already impressive resume of work at the state level.

"Gina McCarthy served as an environmental policy adviser to Governor Mitt Romney in Massachusetts, and helped launch the state's Climate Protection Action Plan. Starting in 2004, she was head of Connecticut's Department of Environmental Protection under Governor Jodi Rell, where she coordinated the state's involvement in the Regional Greenhouse Gas Initiative, a regional program to limit global warming pollution from power plants.

"As thrilled as we are by the impressive victories Administrator Jackson secured for our environment, we know there is still much more to be done, and Gina McCarthy has the resume and commitment to meet these challenges head on. In the next four years, we're counting on the EPA to move ahead with carbon limits for new and existing power plants so we can address the largest sources of global warming pollution, to secure protections for all our waterways from the pollution endangering drinking water for 117 million Americans, and to move ahead with other much-needed environmental initiatives. My staff and I look forward to working with Gina McCarthy and the EPA to address these challenges, and we sincerely thank Administrator Jackson for an incredibly successful four years."

Like 52 Tweet 9

1

National Biodiesel Board
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(573) 635-7913 fax

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April 9, 2013

The Honorable Barbara Boxer
Chairman
Committee on Environment and Public Works
U.S. Senate

The Honorable David Vitter
Ranking Member
Committee on Environment and Public Works
U.S. Senate

Dear Chairman Boxer and Ranking Member Vitter:

On behalf of the National Biodiesel Board representing the U.S. biodiesel industry, I am writing to voice our enthusiastic support for the nomination of Regina McCarthy as the next Administrator of the Environmental Protection Agency (EPA).

As Assistant Administrator for the EPA's Office of Air and Radiation and throughout her career as a leader on environmental issues on the state and local levels, Ms. McCarthy has demonstrated an unwavering commitment to protecting the environment on the public's behalf. Specifically of interest to the biodiesel industry, she has been a strong leader in pushing to reduce our harmful dependence on fossil fuels by developing clean, renewable energy industries, including advanced biofuels such as biodiesel.

Ms. McCarthy understands that this shift to renewables will not only improve air quality and reduce carbon emissions, but will boost local economies across America, bolster our energy security and ultimately help consumers. Additionally, Ms. McCarthy is a veteran of the policy arena with a proven track record of developing practical, innovative solutions to difficult environment and energy problems.

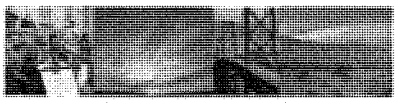
These policies, including the Renewable Fuel Standard (RFS), have been incredibly successful in developing new industries such as biodiesel, which in recent years has grown from a niche fuel with limited production into a burgeoning Advanced Biofuel industry with commercial-scale production across the country supporting more than 60,000 jobs. By producing nearly 1.1 billion gallons of fuel in each of the past two years, the industry has displaced an equivalent amount of foreign petroleum, improving our economy and limiting our vulnerability to global petroleum markets that are heavily influenced by unstable regions of the country.

We believe Ms. McCarthy is an excellent choice to lead the EPA and urge your committee's support for her nomination.

Should you have any questions, please don't hesitate to contact me at 1-800-841-5849.

Sincerely,

Joe Jobe
CEO
National Biodiesel Board



Environmental Justice Leadership Forum on Climate Change

The Honorable Barbara A. Boxer
United States Senate
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Bldg.
Washington, DC 20510-6175

March 15, 2013

Dear Madam Chairwoman:

On behalf of the 45 member organizations of the **Environmental Justice Leadership Forum on Climate Change (EJLFCC),** we are writing to wholeheartedly support the nomination of **Assistant Administrator of the Office of Air and Radiation Gina McCarthy** as the next Administrator for the Environmental Protection Agency.

The EJLFCC, a national coalition of environmental justice advocates from 18 states, has worked, since 2008, to mobilize and inform federal legislative actions that would result in the development of just policies and mechanisms that equitably reduce carbon emissions. In addition to this specific charge, the EJLFCC recognizes that the enforcement of environmental regulations and related programs that enhance the health and sustainability of communities - that are predominately composed of people of color, indigenous peoples and considered low-income – is just as critical.

Members of the EJLFCC have had several opportunities to meet with Ms. McCarthy, as well as members of EPA's core leadership team to voice our concerns about clean air and other related regulatory concerns. From these conversations – including our most recent conversation at the end of January – we left with an impression that Ms. McCarthy and her staff, under the leadership of former EPA Administrator Lisa P. Jackson, have been working hard to move forward much needed regulations to improve human health, despite push-backs and litigation from industry and a seemingly challenging Congress. In each of our conversations, McCarthy has been upfront, honest and direct in the progress or the challenges she has faced. In the Office of Air and Radiation, her team successfully put forward the most stringent standards on Soot (or PM 2.5). However, there are still challenges that we know she will be committed to, specifically with moving forward on Greenhouse Gas permitting regulations, New Source Performance Standards for new and existing power plants, the Tier III cleaner vehicles standard and revising the current ozone standard.

While most of her work with the Agency has been in the air realm, we are sure that her prior environmental work in Connecticut and Massachusetts, will serve her well as she learns to manage issues in air, waste, and water – which is critical for environmental justice communities, since no one lives in a silo. The communities we live and serve in are inundated with environmental stressors in every form including: dirty, toxic air, landfill and hazardous waste siting, disposal and clean up, to the pollution associated with goods movement near ports, urban air toxins, toxics in consumer goods, industrial agricultural pesticides, and the lack of resources to manage mitigation and adaptation efforts to climate change. Based on Ms. McCarthy's professional environmental experience and her most recent verbal commitment at the recent U5 EPA's Clean Air Act Advisory Committee meeting a week ago, 'environmental justice will remain a priority for this Administration' – and we believe her.

Thank you for this opportunity to share our thoughts about Assistant Administrator McCarthy. If you have any specific questions or concerns, or how we can be involved in supporting this nomination, please let us know. As always, we appreciate the hard work of you and your committee to better protect the health and welfare of the American people.

In health and environment,

Center on Race, Poverty & the Environment, California
◊
Communities for a Better Environment, California
◊
Community Coalition for Environmental Justice, Washington

Environmental Health Coalition, California
◊
Los Jardines Institute (The Gardens Institute), New Mexico
◊
UPROSE, New York
◊
WE ACT for Environmental Justice, New York & Washington, DC

The Alliance
for Responsible Atmospheric Policy
2111 WILSON BOULEVARD, 8TH FLOOR
ARLINGTON, VIRGINIA 22201
Phone: 703-243-0344 • Fax: 703-243-2874
E-mail: alliance98@aol.com

April 11, 2013

The Honorable Barbara Boxer
Chair, Senate Environment and Public Works Committee
Senate Dirksen Room 410
Washington, D.C. 20510

The Honorable David Vitter
Ranking Member, Senate Environment and Public Works Committee
Senate Dirksen Room 456
Washington, D.C. 20510

Dear Senators Boxer and Vitter:

The Alliance for Responsible Atmospheric Policy (Alliance) enthusiastically supports confirmation of Gina McCarthy as Administrator of the Environmental Protection Agency.

The Alliance is an industry coalition that was organized in 1980 to address the issue of stratospheric ozone depletion. It is presently composed of about 100 manufacturers and businesses that use hydrochlorofluorocarbons (HCFCs) and hydrofluorocarbons (HFCs) in air conditioning, refrigeration, foam insulation, metered dose inhalers, technical aerosols, and fire extinguishing equipment. (See attached list). The Alliance is the leading industry voice that coordinates industry participation in the development of international and US government policies regarding ozone protection and climate change.

Ms. McCarthy has played a significant role in the issues associated with protection of the Earth's stratospheric ozone layer, implementation of Title VI of the Clean Air Act and reducing the impact of fluorocarbon compounds on the ozone layer and the climate. In this capacity she has demonstrated a comprehensive understanding of complex technical issues and a firm grasp for developing cost-effective solutions for achieving significant environmental results.

The Alliance greatly values the many opportunities we have had to work with Ms. McCarthy at the Environmental Protection Agency, and strongly endorses her confirmation for the good judgment she will bring to the position.

Regards,

Dave Stirpe
Executive Director



The Alliance
for Responsible Atmospheric Policy
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E-mail: alliance98@aol.com

MEMBERSHIP LIST

Alliance for Responsible Atmospheric Policy

AGC Chemicals Americas
A-Gas/RemTec
Air Conditioning, Heating & Refrigeration Institute
Airgas
American Pacific Corp.
Arkema
Association of Home Appliance Manufacturers
Bard Manufacturing Co.
Brooks Automation, Inc.
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Emerson Climate Technologies
E.V. Dunbar Co.
Falcon Safety Products
FP International
General Motors
Golden Refrigerant
Halotron
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Honeywell
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NATIONAL WILDLIFE FEDERATION®
National Advocacy Center
901 E St, N.W., Suite 400
Washington D.C. 20004
202-797-6800
www.nwf.org

April 10th, 2013

Dear Senator:

On behalf of the National Wildlife Federation, our 48 state affiliates, and our over 4 million members and supporters, I am writing to offer support for the confirmation of Gina McCarthy as Administrator of the Environmental Protection Agency.

National Wildlife Federation is dedicated to inspiring Americans to protect wildlife for our children's future. To address the important issues that affect America's lands, waters, wildlife, and communities, we need a strong Environmental Protection Agency led by a strong Administrator.

We believe Ms. McCarthy is the right person to take on these challenges. She has decades of experience working across party lines with officials at the local, state, and federal levels to protect our air, water, wildlife, parks, public health, and the jobs that depend on them. It's worth noting that she has successfully worked under five Republican Governors and, in her role at EPA, helped broker a successful agreement between business, labor and environmental interests to dramatically improve vehicle fuel economy.. Ms. McCarthy has proven herself to be fair and pragmatic while determined to carry out her responsibilities under the law, and we are confident she will be an able and effective Administrator.

Ms. McCarthy is also a prominent leader in the effort to reconnect children and families with nature through outdoor education and recreation. During her tenure as Commissioner of Connecticut's Department of Environmental Protection, she established the "No Child Left Inside" program to encourage families throughout the state to visit their parks and forests. She has a clear commitment to preparing the next generation of environmental stewards.

With the confirmation of Ms. McCarthy, we believe that the federal government will be in a position to move forward towards a safer and more sustainable future for our children.

Sincerely,

Larry J. Schweiger
President & CEO
National Wildlife Federation

Senator BOXER. I strongly believe that Gina McCarthy's nomination should enjoy smooth sailing through this Committee and on the Senate floor.

Now, a few of my Republican colleagues have asked some questions. It is their utter right to do so. I am glad they did so. But it is my fervent hope that those issues will be resolved quickly.

One of the questions they have raised is the use of secondary work email accounts at EPA. It is important to note that this method of answering email was initiated by Republican EPA Administrator Christine Todd Whitman and was used by Republican EPA Administrator Stephen Johnson and Acting Administrator Marianne Horinko.

Secondary emails have been used because top officials at the EPA have too many messages through their primary email account to be manageable. For example, Administrator Jackson received 1.5 million emails a year, more than 41,000 a day.

For her secondary work email account, Administrator Jackson used the name "Richard Windsor," Administrator Whitman used "ToWhit," Administrator Johnson used "ToCarter," Acting Administrator Horinko used "ToDuke," and Deputy Administrator Peacock used the name "Tofu@epa.gov."

Republican members of this Committee wrote to Gina McCarthy just yesterday, just yesterday, with a number of new questions generally focusing on past EPA practices. EPA has provided extensive information and intends to continue to work with the Republican members on these issues.

I totally disagree that EPA has been "wholly unresponsive"—that is what our colleagues on the Republican side said—to the majority of issues raised in this letter. I am so hopeful that all outstanding issues can be addressed promptly and will not stop this most qualified candidate from moving forward.

Look, EPA has a critical mission: to protect human health. Laws like the Clean Air Act have a great history. I remember a time not so long ago when the air was so dirty in Los Angeles it was hard to see out the window. Because of the EPA, there has been a dramatic improvement in air quality.

I have a chart to prove what I have just said. In 1976, there were 166 air health alerts in Southern California. In 2012, there were zero air alerts. This demonstrates remarkable progress that must be continued throughout the Country. Because if you care about this economy, there is one basic fact. If you can't breathe, you can't work. So we have to make sure people can breathe and be healthy.

Compare this Clean Air Act success story to China. Some of my colleagues say, don't do anything, take the lead of China on climate change. Take a look at this. This is kind of a clear day in China. I was there for several days with colleagues on a trip. And this was considered a clear day.

The American people get this. In January 2013, a bipartisan poll found that 78 percent of voters believe that clean air is extremely important, with 69 percent of voters favoring even stricter limits on air pollution. So the results are clear: the American people support the EPA, they support our landmark environmental and public health laws. And I am sure they also support transparency, which

is something my colleagues insist on. And I agree with them completely.

Gina McCarthy's service as Assistant Administrator over the past 4 years has led to something really good to share with you: reductions in mercury, arsenic, lead, and other toxic pollutants in our air. It is clear we are moving forward and people are healthier. I am confident that Gina McCarthy, after we hear her today, I think it will underscore how fair she is, how trustworthy she is, and I believe how she understands the law and the science.

She has a deep understanding that the health and safety of the American people and a growing economy depend on clean air and safe drinking water. So I believe she will lead in the right direction in a bipartisan manner.

Gina McCarthy, I strongly support your nomination. I am very excited about it. I hope, I really hope, that our colleagues will support you.

With that, I turn to my Ranking Member, Senator Vitter.

OPENING STATEMENT OF HON. DAVID VITTER, U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator VITTER. Thank you very much, Chair Boxer, for convening today's hearing. And certainly, the EPA plays a critical role, not only in protecting our environment and health, but also impacting our economic competitiveness.

I am concerned, as you know, that the central functions of the agency, quite frankly, have been obfuscated by ideology, frustrated by, yes, a severe lack of transparency, undermined by non-peer reviewed science that the agency often keeps hidden and implemented without regard to economic consequences. That is why, along with my Republican colleagues, I made those five specific requests, all related to transparency, which you underscore that you certainly support.

I just want to correct for the record: those requests were not made yesterday. They were made public yesterday in writing. Exactly the same requests were made over 3 weeks ago in my one on one meeting with the nominee. To date, the EPA has chosen to completely ignore three and three-quarters of those requests.

Although much-needed reforms in the Freedom of Information Act process seems to be moving forward, that is the one point where I think we have made real progress since that face to face meeting. The record there is really troublesome. And the proof will be in the pudding in terms of the EPA really implementing a new day. Because that FOIA process is broken and has been abused.

Now, the agency was comfortable releasing personal and private information of small businesses and private citizens last month. But the EPA continues to abuse the exemptions under FOIA for the agency's own work.

Now, the nominee recently stated that information is power. Apparently she also believes that withholding information is power. That is how the EPA has been acting. Since 1997, Congress has questioned the validity of and asked for the release of the underlying data for studies upon which the agency bases health benefits when issuing air-related rules. That is another one of our five points. And that wasn't yesterday. In fact, that wasn't even 3

weeks ago. That is a request that has been made by various people for years. The agency continues to hide this 30-year-old data, which the National Academy of Sciences stated should have little use for decisionmaking.

I also think that the EPA eschews all cost-economic modeling that would verify the true impacts of the regulatory agenda that now provides this Country with the lowest work force participation rate since the Carter administration. In this regard, I think cost-benefit analyses are key, and more importantly, they are required under law, under executive orders and by the Clean Air Act, Section 321(a). But they are ignored as EPA remains intransigent in its opposition to having a full and transparent economic analysis process.

Another big area of concern, which is another one of our five points, as you know, Madam Chairman, is backroom "sue and settle" deals, made with allies in the environmental community. It is perhaps one of the best, meaning worst, example of the agency's true aversion to sunlight.

Now, the nominee before us today echoed her predecessor's sentiment, Lisa Jackson, during her own 2000 nomination hearing, when she said, and this is the nominee speaking about Administrator Jackson, "Administrator Jackson made a promise that her EPA will be transparent in its decisionmaking. And that is what I will deliver. Transparency is more than sharing what the science and law is telling us, and it is more than making clear decisions that can stand the test of time, which we all know is of paramount importance." Unfortunately, I think it is clear in the last 4 years that the EPA has failed to keep those transparency promises.

The real economic harm of the rules put forward during the last 4 years, most of which were crafted or signed off on by the nominee, and those in the coming 4, is quite frankly kept secret by a complex process of circumventing FOIA requests and congressional inquiries, by conducting official businesses using, yes, aliases, and also private email accounts. Private accounts are completely contrary to stated EPA policy. And by hiding and cherry-picking scientific data, by negotiating backroom sue and settle deals, and by the manipulation of cost-benefit numbers.

Let me give some specific examples of what this produces. In 2010, the infamous former EPA Region 6 administrator, Al Armandariz, became the poster child for EPA's efforts to try and shut down hydraulic fracturing by coordinating a public attack on range resources in Parker County, Texas, based on fabricated science. The EPA failed in their efforts in Parker County, once it became crystal clear about the lack of science. But Armanderes made clear he believed that new regs being developed by today's nominee and her office would be the "icing on the cake" for killing many of those energy jobs.

Second, EPA Administrator Region 8 James Martin resigned after lying to a Federal court, and after EPA lied that he was not using private email account to conduct official business and hide official business. Third, States are clearly, under Federal law, supposed to regulate regional haze. However, EPA, through one of these "sue and settle" agreements, has completely usurped State control of the program in an attempt to shut down coal-fired power

plants. It has done this with the affected parties on the other side, like the States, having no role in the process, no say, no input, no seat at the table.

So those are my concerns, and those are our concerns, the real-world impacts. That is why we continue to make these clear transparency demands, which I will be following up on, both here today and after today, before we vote. Thank you, Madam Chairman.

[The prepared statement of Senator Vitter follows:]

STATEMENT OF HON. DAVID VITTER,
U.S. SENATOR FROM THE STATE OF LOUISIANA

Thank you, Chairman Boxer, for convening today's hearing. The EPA plays a critical role in the status of not only our environment but our economic competitiveness. I am concerned that the central functions of the Agency have been obfuscated by ideology, frustrated by a severe lack of transparency, undermined by science the Agency keeps hidden, and implemented without regard for economic consequences.

Along with my Republican colleagues, I have made five specific requests related to transparency at the agency. The requests were made 3 weeks ago privately, and were outlined in a letter to the nominee yesterday that was provided to the public. To date, EPA has chosen to ignore three and three-quarters of those requests.

Although much needed reforms in the Freedom of Information Act (FOIA) process seem to be moving forward, there is little doubt the process is broken and has been abused for some time. While the agency was comfortable releasing personal and private information of small businesses and private citizens last month, the EPA continues to abuse the exemptions under FOIA for the Agency's own work.

The nominee recently stated that "information is power." Apparently, she also believes that withholding information is power: Since 1997, Congress has questioned the validity of and asked for the release of the underlying data for studies upon which the Agency bases health benefits when issuing air related rules. The Agency continues to hide this 30-year-old data which the National Academy of Sciences stated should have little use for decisionmaking.

The EPA eschews at all costs economic modeling that would verify the true impacts of the regulatory agenda that now provides this Country with the lowest workforce participation rate since the Carter administration. Cost/benefit analyses as required under various executive orders and as required by the CAA, Section 321(a), yet EPA remains intransigent in its opposition to having a transparent economic analysis process.

The backroom "sue and settle" deals made with allies in the environmental community represent perhaps one of the best examples of the Agency's true aversion to sunlight. Rather than providing a process where impacted businesses could intervene in an otherwise closed-door negotiation, EPA objects to the idea of allowing anyone in the room that may not be like-minded in the settlement agreement.

When the President took office in 2009, he promised that his Administration would be the most transparent in history, asserting, "Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use." The nominee before us today echoed her predecessor's sentiment during her own 2009 nomination hearing when she said, "Administrator Jackson made a promise that her EPA will be transparent in it decision-making, and that is . . . what I will deliver . . . transparency is more than sharing what the science and the law is telling us, and it is more than making clear decisions that can stand the test of time, which we all know is of paramount importance." EPA has failed to keep the promises of the President, the former Administrator, Lisa Jackson, and the nominee sitting before this committee today.

This Agency as a whole, and the Office of Air and Radiation in particular, suppresses the consequences of its actions from the public; the real economic harm of the rules put forward during the last 4 years—most of which were crafted or signed off by the nominee—and those in the coming 4 is kept secret by a complex process of circumventing FOIA requests and congressional inquiries, conducting official business using alias and private email accounts, hiding and cherry-picking scientific data, negotiating backroom deals, and the manipulation of cost/benefit numbers.

Let me provide some specific examples of the reasons for my concern:

• In 2010, infamous former EPA Region 6 Administrator Al Armendariz became the poster child for EPA's efforts to try and shut down hydraulic fracturing by coordinating a public attack on Range Resources in Parker County, Texas, based on

fabricated science. In that same year, the appointee of President Obama let slip that EPA's "general philosophy" is to "crucify" and "make examples" of oil and gas companies regardless of guilt or wrongdoing. The EPA failed in their efforts in Parker County, but Armendariz made clear he believed that new regulations being developed by today's nominee and her office would be the "icing on the cake" for killing energy jobs.

• EPA Region 8 Administrator James Martin resigned after lying to a Federal court, and after EPA lied that he was not using his private email account to conduct official business in violation of the Federal Records Act and the Freedom of Information Act.

• EPA also tried to shut down a hydraulic fracturing project in Dimock, PA based on a faulty study, but failed to produce any real evidence of water contamination.

• EPA usurped cooperative federalism with the Cross State Air Pollution Rule (CSAPR) to force Federal Implementation Plans to reduce SO_x and NO_x emissions in 27 States. Compliance would have led to closures of facilities and mining operations and an estimated increase of $514 million in consumer power prices. The D.C. Circuit shot down the rule in part due to EPA's overreach in the area of State authority . . . and the courts continue to batter multiple Agency decisions, particularly under the Clean Water Act.

It is expected that in 2013 EPA will propose revisions to the Ozone National Ambient Air Quality Standards (NAAQS), which, by their estimates, could potentially cost $19 billion to $90 billion annually and would likely find 85 percent of U.S. counties designated in nonattainment. The cumulative impacts on jobs, U.S. competitiveness, power prices, fuel use, and electricity reliability of the new Ozone NAAQS as well as other EPA rules to be issued remain unknown.

My question then is: Why should the underlying science and true economic impacts behind EPA's air regulations not be made available to the public? Why—if "information is power"—is EPA so afraid of making public the underlying data that the Agency claims justifies the supposed benefits?

For the last 3 weeks I have heard nothing but excuses from the EPA:

• Excuses for not complying with the Freedom of Information Act;

• Excuses as to why they won't share emails related to senior officials' work that Congress is entitled to;

• Excuses for why they need to exclude those affected by and hide the contents of settlement agreements from the public; and

• Excuses for not being able to share the underlying science for their air rules with the public.

I look forward to further discussing these issues with the nominee today. My hope is that the nominee has come prepared to provide something more substantive than excuses.

Senator BOXER. Thank you, Senator. We are going to try to keep to the time schedule, if we can. What we are going to do, I think we can get to a lot of colleagues, so I hope you will stay.

We are going to hear from our two Senators who are visiting us to introduce Gina McCarthy. Then we are going to go to, in this order: Whitehouse, Barrasso, Sanders, Inhofe if he is here, Carper, Fischer, Wicker. We are going to try to get this done before the vote starts at 11, 11:10, 11:15.

So which one of you would like to begin? Senator Warren.

OPENING STATEMENT OF HON. ELIZABETH WARREN, U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator WARREN. Thank you, Madam Chairman. It is an honor to be here with Senator Cowan to introduce the President's outstanding nominee for Administrator of the Environmental Protection Agency, Gina McCarthy. Gina has dedicated her professional life to the protection of our public health and to the stewardship of our environment. I know she will fill this post with great distinction.

I am especially proud that Gina is from Massachusetts. She was born in Brighton. She holds degrees from the University of Massa-

chusetts Boston and from Tufts University. And she began her career in Canton.

After more than 25 years in public service at the State and local level, Gina's track record is well-known in Massachusetts. She served in numerous environmental posts in the administrations of no fewer than five Governors, from Mike Dukakis to Mitt Romney. Those of you who are familiar with Massachusetts politics will recognize this as a noteworthy achievement in and of itself.

I could go into detail about the quality of Gina's work, her groundbreaking efforts to develop the first mercury and air toxics standards for power plants, her work on a science-based review of how climate change is putting human health at risk, or her careful management of fisheries, parks and forests. I could speak to the depth and breadth of her public service, that she understands what it takes for this agency to function effectively, because she has worked at so many levels of its operation.

But what I find to be most compelling about her as a public health advocate and environmental steward is the approach she brings to her work. Gina is driven by a deep concern for the health and well-being of each of us, and her people-oriented approach has always informed her decisionmaking about how best to protect the air we breathe, the water we drink, and the outdoor spaces that we cherish.

Gina's commitment to this cause is evident not only in the quality of her work but in the 12-hour days, the late nights the colleagues at the EPA have described as part of her regular routine. I believe that Gina's approach to her work is what has enabled her to work so effectively across party lines. It is a key part of what makes her a pragmatic policymaker and a tough but fair regulator. I know that Gina will be able to work constructively and openly with industry leaders, without compromising the EPA's commitment to public health and preserving our natural environment.

The environmental policies and public health rules that we craft today will have a profound impact on the world we leave to our children and grandchildren. The EPA will continue to play a crucial role in assuring a safe and healthy world for future generations. I can think of no one better to lead that work than Gina. I am proud to bring you a talented, hard-working daughter of Massachusetts here to serve her Country.

Thank you.

Senator BOXER. Thank you so much, Senator.

Senator Cowan, we are delighted to have you. Please proceed.

OPENING STATEMENT OF HON. WILLIAM M. COWAN, U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator COWAN. Chair Boxer, Ranking Member Vitter and members of this Committee, I am honored to join Senator Warren to express my strong support for the nomination of Gina McCarthy.

Gina has dedicated her life to public service. She has fought to protect our public health, conserve our natural resources, develop new policies and manage Federal programs and State agencies. Gina's success is a reflection of her ability to bring together diverse and opposing stakeholders and work with both sides to fairly re-

solve their differences and achieve meaningful environmental protections.

Her success is also a reflection of her understanding that environmental protection and economic growth go hand in hand and can be mutually reinforcing. Gina started her career in 1980 as the first health agent in Canton, Massachusetts. Early on, she established herself as someone who can and will work with all parties. She is also someone who will tell you when there is no need for Government intervention. While she was always ready to push for action when needed, she was also the first person to put her foot down when it was clear that no action was necessary.

Since her time in Canton, Gina has more than 25 years of experience working on environmental issues at the State level, working for both Democratic and Republican administrations. As many people have said, the great thing about Gina McCarthy is that what you see is what you get.

Over the last 4 years, she has brought the same pragmatism to her work for the Federal Government. She has been a leading advocate for balanced, common-sense strategies to protect public health and our environment. I believe Gina McCarthy has the background, the experience and judgment to be a terrific Administrator of the Environmental Protection Agency. I hope this Committee will give her nomination its full consideration. I look forward to supporting her on the floor.

Thank you.

Senator BOXER. Senators, thank you. You are free to go, because I know you have hectic schedules. With that, we are going to move to Senator Whitehouse, and then to Senator Barrasso.

OPENING STATEMENT OF HON. SHELDON WHITEHOUSE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator WHITEHOUSE. Thank you, Chairman. I am delighted to consider Assistant Administrator McCarthy's nomination to serve as the Administrator of the Environmental Protection Agency.

Four years ago, when EPW assembled for Lisa Jackson's nomination hearing, I expressed my frustration that the EPA, during the Bush administration, had become a poster child of the opaque Federal agency pandering to special interests, rather than one that based its decisions on the best available science and on the public interest.

As the Assistant Administrator of one of EPA's most active divisions, Air and Radiation, Ms. McCarthy has played an instrumental role in helping to turn the EPA around. During her exemplary career in public service, she has designed and implemented policies that have saved countless lives and billions of dollars in health care costs. Ms. McCarthy began her career as a health agent for the town of Canton, Massachusetts, in 1980 and has worked her way up ever since. During 33 years of public service, she has also been Deputy Secretary of Policy for the Massachusetts Office for Commonwealth Development and Commissioner for the Connecticut Department of Environmental Protection. She served both Democratic and Republican Governors, including Mitt Romney and Jodi Rell.

One of her many accomplishments in New England is the Regional Greenhouse Gas Initiative, RGGI, the first of its kind market-based effort to reduce greenhouse gas emission in the Northeast and Mid-Atlantic. Currently RGGI has nine member States with a combined population of 41 million Americans. RGGI has been credited with boosting local economies by sparking further investment in energy efficiency programs and renewable energy development.

She brings New England values of plain-spokenness, independence and practicality. And her local experience makes her well aware of how Federal policy affects local stakeholders.

As Assistant Administrator, Ms. McCarthy crafted several key health standards, including the first-ever mercury standard for power plants. The Mercury and Air Toxics Standard set long-overdue standards on mercury, arsenic, chromium, sulfur dioxide, nitrogen oxides and other dangerous air pollutants. MATS, as it is called, is projected to prevent up to 11,000 premature deaths, 4,700 heart attacks, 130,000 asthma attacks, and to provide as much as $90 billion in health benefits each year. That is $3 to $9 in health benefits for every dollar spent to meet the standard, a huge economic win.

I am from the Ocean State. I know that cleaning up smokestack emissions is one of the most important things to do to reduce toxic mercury compounds that build up in our fish and enter our food. Rhode Island and other States along the Eastern Seaboard are also downwind States, downwind of tall smokestacks spewing pollution. As of 2010, 284 tall smokestacks, stacks over 500 feet, were operating in the United States, needles injecting poison into the atmosphere and contributing significantly to pollution in my home State.

The air pollution from these tall stacks went largely unchecked until Ms. McCarthy came along to clean them up. These same smokestacks have been unloading their soot pollution on Rhode Island for decades. Last December, EPA adopted a stricter limit on soot, or as it calls it, fine particulate matter. When we breathe it in, soot increases the risk of asthma attacks and lung cancer. The smallest particles pass into the bloodstream and cause heart disease, stroke and reproductive complications.

Restrictions on particulate matter are expected to prevent as many as 35,000 premature deaths every year, 1.4 million asthma attacks, 2.7 million days of missed work or school and save between $2 billion and $6 billion in avoided health care costs. Another huge economic win, if you are not the polluter, of course. And yes, you do have to clean up your mess.

The costs of air pollution are paid in premature deaths and reduced quality of life, higher medical bills, strained public health services and missed days of work and school. Asthma is the No. 1 health reason for missed school days and the fourth leading cause of missed adult work days. My downwind home State of Rhode Island has the sixth highest rate of asthma in the Country. More than 11 percent of the people in my State suffer from this chronic disease. In 2009, 1,750 Rhode Islanders were hospitalized for asthma, hospital stays that cost about $8 million, not counting medication and missed days of work and school.

So the return on investment, from EPA's air standards, would make a hedge fund proud. And I am proud to thank Ms. McCarthy for these successes, and to support her candidacy as Administrator of the Environmental Protection Administration. Thank you very much, Madam Chair.

Senator BOXER. Thank you, Senator.

Senator Barrasso.

OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM THE STATE OF WYOMING

Senator BARRASSO. Thank you, Madam Chairman.

I am not sure whether the nominee before us today is personally aware of so many folks who have actually lost their jobs because of the EPA, and a role that I believe is taking now, which is failing our Country, people in places like Wyoming, Montana, Kentucky, Ohio and West Virginia.

And let me just read you a story that ran in the front page of the Casper Star Tribune, Wyoming's statewide newspaper, dated January 28th of this year, 2013. It is entitled Coal's Decline Hits: Depressed Domestic Market Means Laid-Off Wyomingites. The article references Mike Cooley and his family. Here he is with his 2-year-old son and his wife. The article says that Mike has become one of several hundred mining family mine workers to lose their jobs in the past year in the region as a dispute over West Coast ports hobbles the industry's ability to reach booming markets in Asia, people who want to buy American products.

But yet, your extreme emission rules that you have imposed on U.S. power stations are forcing coal companies to make up for lost domestic customers by exporting more to countries in Asia. Yet the EPA has written a letter to the Army Corps of Engineers, I would ask, Madam Chairman, to make a copy of this letter part of the record.

Senator BOXER. Yes, it will be done.

[The referenced letter was not received at time of print.]

Senator BARRASSO. Thank you very much, Madam Chairman. Your EPA has written the Army Corps of Engineers encouraging them to look at the greenhouse gas impacts of allowing coal to be shipped overseas through these West Coast ports.

So not only do you block the use of coal in power plants domestically, you now are recommending that coal not be shipped, that an American product not be able to be shipped and sold overseas. This gentleman goes on, he says, I have never been laid off, I have always worked since I was a teenager. Now his family is relying on his wife's income as a grocery store cashier until he finds a job.

That is not just Wyoming. The Bluefield Daily Telegraph, a West Virginia paper, ran a story about a veteran coal miner, their concerns about the Administration's war on coal. This miner, named Al Palmer, and Madam Chairman, I would like to make that story a part of the record as well.

Senator BOXER. Yes, without objection.

[The referenced information follows:]

Bluefield Daily Telegraph

November 3, 2012

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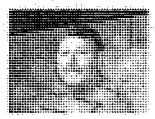
Veteran coal miner voices concerns about 'war on coal' (http://bdtonline.com/local/x880886288/Veteran-coal-miner-voices-concerns-about-war-on-coal)



'Big' Al Palmer Staff photo by Bill Archer

By BILL ARCHER
Bluefield Daily Telegraph (http://bdtonline.com)

BLUEFIELD — By way of example, "Big" Al Palmer, a fire boss and roof bolter operator at a Wyoming County coal mine, cut loose with a Tarzan yell like the one he uses in the mines to get the attention of his fellow coal miners.

"We are like family in the mines," Palmer said. "I love my people. I love my work and I love my industry."

Palmer's father worked for Eastern Coal in McDowell County, both of his grandfathers worked in the mines in Mercer County and now his son works in the same mine where he works.

"My question is, how can something that has been so great for all these years wind up being so bad in just four years," he said. "The coal that we have mined here has fueled and powered this country for almost 200 years. The steel that you have that's holding this building up came from the high-grade coal that came from right here in this part of the country.

"The government has taken all of that away from us," Palmer continued. "Now, we're sending all that high-grade Pocahontas No. 3 coal overseas where they don't have scrubbers on their smoke stacks like we do. We've wasted our time spending money to prop up failed energy products like Solyndra when we have all the energy we need right here.

"In the past, I've actually had people come up to me and thank me for keeping their lights on," Palmer said. "Now, the government is using our own tax dollars to put us out of work. It bothers me because we're the ones who industrialized the world. Why would they just turn around and try to shut us down.

"Coal miners used to be heroes, but now many of my brothers and sisters in the coal industry fear for their family's livelihoods," Palmer said. "We have lost most of our steel jobs to the rest of the world and now it looks like the politicians and the (Environmental Protection Agency) wants to give the mining jobs away to the rest of the world.

"I am not against new sources of energy, but we have spent billions on failed companies," Palmer said. "We have some of the cleanest-burning power plants in the world, but if they don't meet EPA standards, why not use those wasted tax dollars to help them buy scrubbers instead of closing them." Palmer expressed his concerns over the environmental impact of solar panels as well as wind turbines that "kill and harm airborne animals," he said.

"Four years ago, President Obama promised that the electric utility rates would go up for people who get their power from coal-fired power plants," Palmer said. "He also promised that if a company tried to build a coal-fired power plant, he would bankrupt them," Palmer said. "It's pretty serious when people mess with your job security and your job."

Palmer said that he can't stand idly by and watch someone come in with a jackhammer, knock out the foundation and watch my home crumble," he said. "Coal has powered this nation for years. Please don't throw us away now."

In his letter, Palmer provided a history lesson of how the coal industry developed, and included some of personal recollections about how coal was considered as being "vital to our national economy, freedom and strength."

Palmer said that his boss had asked him not to do his Tarzan yell in the mines for a while, but he said that he asked him to continue the call because it seems to boost morale.

Palmer worked for the power company before going into the mines on April 28, 1980. "I've enjoyed coming to work every single day," he said. "People portray coal miners as not being very smart, but we are professionals and we love what we do," he said.

— Contact Bill Archer at barcher@bdtonline.com

Senator BARRASSO. He says, "Coal miners used to be heroes. But now many of my brothers and sisters in the coal industry fear for their families' livelihood." The article mentions Al's father, who worked as a coal miner, as did both of his grandfathers. Now his son works in the same mine with him. He stated in the article, "Coal has powered this Nation for years. Please don't throw us away."

My questions are, are coal miners like Al and his son no longer heroes to the nominee and to the EPA? The EPA is making it impossible for coal miners like Mike Cooley in Wyoming and Al Palmer in West Virginia to feed their families. How many more times, if confirmed, will this EPA director pull the regulatory lever and allow another mining family to fall through the EPA's trap door to joblessness, to poverty and to poor health? These people are heroes, and they deserve better than what they are getting from the EPA.

The nominee before this Committee is a senior EPA official, reporting to the Administrator and to some extent, she owes the American people an explanation and a vision today for what the EPA, under her, would look like. Will anything change? Anything from the course that we have been on for the last 4 years? The nominee today has testified at her confirmation hearing 4 years ago that she would "speak plainly and truthfully about the lives being lost, the responsibilities we face, the challenges ahead, the options we have and the opportunities we can realize as we face the future together."

I haven't heard yet any plain statements from EPA and hopefully I will today from this nominee about the negative health impacts and lives lost from chronic unemployment caused by the EPA policies. Regulations and proposed rules on greenhouses gases, coal as, mercury emissions and industrial boilers have led to the closing of dozens of power plants in the U.S., costing our Country thousands of jobs. Folks who now have no job, no money, no prospect for a job in their communities, and they are experiencing serious health risks as a result of that.

Studies show that children from unemployed parents suffer significant negative health effects. The National Center for Health Statistics said children in poor families, people out of work, are four times as likely to be in fair or poor health as children in families who are not poor. This is a serious health epidemic and it seems to go unnoticed by the EPA. So we need a nominee who has the power to not just listen to stakeholders, but to keep his or her promises, someone who is truly committed to the reform that we need to keep America working.

Thank you, Madam Chairman.

Senator BOXER. Thank you. I ask unanimous consent to place into the record a document that shows that over the last 40 years, our national GDP has risen by 207 percent since passage of the Clean Air Act, 40 times the cost of regulations. So I am going to put that into the record.

[The referenced information follows:]

EPA United States Environmental Protection Agency

Newsroom

Speeches By EPA Administrator

Administrator Lisa P. Jackson, Remarks on the 40th Anniversary of the Clean Air Act, As Prepared

09/14/2010

As prepared for delivery.

Thank you for being here to mark 40 years of cleaning up the air we breathe. Let me begin by saying how honored I am to be in the presence of so many who fought for the passage and strengthening of the Clean Air Act, and those who – just as importantly – fought to ensure that the Act is faithfully implemented and responsibly enforced.

Legislative champions like Chairman Waxman. Innovators like John Mooney, one of the inventors of the catalytic convertor. Thoughtful and pragmatic lawmakers like Congressman Boehlert and Majority Leader Baker – the man known as the "Great Conciliator" and one of many who reached across the aisle to make the Clean Air Act possible. We also have with us today pioneering EPA implementers like Administrator Ruckelshaus and Assistant Administrator Hawkins, both of whom inspire our work today. Let me also acknowledge Majority Leader George Mitchell, who planned on being here today but has taken on another extraordinary challenge: helping to negotiate a Middle East Peace Agreement.

I must also thank all of you – the public servants, health advocates, and industry innovators – for being part of the work that has saved hundreds of thousands of American lives, protected our environment and spurred the creation of American jobs. Each of you has been instrumental in the tireless – and at times, thankless – efforts to enact, amend, and apply the Clean Air Act over four decades. Thank you very much.

We are here to celebrate a law that has proved to be one of the most important and beneficial pieces of legislation in our nation's history.

First and foremost, it has protected the American people. It is literally a life saver. We estimate that it has prevented tens of thousands of premature deaths – each year. Along with lives saved, the Clean Air Act has reduced asthma attacks, heart disease, and numerous other health conditions Americans suffer from. I often think of my youngest son who has battled asthma his whole life. Without the Clean Air Act protecting the air around our home, around his school and around the places we have traveled, there is no telling how much more challenging his condition could have been for him and our family. I'm sure similar stories can be told by many of you – and by millions of people across this country.

Those protections have added up to trillions of dollars in health benefits for our nation. Breathing cleaner air has kept people from needing expensive treatments and costly hospital stays. It has also kept our kids in school and our workers on the job, increasing productivity and economic potential.

And as air pollution has dropped over the last 40 years, our national GDP has risen by 207 percent. The total benefits of the Clean Air Act amount to more than 40 times the costs of regulation. For every one dollar we have spent, we get more than $40 of benefits in return. Say what you want about EPA's business sense, but we know how to get a return on an investment. In short, the Clean Air Act is one of the most cost-effective things the American people have done for themselves in the last half century. The irony is that one of the most economically successful programs in American history is also one of the most economically maligned. The Clean Air Act has faced incessant claims that it will spell economic doom for the American people.

Today's forecasts of economic doom are nearly identical – almost word for word –

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10/01/2012 Administrator Lisa P. Jackson, Remarks at the Water Environment Federation's Technical Exhibition and Conference, As Prepared
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06/09/2012 Administrator Lisa P. Jackson, University of Washington 2012 Commencement Address, As Prepared
05/31/2012 Administrator Lisa P. Jackson, Announcement on Addressing Asthma Disparities, As Prepared
05/25/2012 Administrator Lisa P. Jackson, Remarks at the 2012 Denver School of Science and Technology Graduation Ceremony, As Prepared

to the doomsday predictions of the last 40 years. This "broken-record" continues despite the fact that history has proven the doomsayers wrong again and again.

In the 1970s, lobbyists told us that using the Clean Air Act to phase in catalytic converters for new cars and trucks would cause "entire industries" to "collapse." Instead, the requirement gave birth to a global market for catalytic converters and enthroned American manufacturers at the pinnacle of that market.

In the 1980s, lobbyists told us that the proposed Clean Air Act Amendments would cause, quote, "a quiet death for businesses across the country." Instead, the US economy grew by 64 percent even as the implementation of Clean Air Act Amendments cut Acid Rain pollution in half. The requirements gave birth to a global market in smokestack scrubbers and, again, gave American manufacturers dominance in that market.

Yet again in the 1990s, lobbyists told us that using the Clean Air Act to phase out CFCs – the chemicals depleting the Ozone Layer – would create "severe economic and social disruption." They raised the fear of "shutdowns of refrigeration equipment in supermarkets … office buildings, our hotels, and hospitals." In reality, new technology cut costs while improving productivity and quality. The phase-out happened five years faster than predicted and cost 30 percent less. And, by making their products better and cleaner, the American refrigeration industry created new overseas markets for themselves.

In fact, thanks in no small part to the Clean Air Act, America is home to a world-leading environmental technology industry. By conservative estimates, in 2007 environmental firms and small businesses in the U.S. generated $282 billion in revenues and $40 billion in exports, while supporting 1.6 million American jobs.

As you can see, the Clean Air Act has not only reduced harmful pollution – it has also been particularly effective at proving lobbyists wrong. This law not only respects but thrives on the openness and entrepreneurship of our economy. It creates a "virtuous cycle" in which clean air standards spark new technology – serving our fundamental belief that we can create jobs and opportunities without burdening our citizens with the effects of pollution.

Now it's our turn to promote innovation, grow a clean economy, and address both the new challenges and the unfinished business of the Clean Air Act. This is an ambitious effort, one that follows in the extraordinary footsteps of the last four decades. I believe that we will have our own chance to make history with the work we will set in motion. And while I won't be making any news here today, I do want to talk about what we've done so far – because we are off and running.

Since 2009 EPA has put forward new health standards for ground level ozone, and finalized the first new standards for SO2 and NO2 in more than two decades. We are taking action on air toxics from industrial boilers that emit acid gases, dioxin, and mercury. And we've finalized rules on cement plants. We've used the "Good Neighbor" provision in the Clean Air Act to shape a transport rule that could have up to $290 billion in health benefits for the American people. And we've issued clear rulemaking guidance to ensure that the benefits of the Clean Air Act are reaching every community – including the low-income and minority communities that often bear the greatest environmental burdens.

Last year, EPA also began the process to carry out the 2007 Supreme Court decision that the Clean Air Act applies to greenhouse gases. As the Court directed, we began taking measured steps to address greenhouse-gas pollution that science shows is contributing to climate change.

Step one was a confirmation of the extensive science of climate change, fulfilling the Supreme Court mandate that EPA determine whether greenhouse gas emissions endanger public welfare and the environment. We then finalized the first-ever greenhouse gas emissions standards for American vehicles – which will cut some 950 million tons of carbon pollution from our skies, while savings drivers of clean cars $3,000 at the gas pump and keeping $2.3 billion at home in our economy, rather than buying oil from overseas.

As with every Clean Air Act program, this will also mean new innovation: American

scientists producing new composite materials that make cars lighter, safer and more fuel efficient; American inventors and entrepreneurs taking the lead in advanced battery technology for plug-in hybrids and electric cars; and American manufacturers producing these new components – which they can then sell to automakers in the US and around the globe.

Our next step was to craft a tailoring rule that limits permitting to a small universe of the largest emitting sources, phases in requirements and shields small greenhouse gas emitters – including thousands of small businesses and non-profits – from regulation. A guidance document that EPA will issue shortly will assist the states and the small number of sources covered in completing the permitting process in a manner that is practical and manageable.

True to form, the lobbyists have recycled their old predictions of job loss and economic catastrophe with regard to each and every one of these actions. That train's never late. There have been claims of EPA's bureaucratic power grabs – despite the fact that our actions are guided by extensive science and – in the case of the endangerment finding – mandated by the Supreme Court. Of course there have been claims about job killing regulations – despite the fact that cost-effective strategies to reduce air pollution should spark clean energy innovation and help create green jobs.

One prominent lobbyist was even quoted saying that if EPA wishes to regulate greenhouse gas emissions, "then it ought to have to regulate facilities large and small and suffer all the consequences, warts and all." Some lobbyists are actually so eager to see their wild projections of economic collapse come true – just once – that they hope to force EPA to regulate in the most aggressive and disruptive way imaginable.

Fortunately, we know better. The Clean Air Act does not require EPA to act in a reckless and irresponsible manner. We will proceed carefully through the series of sensible steps that I have been describing publicly since my confirmation hearing twenty months ago. To be very clear about how we make our decisions, I am outlining today five principles that will inform all of our clean air efforts in the months and years ahead. These are the guiding points that will help us confront everything from lingering challenges like smog and mercury, to new challenges like greenhouse gases.

First, we will continue to promote commonsense strategies that encourage investment in energy efficiency and updated technologies. The history of the Clean Air Act is the history of environmental innovation, and we intend to carry on that tradition. That is especially critical in our efforts to spark the long-deferred investments power plants that have been around for 50 years and longer, and have avoided the basic pollution controls that newer plants have used for decades. These controls save lives. By now should be as standard as seatbelts are to cars

Next, we will use similar strategies to capture multiple pollutants. Many of the most harmful pollutants can be captured with the same technologies, and we plan to take a multi-pollutant, sector-based approach that provides certainty and clarity for businesses and investors and creates opportunities to reduce emissions at lower cost.

Principle number three is to set clear, achievable standards while maintaining maximum flexibility on how to get there. By relying on innovation, we can open the way to compliance through many different strategies. Often industry develops a range of resourceful compliance strategies that were not anticipated. We must be as flexible as possible to ensure the best results. That flexibility will also enhance the compatibility of EPA's rules with state clean air programs.

Fourth, we will seek input from the citizens, industry, affected entities, other stakeholders, as well as our partners in state, local and tribal governments. As always – we will seek the input of as many sources as possible.

Finally, we will set the standards that make the most sense – focusing on getting the most meaningful results through the most cost-effective measures. The Clean Air Act does not compel regulations for all industry categories, and we want to ensure that we move forward without burdening small businesses, non-profits and other

entities that don't account for significant amounts of pollution in our skies.

Our goal is to use the tools in Clean Air Act to provide flexibility for everyone, to work in sync with market principles and to encourage investment in new technologies that provide cost-effective and efficient methods for lowering pollution in the air we breathe. As Administrator and as an American consumer, I know we must be smart in the strategies we employ. Industry needs clarity and certainty to make the best investments. They are the key to the innovation that helps us reduce pollution, protect our health and preserve our environment.

But we are not going to fall victim to another round of trumped up doomsday predictions. We have four decades of evidence that the choice between our economy and our environment is a false choice. We are a stronger, healthier, more productive and more prosperous nation because of the Clean Air Act. I know we can successfully write the next chapter in the history of this important law.

We can take on the remaining challenges of pollution in our air. I know because the Clean Air Act took on big challenges – and it worked. We can come together in a collaborative effort, ignore the doomsday exaggerations, and build a commonsense plan together. I know because we've done it before – and it worked. And we can absolutely grow our economy at the same time we protect our environment, our health, and safeguard the planet for the next generation.

We have 40 years of proof to back us up. We've done it before – and it worked. I look forward to working with all of you in those efforts.

Thank you very much.

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Senator BOXER. And I am going to also state, I couldn't agree more with my friend on the problems of unemployment, absolutely. And I hope we can work together on that.

OK, Senator Sanders.

OPENING STATEMENT OF HON. BERNARD SANDERS, U.S. SENATOR FROM THE STATE OF VERMONT

Senator SANDERS. Thank you, Madam Chair. I rise in support of the candidacy of Gina McCarthy to be our next EPA Administrator.

I want to thank Senator Barrasso, because he made it very clear what this whole discussion is about. I think we have heard from previous speakers about the qualifications of Gina McCarthy, but really this is not a debate about Gina McCarthy. Senator Barrasso made it very clear what the debate is about. And it is a debate about global warming and whether or not we are going to listen to the leading scientists of this Country who are telling us that global warming is the most serious planetary crisis that we and the global community face, and whether we are going to address that crisis in a serious manner.

And in essence, what Senator Barrasso has just said is, no. He does not want the EPA to do that. He does not want the EPA to listen to science. What he wants is us to continue doing as little as possible as we see extreme weather disturbances, drought, floods and heat waves all over the world take place. So let me go on record as saying I want the EPA to be vigorous in protecting our children and future generations from the horrendous crisis that we face from global warming.

According to the National Oceanographic and Atmospheric Administration, 2012 was the warmest year ever recorded for the continental United States, and over 24,000 new record highs were set in the U.S. alone. It was the hottest year in recorded history, in New York, Washington, DC, Louisville, Kentucky, even my home city of Burlington, Vermont and other cities across the Country.

Last year's drought, affecting two-thirds of the United States, was the worst in half a century, contributing to extraordinary wildfires, burning more than 9 million acres of land, reported the National Interagency Fire Center. Heat waves and droughts are not limited to the U.S. Australia, for instance, just experienced a 4-month heat wave with severe wildfires, record-setting temperatures and torrential rains and flooding, causing $2.4 billion in damages, according to the New York Times.

We also know that global warming is causing heat waves and drought. But it is also resulting in extreme weather disturbances of all kinds. NOAA's Climate Extreme Index, which tracks extreme temperatures, drought, precipitation and tropical storms, tells us that 2012 set yet another distressing record, the most extreme climate conditions recorded. Ronald Prinn, the Director of MIT's Center for Global Change Science, concluded, and this is an important point: "What we have heard recently from scientists is that they tell us that their earlier projections regarding global warming were wrong, that in fact they underestimated the problem and that the conditions that they were worried about will likely be worse than what they had previously thought." And Ronald Prinn, the Director of MIT's Center for Global Change Science, said, "There is signifi-

cantly more risk than we previously estimated, which increases the urgency for significant policy action."

Let me just conclude, and I am glad that my colleague Senator Inhofe is here, because Jim Inhofe and I are good friends, although we have rather strong disagreements on the issue of global warming. What Senator Inhofe has written and talked about is his belief that global warming is one of the major hoaxes ever perpetrated on the American people, said it is a whole push by people like Al Gore, the United Nations and the Hollywood elite. I think that is a fair quote from Senator Inhofe, is that roughly right, Senator Inhofe?

Senator INHOFE. Yes. I would add to that list moveon.org, George Soros, Michael Moore and a few others.

[Laughter.]

Senator SANDERS. All right, there we go.

So that is the issue. That is exactly what the issue is. Do we agree with Senator Inhofe that global warming is a hoax and that we do not want the Federal Government, the EPA, the Department of Energy to address that issue, because it is a "hoax" according to Senator Inhofe and others? Or do we believe and agree with the overwhelming majority of scientists who tell us that global warming is the most serious planetary crisis that we face and that we must act boldly and aggressively to protect the future of this planet? That is what the issue is, and that is why I am supporting Gina McCarthy.

Senator BOXER. Thank you very much.

Poor Gina.

[Laughter.]

Senator BOXER. You are sort of caught in this situation. Anyway, Senator Inhofe, you are going to do this, and the vote has started. As soon as Senator Inhofe has finished, in his 5 minutes, we are going to go vote. We are going to come back between 11:30 and a quarter of.

OPENING STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator INHOFE. Thank you very much, Madam Chairman, for giving me this opportunity. I think people realize we have two meetings going on at the same time.

I would say this to you, Gina, you and I have had a chance to visit. I appreciate it very much, and I commented to you, and I have said publicly several times, if you are confirmed, I want to develop the same relationship that I had with Lisa Jackson. While we disagreed with policy things, we were able to get some things done.

There are some areas of your previous position where I disagree. I am concerned about the direction of the EPA, and particularly the air office, some of the things that have happened. Americans want energy independence. We have the opportunity to have that, and I have said this so many times, that we now know that we have the resources to be totally independent. But we have to develop resources. Some of those are fossil fuels.

The President's campaign against the fossil fuels has been a Governmentwide effort. But the regulations coming out of your agency have had the most damaging effects. In just the last few months, you put out the Utility MACT. I remember I had a CRA on the

Utility MACT, came very close to getting it through. It would cost about $100 billion and 1.65 million jobs. Boiler MACT, which would have cost $63 billion, 800,000 jobs, and the PM 2.5, the Soot Rule, which would put dozens of counties out of attainment, in my State of Oklahoma, probably 15 counties out of 77.

But the President has saved many of the worst regulations for his second term. And the simple fear if these regulations become final is having a sustained chilling effect on achieving the goal of domestic energy independence. One of those is the ozone, the NAAQS, that is probably being developed as we speak. This rule could shut down oil and gas activities across the Country. Additionally, because of the NSPS for electric generating units you have proposed last year, utilities cannot build new coal-fired power plants. That is in effect today.

So coal, the source that you said in this room would remain vital for a long period of time, is now on the path to become obsolete. I am also concerned about the way the EPA has maintained its relationships with the States. Cooperative federalism is a key component to the Clean Air Act, but your agency has often acted secretly with environmental groups to impose damaging regulations. A lot of this comes through lawsuits that are filed by them and then consent decrees. We will have a chance to talk about that in the question and answer.

So I look forward to this. I hope it does work out with our timing and I look forward to working with you.

Senator BOXER. Senator, thank you so much. I am glad you were able to come back.

We are going to recess now and come back between 11:30 and a quarter of. So could you just take a break and come back at 11:30? Senator Baucus wanted to speak at that time. We are going to try to get back as fast as we can. We recess until the call of the Chair.

[Recess.]

Senator BOXER. We are back, thank you so much, Hon. Gina McCarthy, for waiting patiently. We are going to move forward, and I am going to read the list. If there is any disagreement with this list, please let me know. We will go back and forth. Carper, Fischer, Merkley, Wicker, Cardin, Sessions, Udall. All right. Yes.

Senator WHITEHOUSE. Madam Chair, I'm not on the list.

Senator BOXER. Didn't you speak already?

Senator WHITEHOUSE. Oh, this is——

Senator BOXER. We are still opening.

Senator WHITEHOUSE. Then I did.

[Laughter.]

Senator BOXER. As a matter of fact, I personally remember it well, and it was good, from my standpoint.

[Laughter.]

Senator BOXER. All right, so we're moving to Senator Carper.

OPENING STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Thanks, Madam Chair.

Welcome, Gina. It is very nice to see you.

I just want to start off, to my colleagues, my last job before I came here to work with all of you, as some of you know, I got to be Governor of my State for 8 years. The tradition in Delaware, whether you are a Democrat or Republican Governor, is you get elected and you have the opportunity to govern with the team that you choose. I think every year, anyone we wanted to nominate or ask to be a cabinet secretary or division director during those 8 years, and we had a Republican house and a Democrat senate for all 8 years.

But to a person, they were all confirmed and went on to serve. I said to the legislature, let me have the team that I think will help me and the administration serve our State well. And God bless them, they did. They did. And I said, hold us accountable for our results.

I worry about something, I call it executive branch Swiss cheese. I don't care whether you have a Republican President, if it is George W. Bush, or if we have a Democratic President. This is not a good situation for our Country.

I chair the Committee on Homeland Security now. We had a hearing a couple of days ago for OMB Director. And we have an acting OMB Director. As you may know, there are two Deputy OMB Directors, one for management, one for budget. They are vacant. We have a position for OIRA, which handles regulation, and we have an acting person in place. Part of that is the responsibility of the Administration. This is a shared responsibility here. They have an obligation to give us good names. They have to vet them, give us good names. We have an obligation to, in a prompt, forthright way, consider those names.

I tell you, I was once asked by Bill Clinton to serve on the Amtrak board of directors. The process, just going through there, I was a sitting Governor, the process you have to go through to be vetted is awful. It was horrendous. I hated it. And what we ask people to do, very good people, whether it is George Bush as President or Barack Obama, we ask very good people to go through what is a very unpleasant experience, a lengthy process. Sometimes they have to put their life on hold. And then to risk having their integrity impugned publicly, just because they want to serve their Country.

This is a good woman. This is a good woman. Is she perfect? No. Do we disagree on something? Sure, we do. But I mean, how many people come before us nominated by a Democratic President that actually served not one, not two, not three, but four Republican Governors? When you are a Governor, you are a practical person, you are a pragmatic person. The four that she served are that.

For myself, I want us to have people in this position that are smart, that are pragmatic, that use some common sense to try to do what is right. Here is the situation we face. Virtually every regulation that the Bush administration sought to put in place dealing with air, they were all basically remanded or turned back over to the courts, every one were remanded or turned back over to the agency. They said, you got it wrong.

The reason why there is all this stuff in her lap and in EPA's lap is because of that. We have to get it right.

The last thing I will say is this. We all have things that kind of stick with us and things that we have heard that really stick with us over time. I just want to share this one quick story, particularly with my Republican colleagues. And here it is. I think it was my first term in the Senate. I was, along with George Bush, trying to lead the Clean Air Nuclear Safety Subcommittee. We had a meeting with a bunch of utility CEOs. There was one CEO there, there was about 8 or 10 of them, there was one CEO from one of the southern utilities, maybe Alabama, but he said to us, we had been talking for an hour or so, on clean air emissions, clean air standards.

Here is what he finally said to us. He said, look, tell us what the rule are going to be, give us a reasonable amount of time and give us some flexibility and get out of the way. That is really what he said. He said, we need predictability and we need certainty. And we need it especially with respect to this position. We need somebody who will help us develop what the rules are going to be, give us some flexibility, a reasonable amount of time to comply, and then let's get out of the way.

I think Gina McCarthy understands that. And I think she will be a very good partner with us. She has been a good partner with us. It wasn't just by chance that we unanimously confirmed her here and in the U.S. Senate when she took over this Air position 4 years ago.

I think she will do a good job for us. She will be responsive and she will use pragmatism and some common sense. I would just plead with my colleagues, let's get this done. Let's get this done, and I don't think you will regret it. Thank you. And I would ask that the rest of my statement be made part of the record.

[The prepared statement of Senator Carper follows:]

STATEMENT OF HON. THOMAS R. CARPER,
U.S. SENATOR FROM THE STATE OF DELAWARE

Thank you, Chairman Boxer, for having this hearing today.

I would like to warmly welcome Gina McCarthy back to our committee. I am happy the President has nominated her for EPA Administrator and she has agreed to continue her service at the EPA in this new role.

I believe Gina has a strong background for this position—not only from her long history of work in the States, but also as head of the EPA air division during a challenging time.

Four years ago—after being unanimously approved as Assistant Administrator for Air by this committee and by the Senate—she faced a daunting task waiting for her at the EPA.

Every major clean air regulation written by the Bush administration had been remanded or vacated by the courts.

As a result, Gina was tasked with implementing a laundry list of court-ordered regulations—all during the worst economic crisis since the Great Depression.

Many felt concerned that promulgating new regulations could short circuit the economic recovery.

But at the end of the day, she helped put in place safeguards for cleaner air that protected the health of Americans without undercutting efforts to grow our economy. That's in no small part due to her leadership.

She has worked for not one, not two, but five, that's right five, Republican Governors. Most recently she has worked for Mitt Romney in Massachusetts and Jodi Rell in Connecticut.

As a result, she's accustomed to working in a consensus-driven way with members of both parties—a critical skill set that will serve her well in the top job at the EPA.

She and I have not always seen eye-to-eye on some issues. But she has always been honest with me and my staff—and tried to find common ground if possible. Again, an important skill to have as Administrator.

Some folks believe that you have to choose between protecting the environment and growing our economy, but Gina has helped prove that notion wrong.

We know choosing between a strong economy and a safe environment is a false choice, and Gina is well-suited to help guide the EPA through a significant period.

I look forward to continuing to work with her on issues facing our Country and my home State of Delaware, like curbing dangerous cross-state air pollution and addressing climate change.

Lisa Jackson leaves big shoes to fill as EPA Administrator, but I'm confident Gina will fill them.

And speaking of shoes to fill, I have long been concerned about a problem that has plagued the executive branch through both Democratic and Republican Administrations—numerous and longstanding vacancies in senior positions throughout the Federal Government.

This problem has become so prevalent that I've started referring to it as executive branch "Swiss cheese."

At any given moment we are lacking critical leadership in numerous positions in just about every agency, undermining the effectiveness of our Government.

While Congress and the Administration have taken steps to address this problem, the fact remains that we still have more work to do to ensure that we have talented people in place to make critical decisions.

That's one of the reasons why today's confirmation hearing is so important, and why I'm pleased that President Obama has put forward a nominee who I believe has the skills necessary to step in and be effective from day one.

And that's why I am calling on my colleagues to join me in supporting Gina's nomination.

Senator BOXER. Without objection. And I really thank you for that. It was so well said.

Now, we have a slightly different list from the Republicans, I am going to go through it again just to make sure everybody is treated fairly. Because that is extremely important.

So we are going to move to Senator Fischer, then Merkley, Wicker, Cardin, Sessions, Udall. Everybody happy? All right. Senator Fischer.

OPENING STATEMENT OF HON. DEB FISCHER, U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator FISCHER. Thank you, Chairman Boxer and Ranking Member Vitter. I am happy to be here today.

Thank you, Ms. McCarthy, for being here and for your willingness to serve the public. I truly appreciate that. And I do appreciate that I have this opportunity to share with you some of the concerns of my constituents.

As you and I spoke, in Nebraska, agriculture is our No. 1 industry. We are a people who are proud to feed the world. Our success is the direct result of careful stewardship of our natural resources, which we depend upon for our livelihood. We hold dear these resources, our land and our water. These are both our heritage and our legacy to future generations.

We have made tremendous gains in production agriculture, producing more while using less land, less water, less energy, less fertilizer and less pesticide. These achievements and these environmental improvements are made because of farmers' and ranchers' application of new technology and conservation practices. They are not the result of a permit or a mandate or a paperwork requirement from a Federal bureaucracy. They are the result of cooperation between producers and local university extension educators and conservation agents.

These are folks who farmers trust to help them implement science-based solutions that improve our efficiency and reduce our

environmental impact. We believe that local natural resources management is more successful than EPA's top-down command and control Federal approach. We believe that local natural resource management is more successful than EPA's continual approach in that area. And we find that EPA's proposed expansion of the Clean Water Act authority is alarming.

Also of concern to us is the increasing cost of compliance with environmental regulations for Nebraska's public power utilities, which you and I spoke about. Because that does increase the monthly electricity bills for all Nebraskans, and that is a burden. Our State is poised to work with EPA to make reasonable and cost-effective changes that result in meaningful environmental improvements. What we cannot tolerate, however, is failure to consider economic impacts, mandates of controls that are not commercially available, and regulatory uncertainty.

Regulations must be made on sound, publicly available science, subject to a thorough cost-benefit analysis, and promulgated through a transparent public notice and comment process. Madam Chair, I would ask that my full statement be entered into the record. Ms. McCarthy, again, I appreciate your being here. I look forward to questioning you about many of these concerns. Thank you.

[The prepared statement of Senator Fischer follows:]

STATEMENT OF HON. DEB FISCHER,
U.S. SENATOR FROM THE STATE OF NEBRASKA

Thank you, Chairman Boxer and Ranking Member Vitter, for holding today's confirmation hearing. Thank you, Ms. McCarthy, for being here and for your willingness to serve the public. I appreciate the opportunity to share with you the concerns of my constituents.

During my Senate campaign, I traveled 73,000 miles, crisscrossing Nebraska. From every corner of my State, from families, from business owners, and especially from farmers and ranchers, I was overwhelmed with appeals to address the over-regulation inhibiting economic growth. As a Senator, I continue to hear more of the same. These pleas for relief come from families facing higher electricity bills, businesses and utilities confronting the compliance costs of new rules, and producers who are frustrated with a bureaucracy that just simply doesn't understand the nature of their business.

In Nebraska, agriculture is our No. 1 industry. We are a people who are proud to feed the world. Our success is the direct result of careful stewardship of our natural resources, which we depend upon for our livelihoods. We have made tremendous gains in production agriculture—producing more while using less land, less water, less energy, less fertilizer, and less pesticide.

These achievements and environmental improvements are made because of farmers' and ranchers' application of new technology and conservation practices. They are not the result of a permit or a mandate or a paperwork requirement from a Federal bureaucracy. They are a result of cooperation between producers and local extension educators and conservation agents. These are folks who farmers trust to help implement science-based solutions that improve our efficiency and reduce our environmental impact.

Unfortunately, it seems EPA has preferred to pursue a top-down, command-and-control, Federal approach to addressing environmental and conservation issues. Centralized management and mandates are all too often arbitrary, ineffectual, or even counterproductive, lacking the insight of local stakeholders. I strongly believe that environmental policy and resource management should account for site- and situation-specific factors that acknowledge that those closest to a resource are generally best situated to manage it.

I am particularly concerned about EPA's proposed guidance to clarify regulatory jurisdiction over U.S. waters and wetlands, which would broaden the number and kinds of waters subject to regulation. Expanding the Clean Water Act's scope imposes costs on States and localities as their own actions—such as transportation im-

provements, flood control projects, and drainage ditch maintenance—become subject to new requirements.

I am also concerned about the increasing cost of compliance with environmental regulations for Nebraska's public power utilities. Advanced pollution-control equipment can account for up to 25 percent of the cost to build a new power plant. Last year, Nebraska utilities spent tens of millions of dollars complying with power-plant environmental regulations, and these costs are expected to continue to rise, increasing electricity prices and the monthly bills of all Nebraskans.

Nebraska utilities work hard to provide low-cost electricity that is clean and reliable. We rely on coal-fired generators because they are the least expensive way to generate electricity. The barrage of new regulations under the Clean Air Act will likely cause Nebraska utilities to close some of our older power plants because the cost to bring them up to the new emissions standards would be more than the plant is worth.

Our State is poised to work with EPA to make reasonable and cost-effective changes that result in meaningful environmental improvements. What we cannot tolerate, however, is lack of transparency, failure to consider economic impacts, mandates of controls that are not commercially available, and regulatory uncertainty.

Regulations must be based on sound science—science that is publicly available and open to examination. EPA must also comply with the law, including the requirement that the agency use sound methodology to conduct continuing evaluations of potential loss and shifts in employment that may result from the implementation and enforcement of its rules.

Finally, we must ensure that rulemaking is done through a transparent public notice and comment process, not through the increasingly common and underhanded litigation practice known as "sue and settle." These lawsuits often result in consent decrees that give the environmental groups negotiating power; meanwhile private property owners and others in the regulated community are not given any power to participate in the process.

Ms. McCarthy, thank you again for being here today. I look forward to questioning you about how we can work together to address these important objectives.

Senator BOXER. Senator, thank you very much.

Senator Merkley, followed by Senator Wicker.

OPENING STATEMENT OF HON. JEFF MERKLEY, U.S. SENATOR FROM THE STATE OF OREGON

Senator MERKLEY. Thank you very much, Madam Chair.

And thank you so much for being willing to put yourself forward in this public service capacity. I appreciate it.

I wanted to start by recognizing that this conversation is much broader than your background. I think many of us are extraordinarily impressed with the skills you have developed and the battles you have undertaken. But obviously, there is a very broad conversation about how we make the environment and the economy work together for a better America and better quality of life. And quite frankly, more and better jobs. In that context, this will be a framework that will continue throughout one's service in this type of role.

I share the opinion of many in this room that one of the most important jobs in our Country is to tackle the pressing environmental crisis of our time, climate change. The 12 hottest years on this planet have come in the last 15 years. The statistics of that happening randomly are, quite frankly, minuscule beyond calculation. I look at it through the lens of my farming and my timber community. I just came from Klamath County in the south part of Oregon. It is a massive wildlife refuge and farming community, depending upon irrigation. And they had their worst ever year for water in 2010. They had their second worst year in 2011 and there was a huge battle in the State. This year they are 50 percent

below. And that is just one example of the impact of the changing climate.

In various parts of Oregon we have large pine beetle infestations because the winters are warmer and they are not killing off the pine beetles as much as they used to. It has a big impact on timber. And then of course, the drier years are producing a lot more fires. We had a fire the size of Rhode Island in Oregon last year. We had more acres burned in Oregon last year than we have had in 100 years. We lost range land, we lost timber land. And the drier conditions result, and the firefighting results in the Forest Service having a very difficult time having the funds to plan timber sales, which then complicates the problem, because we have less healthy forests and thinning in our Federal forests, which makes them more susceptible to fires.

So meanwhile, we looked at farming and timber, let's turn to the fishing side of this. We have a big oyster industry on the coast of Oregon. And the Whiskey Creek Hatchery produces oyster seed for other oyster farmers. It has been having a lot of trouble because of a slight change in acidification of the ocean. Just a small change. And if you have a small change affecting shell formation in very young oyster seed, you can think about how different food chains will be impacted. That is not a pretty picture.

So this is just the State of Oregon. If we look more broadly, we see so much more going on. Some of my colleagues have spoken to concern about the natural resource industry and the extraction of coal. Well, quite frankly, I am concerned about my fishing community. I am concerned about my timber community, I am concerned about my farming community, all of which are impacted by the strategies we employ. America should be in the leadership in taking on this challenge.

So there are many of these issues that I will return to, wrestling with specific issues for Oregon when we are in the questioning. I do want to mention how important the Superfund clean up is, particularly Portland Harbor. I have had a chance already to talk with you about that. I continue to look forward to working with you after your confirmation to pursue policies that get us out of the planning stage and into the implementation stage.

Thank you.

Senator BOXER. Thank you, Senator.

Senator Wicker.

OPENING STATEMENT OF HON. ROGER WICKER, U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator WICKER. Thank you, Madam Chair, and thank you, Ms. McCarthy, for making yourself available to the Committee. And thank you for meeting with me early on in the process.

I have often said that the position of EPA Administrator is one of the most important and consequential of any Administration.

Despite a weak economy and high unemployment, the Administration continues to use EPA to push regulations that I fear will put more Americans out of work and at the same time achieve only minimal results. I am afraid these harmful regulations will continue.

Because of the significance of these decisions, transparency is critical as taxpayers are asked to shoulder the burden of excessive regulations. In other words, you and I may disagree on policy. But let's not hide information. Show us the data on the science.

Ms. McCarthy, as you and I discussed in our first meeting, I have concerns regarding the National Ambient Air Quality Standards for Ozone. DeSoto County, Mississippi, has been dealing with this issue first-hand as have many counties across the U.S. DeSoto County is a suburban county, it is very clean. It has the misfortune of being just south of Memphis, Tennessee and Interstate 40. I was disappointed in the 2012 decision to designate DeSoto County as a major contributor to poor air quality in the region. I just do not believe that is fair.

As EPA moves forward with regulations, many are concerned that more stringent rules could hinder economic growth in noncompliant counties, complicating job-creating efforts as new construction projects, energy production and manufacturing facilities struggle to comply with Federal regulations.

I was interested to see the Chair's chart on smog alerts in her home State of California. In 1976, it was very, very high. This year, zero. No smog alerts. It seems to me that this should be an occasion to celebrate the success of current policies, rather than to advocate more restrictive policies. Hard to get below zero, 100 percent success, on smog alerts.

As is the case with many EPA regulations, I believe it is important for the agency to afford particular deference to the knowledge, authority and expertise of State governments. Strong consideration should also be given to regional variability and differences between States and within States where regulations are developed. A one size fits all approach is not always the best strategy, particularly when jobs are threatened for no significant environmental gain.

Now, with regard to coal. I agree with Senator Barrasso, excessive rules from EPA affecting coal-fired power plants pose a serious threat to America's economic competitiveness. Because Mississippi has diverse fuels and power generation technology options, including coal, our State can offer electric rates below national average and attract more job-creating investment. The President said in 2008, we can develop clean coal technology. EPA needs to help make good on that promise.

EPA's regulatory assault on coal does not diminish the influence of foreign energy producers or bring down prices for families and businesses.

Now, with regard to water, our next EPA Administrator will oversee development and implementation of more than just air regulations. If confirmed, you would be the primary decisionmaker on how to regulate activities related to chemical manufacturing, farming activities, forest products and private property rights, among others. I am interested to hear how you plan to approach water issues and water regulations that could have a severe impact on job creation. This would include burdensome permits for forest roads, development of numeric nutrient standards for the Gulf of Mexico, how you would exercise EPA's veto authority under Section 404 of the Clean Water Act, and if you believe the preemptive veto

of any project before it goes through the regular NEPA process is appropriate.

These issues are critical for Mississippi and for the entire Country, the well-being of all Americans and their ability to earn a living.

So I look forward to the hearing regarding these important issues. Securing a productive and reliable energy plan should be a top priority. And yet the focus should be on efficient and safe ways to utilize America's abundant resources, not regulatory decisions that hurt jobs and block affordable energy. Thank you very much.

Senator BOXER. Thank you, Senator.

So I wanted to say, since we have so many members here, that Senator Vitter and I were talking to Senator Wicker, we came up with a new early bird rule. So the way it will work is, whoever is here at the time the gavel goes down, in their chairs, that will be the order by seniority. But after the gavel goes down, then the early bird rule. Is that OK with everybody? Yes? OK.

So we're going to go to Cardin, Sessions, Udall, Boozman. Go ahead, Senator.

OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. Thank you, Madam Chair. I noticed that that rule was implemented only after I got a chance to speak.

[Laughter.]

Senator CARDIN. I just would note that for the record, but I still love you.

Senator BOXER. Here is my answer to that. Anyone who really cares about the future is a hero. Because you changed the rules for the future, we all thank you for that.

OK, let's move to Senator Cardin.

Senator CARDIN. Madam Chair, I am honored to be the first person recognized under the new rules.

[Laughter.]

Senator CARDIN. Let me welcome Ms. McCarthy to our Committee and thank you very much for your public service. I thank your family. You are stepping forward in an extremely important role.

As you can see by the members' interest in this hearing, that has a lot of members' interest. That is courageous of you. We thank you. This is an extremely important public service and we very much appreciate your willingness to serve.

EPA has a proud history, since 1970, bipartisan support. An agency that we labeled Environmental Protection Agency because we want to protect the environment for future generations, that is the responsibility. The Clean Air Act, the Clean Water Act were bipartisan actions taken by Congress because we recognized that we have a responsibility to American families to protect their health and protect the environment for future generations.

As Senator Boxer already pointed out, the cost-benefit ratios of these laws are well-documented. Multiple factors of 40 to one in the costs associated with implementing these statutes and the benefits that we receive from clean water and clean air.

In Maryland, we are very proud of what we have been able to do as a State. We enacted, in 2006, the Maryland Healthy Air Act. Those who claimed it would cost jobs, it did just the reverse. It created jobs in our State. And it provided a healthier environment for the people in Maryland.

The problem is, like Delaware, we are downwind. If we don't get help from the Federal Government in enforcing clean air standards, even though we can do the best job possible in our State, our people will still be vulnerable because of inaction in other States. That is why we are concerned about proper enforcement of national laws. It helps us, even though our State has done the right thing.

We have families with children with asthma. We know what happens when the Clean Air standards are not as strict as they need to be. We have families with people who have heart disease that are affected by the quality of our air. We have water-borne disease problems in our State because of the quality of the water.

I think the colleagues on this Committee have heard me talk frequently about the Chesapeake Bay, and we had a chance to talk about the Chesapeake Bay. The Chesapeake Bay is a multi-jurisdictional body of water, and all of the surrounding jurisdictions have come together in an effort to recognize the importance of the Chesapeake Bay as a way of life for us in our community, but also its national significance. We have to work together.

The Federal Government is an important partner. And we have made a lot of progress. But let me make it clear. The Baltimore Inner Harbor today is unfit for human contact about 73 percent of the time. We still have a lot more we need to do. So we need your help. And yes, we have established programs to deal with development and agriculture and storm runoff.

But there is also the issue of climate change that affects the Chesapeake Bay and affects the people of my State. Smith Islanders who are trying to hold on to that last bit of land know that every increase in sea level affects their survival. The sea grasses in the Chesapeake Bay are not as strong as they need to be. Why? Because of water temperature and rising water temperature. That affects our watermen and their livelihood. It affects the diversity within the Bay. It affects the health of the Chesapeake Bay.

So yes, we are concerned about climate change. We are a coastal State. Every State in America should be concerned about it. Our military installations are vulnerable. As Senator Carper mentioned, the national security interest. There is a national security interest to make sure that we deal responsibly with global climate change. The best thing is not adaptation, the best thing is to slow down and do what we can to prevent unnecessary carbon emissions.

EPA needs to be guided by the law and good science. Quite frankly, looking at your record, you have done both. I applaud you for that, because we need an EPA Administrator that will follow the law, use best science, work with us, and protect the public as you should.

I thank you for stepping forward and I am proud to support your nomination.

Senator BOXER. Thank you, Senator.

Senator Sessions.

OPENING STATEMENT OF HON. JEFF SESSIONS,
U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Good morning, and thank you.

Ms. McCarthy, it was a real pleasure for me to have a good conversation with you late yesterday, last night. I value Senator Carper's opinion and look forward to evaluating your nomination.

If confirmed, you will be taking control of a very important Federal agency. I don't think there is any agency in Government today that has more potential and actual reach down to the average American, touching their lives in ways never contemplated when Congress passed some of the laws we passed over the years.

I have heard from some that you will be a distinct change from your predecessor and that you are pragmatic and data-driven. I hope that is true. It is important that we move in that direction. But I am mindful, you were the principal architect of Boiler MACT, Utility MACT, the Greenhouse Gas Rules, the Ozone and PM standards and the Cross State Air Rule, which was recently struck down by the D.C. Court. So if you think about it, under statutes passed long before global warming was contemplated, now CO_2 is being defined as a pollutant, and EPA is able to reach into someone's backyard where they are barbecuing, their lawnmower, their house or their automobile and so forth. It is a massive reach and just a pure sense of Federal power to areas never before contemplated, and never expressly legislative by the U.S. Congress.

So I worry about that, and the American people worry about that. We are hearing a lot of concerns from my constituents.

A most recent study by the National Association of Manufacturers found that just seven of the new EPA rules would require total capital expenditures of about $400 billion to $880 billion. That is very significant. Americans expect the environment to be protected. But they worry about our competitiveness in the world marketplace. And certainly after trillions of new spending by this Administration and hundreds of new regulations that have been asserted as creating jobs, the United States has 3 million fewer jobs today than we had in 2008. We are not creating jobs. Jobs are leaving the work force every month. And last week's report showed 88,000 jobs being created, 486,000 Americans leaving the work force. So it is not a healthy thing, in my opinion.

I want to tell you a little about the Henry Brick Company in Dallas County, Selma, Alabama, one of our counties with the highest unemployment rate in the State. They were formed in 1945. I think we have a picture of the family there. They made about 35 million bricks a year. By the 1970s they were making 75 million with 100 employees. By the 2000s they were up to 115 million bricks. But sadly, the economic downturn hurt them. It hurt a lot of other companies, particularly brick companies. They fought hard to stay open, they hope to stay open. They have just 60 workers today.

So in 2005, after EPA passed a new rule called the Brick MACT, Henry Brick Company spent $1.5 million to install scrubbers to clean their emissions. Now after having entered that settlement, entering into a new settlement that you've entered into, with an environmental group, EPA is proposing an even more stringent rule that would require Henry Brick to install more equipment, costing as much as $4 million to $8 million. Now, their gross rev-

enue last year was $6 million. You see the impact of that on this small company?

So this is a tremendous strain. It places jobs at risk. This is the kind of real impact that is occurring in our Country today. I just hope that if you are selected for this position and confirmed, and it looks like you will be, then I think you need to consider this and some other similar situations as we go forward.

Senator CARPER [presiding]. I think, Senator Udall, you are next on the list.

OPENING STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator UDALL. Thank you, Mr. Chair. It is good to see you here and have you presiding.

Let me just echo what everybody else has said, Ms. McCarthy. I think that we really appreciate your putting your name forward. We appreciate you for the work you have done at the Air Quality Bureau. I really wanted to highlight some of that work, because I know what you are going to be doing as EPA Administrator is trying to figure out the right balance between environmental protection and our economic needs. That is what you struggle with every day when you do the work.

As you are aware, we had a very serious air quality issue in New Mexico. It was an issue revolving around the Regional Haze Rule. In the time period of 2011, EPA proposed a rule for the San Juan Generating Station, this is one of our biggest power generators in New Mexico, to install best available control technology to reduce pollution. It called for the owners of that generating station to install selective catalytic reduction technology on each of four units. And as you know what occurred could have just deteriorated into lawsuits and gridlock, and there were accusations back and forth about how much it was going to cost, and we couldn't go forward with this.

But the thing that I was impressed with is the EPA and under your guidance and with the regional administrator, they said, let's hear proposals about how to solve this. Let's not get into a long protracted lawsuit and not get anywhere. So what ended up happening as a result of that, the Governor's environmental agency, and by the way, we are talking about a Republican Governor, and the Public Service Company of New Mexico, who owns this generating station and your regional administrator all got together. And they started talking, and there was a proposal put out by the environment department. What ended up happening is a, what I would call a common sense solution, a win-win solution in this circumstance. Two of the units of the four were retired and are going to be replaced by natural gas-fired units, which that helps in terms of pollution and is a win-win. And the actual technology on the other two units I think is being updated. And the company feels they can win with it. So that is a win-win.

So all of the parties here, the citizens of New Mexico, public service company that owned the generating station, the Governor of New Mexico, all of us supported that coming together. Really what I think you bring to this position is that kind of common sense solution of problems.

So I support this nomination and I don't want to go on any longer, because I know we are trying to get through this. I will put more detailed arguments and backup in the record as to what I have done here and leave some additional time for others to speak. I think this is a very good example of the kind of work that you have done, and I look forward to you doing the same kind of work as the head of the Environmental Protection Agency.

Thank you very much.

Senator CARPER. Thank you, Senator.

Senator Boozman is next, then Senator Gillibrand. Senator Boozman.

OPENING STATEMENT OF HON. JOHN BOOZMAN, U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator BOOZMAN. Thank you, Senator Carper. And thank you, Senators Boxer and Vitter for holding this important hearing.

We just appreciate you, Ms. McCarthy, for your willingness to serve. These are very difficult positions. I also appreciate your coming by and having a good visit.

We all value clean water, clean air and conservation. In short, we all value a safe and clean environment for the benefit of all Americans. No single agency or individual is responsible for bringing about these important goals. These are certainly things that the American people from all walks of life care about and cherish and work to achieve.

I would like to talk a little bit also about the transparency issue and the accountability. Every Federal agency should be committed to transparency and accountability. This includes transparency and accountability to Congress and the American people. Certainly we must hold every Federal agency, including the EPA, to accountability in this regard. Transparency and accountability at the EPA should mean several things. First, it means the agency should respond fully, truthfully and promptly to Freedom of Information Act requests and congressional inquiries. It means that the agency's business should not be conducted on secret email accounts and that shield officials from accountability.

Transparency and accountability mean that the EPA shares the science, the underlying data used to write or promote rules that have such tremendous effect that will cost the American people in some cases billions of dollars every year. This is a matter of not only transparency, not just to Congress but also to the scientific community and ultimately to the American people.

Transparency and accountability mean that the EPA should recognize and follow the spirit of cooperative federalism, working with, not dictating to State partners. The principle is built into our most important environmental laws, and too often the agency ignores it.

When we visited, we had a good talk about that, and you mentioned the importance of cooperative federalism in our meeting. I appreciate that and hope to hear more about what that means in today's hearing.

Transparency and accountability mean that the agency should implement laws like the Clean Air Act in the way that Congress intended. New authorities and requirements should not be suddenly discovered decades after a law was written in order to avoid

accountability to the democratic process. Transparency and accountability mean that all citizens from all points of view and sides of the political spectrum will have equal access to the agency's activities and processes. A suit and settle approach that provides unique access and influence to one set of stakeholders on one side of the political spectrum, while locking out States and other interested parties, is hostile to the democratic values that the agency should uphold.

Ultimately, I believe you are a very gifted and committed individual with the credentials, knowledge and experience for the important role. My concern relates to the needs, again, and I have said it over and over in this, is the transparency, the accountability, the respect for the democratic institutions and principles that are foundational in our Country.

Yesterday I joined several of my colleagues in sending a letter to you outlining some concerns that we had regarding the agency. I think our requests are just good government, non-partisan requests based on the principles that should apply to all agencies and administrations in both parties. I hope that we will get a response quickly, thoroughly, probatively. And I hope that today's hearing will allow us to dig into some of these issues a little bit more.

Thank you for being here and we look forward to your testimony.

Senator BOXER [presiding]. Thank you, Senator.

Our final Senator is going to be Senator Gillibrand. Then finally you get to say a word or two. Go ahead.

OPENING STATEMENT OF HON. KIRSTEN GILLIBRAND, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator GILLIBRAND. Thank you, Madam Chair, for holding this hearing.

I am pleased today to speak in support of the nomination of Gina McCarthy to serve as our next Administrator of the EPA. President Obama has made an excellent selection by putting this nomination forward to the Senate.

As we have heard from our other colleague today, Gina McCarthy is a distinguished public servant with a career spanning more than three decades on the Federal, State and local level. The past 4 years, she served as the Assistant Administrator for the Office of Air and Radiation, where she has had a role in some of the most important new environmental policies that will protect the air we breathe by reducing harmful emissions that threaten our health and accelerate climate change.

With her leadership, the Administration recently proposed a new Tier 3 vehicle emissions standard, which will reduce tailpipe emissions and protect public health by lowering the amount of sulfur in gasoline. This is expected to reduce asthma rates in our children. She has also taken a leading role in reducing mercury, arsenic and other toxic emissions from power plants. For mothers like me, who care what my children breathe every day, and the effects that it could have on their health, these types of common sense policies are exactly the right priorities for the EPA.

Gina McCarthy has worked at every level of government. I am confident that she understands how the regulatory process impacts States and local government and brings that perspective to the job.

With tighter budgets at every level of government all across the United States, it is important to have an Administrator who can work with local leaders to find common ground.

And her public service has demonstrated that protecting the air we breathe and the water we drink is not a partisan or ideological issue. It is about protecting our families. She served both Republicans and Democrats throughout her career, earning praise across the aisle for her pragmatism. Jodi Rell, the former Republican Governor of Connecticut, who Gina served as Environmental Protection Commissioner, called her a dedicated public servant with tremendous talent and passion.

Madam Chair, the next EPA Administrator will confront a broad range of challenges from restoring our significant water bodies, like the Long Island Sound, to protecting against the threat of climate change, protecting our children from toxic chemicals that could harm their development or contribute to learning disabilities, autism, cancer, to rebuilding our Nation's crumbing water infrastructure. It is critical that we have someone like you in that post who can work across the aisle to implement effective environmental protections that will lead to a healthier population, preserve our natural resources for generations to come.

I applaud President Obama for nominating Gina McCarthy to take on this difficult task. I am confident that you are the right person for the job. Thank you for your service and your willingness to continue to serve the people of the United States. Thank you, Madam Chair.

Senator BOXER. Thank you so much. And I want to thank all my colleagues. You have been just so, I think, interested in this. It is wonderful to see both sides of the aisle come out in the numbers that we have seen.

Well, Assistant Administrator McCarthy, this is your time. We are looking forward to hearing from you. Please proceed.

STATEMENT OF GINA McCARTHY, NOMINATED TO BE ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. MCCARTHY. Thank you, Madam Chairman.

Please allow me to express my appreciation to you and to Ranking Member Vitter for holding this hearing. I also want to thank Senators Warren and Cowan for their kind introductions, as well as the members of this Committee for spending time with me since my nomination, as well as during my tenure at EPA.

I would also like to take a moment to thank my family, my husband Ken, seated behind me, and my three children, Dan, Maggie and Julie, who are hopefully hard at work today. Their support has been an endless source of energy and inspiration to me.

I am deeply honored that President Obama has nominated me to lead the EPA. Having spent my career in public service, I know of no higher privilege than working with my colleagues at EPA, with Congress and our public and private partners to ensure that American families can breathe clean air, drink clean water and live, learn and play in safer, healthier communities.

I take the mission EPA seriously, to protect public health and the environment. We have made dramatic progress since 1970,

when EPA was first created, which gives us very much to celebrate. Our air, land and water are significantly cleaner and safer today, while the economy has grown and prospered during that time. This record of success provides confidence that we can meet the very real and significant challenges that we still face in protecting American families from pollution and in ensuring that future generations can live in a cleaner, healthier and safer world, while enjoying even a more prosperous economy.

To that end, I know many members here agree that we must ensure that increasingly complex and numerous chemicals we use in products are safe. If confirmed, I look forward to working with members of this Committee in your effort to reauthorize our antiquated chemical safety laws. We must also ensure that that water that is so critical to public health, quality of life and prosperity is protected from dangerous contaminants, including new emerging ones.

If confirmed, I look forward to working with members of the Committee to ensure that EPA's use of science is rigorous and transparent, so we can preserve and improve the Nation's water quality. And as we continue our efforts to address improved air quality, we must also, as the President has made clear, take steps to address climate change. Climate change is one of the greatest challenges of our generation. And facing that challenge with increased focus and commitment is perhaps the greatest obligation we have to future generations.

But I am convinced that we are up to that task. Common sense steps can be taken to reduce emissions of greenhouse gases while opening up markets for emerging technologies and creating new jobs. This Administration has already, through our greenhouse gas and fuel economy standards, set us on a path to reduce greenhouse gas emissions by 6 billion metric tons, just by doubling the efficiency of cars and other light duty vehicle by 2025, which will save consumers an average of $8,000 at the pump and reduce our reliance on foreign oil by 12 billion barrels.

This national car program was a joint effort of States, the automobile industry, labor, environmental organizations, consumer advocacy groups and the Federal Government. It is one of the best examples of a key lesson that I have learned during my many years of public service. Public health and environmental protections do not come solely out of government, and they don't come solely out of Washington, DC. They happen in States, cities and towns all across the U.S. when people take action to make their homes more efficient, their businesses run better, their products perform better and their communities cleaner, healthier and safer.

Prior to coming to EPA in 2009, I was lucky enough to spend more than 25 years working at the State and local level, listening to, learning from and being inspired by people from all walks of life. And that brings me to one more important lesson that I learned. Environmental protection is not a partisan issue. I worked for and with Republicans, Democrats and Independents, who all shared a common desire and willingness to roll up their sleeves and figure out what kind of common sense approach we could take to be responsible and to act consistent with the laws and the science.

That is why my door is always open, that is why I listen well and I welcome all views. I know from our meetings and discussions that you share my passion and my commitment for serving the American people. I am fortunate enough, if I am confirmed as EPA Administrator, to continue to work with you, Chairman Boxer, Ranking Member Vitter and all the members of this Committee, over the coming years, to serve the American people.

Thank you very much, and I look forward to taking your questions.

[The prepared statement of Ms. McCarthy follows:]

Statement of

Gina McCarthy

Nominee for the Position of

Administrator of the

United States Environmental Protection Agency

Before the

Environment and Public Works Committee

United States Senate

April 11, 2013

Thank you, Madam Chairman.

Please allow me to express my appreciation to you, and Ranking Member Vitter for holding this hearing; Senator Warren, Senator Cowan for your kind introductions; and Members of this Committee for the time that you have spent with me, both since I was nominated and during the years I served in my current position with the Environmental Protection Agency. I am grateful for the commitment and passion for serving the American people that we share and that comes across so clearly in your discussions with me.

Also, I'd like to take a moment to thank my family – my husband, Ken McCarey, and my sister Elaine who are seated behind me. Their support for me and my work in public service has been an unfailing source of energy and inspiration.

I'm deeply honored that President Obama has nominated me to lead the Environmental Protection Agency. Having spent my entire career in public service, I know of no higher privilege than leading the Agency and working with partners to ensure that the American public can breathe clean air, drink clean water and live, learn and play in safe communities.

The mission of EPA is clear – to "Protect Human Health and the Environment" – and I take that direction very seriously. When the EPA was created in 1970, the country was in a state of environmental crisis: air pollution was visible to the naked eye, rivers were on fire and contaminated land languished. In the past 40 years, we have made dramatic progress that gives us much to celebrate: our air, land and water are, today, significantly cleaner and safer. That progress has gone hand in hand with long-term economic growth and prosperity.

This record of success provides confidence that we can meet the very real and significant challenges we still face – in ensuring that no American's health is threatened by pollution and

that future generations can live in a cleaner, safer world while enjoying an even more prosperous economy.

To that end, I know that many Members agree that we must ensure that the increasingly complex chemicals in the products that we use are safe. If I am confirmed, I look forward to working with the Members of this Committee – from both sides of the aisle – to re-authorize our antiquated chemical-safety laws so that they provide a clear, fair set of rules for industry and certainty for consumers that their products are safe.

We must ensure that water – so critical to human health, quality of life and economic activity – is protected from dangerous contaminants, including new, emerging ones. If I am confirmed, I look forward to working with Members on this Committee to ensure that EPA's use of science in protecting water quality is rigorous and transparent – and that we are effectively helping our state and local partners as they shoulder their share of the mission to preserve and improve the nation's water quality.

As the President has made clear, we must take steps to combat climate change. This is one of the greatest challenges of our generation and our great obligation to future generations. I am convinced that those steps can and must be pursued with common sense. And I firmly believe they can produce not only benefits for public health, but also create markets for emerging and new technologies and new jobs. We have already seen that the greenhouse gas and fuel economy standards for cars and other light duty vehicles will save American families more than $1.7 trillion dollars in fuel costs and the American economy 12 billion barrels of oil and will eliminate 6 billion metric tons of carbon pollution – all while addressing a major source of greenhouse gas emissions.

Those standards reflect the joint work of states, the automobile industry and labor, as well as the federal government. They offer a first-rate illustration of a key lesson that my long career in public service has taught me: that environmental protections do not come solely out of government or out of Washington D.C. – they happen in our States and in our cities, and in our businesses, through innovation and through the initiatives of regular people taking common sense steps to make their factories run better, their products perform better and their communities better places to live.

I've seen this work up close and personal. Prior to coming to EPA, I spent over two decades working at the State and municipal level. I've been involved in running the environmental offices for Connecticut and Massachusetts, in addition to running a variety of local government programs and partnerships. In fact, Madam Chairman and Members of the Committee, I marked over 25 rewarding years in public service, before joining the federal government for the first time in 2009, when I came to Washington to head the EPA's Office of Air and Radiation.

What I've learned from my experience at the state and local level is that environmental protection is not partisan. I've worked for Republicans, I've worked for Democrats and I've worked with those who, frankly, could care less about party affiliation, and who simply care about rolling up their sleeves and figuring out how to move forward in a common sense, responsible manner that is consistent with the law, and with the science. Fortunately for public

health and environmental protection, this group makes up the majority of civil servants and the majority of the American people.

It has been a privilege to serve, for the past four years, as EPA's Assistant Administrator for Air and Radiation. We have attempted to make adherence to the law and to sound science the twin guideposts of our work and we have turned, again and again, to the public, to the states and to business, and to environmental stakeholders, in order to ensure that we are working with the best information available and with a full understanding of the needs and interests of all of those affected by the regulations we have issued.

During my tenure at the EPA, I'm very proud of the work that we've undertaken. In addition to the historic greenhouse gas and fuel economy standards, we have issued Mercury and Air Toxics Standards for power plants. The pollution reductions resulting from these standards will save up to 11,000 lives and prevent thousands of heart attacks, asthma attacks, emergency room visits and hospital admissions, which are worth up to $90 billion in avoided health impacts to American families. Between the time the standards were proposed and the time they were issued in final form, I and my staff worked tirelessly with utilities, grid operators, states, environmental organizations and the public to craft the solutions needed not just to make the standards technically correct, but to make complying with the standards practical and workable for the utility industry and the power sector overall. We understood that we had to ensure that those public health and economic benefits could be achieved while maintaining the affordable and reliable electricity that literally powers our economy.

Also, during these past four years, one of the most dramatic and potentially beneficial changes that our energy markets and overall economy has seen has come in the steep growth in the production and use of natural gas, thanks especially to the widespread use of hydraulic fracturing. During this same time, the EPA was called on to set air pollution standards in the oil and gas sector that included, for the first time, emissions from hydraulically "fracked" natural gas production wells. In setting out to develop those standards, we listened carefully to the companies large and small that drill and operate production wells – as well as to the states and communities that both benefit from the production and are affected by the emissions. We did our best to be good listeners, and the resulting standards adopted the best practices already in use by leading companies and states, provided the time the industry needed to come into compliance, and offered a streamlined approach to permitting that was adapted to the unique needs of fracking operations and avoided duplication with already existing state permitting and reporting.

As a result, the standards will result in more sellable product in the pipeline for companies while reducing up to 290,000 tons of harmful volatile organic compound emissions – and a side-benefit of reducing methane emissions equivalent to 33 million metric tons of carbon dioxide – without slowing down oil and gas development. I have done my best to keep my door open to businesses, environmental advocates, local communities, the states, tribes, labor and the public at large. As a result, I have been rewarded time and again, with information and insights that have led to the development of smarter, more cost-effective rules, and better designed and implemented policies and programs to build partnerships and enhance collaboration. Central to all my efforts has been a clear recognition that the EPA must work hand in hand with states, local communities and tribes if we are to make continued progress in our common goal of protecting public health and

the environment while growing the economy – especially in times like these when resources are so limited and the challenges we face together are so complex. If I am fortunate enough to be confirmed as EPA Administrator, I intend to keep my door and my mind open, and look forward to working closely with all Members of this Committee as well as stakeholders, businesses and communities across the country.

Again, thank you, Madam Chairman, and thank you distinguished Members of this Committee. I look forward to taking your questions.

Senator David Vitter
Questions for the Record
Gina McCarthy Confirmation Hearing
Environment and Public Works Committee

Aggregation:

EPA has a policy of "aggregating" a number of different emissions points into a single stationary source. EPA's regulations require that these emissions points be "contiguous or adjacent" to each other, yet EPA is implementing a policy, found nowhere in its regulations but based on a Memorandum that you drafted, that emissions points may be aggregated even if they are many miles apart if EPA finds them otherwise "interrelated".

EPA determines whether emissions points should be part of the same stationary source on a case-by-case basis by looking at three factors: whether they are under common control; located on one or more contiguous or adjacent properties; and whether they are in a single major industrial grouping (the same two-digit SIC code). The interpretation of adjacency to require a consideration of both proximity and interrelatedness is not the result of the guidance memo I issued, but rather is the position that EPA has taken for more than three decades of applicability determinations and guidance letters, in which the Agency considered proximity and interrelatedness in determining whether emission units are adjacent.

Recently, the U.S. Court of Appeals for the Sixth Circuit rejected EPA's interpretation, where EPA claimed that over a hundred gas wells and a processing plant, spread out over 43 square miles, were contiguous or adjacent to each other. Despite the court's conclusion, EPA issued a December 2012 memo declaring that it would ignore the Sixth Circuit's case in most states. Why does EPA insist in pursuing an interpretation of "aggregation" that is not in the regulations, that contradicts the common meaning of "contiguous and adjacent," and flouts the decision of a court of appeals?

In EPA's view, it is essential to preserve flexibility in determining the scope of a source based on a case-by-case analysis of the three factors. It is important to understand that EPA and states have made source determinations, at the request of the source, that aggregate smaller facilities into one larger one. By doing so, the source gains important flexibility to "net" its emissions over the larger facility, reducing or shuttering operations in one area while increasing others, without triggering permitting. For example, the State of Pennsylvania made a determination in 2012 to "aggregate" two refineries in Philadelphia which provided that source the flexibility it needed to remain operational. In another case, EPA Region 2 agreed with a request from an aluminum plant to consider two (formerly separate) plants as one (http://www.epa.gov/region07/air/nsr/nsrmemos/alcoany.pdf). In other cases, EPA has applied the three factor test and determined that adjacent sources are not part of the same stationary source, because while close together, they were not interrelated (http://www.epa.gov/region07/air/nsr/nsrmemos/we1999.pdf). In summary, a "one-size-fits-all" definition of adjacent that is based on a single bright line test of distance does not provide EPA, states, or sources the needed flexibility to define the scope of the source to support sources' business needs.

If confirmed as EPA Administrator, will you commit to adopt the common sense and legally correct reasoning of the Sixth Circuit across the nation? Why shouldn't a common sense, legally defensible, dictionary definition of "adjacent" apply throughout the country? Will the agency publish guidance on this issue that makes this clear?

Outside the 6th Circuit, rather than using a one-size-fits-all approach in determining which nearby, commonly-controlled emitting units should be treated as one source, EPA will continue to apply the agency's decades-old approach of making case-by-case determinations based on a review of each facility's specific situation, including the relationship between the activities at the units. The agency is concerned that national application of the 6th Circuit decision would require EPA to treat as one source facilities that are nearby and under common control, even when their activities are completely unrelated.

Can you make a clear, unambiguous public statement that clarifies that efforts to comply with the utility MACT do not and will not make a facility subject to the new source performance standard for greenhouse gases?

Given that EPA's proposed carbon pollution standard does not cover modified sources and that new source performance standards generally exempt pollution control projects from being considered modifications, adding pollution control technology to a coal-fired power plant to comply with MATS would not subject that plant to a new source performance standard for greenhouse gases.

Will the agency publish guidance on this issue that makes this clear?

Guidance on this issue is not necessary because the proposed carbon pollution standard does not apply to existing sources.

At a hearing recently, Congressman Barton asked you how many people presented to American hospitals last year with mercury poisoning. What is the answer to that question?

EPA staff has informed me that mercury poisoning is not a reportable condition in the United States, and therefore, accurate statistics on the number of people presenting in clinical settings with mercury poisoning are not readily available. The 2011 Annual Report of the American Association of Poison Control Centers' National Poison Data System documented about 1,700 single exposures to mercury or compounds containing mercury. Most people in the United States are exposed to mercury when they eat fish and shellfish that are contaminated with methylmercury, an organic compound that can be formed when mercury is released to the environment. Most mercury exposures tend to be manifested in subtle, yet very serious, health effects such as neuro-cognitive deficits. For fetuses, infants, and children in the U.S., the primary concern of methylmercury exposure is impaired neurological development. Methylmercury exposure in the womb, which can result from a mother's consumption of fish and shellfish that contain methylmercury, can adversely affect a baby's growing brain and nervous system. Impacts on cognitive thinking, memory, attention, language, and fine motor and visual spatial skills have been seen in children exposed to methylmercury in the womb. Human biological monitoring by the Centers for Disease Control and Prevention and other health organizations shows that most people have blood mercury levels below a level associated with possible health

effects. However, these studies also consistently confirm that approximately 5% of childbearing-aged women have methylmercury levels in their blood at levels of potential concern.

Carbon Tax:

The IMF recently released a study that equated a lack of a carbon tax with a subsidy for fossil fuels. Do you think that is correct? Do you favor a carbon tax, imputed or direct?

I am not familiar with the IMF study to which your question refers so I am not in a position to comment on the study. It should be noted that the Administration has not proposed a carbon tax, nor is it planning to do so. In addition, I would note that as Administrator of the Environmental Protection Agency this specific issue would not be in my purview.

What do you think the social cost of a ton of carbon is?

The social cost of carbon (SCC) is an estimate of the net present value of the flow of monetized damages from an incremental increase in carbon dioxide emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. The Interagency Working Group on the Social Cost of Carbon reported central estimates in 2020 of 6.8 to 41.7 dollars per metric ton in 2007 dollars, depending upon the discount rate, and up to 80.7 for extreme damages.

As you know, the EPA led an interagency study a few years back to examine the social cost of carbon. They examined a range of numbers, none of which were particularly justifiably. They also used one discount rate to assess costs and one to assess benefits, which is, I believe, contrary to OMB practice and guidance. Will you initiate such a study again? Will you open the study to notice and comment?

EPA participated in the Interagency Working Group on the Social Cost of Carbon led by the Council of Economic Advisors and the Office of Management and Budget. The technical support document from interagency working group set a "goal of revisiting the SCC values within two years or at such time as substantially updated models become available..."

GHG:

What is the right target for United States emissions of greenhouse gases? How many tons a years should we be emitting to minimize our exposure to harmful global warming?

In Copenhagen in 2009, the U.S. committed to reducing U.S. greenhouse gas emissions in the range of 17 percent by 2020 from 2005 levels. Over the longer term, the science indicates that the U.S. and other major emitting countries will need to reduce emissions further to mitigate the most severe impacts of climate change.

Alternatively, what concentration of greenhouse gases in the atmosphere is harmful to human health?

EPA addressed the public health consequences of greenhouse gases in the atmosphere in the 2009 Endangerment Finding, where EPA found that elevated concentrations of the well-mixed greenhouse gases in the atmosphere may reasonably be anticipated to endanger the public health and to endanger the public welfare of the current and future generations. Greenhouse

gases impact human health by altering the climate. In the recent D.C. Circuit Court decision (*Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012)) regarding the 2009 Endangerment Finding, the Court found that "EPA had before it substantial record evidence that anthropogenic emissions of greenhouse gases "very likely" caused warming of the climate over the last several decades. EPA further had evidence of current and future effects of this warming on public health and welfare. Relying again upon substantial scientific evidence, EPA determined that anthropogenically induced climate change threatens both public health and public welfare." The Court upheld EPA's approach of relying "on a substantial record of empirical data and scientific evidence, making many specific and often quantitative findings regarding the impacts of greenhouse gases on climate change and the effects of climate change on public health and welfare" in order to make its determination of endangerment.

Where are the most cost-effective reductions of greenhouse gases likely to be?

EPA analysis has shown that there are numerous cost-effective reduction opportunities across the economy. As indicated in my testimony before the Committee, EPA's regulations addressing greenhouse gas emissions from light- and heavy-duty vehicles are projected to achieve dramatic reductions in greenhouse gas emissions while at the same time substantially reducing oil consumption and saving consumers billions of dollars at the pump. EPA economy-wide and electric power sector models show that electric power supply and use represents the largest source of emissions abatement potential. Additionally, the EPA report, Global Mitigation of Non-CO2 Greenhouse Gases (EPA 430-R-06-005, 2006) demonstrates that non-CO2 greenhouse gas mitigation can play an important role in climate strategies, and that methane mitigation from the energy, waste, and agriculture sectors can provide a substantial quantity of cost effective reduction opportunities. Finally, energy efficiency also offers a low cost energy resource with the potential to reduce greenhouse gas emissions across the economy. For example, consumers, home owners, building owners and operators, and industrial partners have saved more than 1.8 billion metric tons carbon dioxide equivalent over the past twenty years of the ENERGY STAR program.

Can you give me any assessment of the additional mortality (deaths) or morbidity associated with the emissions of greenhouse gases? I know that EPA is always very precise about the mortality and morbidity associated with ozone and particulate matter and even mercury. Does it have the same sort of analytical rigor with respect to greenhouse gases?

EPA is committed to providing scientific and analytic rigor with regard to any of the agency's greenhouse gas and climate change analyses. The peer-reviewed scientific assessments are clear that human health is at risk due to greenhouse gas-induced climate change , including through worsened air quality, increases in temperatures, changes in extreme weather events, increases in food and water borne pathogens, and changes in aeroallergens. Increases in ambient ozone are expected to occur over broad areas of the country, and they are expected to increase serious adverse health effects in large population areas that are and may continue to be in nonattainment. There are existing individual studies that quantify mortality and other health effects due to climate change, but this is an emerging field and we expect our tools will continue to improve.

If greenhouse gases are air pollutants, and if they endanger public health, and if they come from numerous large, area, and minor sources, why has the agency not chosen to regulate them under the

NAAQS program? If we believe GHGs are deleterious to public health, isn't the appropriate response to promulgate a standard above which humans are at risk?

Greenhouse gases are air pollutants under the CAA but they are different from other air pollutants in many important ways, and thus the application of the NAAQS approach to greenhouse gases would be challenging. EPA therefore is pursuing and exploring other common-sense approaches to using the CAA to address greenhouse gas emissions.

NSPS – Existing:

Has the agency done any legal analysis of the challenge of regulating greenhouse gases from powerplants under 111(d)? Can you share it with me?

At this time, EPA is working to finalize the proposed NSPS for new sources. The agency is not currently developing any existing source GHG regulations. In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency would ensure, as it always seeks to do, ample opportunity for States, the public and stakeholders to offer meaningful input on potential approaches.

NAAQS:

Can you identify language in Section 109 of the Clean Air Act that specifically prohibits the consideration of costs in the setting of National Ambient Air Quality Standards?

The U.S. Supreme Court held in Whitman v. American Trucking Associations, 531 U.S. 457 (2001) that in setting national ambient air quality standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. The Court's reasoning is found at 531 U.S. 464-472.

As part of the standard setting process, is EPA prevented from comparing the health and other effects of a considered NAAQS standard with the health and other effects of unemployment and economic dislocation?

In *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), the Supreme Court held that EPA may not consider the costs of implementing the standards in setting NAAQS that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act. The Supreme Court rejected the argument that EPA could consider costs of implementation because health and other effects could stem from implementation strategies. While EPA cannot consider the costs of implementing the standards when setting the NAAQS, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans (SIPs) to implement the NAAQS. Likewise EPA has discretion to consider costs in many of the CAA provisions authorizing EPA to set standards to control emissions.

Leaving aside the question of cost, how does EPA assess the health benefits associated with economic dislocation caused or likely to be caused by the new standards? Certainly there is some. Certainly it has effects or potential effects on human health. How are they quantified when you are making health-based assessments for revised national ambient air quality standards?

The over 40-year history of the Clean Air Act is one in which reducing harmful air pollution has gone hand in hand with economic growth and job creation. EPA's benefits assessments focus on

the benefits associated with reductions in air pollution. EPA acknowledges in the regulatory impact analyses that there are unquantified benefits and disbenefits that are not included in our estimates of total net benefits.

The Centers for Disease Control has cited numerous triggers for asthma attacks that are unrelated to air quality. How is that data factored into determination of revised NAAQS?

The Integrated Science Assessment (ISA) for ozone evaluates all of the scientific information regarding the relationship of ozone to asthma in light of other asthma triggers. It is the purpose of the ISA to reach determinations regarding whether ozone exposure is causally related to health outcomes, including asthma attacks. This information is taken into account in the agency's decisions on the current and potential alternative standards.

Will you commit to working with the CDC and others outside the agency to ensure that we are using the very best science before you set the new ozone standard?

EPA is committed to using the best available science in its NAAQS reviews, which is why the process ensures extensive peer-review by EPA's Clean Air Scientific Advisory Committee and public comment on the Integrated Science Assessment (ISA), the Risk and Exposure Assessments (REAs) and the Policy Assessment (PA), which the agency relies upon in making judgments on the current and potential alternative standards. CDC has been involved in the ongoing ozone NAAQS review.

If you do lower the standard for ozone, what do you imagine will be the compliance burden on the States? In other words, what portion of the additional emissions reductions will be as a result of things like fleet turnover, and what will localized compliance options look like?

Implementation of the NAAQS will be achieved through a combination of state plans and federal measures. The states' obligations are set forth in Title I of the Clean Air Act.

If the sole concern of a NAAQS standard-setting exercise is human health (and a protective margin for it), why is setting the standard at background levels not always the best and simplest answer?

The Clean Air Act requires that EPA to establish a primary NAAQS at a level that is requisite to protect public health with an adequate margin of safety. In setting standards that are 'requisite' to protect public health and welfare, as provided in CAA section 109(b), the EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. Considering what standards are requisite to protect public health with an adequate margin of safety requires public health policy judgments that neither overstate nor understate the strength and limitations of the evidence or the appropriate inferences to be drawn from the evidence. The Administrator must weigh the available scientific and technical information, and associated uncertainties, to reach a final decision on the appropriate standard level. For example, in considering the requirement for an adequate margin of safety, the EPA considers such factors as the nature and severity of the health effects involved, the size of at-risk population(s), and the kind and degree of the uncertainties that must be addressed.

If the sole concern is health, why is OMB involved? Why are there any policy considerations at all? If the dose is the only relevant metric, why is the Administrator involved? What considerations do OMB, the Administrator, and all others involved in the process bring to bear?

The Clean Air Act directs the Administrator of EPA to set primary standards that, in the Administrator's judgment, are requisite to protect public health, including the health of sensitive subpopulations, with an adequate margin of safety and secondary standards that are requisite to protect the public welfare. The Clean Air act requires EPA to periodically review the body of scientific evidence on the effects of air pollution on public health and welfare, and, based on that, determine whether to revise the standards to meet the requirements of the Act. This is required every five years. See response to the related question for discussion of the public health policy judgments involved in setting a primary NAAQS. OMB review of federal regulations occurs in accordance with Executive Order 12866.

RFS

Is ethanol good for the economy; does it make sense economically?

Ethanol plays a role in a number of programs and standards that EPA implements under the Clean Air Act, such as the RFS program. EPA does not have a position on ethanol beyond the scope of our responsibilities in implementing CAA provisions.

Do you think we will have 21 billion of gallons of advanced cellulosic available by 2030?

Under the Energy Independence Security Act (EISA) of 2007, which amended the Renewable Fuel Standard Program in the Clean Air Act, Congress established volume mandates of 36 billion gallons of renewable fuel by 2022, which includes 16 billion gallons of cellulosic biofuel, and 21 billion gallons of total advanced biofuel (including cellulosic biofuel). The law requires EPA to set annual volume standards designed to achieve the total renewable fuel requirement under EISA. It also requires EPA to set the volume of cellulosic biofuel for any calendar year at the projected volume of cellulosic biofuel production. It would be premature to judge whether this volume level is feasible for 2030 at this time.

PM

What percentage of the health benefits claimed or projected for all rules related to air emissions proposed in the last five years are the result of lowered emissions of particulate matter?

EPA strives to quantify all of the anticipated benefits for our air rules. Pollution controls often reduce multiple pollutants, leading to significant co-benefits from the application of those controls. For example, pollution control devices, such as scrubbers reduce SO2 emissions, also provide significant PM2.5 co-benefits. In some cases, EPA does not have the data to quantify all of the benefits associated with reducing air pollution, which prevents EPA from quantifying all the benefits associated with its rules. The agency does not have the specific calculation you request readily available.

Has the agency ever claimed that there would be health benefits for levels of particulate matter below the NAAQS for particulate matter? If so, explain.

EPA's approach to estimating the benefits of reducing fine particulate matter pollution is consistent with the best available science and advice from two Congressionally-created independent review boards, the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis. There are health benefits attributable to reducing

particulate matter pollution below the NAAQS and the agency does take those benefits into account. There is no scientific basis for ignoring those benefits. While the NAAQS is set at a level adequate to provide protection of public health – and should be neither more nor less stringent than necessary to do so – it is not set at a zero risk level.

Do you think the speciation of particulate matter is unimportant? Has the agency conducted any studies to examine the potential effect of the chemical composition of particulate matter? What have they shown?

Understanding the components of particulate matter is important. The Agency has invested in a $PM_{2.5}$ speciation monitoring program since 1999 to provide ambient air data for tracking air quality and to support scientific studies. In addition, the EPA and other organizations (e.g., HEI, EPRI) have funded research on health effects related to PM composition. In the PM NAAQS review completed in 2012, the Agency concluded that the currently available scientific information continues to provide evidence that many different components of the fine particle mixture as well as groups of components associated with specific source categories of fine particles are linked to adverse health effects. However, the scientific evidence is not yet sufficient to allow differentiation of those components or sources that are more closely related to specific health outcomes nor to exclude any component or group of components from the mix of fine particles included in the $PM_{2.5}$ indicator.

Have you or anyone at the agency (to your knowledge) ever asked or in any solicited an NGO or other organization or person to petition or sue the agency?

Response: No.

In the last five years, how many petitions or lawsuits that have subsequently been settled have been initiated by entities or persons who are not regulated by the agency? How many of those settlements have included requirements on the agency to promulgate a rule or alter the schedule of a rule already being promulgated?

In the last five years, how many petitions or lawsuits that have subsequently been settled have been initiated by entities or persons who are regulated by the agency? How many of those settlements have included requirements on the agency to promulgate a rule or alter the schedule of a rule already being promulgated?

Response (to two questions above): The EPA is sued hundreds of times a year and many environmental statues include provisions that allow for any citizen to file a petition or commence a civil action against the agency whether or not they are directly regulated under a particular standard or rule. EPA does not enter into settlement agreements that purport to provide the Agency with a new authority. Nor does EPA commit in settlement agreements or consent decrees to any final, substantive outcome of a prospective rulemaking or other decision-making process.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

Your predecessor indicated that the new automobile mandates would add "a little upfront" cost to cars. Yet in its own documents the federal government estimates that the additional cost for a new car will increase $3200 on average as a result of the mandate. How would you characterize that amount?

The estimated average additional cost of the vehicle in 2025 (estimated at $1800 over the 2016 standards, or about $3,000 over model year 2011) will be more than offset by an estimated $8,000 in fuel cost savings to the consumer over the lifetime of the vehicle.

Who should be primarily responsible for designing automobile mandates, EPA, DOT, or California?

EPA and DOT act under their respective statutory authorities, the Clean Air Act (CAA) and the Energy Policy and Conservation Act (EPCA) to promulgate vehicle emissions standards (CAA) and corporate fuel economy standards (EPCA). In the Clean Air Act, Congress included preemption waiver provisions allowing California to have a state new motor vehicle emissions program, provided certain statutory requirements are met.

How regressive are the costs imposed by environmental regulations? Has the agency ever examined that?

Response: I have always been very sensitive to the costs of regulations and have worked hard to find flexibilities where I can that help us to achieve environmental and public health benefits at a lower cost. At the same time we must be sensitive to two other points. First, the costs imposed by pollution control standards are a small component of the overall costs of goods and services. For example, even with the MATS rule in place, electricity prices are projected to remain well within their historical range of variability. Other rules, such as our Light Duty Vehicle standards for GHG emissions, can actually save consumers money over the life of a vehicle. Second, we must also keep in mind that the impacts of pollution often fall heavily on lower income individuals and protecting them can help reduce costs for medical treatment and missed work. If confirmed, I commit to continue to be sensitive to both the costs and benefits of our regulations for all Americans, including lower income families.

How concerned are you about the growing reliance of utilities on natural gas to fire powerplants? The simple reality is that natural gas is intensely volatile with respect to price. It always has been and it probably always will be. Coal, on other is very stable with respect to price. Do you think people will

blame the agency when their electricity prices start to climb or, worse, gyrate? How concerned are you about public backlash against the agency eroding its ability to do its important work.

Response: I believe, as does the Administration, that coal will remain one of our nation's important sources of energy. At the same time, our nation is fortunate to have a broad range of domestic energy sources, which includes not only coal, but also natural gas, wind, solar and nuclear among others. Utilization of all these energy sources through an all of the above energy strategy will help ensure that Americans continue to have access to clean, reliable and affordable electricity.

How many people at the agency/among your direct reports have ever worked in the regulated community?

EPA employees have a diverse and complementary set of career experience, including industry, non-profit, education and research. My experience suggests that a substantial proportion of EPA staff, including many of those who report directly to me, have worked in the private sector, including in sectors regulated by the agency.

How many discretionary rulemakings, that is, those not explicitly required by statute, is the agency undertaking currently?

Response: EPA only conducts rulemakings as authorized by statute. The rule of law, along with sound science and transparency, is one of EPA's core values and, if I am confirmed, it will continue to guide all EPA action.

Would it be helpful if Congress gave the agency more specific instructions in statute?

Response: I am not aware that the Administration is seeking specific legislative changes at this time; however, if confirmed, I would always be happy to work with Congress to provide input into the legislative process as appropriate.

Would it be worthwhile for the agency to conduct a "look-back" at the costs and benefits of regulations encoded over the years? Would it be wise to include stakeholders in that process?

Response: EPA has conducted a peer-reviewed retrospective study on the benefits and costs of the Clean Air Act;"The Benefits and Costs of the Clean Air Act, 1970 to 1990" was issued in 1997. In that study EPA found that, by 1990, the differences between the scenarios were so great that, under the so-called "no-control" case, an additional 205,000 Americans would have died prematurely and millions more would have suffered illnesses ranging from mild respiratory symptoms to heart disease, chronic bronchitis, asthma attacks, and other severe respiratory problems. As a result, the monetized benefits

massively outweighed the costs. It is my understanding that the public was given an opportunity to comment during the development of the study. More recently, as part of E.O. 13563, EPA is taking additional steps to improve environmental regulation by retrospectively examining the process and factors that affect the estimated costs of regulations. My understanding is that a draft report of several case studies is currently undergoing review by the Scientific Advisory Board, in a process that involved input from outside stakeholders, such as the American Forest and Paper Association. If confirmed, I would look to continue an open dialog with stakeholders about the impacts of already-promulgated rules and ways in which EPA can do a better job estimating both costs and benefits going forward.

Should the federal government annually estimate the costs and benefits of all of its regulations?

Response: It is my understanding that OMB annually prepares a Report to Congress on the Benefits and Costs of Federal Regulations as required by the Regulatory-Right-to-Know Act. Based on estimates from Federal Agencies, the OMB Report summarizes the quantified and monetized benefits and costs of major Federal regulations reviewed by OMB over the previous ten years, and highlights the rules from the most recent year.

Do you favor the Sanders Boxer legislation? Do you think it is directionally correct?

Response: The Administration has not proposed a carbon tax, nor is it planning to do so. The President has repeatedly called on Congress to act to address the growing threat posed by climate change. In the State of the Union, the President made clear that while he still expects Congress to act on this vital issue, but if Congress will not take action on this important issue he will continue to build on the progress underway by his Administration to confront this threat.

Energy Reliability:

Since 2010 demand for natural gas has outpaced the delivery capacity of natural gas infrastructure. While coal plants keep a pile of coal on site for generation, gas plants tend to receive fuel as it is needed. During severe weather conditions -whether cold, hot or storms – there is great value in a "coal pile" that can be deployed at those times. If it were only market conditions, or the current lower price of natural gas, coal plants would not be closed – utilities would simply run gas plants more, run coal plants less but keep them in the generation mix as an option for future needs. Recent experience in New England has shown that electric reliability is challenged during these weather related events. Electricity prices in New England were four to eight times higher than normal during a recent snowstorm as the region's overwhelming reliance on natural gas for power collided with a surge in demand for heating. Are you concerned that a major emergency back-up resource – the coal pile – will not be available in future weather events/emergencies?

EPA's Clean Air Act power plant rules provide flexibility to regulated entities to help ensure a path forward for generating units of all types. EPA analyses conducted in support of its power plant rules project that fuel diversity will be maintained in the future, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting its analyses. EPA works closely with DOE, FERC, grid planning authorities and other entities with expertise related to electric reliability to help ensure that the agency's rules are implemented in a manner consistent with maintaining electric reliability.

Are you concerned that regions of the country, like New England that rely on a single fuel source for the bulk of its power leave the region open to more supply and price disruptions versus a region with a diverse fuel mix?

EPA's Clean Air Act power plant rules provide flexibility to regulated entities to help ensure a path forward for generating units of all types. The agency has conducted detailed analysis to support its actions. These analyses project that fuel diversity will be maintained in the future, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting its analyses. EPA works closely with DOE, FERC, grid planning authorities and other entities with expertise related to electric reliability to help ensure that the agency's rules are implemented in a manner consistent with maintaining electric reliability.

How many electricity reliability experts are on EPA's staff in the Office of Air and Radiation? In the Agency as a whole?

EPA has significant expertise with regard to analysis of the effects of environmental regulation on the power sector, and has examined the impact of agency rules on resource adequacy and the reliable operation of the sector. In addition, EPA has worked closely with a range of entities directly charged with reliability responsibilities, including DOE and FERC as well as state regulatory authorities and grid planning authorities, to help ensure that EPA rules are developed and implemented in a manner consistent with maintaining electric reliability.

During extreme weather conditions – whether cold, hot or hurricane – there is great value in a "coal pile" that can be deployed at those times. If it were only market conditions, or the current lower price of natural gas, coal plants would not close – utilities would simply run gas plants more, run coal plants less but keep them in the generation mix for future needs. Electric reliability is challenged during exactly these weather related events. Are you concerned that a major emergency back-up resource– that "coal pile" – will not be available in future weather emergencies?

EPA's Clean Air Act power plant rules provide flexibility to regulated entities to help ensure a path forward for generating units of all types. The agency has conducted detailed analysis to support its actions. These analyses project that fuel diversity will be maintained in the future,

helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting its analyses. EPA works closely with DOE, FERC, grid planning authorities and other entities with expertise related to electric reliability to help ensure that the agency's rules are implemented in a manner consistent with maintaining electric reliability.

CCS:

In March of 2012, EPA proposed New Source Performance Standards (NSPS) for CO2 for new coal, oil and natural-gas fired power plants. As proposed, the regulation would effectively prohibit the construction of new coal fired power plants.
EPA's proposal for new power plants abandons decades of precedence under the Clean Air Act (CAA) by setting one standard for all fuel types used in electricity generation. Historically, EPA considered each fuel type in a separate category with a separate standard. In the proposal all the fuel choices (coal, oil, and natural gas) are included in one overarching category/standard. The standard is that for natural gas, which in reality will be impossible for coal and oil to meet. In other words, the required "best demonstrated technology" for all categories to achieve the emission limitation is a natural gas combined cycle plant. New coal fired power plants would have to utilize carbon capture and storage (CCS) technologies that currently do not exist.
EPA makes several statements and assumptions regarding CCS in the NSPS proposal including that new coal fired units could comply with the rule through a 30 year averaging option that would allow them to deploy CCS in 11th year of operation and average emissions over a 30 year span.Is CCS commercially feasible today?

CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale.

Is there a legal and regulatory framework available to handle the sequestration of CO2 captured through CCS? Is there liability and insurance framework in place?

For over 5 years, EPA has worked to establish a regulatory framework under the Safe Drinking Water Act (SDWA) and Clean Air Act (CAA) to facilitate CCS deployment. Under SDWA and through the Underground Injection Control Program, EPA established minimum Federal requirements to ensure that geologic sequestration wells are appropriately constructed, tested, monitored, and closed to ensure protection of drinking water. Under the CAA and through the Greenhouse Gas Reporting Program, EPA outlined requirements for quantifying the amount of CO2 captured and geologically sequestered. With respect to liability and insurance, the 2010 Interagency Task Force on Carbon Capture and Storage found that existing mechanisms related to long-term liability could be adequate to facilitate the initial commercial-scale CCS projects, and projects have been proceeding under existing laws.

Gasoline Blends:

E0 is now the test fuel and E10 is the predominant gasoline blend in the market. Given this reality, why is EPA pushing E15 as the new certification fuel now?

> Vehicles must be tested under conditions that reflect conditions they experience in-use. Since the proposed Tier 3 standards would phase in from 2017-2025 this would mean in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether E10 should be used for the certification test fuel.

Would it not be prudent for EPA to wait and see how E15 performs in the marketplace prior to mandating its use as the new certification fuel?

> EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the Agency is are also seeking comment on whether E10 should be the federal certification test fuel. We will fully consider comments from stakeholders and the public before making a final decision.

You have been working on a Tier 3 rule for some time, when was the decision made to propose E15 as a certification fuel? Please provide the Committee with a list of all meetings or contacts with non-governmental entities, as well as any associated records and documents (whether internal EPA records or documents or otherwise) with regard to the issue of mandating E15 as a certification fuel prior to the release of the proposed rule.

> Consideration of the need to change the certification test fuel to include ethanol goes back to at least 2006 as ethanol use began increasing dramatically. During this multi-year period, the topic was discussed on numerous occasions with all relevant stakeholders, including the vehicle manufacturers, refiners, ethanol producers, nonroad engine manufacturers, the California Air Resources Board, State organizations, and NGOs. EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA further anticipates that the agency will again have numerous discussions with many stakeholders in the post-proposal timeframe prior to making any decision for the final rule, and all meetings and comments from stakeholders will be placed in the rulemaking docket. EPA will fully consider comments and feedback from stakeholders and the public before making a final decision. With regard to your request for documents, EPA staff informs me that the appropriate protocol is to make such a request through a separate letter to the agency. EPA will respond appropriately to any such request.

Please provide the Committee with a detailed written analysis regarding how finalizing E15 as a certification fuel would affect EPA's assessment of future waiver requests for higher ethanol blends under Clean Air Act section 211(f)(4).

> Waiver requests under section 211(f)(4) for ethanol blends higher than E15 would need to show that the fuel or fuel additive at issue will not cause or contribute to the failure of an engine or vehicle to achieve compliance with the emission standards to which it has been certified over its useful life. The assessment would look, for example, at the levels of emissions when tested on the higher ethanol blend compared to emissions when tested on the fuel used for new vehicle certification. If E-15 were the certification fuel, then for those vehicles E15 would be used as the

reference or baseline test fuel. This would not change the issue that would be before EPA – determining whether the higher ethanol blend caused or contributed to the vehicle violating the emissions standards.

Has EPA ever previously required changes in certification fuel prior to the introduction of a fuel into the mass market?

EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. We will fully consider comments from stakeholders and the public before making a final decision.

Last year, the D.C. Circuit ruled that petitioners did not have standing to challenge EPA's decision to approve E15. The court did not rule on the merits, but judges on the panel expressed concerns over EPA's interpretation of its Clean Air Act authority to grant a waiver for E15. Different affected parties have filed for certiorari at the Supreme Court. Will EPA wait to see what happens to these petitions prior to finalizing any changes to certification fuel if the Court grants certiorari?

During the rulemaking process, EPA expects to receive helpful comments on the issue of what level of ethanol to use in the fuel used for testing motor vehicles. It is premature to judge now what action EPA will take in the rulemaking based on the potential action the Supreme Court might take on petitions for certiorari on the D.C. Circuit's decision on review of the E15 waiver. This is especially the case as the issues raised in the petitions to the Supreme Court involve jurisdiction for judicial review, and not the merits of the E15 waiver itself.

Does it concern you that the D.C. Circuit expressed serious concerns over the EPA's interpretation of the Clean Air Act waiver provision, both at oral argument and in a dissenting opinion? How should this affect EPA's approach to future waiver requests?

In the E15 waiver decision, EPA explained in detail its views on the authority to grant a partial waiver. The D.C. Circuit later rejected petitions for review on the grounds that the petitioners did not have standing, and the Court did not decide on the merits of EPA's waiver decision. While one Judge expressed his view that EPA lacked authority for a partial waiver, there was no decision by the D. C. Circuit on this issue. In any future waiver proceeding, EPA will carefully consider this issue of authority to the extent it arises.

Your Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as "forward looking" while admitting that E15 is now only commercially available in a limited number of fuel retailers. Further, in the Regulatory Impact Analysis (RIA) for your proposed rule you are also assuming that E85 use will be negligible in 2017 to 2030. Doesn't this just affirm that your operating assumption is that consumers will be left with no choice but to use E15 whether they want to or not?

EPA is not mandating E15 and the market will determine what among the range of legal fuels are sold to satisfy customer demand. Regardless, since E15 is currently distributed from less than 20 of the approximately 150,000 retail stations nationwide, this would not appear to be a near-term concern. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts

and benefits of the Tier 3 proposal. We will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Doesn't this mean that EPA doesn't consider E85 a viable option for meeting renewable fuel standard requirements?

EPA considers a wide range of renewable fuel types as we conduct assessments for the annual RFS volume standards as required under the CAA. E85 is one of several means that can be used to deliver renewable fuel volumes required to meet the renewable fuel standard requirements. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. We will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

EPA has touted national uniformity in many areas of mobile source regulation, why have you proposed E15 as a federal certification fuel when it cannot be used as such in California?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time we are seeking comment on whether we should finalize E10 for certification test fuel. If we finalize E15 as the certification fuel, the agency intends to allow use of E10 as the certification test fuel through 2019.

In EPA's proposed 316(b) rule EPA has adopted starkly different approaches to managing "impingement" and "entrainment" at existing cooling water intake structures. For entrainment, EPA appropriately adopted a site-specific approach, recognizing that (a) existing facilities already have measures in place to protect fish, (b) further measures may or may not be needed, and (c) the costs, benefits, and feasibility of such measures have to be evaluated at each site. Yet for impingement, EPA adopted rigid, nationwide numeric criteria that appear unworkable and in many cases unnecessary. In a notice of data availability issued last year, EPA signaled that it would consider a more flexible approach for impingement. In the final rule that is due this summer, would you support replacing the original impingement proposal with a more flexible approach that pre-approves multiple technology options, allows facility owners to propose alternatives to those options, and provides site-specific relief where there are de minimis impingement or entrainment impacts on fishery resources or costs of additional measures would outweigh benefits?

Response: It is my understanding that EPA explicitly discussed possible changes to the proposed 316(b) rule's impingement standard in the NODA published in the Federal Register on June 11, 2012 and that

EPA is carefully reviewing those comments as the agency develops the final rule. If confirmed, would be willing to look closely at flexibilities for compliance with the impingement standard.

In EPA's proposed 316(b) rule, EPA has correctly NOT required existing facilities to retrofit "closed cycle" systems such as cooling towers or cooling ponds if the facilities do not already have such systems, because such retrofits are not generally necessary, feasible, or cost effective. At the same time, facilities that do have closed-cycle systems have long been viewed as satisfying the requirements of section 316(b). Yet in the proposed rule, EPA has defined "closed cycle" cooling much more narrowly for existing facilities than EPA did for new facilities several years ago, thereby excluding a number of facilities. And even for the facilities that qualify, EPA is still imposing new study and impingement requirements. In the final rule that is due this summer, would you support a broader definition of closed-cycle cooling and measures that more fully view these facilities as compliant?

Response: My understanding is that EPA explicitly discussed the proposed 316(b) rule's definition of closed cycle cooling in the NODA published in the Federal Register on June 11, 2012. If confirmed, I look forward to working towards an appropriate definition for closed cycle systems.

How does EPA intend to utilize its final stated preference report? If EPA intends to use it in the final rule, what process will EPA undergo to address concerns raised by stakeholders about the applicability and appropriateness of its use?

Response: It is my understanding that EPA is still reviewing the peer-review comments on the 316(b) rule's stated preference study as well as concerns raised by stakeholders in comments. EPA would need to complete that review before it can make any decisions about applicability and appropriateness of the study results.

Has EPA ever investigated a plant closure or reduction in employment to see what role, if any, the administration or enforcement of the Clean Air Act played?

> CAA section 321 authorizes the Administrator to investigate, report and make recommendations regarding employer or employee allegations that requirements under the Clean Air Act will adversely affect employment. In keeping with congressional intent, EPA has not interpreted this provision to require EPA to conduct employment investigations in taking regulatory actions. Section 321 was instead intended to protect employees in individual companies by providing a mechanism for EPA to investigate allegations that specific requirements, including enforcement actions, as applied to those individual companies, would result in lay-offs. EPA has found no records indicating that any Administration since 1977 has interpreted section 321 to require job impacts analysis for rulemaking actions. EPA does perform detailed regulatory impact analyses (RIAs) for each major rule it issues, including cost-benefit analysis, various types of economic

impacts analysis, and analysis of any significant small business impacts. Since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine RIAs conducted for each major rule. The agency could not find any records of any requests for section 321 investigation of job losses alleged to be related to regulation-induced plant closure.

Who made the decision to force Battelle to drop the AAPCA contract? Were you aware of EPA's course of action before or after EPA's ultimatum to Battelle was made? When you did become aware of this action? Have you considered how this will set a precedent in all future contracting actions? Does EPA's policy affect EPA contractors that have contracts with environmental organizations or industry?

Neither I nor other Office of Air and Radiation managers were involved in this decision. My understanding is that the decision was made by EPA's Office of Acquisition Management in accordance with U.S. Government contracting regulations relating to conflicts of interest.

Aggregation

Recently, the U.S. Court of Appeals for the Sixth Circuit rejected EPA's interpretation with respect to aggregation, where EPA claimed that over a hundred gas wells and a processing plant, spread out over 43 square miles, were contiguous or adjacent to each other. Despite the court's conclusion, EPA issued a December 2012 memo declaring that it would ignore the Sixth Circuit's case in most states. Why does EPA insist in pursuing an interpretation of "aggregation" that is not in the regulations, that contradicts the common meaning of "contiguous and adjacent," and flouts the decision of a court of appeals?

EPA believes that it is essential to preserve flexibility in determining the scope of a source based on a case-by-case analysis of the three factors. EPA believes its historical interpretation of the "contiguous or adjacent" language is a reasonable interpretation of that phrase in the regulations. It is important to understand that EPA and states have made source determinations, at the request of the source, that aggregate smaller facilities into one larger one. By doing so, the source gains important flexibility to "net" its emissions over the larger facility, reducing or shuttering operations in one area while increasing others, without triggering permitting. For example, the State of Pennsylvania made a determination in 2012 to "aggregate" two refineries in Philadelphia which provided that source the flexibility it needed to remain operational. In another case, EPA Region 2 agreed with a request from an aluminum plant to consider two (formerly separate) plants as one (http://www.epa.gov/region07/air/nsr/nsrmemos/alcoany.pdf). In other cases, EPA has applied the three factor test and determined that adjacent sources are not part of the same stationary source, because while close together, they were not interrelated (http://www.epa.gov/region07/air/nsr/nsrmemos/we1999.pdf).

If confirmed as EPA Administrator, will you commit to adopt the common sense and legally correct reasoning of the Sixth Circuit across the nation? Why shouldn't a common sense, legally defensible, dictionary definition of "adjacent" apply throughout the country?

Response: Outside the 6th Circuit, rather than using a one-size-fits-all approach in determining which nearby, commonly-controlled emitting units should be treated as one source, EPA will continue to apply the agency's decades-old approach of making case-by-case determinations based on a review of each facility's specific situation, including the relationship between the activities at the units. The agency is concerned that national application of the 6th Circuit decision would require EPA to treat as one source facilities that are nearby and under common control, even when their activities are completely unrelated.

Automobile Mandate:

The basic fuel economy statute, the Energy Policy Conservation Act (EPCA), expressly preempts state laws or regulations "related to" fuel economy standards. This is a very broad statement of preemption. It prohibits states not only from adopting fuel economy standards, but also from adopting laws or regulations "related to" fuel economy standards. Do you agree?

EPA can only deny a waiver of the express preemption provision in CAA section 209(a) based on one of the criteria listed in section 209(b). EPA's waiver decisions under section 209(b) are based solely on an evaluation of those criteria, and evaluation of whether California emission standards are preempted under EPCA is not among those specified criteria. As a result, in making waiver decisions EPA takes no position regarding whether or not California's GHG standards are preempted under EPCA.

For the sake of argument, let's assume that greenhouse gas motor vehicle standards, like those based on California's motor vehicle emissions law, AB 1493, are "related to" fuel economy standards. I know you don't think they are, but for now, let's assume there is a relationship to fuel economy standards. If there was, would it be lawful for California to implement AB 1493? Would it be proper for the EPA to grant California a waiver to implement it?

EPA can only deny a waiver based on one of the criteria listed in section 209(b) of the Clean Air Act. EPA's waiver decisions under section 209(b) are based solely on an evaluation of those criteria, and evaluation of whether California emission standards are preempted under EPCA is not among those specified criteria. As a result, in making waiver decisions EPA takes no position regarding whether or not California's GHG standards are preempted under EPCA.

Key agency documents and even AB 1493 itself imply that motor vehicle greenhouse gas emission standards and fuel economy standards are closely related. EPA and NHTSA acknowledge in their May 2010 Tailpipe Rule that no commercially available technologies exist to capture or filter out carbon dioxide (CO2) emissions from motor vehicles. Consequently, the only way to decrease CO2 per mile is to reduce fuel consumption per mile -- that is, increase fuel economy. Carbon dioxide constitutes 94.9% of vehicular greenhouse gas emissions, and "there is a single pool of technologies ... that reduce fuel consumption and thereby CO2 emissions as well." What this analysis tells me is that greenhouse gas motor vehicle emission standards inescapably and primarily regulate fuel economy. Do you agree?

The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act; the Supreme Court rejected the argument that EPA does not have authority to regulate CO_2 from vehicles because it would impact fuel economy. The Supreme

Court concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."

The framework document for the Obama administration's model year 2017-2025 fuel economy program, the September 2010 Interim Joint Technical Assessment Report published by the EPA, NHTSA, and the CARB, considers four fuel economy standards, ranging from 47 mpg to 62 mpg. Each is the simple reciprocal of an associated CO2 emission reduction scenario. The 54.5 mpg standard for model year 2025, approved by the White House in August 2012, is a negotiated compromise between the 4% per year (51 mpg) and 5% per year (56 mpg) CO2 reduction scenarios. If fuel economy standards derive mathematically from CO2 emission reduction scenarios, and CO2 accounts for 94.9% of all greenhouse gas emissions from motor vehicles, are not the two types of standards related?

The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act; the Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), rejected the argument that EPA does not have authority to regulate CO_2 from vehicles because it would impact fuel economy. The Court concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."

Nearly all of CARB's recommended technologies for reducing greenhouse gas emissions (Table 5.2-3 in CARB's 2004 Staff Report on options for implementing AB 1493) were previously recommended in a 2002 National Research Council study on fuel economy (Tables 3-1, 3-2). CARB proposes a few additional options, but each is a fuel-saving technology, not an emissions-control technology. These facts tell me that greenhouse gas emission standards inescapably and primarily regulate fuel economy. What conclusion do you draw?

The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act. The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), rejected the argument that EPA does not have authority to regulate CO_2 from vehicles because it would impact fuel economy. The Court concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."

In AB 1493 itself, CARB's greenhouse gas standards are to be "cost-effective," defined as "Economical to an owner or operator of a vehicle, taking into account the full life-cycle costs of the vehicle." CARB interprets this to mean that the reduction in "operating expenses" over a vehicle's average life must exceed the expected increase in vehicle cost (Staff Report, p. 148). Virtually all such "operating expenses" are expenditures for fuel. CARB's implementation of AB 1493 cannot be "cost effective" unless CARB substantially boosts fuel economy. Do you agree?

This question would be best addressed by CARB since it is directed at the state standard.

How does the "national" program created in the wake of this backroom deal comport with congressional intent? Under the statutory scheme Congress created, one agency – NHTSA – to regulate fuel economy under one statute – EPCA as amended by the Energy Independence and Security Act (EISA) – through one set of rules – corporate average fuel economy. Today, three agencies – NHTSA, the EPA, and CARB – make fuel economy policy under three statutes – EPCA, the

Clean Air Act, and AB 1493 -- through three sets of regulations. Where does EPCA as amended authorize this triplification of fuel economy regulation?

> In *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Supreme Court rejected the argument that EPA does not have authority to regulate CO_2 from vehicles because it would impact fuel economy and concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency." The National Program approach has garnered widespread support from a broad range of stakeholders including the automobile industry, for this joint, harmonized effort.

49 U.S.C. § 32919 says: "When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards." Yet holding out the threat of California setting greenhouse gas standards that were very clearly "related to fuel economy standards" was almost certainly at the heart of what went on in that secret negotiations. Two questions: Are vehicle greenhouse gas regulations wholly unrelated to fuel economy? If not, how can we have any confidence that you won't try to sidestep clear statutory limits on your authority as administrator?

> The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act. The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), rejected the argument that EPA does not have authority to regulate CO_2 from vehicles because it would impact fuel economy. The Court concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency." As to your second question, let me assure you that I am committed to following the requirements of the law.

Rulemaking is increasingly being accomplished through the use of consent decrees that commit the EPA to taking specific regulatory actions. The consent decrees agreed to by EPA and outside groups often commit EPA to specific actions and timeframes. If EPA is going to make specific regulatory commitments to outside groups, shouldn't there be an opportunity for Congress or the public to comment on these commitments before they are made, rather than having the opportunity to comment only after legally enforceable policy commitments are made by EPA?

Response: Most of these settlements are under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court. In addition, while EPA may agree in settlement to promulgate a rule or standard required by statute, the substantive level or nature of that required action is determined through the rulemaking process, which offers ample opportunity for regulated entities to provide meaningful comment on the proposed regulation itself.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

In February, EPA published the startup, shutdown, or malfunction (SSM) rule, which will force state officials in 36 states to come back to EPA for approval of provisions of their implementation plans. EPA has been crafting this policy since reaching an agreement with the Sierra Club in connection with litigation in November of 2011. How many officials from the states affected by the February SIP call did you meet with prior to announcing the Call? When did you meet with them?

> First, EPA notes that its SSM policy has been publicly stated since 1982. That SSM SIP policy has been restated and refined publicly in guidance and through actions on specific SIP provisions since then, meaning EPA's approach to SIP provisions related to SSM emissions is not new to either states or sources. Over the past year, the Sierra Club's petition for rulemaking, EPA's agreement with the Sierra Club, and EPA's progress in preparing its proposed rulemaking have been covered by the press and also discussed in national meetings and telephone calls with state air agencies. Because the proposed rulemaking addresses EPA's prior actions to approve specific provisions in certain states' SIPs, the proposal is directed more to the legality of the provisions (focusing on EPA) rather than on implementation of the provisions (focusing on states).

EPA is constantly being sued for missing statutory deadlines for rulemaking and then settling the resulting litigation in a court approved settlement agreement. The deadlines in these settlements sometimes put extreme pressure on the EPA to act, and also may create hardships for regulated businesses by interfering with construction plans or requiring large investments in a short period of time. Do you believe that EPA should first consult with the adversely affected parties and other stakeholders before agreeing to such deadlines?

Response: Where EPA settles a mandatory duty lawsuit based on the Agency's failure to meet a statutory rulemaking deadline, the settlement agreement or consent decree acts to relieve pressure on EPA resulting from missed statutory deadlines by establishing extended time periods for agency action. Most of these settlements are under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court. In addition, the agency does not agree to the final substantive outcome of the required action through settlement, so interested parties have an opportunity to provide input on the action itself through normal channels such as the notice and comment rulemaking process.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

Why doesn't EPA have a policy of insisting on the inclusion of relevant stakeholders into lawsuits?

Response: When the Agency is sued on the basis of a final agency action, or for an alleged failure to timely act in accordance with a statute, EPA is a defendant and it is the court that controls who may be added as a party to the lawsuit. Interested person may seek to intervene in any such lawsuit.

What will you do to ensure that States, local governments, and other stakeholders have the ability to meaningfully participate in settlement negotiations for lawsuits that involve EPA's failure to perform a non-discretionary administrative duty?

Response: I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

If confirmed, how do you plan to prevent the proliferation of wasteful lawsuits?

Response: If confirmed, I will consult with our Office of General Counsel as well as the Department of Justice about ways to reduce the number of lawsuits filed against the agency.

At the confirmation hearing, Ms. McCarthy indicated that under the Clean Air Act, the agency is required to seek public comment on settlement agreements. Does EPA also seek public comment on settlement agreements that do not pertain to the CAA? Please identify all instances where the Agency has sought public comment on settlement agreements, not associated with the CAA.

Response: My understanding is that EPA's pesticide program also provides settlement agreements through the Agency website, but I am not familiar with the details of the settlement practices of each EPA Office. I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

At the confirmation hearing, Ms. McCarthy indicated that there are additional opportunities for public interaction beyond the public comment on settlement agreements. Please identify these additional opportunities.

Response: Additional opportunities for public interaction beyond the public comment on settlement agreements include participation in any rulemakings or other activities that may result from such agreements. For example, citizen groups, industry representatives, and other interested people may participate in stakeholder meetings that occur before a rule is proposed. Once the Agency publishes a proposal, there is a comment period open to any member of the public to provide comment on the proposed rule. These comments are considered before the agency takes final action.

There are many ways in which EPA can interact with the public in carrying out our work, and if confirmed, I can examine how to improve such opportunities.

At the hearing, Ms. McCarthy was asked if EPA had ever changed the terms of a settlement agreement in direct response to public comments. Ms. McCarthy responded that she did not know. Please respond for the record whether EPA has ever changed the substance of settlement agreements in response to public comments. Please identify every instance in which EPA changed the substance of a settlement agreement based on public comment and identify the change.

Response: My staff has made me aware of some instances in which EPA has changed the substance of Clean Air Act settlement agreements in response to public comments. For example, after receiving adverse comments on a proposed settlement agreement regarding the technology and residual risk review for more than 25 source categories, EPA modified deadlines for taking proposed or final actions and clarified the scope of such actions for a number of source categories before finalizing the agreement. However, I am not aware of every instance in which EPA has made such a change.

EPA entered into a settlement agreement with WildEarth Guardians and the Sierra Club on regional haze. The states have since insisted that under the Clean Air Act, they should be the lead regulators on this matter. Did EPA consult with the affected states before the agency settled with the Sierra Club and WildEarth Guardians?

Response: Although the Clean Air Act gives States the lead in addressing regional haze, if States do not take action consistent with the Act on a timely basis, the Act obligates EPA to take action. EPA was sued to set new deadlines because States and EPA had not taken required actions. We published the proposed settlement agreement in the Federal Register and received and considered comment on it from the States and other interested members of the public before finalizing the agreement.

At the hearing, in response to questions on regional haze, Ms. McCarthy stated that, "We worked very closely with States on regional haze issues, and we worked hard to make it a State implementation plan to the extent that we can." Yet, we know that EPA has rejected several state implementation plans. What are the limitations EPA faces that would lead the agency to reject a state implementation plan? If EPA is seeking to work with the states, why are these states currently suing EPA to challenge EPA's action on regional haze?

Response: EPA can only approve State implementation plans that are consistent with the Clean Air Act and our regulations. I am committed to working with States so that more of these plans can be approved and litigation can be avoided.

BACT standards apply to individual sources on a case-by-case basis. They generally are more stringent – and by law may not be less stringent – than Clean Air Act new source performance standards (NSPS),

which the EPA establishes for categories of industrial sources. In other words, NSPS are the "floor" or minimum emission control standards for BACT determinations. Is that correct?

Yes. The Clean Air Act specifies that BACT for a source cannot be less stringent than an applicable NSPS. Thus, when EPA completes an NSPS for a source category, BACT determinations that follow for applicable sources would need to consider the levels of the pollutant standards and the supporting rationale of the NSPS.

If BACT does not require fuel-switching, we should have no reason to expect that NSPS would require fuel switching or "redefine the source" to impose identical CO2 control requirements on coal boilers and on gas turbines. Is that correct?

EPA's GHG Permitting Guidance (March 2011) says: "... a permitting authority retains the discretion to conduct a broader BACT analysis and to consider changes in the primary fuel in Step 1 of the analysis." Thus, EPA never ruled out the possibility that a permitting agency could require that an applicant consider natural gas, or other cleaner fuels, when proposing a coal-fired EGU. However, it is important to note that under the proposed carbon pollution standard for new power plants, companies would not be required to build natural gas combined cycle units; they would be required to meet a standard of 1000 lbs/MWh, which can be met either through the use of natural gas or by burning coal along with carbon capture and storage. The agency is still actively considering a wide range of comments on this issue, and any final decision will reflect careful consideration of the issue.

In their guidance establishing what could be considered Best Available Control Technology (BACT) for regulating GHGs in the permitting process, EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT: Since NSPS are traditionally interpreted to set the BACT "floor" for permitting purposes, how can a NSPS that eliminates the ability to construct new coal units without the implementation of commercially infeasible carbon capture and storage (CCS) be consistent with EPA's previous guidance?

As explained in responses to related questions, the statement that "EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT" is not entirely correct. While EPA did not propose that CCS represented BSER, EPA stated in the preamble of the proposed NSPS rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO_2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. As noted in answers to other questions, several commercial-scale coal-fired power plants with CCS are currently progressing, and EPA's view is that coal-fired units can meet the proposed limit. The agency is still actively considering a wide range of comments on these issues, and any final decision will reflect careful consideration of these issues.

The Air Office's PSD and Title V Permitting Guidance for Greenhouse Gases, both as proposed in November 20102 and as adopted in March 2011, similarly states that the "initial list of control options for a BACT analysis does not need to include 'clean fuel' options that would fundamentally redefine the source." In other words, an applicant would not be required to "switch to a primary fuel type other than the type of fuel that an applicant proposes to use for its primary combustion process." In addition, a Q&A document published along with March 2011 guidance asks whether "fuel switching

(coal to natural gas) should be selected as BACT for a power plant?" The document answers: "No." It goes on to state that BACT for CO2 should "consider the most energy efficient design," but "does not necessarily require a different type of fuel from the one proposed." These documents suggest that the EPA will not require fuel switching in BACT determinations. Was that a reasonable conclusion for Congress and electric utilities to draw at the time?

That is a reasonable interpretation, and EPA continues to believe that its BACT guidance is reasonable for the specific purposes for which the guidance is intended.

In most cases, the EPA is required to document a threat to public health or the environment before issuing a new regulation. But evidence abounds that the agency routinely relies upon speculative and poorly constructed computer models to justify its rulemaking. The Government Accountability Office, among others, has revealed serious shortcomings in the agency's scientific analyses. Unjustified regulations misdirect resources from real threats, and thus jeopardize public health and safety. What actions, if any, will you take to ensure that the agency applies the best science available through rulemaking?

EPA works to ensure the use of the best available science, including though compliance with its Data Quality and Peer Review Guidelines which respond fully to Federal standards established by the Office of Management and Budget. I intend to continue the agency's ongoing efforts to ensure that scientific and technical information that is intended to inform or support agency decisions continues to be based on the best available science.

The final Boiler MACT and related Non-Hazardous Secondary Material (NHSM) rule published at the beginning of this year are a significant improvement compared to where EPA started and better than the December 2011 reproposal. EPA promised in the final NHSM to amend the list of non-waste fuels to include (1) paper recycling residuals, (2) processed construction and demolition wood, and (3) railroad crossties. We have been hoping EPA would start this supplemental rulemaking quickly given the existing, extensive record and new information provided since the rule was promulgated showing how EPA's criteria for listing have been met. However, EPA has not announced a schedule for this critical action. Facilities need to know very soon for compliance purposes whether materials they have relied upon in the past as important energy sources will remain fuels. Uncertainty or failure by EPA to act will result in facilities abandoning the use of high energy residuals and filling up landfill space and being replaced by fossil fuels; clearly not a good environmental outcome. When do you plan to start this supplemental rulemaking?

Response: The Agency committed to issuing the Nonhazardous Secondary Materials (NHSM) categorical listing rule in a timely manner. I understand that, recently, the Agency received important new information from industry that will inform the rulemaking. If confirmed, I am committed to keeping the Committee apprised of ongoing NHSM rulemaking efforts.

In response to petitions from environmental organizations to initiate a 404(c) veto process for a potential mine site in Bristol Bay before a permit application was submitted, EPA – pointing to its authority under CWA Sec. 104 – initiated a draft watershed assessment that involved the crafting of a hypothetical mining scenario in Bristol Bay. EPA has stated that the assessment will not have any legal consequences, but also that it is intended to provide a scientific and technical foundation for decision-making. How exactly does EPA intend to utilize this study under your leadership?

Response: I understand that EPA is currently undertaking a peer reviewed study of the potential impacts of large scale mining on the Bristol Bay Watershed. If I'm confirmed, I commit to learn more about the process and the assessment and I would happy to follow up with you.

EPA has full authority under the well-established Sec. 404 process to review any future permit application submitted to make a determination as to whether or not there will be any of the unacceptable adverse effects listed in CWA Sec. 404(c) at the disposal sites being considered by the U.S. Army Corps of Engineers, including unacceptable impacts to fishery areas and wildlife. Why, then, is EPA using its limited resources to conduct a watershed assessment on a hypothetical mining scenario that even EPA's scientific review panel found did not accurately reflect the conditions of a real mine, rather than allow the companies that have invested millions of dollars to submit their proposal which EPA would then review?

Why does the draft assessment only focus on two hydrologic units in the watershed and assume that such a small area is representative of a 40,000 square mile region?

Why did EPA not note the risk assessment scenarios in their proper explanatory context, as they would have been in a typical risk assessment document?

Why did EPA fail to address mitigation and impact avoidance or minimization actions that would undoubtedly be included in any actual mine plan?

What impact do you think EPA's actions with respect to Bristol Bay will have on investment in U.S. property and natural resource development?

Has EPA considered the positive environmental justice impacts high-paying jobs and tax revenue will have on the region?

Response (to the six questions above): I understand that EPA is currently undertaking a peer reviewed study of the potential impacts of large scale mining on the Bristol Bay Watershed. I understand the need to ensure that the Agency is spending the taxpayer's money wisely. If I'm confirmed, I will review the study carefully. I understand that the Agency has already undertaken one expert peer review, and has begun a second round of review of the revised draft. I believe that strong science is crucial for all the work EPA does, and incorporating peer review helps to address such technical issues. I understand that the Agency has publicly stated that no regulatory decision would be made until the science is fully

understood, and that it is premature for speculation on economic impact.

Section 112(r)(1) of the Clean Air Act is commonly used in EPA enforcement actions as a "General Duty" provision. It requires owners and operators of stationary sources of emissions to identify and prevent accidental releases of hazardous substances. Although the section states that "it shall be the objective of the regulations and programs authorized" under 112(r) to prevent accidental releases and to minimize the consequences of any such release, EPA has yet to issue any regulations or enforcement directives identifying what is expected of these sources. In recent years, EPA has increasingly used the General Duty provision to impose substantial penalties on facilities. This situation has created uncertainty for industry, leaving questions about the consistency of how compliance is measured and when compliance has been achieved. In addition to this uncertainty, certain interest groups are now calling on EPA to use the provision to regulate chemical facility security, regardless of the fact that the subsection is clearly limited to "accidental releases." Furthermore, in the Homeland Security Appropriations Act of 2007, Congress explicitly assigned jurisdiction over security to the Department of Homeland Security (DHS). What is your position on EPA's role in regulating chemical facilities using the General Duty Clause? Do you believe that legislation is needed to clarify the use of the clause as well as ensure its proper application by affirming that jurisdiction of chemical facility security remains with DHS, as Congress intended? Why or why not?

Response: I understand that there are several laws, including the Emergency Planning and Community Right-to-Know Act and Clean Air Act 112(r), which require facilities to report to the community the chemicals at their site and establish and maintain a program for preventing accidental releases of those chemicals. However, I have not had direct experience implementing Section 112(r)(1). Although it is in the Clean Air Act, it is implemented by the Office of Solid Waste and Emergency Response, not the Office of Air and Radiation. I understand that EPA is working with federal agencies, including the Department of Homeland Security, to address chemical safety issues by identifying common issues related to chemical safety and leveraging federal resources to resolve them. If I'm confirmed, I'd be happy to explore these issues with your office.

EPA makes several statements and assumptions regarding CCS in the proposed standards, and proposes that new coal fired units could comply with the rule through a 30 year "averaging" option that would allow them to deploy CCS in year 11 of operation and average their emissions over a 30 year span: While conceding that CCS does not meet the requirements of BSER, EPA claims that CCS is an available compliance option. In your estimation, is CCS commercially feasible today?

In the proposed carbon pollution standards for new power plants, EPA did not declare that CCS is not BSER. The agency is still considering a wide range of comments on the proposal, including on this issue, and we will of course take these comments into consideration in taking any final action on the proposal. The EPA stated in the preamble of the proposed rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO_2 capture, compression, transportation and storage) have already been

implemented at commercial scale." [77 FR 22414]. As explained in response to other questions, EPA's view is that new coal-fired units can meet the proposed limit. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development. The agency is still actively considering a wide range of comments on this issue, and any final decision will reflect careful consideration of the issue.

Are there any CCS plants that are deployed and demonstrated on a large scale?

A number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California. In addition, for more than a decade, Dakota Gasification Company's Great Plains Synfuels Plant in Bismarck, North Dakota, has been capturing and storing approximately 1.6 million tonnes of CO_2 per year.

EPA has stated that the proposed GHG NSPS will promote the development of CCS in the United States. How do you expect the rule to do so?

The proposed rule would promote development of CCS because it would set emission limits that, in the case of coal- or petroleum coke-fire units, would require use of CC5 at a moderate level. A number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

Is there an existing and robust transportation pipeline system available to handle the CO2 captured by CCS?

Carbon dioxide has been transported via pipelines in the U.S. for nearly 40 years. Approximately 50 million metric tons of CO_2 are transported each year through 3,600 miles of pipelines. [77 FR 22392]

Similarly, is there a legal and regulatory framework available to handle the sequestration of CO2 captured through CCS? Is there a liability and insurance framework in place?

For over five years, EPA has worked to establish a regulatory framework under the Safe Drinking Water Act (SDWA) and Clean Air Act (CAA) to facilitate CCS deployment. Under SDWA and through the Underground Injection Control Program, EPA established minimum Federal requirements to ensure that geologic sequestration wells are appropriately constructed, tested, monitored, and closed to ensure protection of drinking water. Under the CAA and through the Greenhouse Gas Reporting Program, EPA outlined requirements for quantifying the amount of CO2 captured and geologically sequestered. With respect to liability and insurance, the 2010 Interagency Task Force on Carbon Capture and Storage found that existing mechanisms related to long-term liability could be adequate to facilitate the initial commercial-scale CCS projects, and projects have been proceeding under existing laws.

In what year do you expect CCS to be commercially viable, given current funding?

EPA stated in the preamble of the proposed rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO_2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. As noted in response to one of your other questions, a number of full scale commercial projects are currently in development (please see response to question 76 for more information).

Carbon Neutrality / GHG:

In a reversal of precedence and established practice, EPA in the GHG Tailoring Rule, between proposed and final and without opportunity for public comment, treated biomass the same as fossil fuels rather than recognizing that biomass actually recycles carbon and does not increase carbon in the atmosphere. A partial recognition of this mistake was the 3-year deferral by the Agency of the regulation of biomass under the Tailoring Rule to review the science and policy. While an EPA convened Clean Air Act Science Advisory Board Panel submitted recommendations, these suggested remedies are complex, difficult to implement, and again unnecessary. So as to not miss the end of the deferral period in June of 2014 and inadvertently keep a flawed policy change in place, a final policy consistent with the science that encourages biomass as an energy source and accounts for the natural recycling of the biomass carbon is necessary. Can you imagine a scenario whereby EPA would not recognize the well-established science supporting the carbon neutrality of biomass combusted for energy by forest products manufacturers and others? As EPA Administrator, will you work with me and all affected industries to ensure that renewable biomass remains a carbon neutral fuel, and as such, receives favorable treatment in the permitting program?

The purpose of the 3-year deferral is to give EPA time to conduct a detailed examination of the science associated with biogenic CO_2 emissions and to consider the technical issues that the agency must resolve in order to account for biogenic CO2 emissions in ways that are scientifically sound and also manageable in practice. In September 2011, EPA submitted its draft "Accounting Framework for Biogenic CO_2 Emissions from Stationary Sources" to the Science Advisory Board (SAB) for peer review. EPA is considering the September 2012 SAB Peer Review Report now, and will determine the most technically sound approach for treatment of biogenic CO_2 in a regulatory context as the agency reviews the report and its recommendations.

Do you or will you support a carbon tax? More specifically, what is your sentiment with respect to the Boxer-Sanders bill?

Response: The Administration has not proposed a carbon tax, nor is it planning to do so. The President has repeatedly called on Congress to act to address the growing threat posed by climate change. In the State of the Union, the President made clear that while he still expects Congress to act on this vital issue, but if Congress will not take action on this important issue he will continue to build on the progress underway by his Administration to confront this threat.

Can you comment on Australia's experience with a carbon tax?

Response: I am not familiar with the details of Australia's carbon tax.

We have all heard the claims that if the US acts then other countries will follow. Can EPA provide this committee which examples of specific countries that will follow the US lead if the US adopts more stringent regulations on existing power plants?

During my tenure at EPA, I have seen that the United States is recognized as a global leader in many aspects of environmental protection and many countries look to the United States for leadership in this area. Although I would defer to the State Department with regard to the positions and commitments of specific countries in this area, I believe that U.S. leadership in reducing carbon pollution will encourage greater action from other countries and will enhance U.S. leverage in international climate discussions.

If all the regulations enacted or being contemplated with respect to greenhouse gases are fully implemented, what the impact be on global concentrations of greenhouse gases and on global average temperature? Please cite your source.

To respond to your precise question would require more specific information about the current or potential future regulations to be considered. The common sense regulations to address greenhouse gases that EPA has undertaken under this administration will achieve significant emission reductions. The light-duty vehicle emissions and fuel economy standards that EPA and NHTSA have established for model years 2012-2025, for example, are expected to result in reductions of over 6 billion metric tons carbon dioxide equivalent over the lifetime of these vehicles. Further actions, from both the United States and all of the major emitting countries, will be necessary to achieve the reductions that science indicates are necessary to address climate change.

If the US has committed to a specific course of action through regulations, what leverage would U.S. diplomats have to craft international compromises on climate issues?

I would defer to the State Department with regard to the positions and commitments of specific countries in this area and more generally with regard to the conduct of international climate negotiations. That said, I believe U.S. leadership in reducing carbon pollution will encourage greater action from other countries and will enhance U.S. leverage in these discussions.

<u>CBA:</u>

In March of 2011 EPA released a report: "The Benefits and Costs of the Clean Air Act from 1990 to 2020" that estimated that the monetized benefits of CAA regulations would be 2 trillion dollars annually by 2020 with cumulative benefits reaching $12 Trillion. Nearly all of the benefits came from avoiding 230,000 premature deaths annually in 2020 due to reductions in fine particulate emitted into the air we breathe. EPA stated that monetized benefits exceed costs of compliance by a 30 to 1 factor. What value did EPA use for a premature death avoided (PDA)? How was that value determined? Just how long was the PDA avoided? Was the same benefit used regardless of the time period of avoided mortality? Did the National Research Council suggest in a 2008 report to EPA that it

was more appropriate to use of the value of statistical life years (VSLY) saved for determining a value of a PDA? Did EPA incorporate that recommendation?

In the March 2011 study, estimated reductions in premature mortality were monetized using EPA's standard default Value of Statistical Life (VSL) methodology, which is based on 26 premature mortality valuation studies and is expressed as a statistical distribution with a central value of $8.9 million (in year 2006 value dollars) for premature mortality risk reductions projected for the year 2020. This mortality valuation methodology was explicitly peer-reviewed by the statutorily-prescribed Advisory Council for Clean Air Compliance Analysis (Council) for use in developing the primary results of the March 2011 study. The VSL is applied to monetize the value of incremental reductions in population-wide mortality risks for each year analyzed.

EPA does not interpret the 2008 National Research Council (NRC) study you reference as expressing a preference for a value of statistical life years (VSLY) approach. To the contrary, the NRC report expresses a preference for a VSL approach in stating that "...the committee recommends the use of a constant WTP [Willingness to Pay] and corresponding VSL as the most scientifically supportable approach to monetary valuation of ozone-related mortality risk given the information available in the epidemiologic and economics literature." Consistent with that approach, the March 2011 report relied on the peer-reviewed, EPA standard VSL methodology for primary results but also estimated life-years gained and life expectancy gained using a dynamic population model, and these results were used as inputs to the economy-wide modeling conducted for the study.

The Office of Chemical Safety and Pollution Prevention has been engaged in negotiations with industry to develop an enforceable consent agreement for an environmental monitoring program of the effluent of octamethylcyclotetrasiloxane (D4). We understand the Agency has recently advised the industry stakeholders that it will submit the draft agreement to "peer consultation." We are troubled by this proposed action as it does not afford the protections of a formal peer review to interested parties. This could be a very one-sided process and give the Agency the ability to claim the need for a far more extensive and unnecessarily expensive monitoring program. Will you commit to either abandon the peer consultation proposal or elevate it to an independent formal peer review by the Agency's Science Advisory Board or an equivalently independent body?

Response: I am committed to ensuring the safe manufacture and use of chemicals in this country. I am equally committed to following the processes laid out in the agency's Peer Review Handbook on issues related to peer consultation and peer review. I can assure you and this committee that any review process for this or other chemicals will be consistent with the agency's peer review guidelines.

For chemicals management, the Agency has traditionally used an approach where the risks associated with a chemical are systematically evaluated first. If risks are identified that merit the introduction of risk management intervention, EPA separately assesses risk management instruments that would be the most appropriate. Will the Agency continue to use this tiered approach where risks are assessed

separately from consideration of the need for risk management? Some regional regulatory authorities, most notably the Europeans, are increasingly using hazard as the basis for proposing regulatory restrictions for industrial chemicals. This appears especially the case for controversial human health endpoints, such as endocrine activity, where the science in still evolving. Will EPA continue to use risk as the basis for regulating industrial chemicals?"

Response: It is my understanding that currently under TSCA, the EPA is required to use risk as a basis for risk management activities, recognizing the need to act in the absence of scientific certainty. I also support the Administration's interest in reforming this outdated law and, if confirmed, look forward to working on it with you and this committee.

The Agency proposed a coal combustion residuals (CCR) rule in 2010, and that rule has not been finalized. At the same time EPA has made a commitment to propose revised effluent guidelines for the steam electric industry by April 19 and then finalize the guidelines by May 2014. How does the Agency plan to ensure coordination between these two rules, which involve many of the same wastestreams?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

EPA is still considering two regulatory options for coal ash – the first would regulate coal ash under RCRA's Subtitle C hazardous waste program and the second would regulate coal ash as a non-hazardous waste under RCRA's Subtitle D program. Both options have their drawbacks, especially in my view the Subtitle C option, and EPA has received approximately 450,000 comments on the proposal identifying major shortcomings with both approaches. Given this, last year the Senate introduced bi-partisan legislation (S. 3512) that would establish federal non-hazardous waste standards for the management of coal ash under RCRA Subtitle D. I expect similar legislation to be introduced shortly in the House. The legislation draws from the key components of EPA's proposed Subtitle D regulatory proposal and would allow the States to take the lead in implementing enforceable permit programs for coal ash, with EPA ensuring that State programs meet the federal standards or, if not, EPA would implement and enforce the federal controls for coal ash. In light of the controversy surrounding EPA's regulatory options, would you support federal legislation along the lines of S. 3512 that would create a federal regime for the management of coal ash? What would be the key criteria that EPA would like to see in federal legislation for coal ash? Do you agree with the

views of ECOS, ASTSWMO and individual state agencies that the states are up to task of implementing federal controls for coal ash?"

Response: I am not familiar with the provisions of that particular legislative proposal; however, if confirmed, I would be happy to take a look at that and/or other bills and to provide feedback at that time.

Suzanne Rudzinski, Director of the Office of Resource Conservation and Recovery, on Oct. 11, 2012, documented in a declaration to the U.S. District Court for the District of Columbia in Appalachian Voices v. Jackson (Civ. No. 1:12-cv-00523-RBW) why the agency could not promulgate a final rule on the disposal and management of coal combustion residuals in surface impoundments and landfills in the six-month timeframe requested by plaintiffs. Ms. Rudzinski told the court that EPA could not meet that deadline because "such a schedule does not provide EPA with the time necessary to allow sound-decision making, and would result in final agency actions that, in [her] view, are neither scientifically sound nor legally defensible." EPA's semi-annual regulatory agenda provides no projected date for completion of this rulemaking. What are EPA's plans for issuing a final rule? Specifically, what are the major actions EPA plans to complete prior to issuing a final rule and the projected deadlines for completing those actions (i.e., plans for issuing a notice of data availability or any other rulemaking steps requiring public comment)? Can you assure us that EPA will not define coal ash as a hazardous waste?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

<u>Coal Power Plant Closings:</u>

A large number of plants are expected to retire in 2015/16 – as the economy recovers and electric demand recovers. Experts expect regional problems because there are areas not served by natural gas pipelines where needed infrastructure may not be able to be put in place in this time frame or where replacement plants cannot be permitted and built within this time frame. MISO has done an analysis that shows 9% of capacity (12.9 GW at last estimate) is closing and there is probably not sufficient gas infrastructure to serve existing demand let alone new demand. Did EPA examine natural gas availability when you issued the Utility MACT rule, CSAPR, the PM NAAQS and NSPS for GHGs?

Electric utilities, grid operators and electric regulatory bodies, like state public utility commissions, have a wide variety of options for meeting electric demand. EPA conducts detailed analysis to support its actions and projects that fuel diversity will be maintained in the

future so that the full range of electric generating resources is maintained, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis projects that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting analyses of its power sector rules.

EPA has not done a cumulative analysis of the impact of its many recent regulations affecting power plants. There has been no government analysis by any government agency of which plants are closing, where they are located and whether or not the area has natural gas infrastructure in place or can be supplied with additional supplies of natural gas in existing infrastructure. Certain sections of the country are very coal dependent while others have little coal generation. Ten states depend on coal for over 70% of generation; 11 states are 50-70% dependent. These states will experience disproportionate impacts including higher costs. Is this something EPA examined? Does this concern you?

Electric utilities, grid operators and electric regulatory bodies, like state public utility commissions, have a wide variety of options for meeting electric demand. Many existing coal plants are already very well controlled for pollution, and other coal plants have the ability to retrofit with widely available pollution control technologies. External analysts, including GAO[i], CRS[ii], the Bipartisan Policy Center[iii], and Analysis Group[iv],have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. EPA performs detailed regulatory impact analyses of its power sector rules, including estimates of potential impacts on the mix of generation resources as well as electricity prices, and these analyses are publicly available and subject to notice and comment.

Have EPA regulations played a role in the premature closing of coal-fired powerplants?

A number of factors may influence an owner/operator's business decision to retire a plant; in some instances, environmental rules may be a part of the equation. External analysts, including GAO[v], CRS[vi], the Bipartisan Policy Center[vii], and Analysis Group[viii], have found that decisions to

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[i] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[ii] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf

[iii] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability

[iv] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf

[v] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[vi] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf

[vii] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability

retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth.

Bloomberg Government recently put together a comparison chart of various estimates of plant closures made by government agencies and private financial firms and other experts. EPA's estimate in December 2011 of plant closures resulting from EPA's regulation at 17.5 GW. The EIA estimated 49 GW in July 2012, most of it within 5 years but put the overall range at 34 GW to 70 GW. Other private sector groups have estimated coal plant closures at 34.5 GW to 77 GW. Is it concerning to you that EPA's estimate constitutes such an outlier?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figures. External analysts, including GAO[ix], CRS[x], the Bipartisan Policy Center[xi], and Analysis Group[xii], have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

EPA regulations and low natural gas prices are leading many utilities to fuel switch from coal- to natural gas-fired generation. However, it is not clear yet whether there will be sufficient pipeline infrastructure or storage to accommodate the greater use of natural gas by electric utilities. And as is evidenced in your home region of New England, a region heavily reliant on natural gas for electric generation, there are issues with pipeline capacity and competing demand for gas for home heating. Electricity prices in New England were four to eight times higher than normal in February 2013 because of the lack of fuel diversity. And New England is not the only region of the country with potential reliability concerns. A January 2013 EPA Compliance Update by the Midwest Independent System Operator (MISO) states the ISO has concerns about whether there is sufficient resource adequacy in the Midwest beginning in 2016. With the significant number of coal-fired generation retiring due to EPA regulations and low natural gas prices, MISO projects there will be a potential 11.7 GW shortfall of resource adequacy in the winter of 2016 and a 3.5 GW one in the summer of 2016. MISO anticipates increased utilization of natural gas fuel generation that will result in "changes to the system's generation configuration and concerns about the ability of the current pipeline infrastructure's ability to deliver enough gas." Do you agree that EPA environmental regulations are now driving U.S. energy policy with serious implications for electric reliability and electricity prices? Is EPA working closely with the Federal Energy Regulatory Commission to ensure the reliability of the electric grid and smaller load pockets facing potential generation shortfalls? Can you please provide

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[viii] Analysis Group – "Why Coal Plants Retire"
http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf
[ix] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf
[x] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?"
http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf
[xi] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability"
http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability
[xii] Analysis Group – "Why Coal Plants Retire"
http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf

the committee with specific information about inter-agency meetings on these issues?

EPA is working closely with FERC and DOE, as well as with grid planning authorities and other key stakeholders, to ensure implementation of EPA rules and requirements in a manner consistent with maintenance of electric reliability. EPA will continue to work with FERC, DOE, grid planning authorities and electric utilities to address any specific challenges that may arise. EPA, FERC and DOE meet regularly to coordinate on these issues. The three agencies participate jointly in monthly calls with key Regional Transmission Organizations, have met jointly with other key planning authorities, and participate in engagement with state regulatory authorities and other stakeholders. With regard to your question concerning impacts of environmental regulations, please see the agency's responses to the previous questions.

As you may be aware, the Federal Energy Regulatory Commission (FERC) is examining how to promote greater coordination between the electricity and natural gas industries. The Commission has held five technical conferences on this issue and plans to hold another in April. The one thing that is clear from all these conferences is that no one knows whether all the changes needed for fuel switching from coal- to natural gas-fired electric generation on this scale can be accomplished in the time needed to comply with EPA regulations. What involvement, to date, has EPA had with FERC on these technical conferences? Has the agency considered providing utilities with more time to comply with regulations (by perhaps providing larger spacing between regulations) in order to allow the infrastructure upgrades and market reforms (e.g., synchronization of scheduling between electricity and natural gas markets) needed to enable this massive amount of fuel switching?

EPA's Clean Air Act power plant rules provide flexibility to help ensure a path forward for all types of electric generators. Additionally, EPA regulations and guidance have provided tools to allow for planning flexibility in response to reliability challenges. For example, EPA has taken steps to ensure broad availability of an additional year to comply with the MATS rule where needed for technology installation, including in situations implicating reliability considerations. In addition, concurrent with the final MATS rule EPA has identified a clear pathway for up to one additional (fifth) year to come into compliance where needed to address a documented reliability issue. EPA is working closely with FERC and DOE, as well as with grid planning authorities and other key stakeholders, to ensure implementation of EPA rules and requirements in a manner consistent with maintenance of electric reliability.

During extreme weather conditions – whether cold, hot or hurricane – there is great value in a "coal pile" that can be deployed at those times. If it were only market conditions, or the current lower price of natural gas, coal plants would not close – utilities would simply run gas plants more, run coal plants less but keep them in the generation mix for future needs. Electric reliability is challenged during exactly these weather related events. Are you concerned that a major emergency back-up resource– that "coal pile" – will not be available in future weather emergencies?

EPA's Clean Air Act power plant rules provide flexibility to regulated entities to help ensure a path forward for generating units of all types. EPA analyses conducted in support of its power plant rules project that fuel diversity will be maintained in the future, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet

the needs of natural gas generators when conducting its analyses. EPA works closely with DOE, FERC, grid planning authorities and other entities with expertise related to electric reliability to help ensure that the agency's rules are implemented in a manner consistent with maintaining electric reliability.

Can you remember any instance in which EPA has disagreed with a State's approach on an environmental issue and ultimately decided that the State was correct?

Response: I do have experience both at EPA and in my work with the States of EPA and a State working together to resolve issues in a mutually agreeable fashion. For example, EPA and the State of New Mexico initially disagreed on the regional haze implementation plan for the San Juan Generating Station. However, after working together, the parties were able to come to an agreed upon path forward. That collaboration with state and local governments is something that I would hope to bring to the job of Administrator if confirmed.

On March 29, 2013, the Department of Justice filed a cert petition asking the Supreme Court to reverse the decision by the D.C. Circuit striking down EPA's Cross State Air Pollution Rule (CSAPR). This cert petition makes certain claims about the impact of the Court's decision that appear to be inconsistent with statements that you recently made to the U.S. General Accountability Office (GAO). In a letter dated January 7, 2013, to David Trimble of the GAO, you stated as follows: Annual 2012 SO2 emissions levels from power plants within the CSAPR region are on track to be 23% below what CSAPR would have required in 2012. Similary, annual NOx and ozone season NOx emissions in the CSAPR region are projected to be 12% and 5% below what CSAPR required for 2012." Yet the cert petition to the Supreme Court asserts that "By vacating the Transport Rule [CSAPR], . . . the court of appeals' decision will directly and negatively affect the public health." How does the court of appeals' decision "directly and negatively affect the public health" if emissions from power plants are well below the levels that would have been required under CSAPR?

Response: I can't speak to matters that are currently in litigation or to specific litigation decisions made by the Department of Justice. However, the brief filed by the Department of Justice speaks for itself and I am told that it explains, with specific citation to the CSAPR rulemaking record, the ways in which the EME Homer City decision directly and negatively affects the public health by delaying needed emission reductions and hobbling EPA's efforts to address interstate air pollution problems. A single year of emissions data does not provide a complete picture and is not a substitute for having the CSAPR regulatory requirements in place to guarantee that those emission reductions endure over time. Unfortunately, in recent months, we have seen an increase in harmful emissions from some sources that were covered by CSAPR.

Do you believe that EPA and the Department of Justice have an obligation to be forthright and honest with the Supreme Court? Do you agree that, at the very least, the statements in the cert petition regarding the public health impacts of the CSAPR decision could be misleading?

Response: I, personally, believe it is extremely important to be forthright and honest in all circumstances and especially with the courts. As noted above, the brief filed by the Department of Justice speaks for itself and I am told that it explains, based on specific findings made by EPA as part of the CSAPR rulemaking, the ways in which the EME Homer City decision directly and negatively affects the public health.

In CSAPR, EPA originally proposed that Texas would not be covered under the rule because power plants in Texas did not "contribute significantly" to nonattainment problems in other states. In the final rule, however, EPA changed its mind and asserted that emissions from Texas would contribute just over one percent of the problem with projected PM2.5 concentrations at one air monitor in Illinois. As a result of this new projection, EPA issued a final rule that required substantial and costly emission reductions in Texas. In fact, emission reductions required in Texas amounted to more than 25 percent of the total SO2 reductions in CSAPR. Do you believe that EPA overreached by imposing such a substantial burden on Texas in the final rule? When trying to regulate interstate transport of emissions, do you agree with the D.C. Circuit that EPA can only regulate to the extent necessary to eliminate a state's contribution to downwind nonattainment?

EPA's requirements of Texas in CSAPR were in fact calculated as the reductions necessary to resolve Texas's significant contribution to nonattainment and interference with maintenance at downwind receptors projected to have difficulty attaining and maintaining the NAAQS without the rule. The D.C. Circuit Court's ruling made no finding regarding EPA's requirements of Texas under CSAPR. EPA is moving forward to assess options that implement the interstate transport requirements of the Clean Air Act. As part of this effort, EPA is seeking input from Texas and the other states.

Do you anticipate proposing a replacement rule for CSAPR? Will EPA ensure that states and utilities are given adequate time to comply with the rule?

EPA and the states are responsible under the Clean Air Act for addressing inter-state transport of air pollution. EPA is assessing how to move forward to address transport pollution and is taking the Court's *EME Homer City* opinion into account. EPA has already invited the states to participate directly in the assessment of the path forward and will continue working with the states collaboratively in determining the next steps needed to address the threat of transported air pollution to public health. As these efforts continue, EPA will be mindful of the need to provide appropriate timelines for states and the regulated community.

What lessons have you learned from the CSAPR experience?

The CSAPR experience reinforces that upwind state emissions of ozone and PM precursors can be important contributors to levels of PM and ozone in downwind states. Reducing emissions of these precursors will have important public health benefits, and EPA is already working closely with states on further efforts to address interstate transport of these pollutants.

Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements? When does EPA expect do decide?

EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

EPA had determined that electric generating units in the East that were subject to the CAIR program did not have to comply with regional haze best available retrofit technology (BART) requirements because CAIR would reduce emissions more than BART. When EPA replaced CAIR without CSAPR, it revoked the determination that compliance with CAIR constituted compliance with BART, and instead determined that compliance with CSAPR constituted compliance with BART. But now CSAPR has been overturned in court. Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements on a source by source basis? When does EPA expect to decide?

EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

When will EPA produce a full analysis of the impacts of all of its power sector regulations?

Response: EPA performs detailed analysis of the impacts of our regulations as part of the regulatory impact analysis. The modeling approaches we use can take into account other rules. For example, when EPA modeled our mercury and air toxics (MATS) rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating margins. If confirmed, I will work to ensure that future EPA rules reflect careful consideration of the overall state of the power sector, including the impacts of previously finalized rules.

Section 321(a)

In EPA's Utility MACT proposal, EPA stated that: "EGUs are the subject of several rulemaking efforts that either are or will soon be underway. . . . EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies." So, EPA recognizes that it needs to approach these rulemakings, to the extent

that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health benefits that the rulemakings must achieve. The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings. The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking. Does EPA intend to follow through on this commitment and provide a forum in which EPA notifies utilities of all of the impending power sector regulations and discusses ways for industry to comply with all of these regulations in a least cost fashion?

As stated in the cited portion of the preamble to the proposed utility MACT rule (later finalized as the Mercury and Air Toxics Standards or "MATS"), the agency's intent was to use the rulemaking process itself to address issues of flexibility that might support industry's efforts to develop integrated compliance strategies for affected sources. In developing the final MATS rule, for example, the agency received substantial comment suggesting ways in which the final rule could provide compliance flexibility and the agency adopted several of these suggestions, resulting, according to the Regulatory Impact Analysis for the final standards, in $1.3 billion in annual cost-savings relative to the proposed standards. With regard to section 111, EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b). The agency is not currently developing any existing source GHG regulations for power plants under section 111(d).

In section 402(p) of the Clean Water Act, Congress established a procedure that requires EPA to give Congress the opportunity to fully review and analyze EPA's rationale for expanding the federal regulation of stormwater before taking any regulatory action. For instance, the 402(p) report to Congress justifying the 1999 Phase II expansion of the stormwater regulations was submitted to Congress in 1995 – four years before the regulations were finalized. Will EPA follow that procedure for the stormwater rulemaking the Agency is currently working on? What is your anticipated schedule for delivery of the 402(p)5 report to Congress justifying any new post-construction stormwater regulations and how does that compare to your anticipated release date for the draft regulation itself for Public Comment?

Response: I am not aware of a specific timetable for delivery of a 402(p) report or with the specific requirement you cite under the Clean Water Act; however, if confirmed, I would certainly commit to ensure that the Agency meet its requirements under the law.

The recent federal District Court decision in Virginia Dept. of Transportation v. EPA (which concerned the Accotink Creek in northern Virginia) held that the Clean Water Act limits EPA's regulatory authority to "pollutants" rather than water flow and EPA chose not to appeal the case. Do you believe EPA presently has any authority to regulate the flow of water? Do you believe that EPA can

control the volume, velocity or any other characteristic of stormwater that is discharged from a point source, without directly relating those characteristics to a specific level of a specific pollutant that is in that stormwater?

Response: I understand that the federal government chose not to appeal the decision in Virginia Dept of Transportation v. EPA and EPA will respect the court's decision. EPA is working closely with the Commonwealth to assure effective protection of Virginia waters from pollutants of concern. If confirmed, I look forward to working with you on this important issue.

We understand that a draft rule intended to clarify the Clean Water Act's definition of "Waters of the United States" will soon be transmitted to OMB for review. Given how far-reaching and significant this regulation would be, will you commit to at least a 120 day notice and comment period for this rule to ensure an adequate amount of time for the public to engage in this process? Will you agree to withdraw the Guidance document currently being reviewed by OMB once a draft rule is sent to OMB?

Response: I understand that the Agency and the Army Corps of Engineers have submitted a guidance document to the Office of Management and Budget. I believe that it is important that industry, states and the regulators have certainty, with respect to the Clean Water Act. If I'm confirmed, I will certainly review this topic.

The 8th Circuit (in Iowa League of Cities v. EPA) recently joined a long line of courts that have held that EPA has no authority under the Clean Water Act to regulate the source of pollution. Congress only delegated to EPA the authority to regulate the discharge of a pollutant. This means that EPA can set permit limits for discharges but cannot specify how to meet them. Will you commit that EPA will not propose any regulation that would attempt to impose specific control requirements on land, buildings or other sources of runoff, upstream from a discharge into water?

Response: I appreciate your concern regarding this important issue. The EPA is still reviewing the Eighth Circuit's decision, but I want to assure you that if EPA proposes a new regulation, it would be consistent with the law as interpreted by the courts. If confirmed, I look forward to working with you as we implement the requirements of the CWA to protect public health and water quality.

EPA's current municipal stormwater regulations only regulate stormwater flows from municipal storm sewers into waters of the U.S. The discharge from the municipal system is a validly regulated point source, but the runoff into the municipal system is nonpoint source stormwater flow. Do you believe that EPA has Clean Water Act authority to regulate the flow of runoff into a storm sewer?

Response: I appreciate your interest in this issue. It is important to clarify that only point source discharges to waters of the U.S. require a permit under the Clean Water Act. Non-point source runoff into a storm sewer is generally not regulated by EPA. If I am confirmed, I look forward to talking with you in more detail about your concerns.

According to Justice Scalia in the Supreme Court's Rapanos decision, the average applicant for an individual Clean Water Act permit spends 788 days and $271,596 in completing the process, and the average applicant for a nationwide permit spends 313 days and $28,910 -- not counting costs of mitigation or design changes. What has EPA done to reduce these regulatory costs? And what you intend to do as EPA Administrator to further lessen this onerous burden faced by regulated parties?

Response: Having come from the State and local level, I understand how important it is to be able to obtain a permit quickly and affordably, and the need for that permit to withstand legal scrutiny. I agree that the requirements of the Clean Water Act need to have additional clarity. If I'm confirmed, I will explore ways to provide additional clarity to the regulated community.

The current definition of fill material, finalized in May, 2002, unified the Corps and EPA's prior conflicting definitions so as to be consistent with each other and the structure of the CWA. The current rule solidifies decades of regulatory practice, and includes as fill material those materials that, when placed in waters of the U.S., have the effect of raising the bottom elevation or filling the water. However, both EPA and the Corps have stated that they are now considering revising the definition of fill material. What is EPA's rationale for revisiting the well-established division of the Sec. 402 and Sec. 404 programs?

What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?

Has EPA yet considered the time and costs associated with making such a change to the two major CWA permitting schemes – Secs. 402 and 404?

Response (to the three questions above): I understand the importance of clarity, with respect to the permitting process. If I'm confirmed, I'll work closely with the Army Corps and others to ensure that there is increased clarity in the permitting process.

E15:

In February 2013, the President of the American Automobile Association testified before Congress that the introduction of E15 to commerce was done "without adequate protections to prevent misfuelings and despite remaining questions about potential vehicle damage." In further testimony, he suggested that testing of E15 was far too narrow in scope and that sales should be suspended until further study is done on the potential full impact of E15 on all aspects of vehicles and appropriate. Do you believe testing on E15 should have included potential impacts on engine life and fuel pumps? Do you stand by EPA's conclusion that E15 is safe and reliable for consumers to use?

EPA issued its E15 partial waiver decisions based on an extensive review of all relevant scientific and engineering information. For model year 2001 and newer light-duty motor vehicles, across the approximately 30 studies EPA used to support its waiver decisions, which included the comprehensive work conducted by the Department of Energy (DOE), no issues regarding vehicle fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. The model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when operated and tested on E15.

Through its waiver, EPA has concluded that E15 "will not cause or contribute to the failure of engines or vehicles." If you stand by EPA's conclusion, would you support legislation requiring the federal government should indemnify companies that sell E15 from any future liability related to the use of E15 in motor vehicles and motor vehicle engines?

I am not aware of any current proposed legislation of this nature, but in any event, the EPA has no position with regard to such proposed legislation if it exists.

When the RFS was passed, gasoline demand was projected to increase for the foreseeable future. Now, gasoline demand is flat or declining for the foreseeable future. Even if more E15 were used in the marketplace, there would not be enough room in the fuel supply, particularly given new CAFE standards. How does EPA plan on addressing this conflict between mandated ethanol volumes and decreasing fuel demand due to the Administration's CAFÉ standards?

Congress mandated that increasing amounts of renewable fuel be used nationwide, while providing industry with flexibility to determine the most cost-effective fuel mix needed to meet the requirements of the law. EPA is reviewing comments submitted in response to the agency's proposed rulemaking for the 2013 RFS volume standards, and will carefully consider this input as it sets future RFS standards. Going forward, EPA will consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program.

Many auto companies are actually warning consumers against using E15 even in EPA-approved vehicles and AAA is warning consumers not to use it. What does EPA know that the auto companies don't?

EPA would defer to the automakers to explain the basis of their communications. The EPA issued its E15 partial waiver decisions based on an extensive review of all relevant scientific and engineering information. For model year 2001 and newer light-duty motor vehicles, across the approximately 30 studies the EPA used to support its waiver decisions, which included the comprehensive work conducted by the Department of Energy (DOE), no issues regarding vehicle fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. The model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when operated and tested on E15.

Did EPA look at any testing data other than emissions before approving E15?

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Was EPA aware of ongoing CRC testing on engine durability, fuel pumps and other engine components? Why not wait until that test was complete before making a decision? Because in the aftermath it looks like the decision was, at best, premature. The CRC data shows millions of approved vehicles are in danger of engine damage.

EPA has reviewed the limited portions of the CRC test program made available to the public. Unfortunately, complete information on the testing program has not been made available to the government, and the CRC expressly denied EPA or the Department of Energy (DOE) a role in the test program. As DOE has highlighted repeatedly (see for example here: http://energy.gov/articles/getting-it-right-accurate-testing-and-assessments-critical-deploying-next-generation-auto), the CRC E15 test programs have a number of significant scientific shortcomings, including failure to test components or vehicles on E0 and E10 to provide information on typical failure rates for baseline fuels.

How many stations are carrying E15? How is EPA ensuring compliance with the labeling requirement? Recent reports show that as many as 1/3 of stations carrying e15 are not properly labeling it.

As of April 15, 2013, EPA has approved misfueling mitigation plans for 11 companies that are offering E15 at approximately 20 retail stations. EPA is closely monitoring results from the E15 compliance survey to ensure that stations that offer E15 are complying with applicable E15 labeling requirements. In 2012, the E15 survey checked every E15 station registered with an approved Misfueling Mitigation Plan and found 100 percent compliance with the labeling requirements. Reports suggesting that 1/3 of the stations with approved misfueling mitigation plans were found not to be in compliance with the labeling requirements, are erroneous.

At what point should we conclude the mandate is causing significant harm?

EPA is not requiring the use of E15 – this will be up to the marketplace.

What was the rate of consumer misfueling during the switch from leaded to unleaded gasoline? Why didn't EPA promulgate stricter misfueling mitigation requirements like it did during that time- or even the more stringent warning label (considering that was the only misfueling mitigation measure EPA is requiring)?

EPA does not believe there was significant misfueling as unleaded gasoline was introduced. The agency did conduct tampering and misfueling surveys throughout the 1980's and into the early

90's during the phase out of lead in gasoline. The surveys generally found a very low incidence of misfueling. Further, state inspection programs implemented in many areas of the country also implemented tampering and misfueling inspections, which acted as additional deterrents to misfueling.

What is the status of an ANSI standard for E15?

I am not aware of any ANSI standards for E15.

Why is EPA suggesting an E15 cert fuel in the Tier 3 rule, considering one of the justifications is to harmonize regulations with the State of California, which certifies to E10? Is this a way to force automakers to build cars to use fuels that may or may not be commercially available?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether we should finalize E10 for certification test fuel. If we finalize E15, the agency intends to allow use of E10 as the certification test fuel through 2019.

Given the number of issues with E15, not the least of which is liability, why does EPA think half of the fuel consumption will be E15 in 2017?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

The majority of gas stations are single store operators, and more than 90 percent are independent from refineries. Why would these small businessmen take on potential liability to sell a fuel that can only be used in less than 5 percent of vehicle (those certified by manufacturers to use E15 or FFV) and no other type of engine?

EPA does not require that any party offer E15 for sale. EPA has not made a projection of potential E15 sales, but would note that light-duty diesel vehicles represent less than five percent of vehicle sales, yet many retail stations now offer diesel fuel in order to appeal to a wider clientele of potential customers.

Despite guidance from OMB, EPA frequently does not assess the cumulative economic impact of regulations on the regulated community. For example, although EPA touts the cumulative benefits of its Clean Air Act regulations, each regulatory proposal under the Act is only assessed for its particular costs and impacts. Will you commit to ensuring that EPA does a better job assessing the cumulative impacts of regulatory proposals, including impacts on U.S. competitiveness?

Response: EPA performs detailed analysis of the impacts of our regulations as part of the regulatory impact analysis. The modeling approaches we use can take into account other rules. For example, when EPA modeled our mercury and air toxics rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating margins. If confirmed, I would be happy to work with EPA economists to investigate and refine economic tools that can help us better assess our regulations.

EPA is required by statute to evaluate the costs and benefits of each regulation. For cooling water intake structures Clean Water Act Sec. 316(b) regulations, EPA's own analysis states costs 20 times greater than the expected benefit. To justify the imbalance between costs and benefit the EPA provides all kinds of caveats calling the analysis incomplete and the costs overstated. The agency is required to conduct these analyses in a way that supports sound decision-making when setting standards. Such a gap between costs and benefits is troubling – especially for those in rural America and other economically disadvantaged communities who will ultimately be paying for these changes. Does this analysis reflect the state of EPA's science and if not, what steps will EPA take to redo the analysis so that it accurately reflects the cost and benefits before making any policy decision and before issuing any proposed or final regulation?

Response: As you know, I have worked hard to find practical approaches to regulation under the Clean Air Act. If confirmed, I look forward to working to ensure that rules like 316(b) are similarly sensitive to the variations across the electric utility industry and to look for flexibilities that can reduce costs while maintaining environmental protection. Similarly, I will always work to ensure that the EPA uses the best science available for regulatory analysis.

It is my understanding that endocrine screening results have been submitted to EPA on about 50 pesticide chemicals. What has been EPA's experience with the Endocrine Disruptor Screening Program (EDSP) to date? How is EPA applying a weight of evidence approach to screening level results to determine whether the chemicals need to go on to higher tiered endocrine testing?

Response: As I understand it, the agency has received data on a number of pesticides and is in the process of conducting a technical review of the data. If confirmed, I will work to ensure that the endocrine program is on sound scientific footing.

I understand EPA is conducting an evaluation of how well the EDSP Tier 1 screening methods and Battery actually performed. If certain methods are found to be flawed or aren't performing adequately, will EPA make the necessary adjustments to the methods or test Battery before requiring additional substances to undergo EDSP Tier 1 screening? What challenges does EPA see in this next phase? What lessons has EPA drawn from its implementation of the EDSP program to date?

Response: As I understand it, the EDSP screening methods are undergoing external peer review. If confirmed, I will work to ensure that the endocrine program is on sound scientific footing.

EPA's endocrine disruptor regulatory program is risk based, which allows EPA to set safe levels of exposures based on a determination of both hazard and exposure. Do you agree that a risk-based approach is more scientifically sound than a hazard based approach? Do you think this approach provides EPA adequate authority for addressing the "endocrine disruptor" issue?

Response: My understanding is that EPA's endocrine disruptor screening program is a risk based program and is statutorily based. I will work with you and the committee to ensure that the endocrine program is on sound scientific footing.

<u>Endangerment Finding / Peer Review</u>

In 2009, EPA determined in its Endangerment Finding that carbon dioxide and related substances pose a danger to human health and welfare. EPA made this determination without the peer review of the Scientific Advisory Board, a panel of independent scientists whose function is to ensure the scientific credibility of EPA's Clean Air Act proposals. What explains EPA decision to impose such a draconian regulation without complying with its statutory duty of scientific peer review?

> EPA relied on comprehensive peer-reviewed scientific assessment reports conducted by the US Global Change Research Program, the Intergovernmental Panel on Climate Change, and the National Research Council, which are subjected to rigorous expert and in some cases government review. This approach was validated by the D.C. Circuit Court in *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012). The Court found that EPA had based its Endangerment Finding on substantial scientific evidence, noting that "the body of scientific evidence marshaled by EPA in support of the Endangerment Finding is substantial," and that EPA's reliance on these scientific assessments was proper and consistent with the methods decision-makers often use to make a science-based judgment. EPA followed all applicable agency and OMB guidelines regarding data quality and peer review in developing the Endangerment Finding. The D.C. Circuit rejected arguments that EPA was required to submit the proposed Endangerment Finding to SAB for review under the terms of 42 U.S.C. § 4365(c)(1).

EPA has for years maintained that reduction, reuse, recycling and recovery are all preferable to landfill disposal. For municipal waste that cannot be recycled (due to food contamination, or other reasons)

recovery is better than disposal. New and emerging technologies are enabling the production of a variety of clean, renewable fuels and energy from non-recycled plastic in municipal solid waste, and communities across the country are taking integrated approaches to increase recycling and maximize the energy value across the entire municipal waste streams. We hope we can count on EPA's leadership to find ways to ensure that these potentially significant domestic energy sources are not wasted in landfill, but instead treated as the renewable fuels that they are. Do you agree that energy recovery from non-recycled plastics and other waste streams is an underutilized resource? Will you consider appropriate changes to EPA's regulatory programs to do a better job of promoting energy recovery across many different industries and processes? Will you commit to work with the Committee to give energy recovery a proper place in a true "all-of-the-above" energy strategy?

Response: I am happy to work with the Committee. I agree with President Obama that we need an all of the above energy strategy to achieve energy independence in a manner that protects our resources, our health and our environment. I believe that energy recovery from waste streams is an important part of that strategy.

Energy Star

Why, after being warned of the problem by the EPA's Office of Inspector General, did you allow so many products to be labeled as ENERGY STAR appliances devices even though they weren't among the more efficient ones?

> Keeping ENERGY STAR requirements up-to-date is a priority for the Agency. All appliance specifications have been recently updated, with effective dates as follows: clothes washers (January 2011), dish washers (January 2012), dehumidifiers (October 2012), room air conditioners (October 2013), water heaters (July 2013), refrigerators (in process, anticipated March 2014).

It is my understanding that EPA's Office of Enforcement and Compliance Assurance (OECA) is considering eliminating EPA's "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Audit Policy) in an effort to deploy its enforcement resources to address more significant noncompliance issues. This would be a grave mistake as the Audit Policy, which has been in place since 1995, is one of the most successful voluntary programs that the Agency has implemented. The Audit Policy encourages regulated entities to voluntarily discover, and promptly report and correct violations of federal environmental requirements that are not otherwise required to be reported. This Policy has resulted in significant benefits both in terms of protection of human health and the environment and in the development of more comprehensive and sophisticated environmental compliance programs by industry. The Audit Policy does not require a lot of EPA resources. In fact, the Policy requires little of OECA other than a decision, or not, to investigate further the voluntary notifications of noncompliance that it receives. Do you agree that the Audit Policy is an important program? As Administrator will you commit to preserve the Audit Policy so that

the beneficial effects of this Policy continue to be achieved? OECA decisions to review or take action under the Audit Policy are discretionary and nothing requires OECA to follow-up on each and every notification it receives. What steps should OECA take to be more judicious and reduce the number notifications it reviews or follow-up actions it takes?

Response: I know that the practices of environmental management systems and internal audits of company performance have become much more widespread since EPA issued the Audit Policy over 15 years ago. Companies are increasingly aware that good environmental management is part of overall sound business management. This general corporate acceptance of auditing enables EPA to better align the Audit Policy with Agency resources and compliance priorities, and apply it where it can be most effective. If confirmed, I commit to applying compliance incentives in a manner that best advances the goals of good environmental management.

Thinking about environmental justice issues for a minute, why is EPA issuing "papers" proposing changes to policies that were initially published in the Federal Register? What has changed that justifies this significantly less-transparent approach?

Response: While I am not familiar with this specific issue, I commit that I will look into this and ensure that any work that the Agency is doing is consistent with the law and the spirit of transparency.

The "Role of Complainants and Recipients in the Title VI Complaints and Resolution Process" paper leaves an important stakeholder out of the arbitration process as EPA merely proposes negotiations between complainants and the state permitting agencies who receive federal funding. The actual permit holders are not just excluded from negotiations – there is no requirement they even be notified that a complaint has been filed. Shouldn't EPA require both notification and inclusion of all stakeholders potentially affected by a Title XI complaint?

Response: I agree that it is vital that the Agency's Title VI program be administrated in a thoughtful manner, consistent with the law. If I'm confirmed, I commit to receiving additional briefing on the specifics of the program.

The ability for states to develop approvable implementation plans or other submissions, such as Exceptional Events demonstrations, has been hindered by: EPA's inability to provide timely guidance; undefined processes that do not clearly establish the criteria EPA will use to evaluate submissions; and, in some cases, the lack of a dispute resolution processes. If confirmed, what are your plans to correct these deficiencies?

EPA is committed to working collaboratively with our state, local, and tribal co-regulators to produce timely NAAQS implementation guidance. In fact, the agency is in the final stages of drafting Interim Exceptional Events Implementation Guidance, which clarifies and provides

examples of information that air agencies can include in their exceptional event demonstration submittals and identifies mechanisms that air agencies can use to resolve disagreements regarding exceptional event non-concurrence on submittal packages. EPA has had extensive stakeholder involvement during the development of this guidance, and the agency would expect that the final product will address some of your specific concerns.

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Under your direction, would EPA seek to improve the pesticide consultation process with the Services (Fish and Wildlife and National Marine Fisheries) mandated under section 7 of the Endangered Species Act? In order to improve this process, how would you guide the agency to ensure actions are taken to be consistent with the statutory mandate to use the best available information in regulatory decisions regarding pesticide reviews and registrations?

Response: I am committed to working with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service to ensure that the agency fulfills its responsibilities to protect endangered species, including in the decisions made under FIFRA. To achieve this result, I commit that, if confirmed, I will emphasize the importance of using the best available scientific information in decision-making, and conducting regulatory activities in a transparent manner that provides ample opportunities for public participation.

What are the costs (in dollars and time) to EPA headquarters and regional offices related to the implementation and enforcement of the Pesticide General Permit (PGP) under the National Pollutant Discharge Elimination System (NPDES)? In a time of limited resources, how would you seek to manage these requirements while being judicious with available resources?

Response: If I'm confirmed, I'll ensure that the Agency take the least burdensome approach that is consistent with recent court decisions on this topic. If I'm confirmed, I will also work with you, the States and the Agricultural community on this important issue.

What do you see as the appropriate balance between a science-based risk assessment and precaution in making decisions about pesticide approvals under FIFRA? Explain how you would defend EPA's support and implementation of risk assessments against international regulatory authorities who favor a hazard-only based precautionary principle (e.g. the European Union)? What are your views on how best to consider impacts to international trade when make regulatory decisions?

Response: I am committed to protecting the environment as mandated by Congress. FIFRA requires the agency to balance the risks and benefits of pesticides based on the best science available. If I am confirmed I will continue to support stakeholder involvement in strong science-based risk assessments and an open and transparent process. I will continue to collaborate with our global regulatory partners, such as the OECD and the European Food Safety Authority. I look forward to sharing the results of our assessments with our international partners.

Will you support an EPA response to argue against the European Union's prohibition on 350. neonicotinoid insecticides?

Response: I am committed to protecting the environment as mandated by Congress. FIFRA requires the agency to balance the risks and benefits of pesticides based on the best science available. If I am confirmed I will continue to support stakeholder involvement in strong science-based risk assessments and an open and transparent process. I will continue to collaborate with our global regulatory partners, such as the OECD and the European Food Safety Authority. I look forward to sharing the results of our assessments with our international partners.

The government spends millions of dollars on water monitoring that is not used by the EPA Office of Pesticide Programs during the risk assessment process for the registration of pesticides. In general, EPA not using this real-world monitoring data leads to the Agency relying on modeling that over-estimates the potential human exposure to pesticides from drinking water. Being protective is good, but being over-precautionary can have the unintended consequence of eliminating safe uses of pesticide thus driving up the cost of production and limiting the pest control options for farmers and other users. What would you do to ensure that EPA risk assessments as accurate as possible and based on the best available information, while balancing the protection of human health with the needs of agriculture and food/fiber production?

Response: I am committed to applying the best available science – using both monitoring and modeling, as appropriate – to protect human health and the environment.

Does it make sense to regulate pesticides in water runoff as a Clean Water Act program when FIFRA is the congressional statement on the extent of pesticide regulations? Why not consider that pesticides, used in compliance with FIFRA, are not pollutants under the CWA?

Response: I am not familiar enough with the issues you have raised in these questions to provide a detailed response. If confirmed, the Agency and I will work with you and other members of the Committee on this important issue.

Will EPA commit to aligning its FOIA redaction practices with DOJ guidelines?

Response: I agree with you and with Acting Administrator Perciasepe that EPA must strive towards excellence with respect to our transparency policies. If I'm confirmed, I commit to working with you, and others to ensure that our policies are strong, and consistent with the law and appropriate guidelines.

What assurances can you give us that your agency will not continue to stand in the way of the new energy related jobs and the creation of more domestic energy here at home?

Response: I agree with President Obama that we need an all of the above energy strategy to utilize our domestic energy sources to achieve energy independence in a manner that protects our resources, our health and our environment.

What is the communication between stationary and mobile source emissions staff? How do you reconcile requirements to produce new fuels (such as the proposed Tier 3 gasoline sulfur reduction) with requirements to reduce emissions at refineries? Are these contradictory or do you believe that both can be done? For example, don't gasoline sulfur reduction processes increase refinery greenhouse gases, Nitrogen Oxides and Particulate Matter emissions?

Stationary and mobile source emissions staff coordinate closely with regard to interactions between regulatory actions in their respective spheres. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Joint stationary and mobile source modeling indicates that, in the absence of additional controls such as the Tier 3 standards, many areas would continue to have air pollution levels that exceed the existing health-based National Ambient Air Quality Standard (NAAQS) in the future. The proposed Tier 3 rule includes a detailed consideration of potential impacts on refinery emissions. For example, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

President Obama stated that if Congress doesn't adopt climate change legislation he finds acceptable then executive actions will be taken to address climate change. What regulatory options are under

consideration by EPA to fulfill this promise, given that the President identified actions that would be taken "now"?

EPA currently is focused on reviewing more than 2 million comments received on its proposed carbon pollution standards for new power plants. In addition, the model year 2014-2018 heavy-duty GHG and fuel efficiency final rulemaking discussed a potential future phase of standards for model years beyond 2018. The agency has begun some initial discussions with stakeholders regarding a potential second phase of greenhouse gas standards for heavy duty vehicles that would extend beyond the current model year 2014-2018 standards as contemplated in the initial rulemaking. Further, EPA also oversees a number of non-regulatory programs, such as ENERGY STAR and others, which have resulted in the achievement of substantial GHG reductions.

A cursory look at the some of the largest rules that you have issued or proposed in your tenure at EPA suggests that your office has imposed between $300 to $400 billion dollars per year in higher costs on American businesses and consumers. Could you provide this Committee with an estimate of the total annual costs of all the rules you have proposed and finalized since becoming Assistant Administrator for Air and Radiation? How do you think these costs impact the ability of American firms to compete internationally? How do you think these costs impact the price of goods for people who are struggling to get by?

The Office of Management and Budget (OMB) issues a Report to Congress each year which compiles estimates of the benefits and costs of federal regulation.[xiii] For each year since 2009, these OMB Reports to Congress indicate the quantified benefits of air rules issued in that year significantly exceeded the costs of those rules. In addition, in a March 2011 report that studied the 1990 Clean Air Act amendments and the effects of associated programs on the economy, public health and the environment between 1990 and 2020, EPA estimated that the benefits of these clean air programs will reach approximately $2 trillion in 2020. By comparison, the cost of these actions was estimated to total $85 billion, resulting in a benefit to cost ratio of approximately 30 to one. An important implication of these findings is that prices of some goods and services may be affected by investments to reduce pollution, but the value to all Americans of cleaner air vastly exceeds those costs. These benefits include reductions in the number of work days lost to air pollution-related health effects, and the resulting improvements in the productivity of American workers enhance the global competitiveness of American workers and the firms that employ them. Cleaner air also reduces medical costs incurred for air pollution-related health effects, resulting in direct savings to American households. In fact, the March 2011 report included economy-wide modeling which demonstrated that just these two beneficial effects alone more than offset the economy-wide effects of all compliance expenditures, with the result that economic growth rates were faster –and the economic welfare of American households was higher—throughout the study period with these clean air programs than without them

[xiii] Latest draft report: http://www.whitehouse.gov/sites/default/files/omb/inforeg/2013_cb/draft_2013_cost_benefit_report.pdf

How many of EPA's significant rules in the last four years have had to be reconsidered and revised after promulgation of the final rule?

Response: I am aware of some instances in the last four years in which EPA has reconsidered and revised a Clean Air Act rule after promulgation of the final rule. For example, in March of this year EPA finalized updates to certain emission limits for new power plants under the Mercury and Air Toxics Standards (MATS) after reconsideration of the final MATS rulemaking that was signed in December 2011. However, I am not aware of every instance in which EPA has taken such an action. If confirmed, I can examine this issue more thoroughly.

The office of the Scientific Advisory Board (SAB) is located inside the Administrator's office and my understanding is that the Administrator actually oversees and approves the selection of SAB and CASAC officials. Is this correct? Do you see an inherent conflict of interest in having EPA select and approve its own peer review committees? Isn't it possible that the selection is likely to reflect people who have general views that are congenial to the way EPA approaches the science? Wouldn't it be better to have officials outside EPA select peer review panels for significant rules, such as NAAQS?

Congress in the Environmental Research and Development Demonstration Authorization Act required that the Administrator establish the Board. As a federal advisory committee, the SAB is subject to the requirements set out in the Federal Advisory Committee Act (FACA), 5 USC App. 2. FACA requires that, consistent with the management of all committees subject to FACA, EPA must make "appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment."5 USC App. 2 § 5(b)(3). The General Services Administration Federal Advisory Committee Management Rule, which governs federal advisory committees government-wide, requires the head of an agency that establishes one or more federal advisory committees to develop procedures to assure that advisory committees are not inappropriately influenced. 41 CFR § 1-2-3.105(g). The EPA's procedures are set out in its Federal Advisory Committee Handbook.

If confirmed, do you plan on continuing with EPA's Design for the Environment Safer Product Labeling Program? In what ways do you believe this has been a valuable program for the manufacturing community?

The DfE process for certification under the Safer Product Labeling Program is often criticized by many as costly, cumbersome and extremely slow. What would you do as EPA Administrator to make the process more efficient and cost-effective?

The DfE Safer Product Labeling Program requires review and approval of a product's composition by a third party. It is my understanding that DfE contracts with two companies to conduct these reviews. Is there a process to re-qualify these organizations? Doesn't the current format of exclusive reviews

by just two companies unfairly exclude other prospective reviewers? What, if anything, would you do to address this apparent monopoly that has been created by the EPA?

Last year, EPA's DfE program published a list of "safer chemicals" on its website as part of its Safer Product Labeling Program. What types of review has the Agency undertaken to classify these chemicals as "safer"? What criteria are used in these reviews? Is there opportunity for public review and comment on the list prior to its publication? Are chemicals not listed as "safer" unsafe for use as intended?

What challenges is the DfE Safer Product Labeling Program facing?

Response to all DfE questions: I strongly support the EPA's efforts to encourage the design and use of safer chemicals and this includes the Design for the Environment (DfE) program, a voluntary partnership program designed to help consumers and purchasers find safer products. If confirmed, I will be happy to work with you and committee on this program.

GHG

How do U.S. greenhouse gas emissions compare to other countries on an apples-to-apples basis, such as the ratio of emissions to GDP? What is an acceptable amount of greenhouse gas emissions annually for the United States?

The U.S. and other countries report total greenhouse gas emissions annually the United Nations Framework Convention on Climate Change using common methodologies[xiv]. In Copenhagen in 2009, the U.S. committed to reducing U.S. greenhouse gas emissions in the range of 17 percent by 2020 from 2005 levels.

You previously co-authored a paper which stated that "the location of CO2 emission reductions is irrelevant in reducing global emissions of this pollutant". Do you still agree with this assessment? If so, where do you think the most cost-effective emission reductions can be made in the world?

CO_2 and other greenhouse gases, once emitted, can remain in the atmosphere for decades to centuries, meaning that their concentrations become well-mixed throughout the global atmosphere regardless of emissions origin, and their effects on climate are long lasting. This means that the impact of GHG emissions reductions on GHG concentrations is not dependent on the location of the emissions reductions. Cost-effective emissions reductions opportunities exist throughout the world. For example, the EPA report Global Mitigation of Non-CO_2 Greenhouse Gases (EPA 430-R-06-005, 2006) finds that major emitting regions of the world, including China, the United States, the EU, India, and Brazil offer large potential mitigation opportunities from the energy, waste, and agriculture sectors. Energy efficiency improvements, for example in

[xiv] U.S. Greenhouse Gas Emissions and Sinks Inventory
http://www.epa.gov/climatechange/ghgemissions/usinventoryreport.html

buildings and the transportation sector, also have the potential to yield substantial cost-effective emission reductions in major emitting countries.

The two states where you worked and developed environmental regulations for the electric power sector have the most expensive power in the Nation. I understand that during your tenure in these states that you pursued the adoption of the first ever plant-by-plant CO2 limits and the first ever CO2 cap-and-trade program. Do you think these policies contributed to the very high cost of power in these States? Can you please outline the specific environmental and health benefits realized in these States that have resulted solely from reducing CO2 emissions as a result of these programs? As EPA Administrator do you intend to pursue similar programs on a national scale?

Although I am proud of the work that I did on climate policies at the state level, I have now been with EPA for nearly four years and at this point am best positioned to discuss my work at the federal level. With regard to the power sector, last year EPA proposed carbon pollution standards for new power plants. The Agency currently is working to review the nearly 2 million comments received on that proposal.

After addressing greenhouse gas emissions in the motor vehicle and utility sector, do you have a plan for addressing GHG emissions in the rest of the economy? You have said EPA plans to focus on the biggest emitters first. Have you prioritized which industries you intend to address after motor vehicles and the power sector?

The agency is currently focused on reviewing the more than 2 million comments received on its proposed carbon standards for new power plants. Although EPA is evaluating GHG emissions information from a limited number of source categories, the agency has not determined that it is appropriate to regulate GHG emissions from other industrial sectors with the exception of the Agency previous acknowledgment that it is appropriate to issue regulations for refinery greenhouse gas emissions. But as stated in the answer to a related question, the agency has no current plan for issuing refinery greenhouse gas regulations. The agency has also previously said that it had insufficient data to regulate Portland cement facilities, and it does not have a timetable or plan for issuing GHG regulations of this sector.

EPA has been petitioned to regulate GHG emissions from animal feeding operations. Can you assure us that EPA won't regulate GHG emissions from any agricultural facilities during the second term?

Currently EPA has no plans with respect to regulating greenhouse gas emissions from animal feeding operations or any other agricultural facility.

EPA has been petitioned to regulate GHG emissions from coal mines. What are your plans with respect to such a petition?

On April 5, EPA informed the US District Court for the District of Columbia that it would be acting on a petition to regulate greenhouse gases from coal mines and in that motion, EPA stated that it plans to deny the Plaintiffs' petition for rulemaking.

EPA has been petitioned to establish National Ambient Air Quality Standards (NAAQS) for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs?

Although EPA has not taken any final action on the petition, I do not believe that setting a national ambient air quality standard for greenhouse gases would be advisable.

Has EPA done any analysis of the value of diverse energy sources as a basis for energy independence?

Response: Not to my knowledge, though it is clear that the United States is fortunate to have a broad range of domestic energy sources, which includes – among others - coal, oil, natural gas, wind, solar, biofuels and nuclear.

Why hasn't EPA studied the cumulative impact of all its recent rulemakings which are causing the retirement of coal fired energy sources?

EPA has been monitoring the changes taking place in the electric utility industry, including the significant decline in natural gas prices, rising coal prices, and reduced demand for electricity. This, when combined with the fact that a majority of coal plants have been in service 40 years or longer and many of these older plants are significantly less efficient (resulting in lower utilization rates), has led to electric utility owners making decisions to retire some of these plants. Many analysts believe that these market changes in gas prices and other factors have the largest impact on retirements in this sector.

The modeling approaches EPA uses can take into account both these market shifts and recent rulemakings. For example, when EPA modeled our mercury and air toxics rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners (including retirement decisions) as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating capacity.

EPA's own data in relation to various carbon reduction plans continuously indicates reducing GHG emissions domestically will have no impact on worldwide emissions. In fact, US emissions are now below 2005 levels and have been flat or declining for nearly 12 years now. This has all occurred without cap-and-trade and, until the last few years, any other GHG regulations. In light of these facts, why do you feel the Agency still needs to move forward with its GHG regulations under the Clean Air Act?

The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), held that greenhouse gases "fit well within the CAA's [Clean Air Act's] capacious definition of air pollutant." As a result of this decision, EPA has certain legal obligations to address greenhouse gases under the Act. Further, although U.S. greenhouse gas emissions currently are below 2005 levels, the science indicates that the U.S. and other major emitting countries must achieve much more substantial reductions in emissions to mitigate harmful climate change. As I stated in my testimony, I strongly believe that we can and must take common sense steps – such as the light- and heavy-duty vehicle emission standards issued under this Administration – that can reduce emissions while maintaining economic growth and prosperity.

In addressing the need for unilateral, domestic GHG reductions, regardless of what the rest of the world does, the Administration has historically said that we need to be "leaders" in this arena to encourage other nations to follow. The U.S. has had some sort of GHG regulation in place since 2007, ranging from the GHG requirements in the RFS, to EPA's GHG regulations for stationary sources under the Clean Air Act, to two stages of CAFÉ and GHG tailpipe standards. How has leading through such actions to control GHGs caused China, India or other developing countries to "follow our lead" in reducing GHG emissions?

My understanding is that a number of major developing countries have taken significant actions to reduce greenhouse gas emissions in recent years. Although I don't have sufficient information to respond to your question as to the relationship between those actions and specific actions taken by the United States, I believe U.S. leadership in reducing carbon pollution does help to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

The EPA's greenhouse gas regulations, along with a host of other onerous regulations, are unnecessarily driving out conventional fuels as part of America's energy mix. The consequences are higher energy prices for families and a contraction of our nation's economic growth for no noticeable impact on the earth's temperature as major developing countries like India and China repeatedly have said they would not cut economic growth to curb GHG emissions. Do you agree with former EPA administrator Lisa Jackson that unilateral actions on greenhouse gas emissions will not significantly impact global emissions and thus have a negligible effect on climate change?

In order to achieve the reductions in greenhouse gas emissions that science indicates are necessary to address the most severe impacts of climate change, all major emitting countries will need to take action. As I indicated in my testimony before the Committee, I believe the United States can achieve meaningful reductions in greenhouse gas emissions through common sense steps, such as the light duty vehicle emission and fuel economy standards established by this Administration, that are fully consistent with domestic economic growth. I also believe U.S. leadership in reducing carbon pollution helps to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

Under EPA's Mandatory Reporting Rule for GHG Emissions, EPA has developed a timeframe for categories of GHG emitters to report GHG emissions data. Some companies are currently working on submitting 2012 GHG emission data to EPA and others are on a deferred schedule. EPA issued a memorandum dated December 17, 2012 (attached) which concluded that because some of the data required to be reported may already be in the public arena and therefore EPA would not accord it Confidential Business Information (CBI) protection. As you might expect, some view this conclusion as premature, and one that should be made at on a case by case basis during the data collection period. In particular, certain industries for which GHG data reporting is currently deferred are very concerned that sensitive business information and trade secrets will not be adequately protected by EPA once their data must be reported. Do you agree that certain sensitive information and trade secrets reported under the greenhouse gas reporting rule should be treated as CBI and protected? Will EPA reconsider the approach announced in its December 17, 2012 memorandum? How does EPA intend to use all of the GHG data being collected under the rule?

Data submitted under the GHG Reporting Program (GHGRP) that has been determined to be confidential business information should be protected under the provisions of 40 CFR part 2, Subpart B. In response to comments raised by stakeholders, EPA deferred reporting of certain

data elements for 3-5 years in order to provide time for the agency to evaluate confidentiality concerns (76 FR 53057, August 2011). When EPA deferred reporting for those data elements, the agency said it would conduct a sensitivity analysis of the data and the 2012 memo sets forth the results of our analysis for the data elements deferred until 2013. EPA has not received any specific stakeholder feedback or additional information that would warrant reconsideration of that analysis. EPA plans to propose a rulemaking for notice and comment related to the inputs whose reporting deadline was deferred until 2015. The GHGRP was mandated by Congress in the FY2008 Consolidated Appropriations Act and the data will inform policy decisions.

Health Benefits

What health benefits are projected to occur as a result of an existing source NSPS - that is, benefits other than the co-control of criteria pollutants or NESHAPS?

At this time, EPA is working to finalize the proposed NSPS for new power plants. The agency is not currently developing any existing source GHG regulations for power plants. As a result, we have performed no analysis that would identify specific health benefits from establishing an existing source program.

Why does EPA claim that its green house gas regulations will have health benefits at levels far below the current PM NAAQS, yet has only set the new PM NAAQS at much higher level? Shouldn't EPA be consistent in justifying regulations on the basis of PM health benefits and where its best scientific judgment sets the health protective PM NAAQS?

EPA's approach to estimating the benefits of reducing fine particulate matter pollution is consistent with the best available science and advice from two Congressionally-created independent review boards, the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis. There are health benefits attributable to reducing particulate matter pollution below the NAAQS and the agency does take those benefits into account. There is no scientific basis for ignoring those benefits. While the NAAQS is set at a level adequate to provide protection of public health – and should be neither more nor less stringent than necessary to do so – it is not set at a zero risk level.

Has EPA done any studies on the health impacts of job losses?

Response: I'm concerned about any American involuntarily displaced from a job, for whatever reason, and the impacts that can have on a family. However, I also understand that the peer-reviewed literature shows the effect of environmental regulation on jobs is far smaller than the exaggerated claims we often hear. The most convincing research out there shows that air pollution is a real threat to Americans' health and that claims of "job killing" regulations aren't supported by the evidence.

EPA performs detailed regulatory impact analyses (RIA) for each major rule it issues, including cost-benefit analysis, various types of economic impacts analysis, and analysis of any significant small business impacts. Since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine RIAs conducted for each major rule.

How many human health impacts are avoided if the proposed CWA 316(b) standards are promulgated?

Response: It is my understanding that Section 316(b) of the Clean Water Act requirements primarily relate to aquatic life; however, if confirmed, I will work to ensure that this and all Agency rules meet the appropriate scientific and legal standards with regard to all types of benefits.

In 1997, EPA changed the way that it conducts Regulatory Impact Analyses (RIA) to justify the costs of many of its regulations. Specifically, EPA now regularly addresses the criteria pollutant, PM2.5, which is already regulated under its own National Ambient Air Quality Standard (NAAQS), in the benefit cost analysis (BCA) for other pollutant regulations, particularly air toxics. Where the Agency finds that PM2.5 emissions reductions show benefits that are the same or greater than that for the pollutant being regulated (a "co-benefit"), the agency has based the rule at least in part on that result. EPA's Mercury and Air Toxics rule for power plants is an example of this approach, which presents at a minimum some practical and scientific questions of validity. Depending on the degree to which EPA relies on co-benefits, EPA could be over-regulating the pollutant(s) that is the focus of an RIA. Since PM2.5 is regulated separately from other pollutants, doesn't this approach really mean that EPA is "double counting" these PM2.5 reductions across other regulations? As Administrator, what steps would you take to ensure that the co-benefits of regulation do not become a regular basis for the calculated benefit of any particular regulatory proposal?

> The purpose of the Mercury and Air Toxics Standards is to reduce mercury and other air toxics, following the approach set out in the Clean Air Act. While the EPA does not set out to regulate PM in toxics rules such as MATS, such rule achieve these PM reductions as an additional benefit at no additional cost. EPA accounts for the PM benefits in our cost-benefits analysis, because they are real, they are significant, and best practices for economic analysis require that the agency consider all benefits. The PM2.5 benefits the EPA estimates for new rules such as CSAPR and MATS are not "double-counting." Those benefits are above and beyond those the agency previously estimated for other rules establishing controls on pollution that are already "on the books," and are appropriate to include in the benefit-cost analysis for a regulation, regardless of whether those PM2.5 benefits are the direct target of a regulation or a co-benefit.

EPA rationalizes many of the very costly regulations it has proposed by citing theoretical PM related health benefit estimates that are based on data collected over 30 years ago. In fact, the key Harvard Six Cities and American Cancer Society data are based on surveys that are over 30 years old. Are you aware that in 2004 the NAS recommended that EPA not rely on these benefit studies because the individual data have not been updated? Why does the EPA continue to rely on studies that the NAS has stated should have "little use for decision making?" Is EPA misleading the public in citing these implausibly high benefit estimates when the NAS has clearly told the Agency not to rely on these

studies? Is EPA's claim of achieving benefits equivalent to curing cancer based on these same flawed studies that rely on outdated information? Will you promise not to rely on studies using the American Cancer Society or Harvard Six City databases until the data are updated as recommended by the National Academy of Sciences?

The quotation in your question is taken out of context. The NAS commented that the EPA should not rely on the Harvard Six Cities cohort and American Cancer Society cohort alone to the exclusion of a "new generation of cohort studies." In formulating the decisions on the PM NAAQS, the EPA considered all of the available scientific evidence, including studies of new cohorts. In addition, two separate panels of EPA's independent Science Advisory Board (SAB) recently recommended that the EPA use these two cohorts to quantify PM2.5-related mortality risks and benefits (i.e., CASAC (2009, 2010) and Council (2010)). Despite some inherent limitations, these cohorts continue to have several advantages over other currently available cohorts, including age and gender representativeness, geographic representativeness, study size, consideration of confounders, and length of follow-up. EPA's approach is consistent with the advice from NAS and SAB.

On one of his first days in office, the President signed a memorandum entitled "Transparency and Open Government" in which he committed to create "an unprecedented level" of openness and transparency. The President correctly stated "transparency promotes accountability". Given the President's commitment, will you promise today to release to the American public all of the underlying research data supporting the PM and ozone benefit studies that your office has used to support such costly regulations? Given the hundreds of billions of dollars in real costs that EPA estimates will result from these regulations, doesn't the public have a right to have the data in order to assess its validity?

EPA is committed to transparency with regard to the scientific bases of agency decision making. In setting the National Ambient Air Quality Standards (NAAQS) and in assessing health benefits anticipated from air pollution regulations, EPA relies on the scientific studies that are published in the peer-reviewed literature. EPA provides the information used in regulatory decisions, including the epidemiological studies, in the publicly available docket accompanying each rulemaking. It is important to understand that the underlying data you are requesting for each epidemiological study consist of three distinct datasets, which the researchers link together in order to estimate the relative risks of exposure to air pollution: (1) air quality data; (2) health event data, which in these studies are data from the National Death Index; and (3) individual health data that are gathered through questionnaires completed for each study participant in the cohort. The questionnaires for these studies requested very detailed personal information, including questions on residential location, age, race, educational attainment, body mass index, alcohol consumption, smoking history, occupational exposure to pollution, and medical history. The complete, linked set of data underlying these studies is held by the scientific researchers that conducted the relevant research, not EPA. The availability of some of these datasets is subject to certain protections against disclosure of medical or similar information that could be used to identify a particular person in a research study.

Does EPA's benefit estimates for the utility MACT rule, which you estimate will cost up to $10 billion, rely on the same two studies (Pope 2002 and Laden 2006) and the same secret databases (American Cancer Society and Harvard Six City data) that we have requested and EPA has failed to release?

The PM2.5 benefits analysis for the Mercury and Air Toxics Standards relied upon earlier studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006). EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively.

Did the 2008 proposed ozone reconsideration, which you estimated could cost $90 billion, also rely on the same two studies (Pope 2002 and Laden 2006) and the same two secret data bases (American Cancer Society and Harvard Six City data) to estimate benefits?

The PM2.5 benefits analysis for the 2008 Ozone NAAQS relied upon earlier studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006). EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively.

Does the just released Tier III rule also rely on the same two studies (Pope 2002 and Laden 2006) and the same two secret data bases (American Cancer Society and Harvard Six City data) to estimate benefits?

The PM2.5 benefits analysis for the Tier 3 proposed rule relied upon earlier studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006). EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively, and will use these in future EPA analyses such as that supporting the Tier 3 final rule.

Doesn't your reticence to release the data suggest that the Agency is fearful the data will not hold up to public scrutiny and that there really is no support for the hundreds of billions of dollars in costs that you have imposed on the American public?

The studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006) have been extensively peer-reviewed. Studies of these cohorts were subject to a full external re-analysis by the Health Effects Institute in 2000. The results of this peer-reviewed reanalysis confirmed the findings in the original studies, concluding that "[o]verall, the reanalyses assured the quality of the original data, replicated the original results, and tested those results against alternative risk models and analytic approaches without substantively altering the original findings of an association between indicators of particulate matter air pollution and mortality."

Given that you are relying on 30-year old data for your health benefit estimates, can you realistically argue that your benefit estimates are in any way as certain as your cost estimates that are based on current market prices for equipment and labor?

EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively).

If HHS can code medical records to protect confidentiality and other agencies can code research data, why can't EPA do the same for data that are now over 30 years old?

EPA provided all of the data received from the researchers. These underlying data consist of three distinct datasets, which the researchers link together in order to estimate the relative risks of exposure to air pollution. Due to this linkage, at minimum there are serious questions as to whether it would be possible to fully protect the confidential medical information by coding the data.

What efforts have you taken to investigate the potential of employing these techniques?

Prior to disseminating the death data provided by Harvard University, EPA coordinated with the Centers for Disease Control and Prevention to ensure that the data did not identify the particular establishment or individual supplying the information.

As part of its proposed air emission standards for hydraulically fractured oil and gas wells, EPA declined to directly regulate emissions of methane but instead mandated "green completions" of wells to control volatile organic compound emissions. It appears -- based on your own testimony stating that this rule could end up "reducing up to 290,000 tons of harmful volatile organic compound emissions and a side-benefit of reducing methane emissions equivalent to 33 million metric tons of carbon dioxide" - that EPA's decision to mandate "green completions" was in effect an effort to control methane emissions. Do you agree with this assertion? Is it typical for an EPA rules stated benefit to be vastly dwarfed by a "side-benefit?"

The oil and gas standards to which your question refers regulate emissions of volatile organic compounds (VOCs) from more than 11,000 new hydraulically fractured gas wells each year – achieving a 95 percent reduction in such emissions. These reductions are achieved through the use of a proven process – known as reduced emissions completions or "green completions" – to capture natural gas that currently escapes to the air. This process has the co-benefit of substantially reducing methane emissions, as well as reducing waste of natural gas – yielding substantial cost savings. Although the rule does not target methane emissions, it is appropriate and beneficial to account for this co-benefit in analyzing and describing the rule.

Are you familiar with and confident in the data EPA used to justify the "green completion" mandate?

EPA based all provisions of the Oil and Natural Gas NSPS on the best available data sources and on proven technology that will result in net cost savings to operators through recovery of natural gas otherwise lost during well completions. A variety of data sources informed development of the rule, including data from the U.S. greenhouse gas inventory, Natural Gas STAR program, State programs, and other published studies and materials. In addition, during an extended comment period, several commenters provided supplemental data for the agency's consideration. The agency considered all of this for the final rule.

As you are aware, certain outside groups have filed a lawsuit challenging EPA's decision not to explicitly regulate emissions of methane. Can you commit today that you will vigorously defend your rule against this challenge and not enter into a quick settlement that will require EPA to regulate emissions of methane?

EPA will evaluate the claims but at this time cannot predetermine how the agency will respond.

During your tenure as Assistant Administrator for Air and Radiation, EPA issued new air emission standards for hydraulically fractured oil and gas wells. This rule was challenged by multiple outside groups and EPA indicated earlier this year that it intends to amend and reissue the rule later this year. This February, EPA's Inspector General (IG) issued a report stating that EPA's air emissions data for the oil and gas production sector is lacking and needs to improve. As part of the report, in a memorandum dated November 16, 2012 from you to the EPA IG's office, you agreed with an IG recommendation to develop a cross-office strategy designed to address gaps in the emissions data possessed by EPA on the oil and gas production sector. Do you think it is advisable to delay any new emission rules until this strategy is in place and these data gaps are addressed? Was it a mistake for EPA to propose the air emission rules in light of the data gaps identified in the IG report?

The 2012 oil and natural gas rules were based on the best information available. The final rule achieved significant emission reductions while increasing natural gas supply, providing a common sense answer to a significant environmental concern. EPA continues to refine and improve its knowledge of the oil and gas industry as data and information become available. I can assure you that future policy decisions concerning the oil and natural gas sector will be informed by any new data received.

Former Administrator Lisa Jackson acknowledged that the states "are stepping up and doing a good job" regulating hydraulic fracturing. Do you see a need for the EPA to regulate fracking? Lisa Jackson also answered a question about EPA's ability to keep pace with oversight on day-to-day hydraulic fracturing operations by saying "I don't think we can" and later said EPA is "not nearly large enough to be on the ground the same way" as State regulators. Do you disagree with these comments by Lisa Jackson?

Response: I can't speak to the exact context in which Former Administrator Jackson made these comments; however, I agree with what I perceive to be the sentiment that the State regulators are the primary regulators of fracking activities.

The EPA is currently in the middle of a multi-year, multi-million dollar project examining the relationship between drinking water and hydraulic fracturing at the urging of Congress. At the same time, we understand there have been several petitions to the Agency from groups requesting immediate action on hydraulic fracturing related activities (examples include: TRI Petition in October 2012; TSCA Petition in August 2011; E&P Waste Petition of 2010). Does it make sense for the Agency to wait on the outcome of the national water study before responding to any of these petitions or

developing rulemakings associated with any one of the petitions? If not, what scientific work is being done that would support taking any action at this time? If you are not going to wait before moving forward with regulatory changes, should we continue with the study?

Response: As I understand it, the Agency's study addresses drinking water and the petitions you mention contain questions not limited to the scope of the study. If confirmed, I will take a close look at the interaction between the study and the pending petitions and will ensure that any action taken by the Agency is grounded in science.

Last August, the EPA's Science Advisory Board (SAB) noticed in the Federal Register a call for experts to sit on an ad hoc panel to advise the SAB on the EPA's national hydraulic fracturing and water study. Given the significance of this study into the relationship between drinking water and hydraulic fracturing, shouldn't the panel include experts in the oil and natural gas industry that have direct, current and real world experience in unconventional oil and natural gas development? It has come to my attention that a number of industry experts that were included on the November 2012 list of candidates for the SAB ad hoc panel have been notified that certain financial interests in oil and natural gas companies are considered by EPA to be "disqualifying financial interests" under the Ethics in Government Act of 1978 and related regulations. Isn't there a conflict of interest waiver available for special government employees serving on SAB panels and other committees subject to the Federal Advisory Committee Act? Other federal agencies overseeing regulated industries, including the DOE and FDA have issued waivers to individuals. EPA's own guidance recognizes that a waiver may be warranted when "the participation of the individual is so vital as to waive a conflict of interest." Given that current oil and natural gas experience is important to a study looking at today's drilling and production technologies and EPA has clear authority to waive a conflict of interest based on a disqualifying financial interest, should conflict of interest waivers be used to ensure that current, real world experience in today's unconventional oil and natural gas industry is included on the peer review panel for the EPA study?

Response: From what I understand, members of the panel were chosen because of their scientific expertise and represent a wide variety of expertise areas. If confirmed, I would be happy to discuss this issue with you further.

EPA has repeatedly stated that with regard to its studies associated with hydraulic fracturing, a transparent, research-driven approach with significant stakeholder involvement can address questions about hydraulic fracturing and strengthen the nation's clean energy future. However there are several examples, such as Dimock, PA, Parker County, Texas, and Pavillion, Wyoming where it appears the Agency is more interested in rushed judgments, which turn out to be inaccurate, and placing information in the hands of the media rather than undertaking a sound scientific approach to addressing fundamental questions. Will this continue to be the Agency's response to difficult technical issues under your leadership?

Response: As I have previously stated, I believe that the Agency's actions should be guided by sound science and the law, and if confirmed, I would continue to affirm those principles.

Congress made clear in the Energy Policy Act of 2005 that the states are responsible for regulating hydraulic fracturing within their borders, and that the EPA has a very limited role regulating hydraulic fracturing through the Safe Drinking Water AcT. EPA has constantly pushed to expand its reach beyond what Congress has authorized, and that seems to be what the agency is attempting to do with draft guidance on the use of diesel fuels in hydraulic fracturing issued last year. The guidance offers a vague and unworkable definition of "diesel fuels," which covers more than just diesel fuels, and unnecessarily calls into question the legitimacy of decades-old, state-run regulatory programs that to date have produced zero cases of groundwater contamination as a result of hydraulic fracturing. If you are confirmed, will you withdraw this draft guidance? What are the plans of the Agency with regard to the diesel issue? What is the timing?

Response: As I understand it, EPACT 2005 specifically exempted diesel fuel from the exclusion from the Safe Drinking Water Act. If confirmed, I will work with you on the specifics of the issue of diesel fuel use in fracking.

The president as well as top officials in the Department of the Interior and Department of Energy have emphasized the importance of shale gas development and touted the increase in U.S. oil and natural gas development. The use of hydraulic fracturing and horizontal drilling has been essential to this increased development of oil and natural gas as well as the resurgence of American industry including the manufacturing sector. Before Congress in May 2011 former EPA Administrator Lisa Jackson testified to the absence of any "proven case where the fracking process itself has affected water" and then reiterated in an April 2012 interview that "in no case have we made a definitive determination that the fracking process has caused chemicals to enter groundwater." Do you agree with this position? Are you aware of any definitive determinations that would contradict these statements?

Response: Although I am not familiar with the exact context of her testimony, I am not aware of any definitive determinations that would contradict those statements.

In December 2011, EPA released a draft report entitled "Investigation of Ground Water Contamination near Pavillion, Wyoming." This report concluded that fracking fluid was present in groundwater at Pavillion and set off newspaper headlines suggesting that EPA had a documented case of groundwater contamination from shale gas development activities. In January 2013, over a year later, EPA announced it was delaying the release of findings in the Pavillion matter by 8 more months to evaluate new data. Do you believe that EPA's Pavillion draft report met the standards of quality assurance and scientific rigor that you will expect as EPA Administrator?

Response: I have not had the opportunity to review or be briefed on that particular draft report, so I can't speak to its quality; however, if confirmed, I will hold the Agency to the highest scientific standards.

Will you commit that EPA's final report on Pavillion will be undertaken in accordance with EPA standards on quality assurance and with appropriate opportunities for peer review?

Response: If confirmed, I commit to ensuring that Agency standards for quality assurance and peer review are followed.

Do you believe that EPA should refrain from issuing conclusions such as those reached in the Pavillion case before having all of the relevant data confirmed and subjected to Agency-standard quality controls and peer reviews? As Administrator will you encourage EPA officials to refrain from making public conclusions or accusations such as these prior to confirming that the conclusions reached are supported by scientific evidence?

In December 2010, EPA's Region 6 issued an emergency order under the Safe Drinking Water Act alleging that gas wells operated by Range Resources in Parker County, Texas were leaking methane into local residences. Once again, this led to headlines indicating that EPA had linked shale gas development to groundwater contamination. In April 2012, this case was dropped. As Administrator will you encourage EPA officials to refrain from making public accusations such as these prior to confirming that the conclusions reached are supported by scientific evidence?

In 2011, EPA investigated groundwater contamination issues in Dimock, Pennsylvania. While this investigation triggered headlines suggesting that hydraulic fracturing was responsible for water contamination, EPA testing in 2012, indicated that there was no risk to human health from the drinking water and that no significant levels of fracture fluid had been found. Based on the discontinued or discredited investigations in Pavillion, Wyoming, Parker County, Texas, and Dimock, Pennsylvania, do you think that EPA has a credibility problem with its actions relating to hydraulic fracturing? What steps will you take as Administrator to address this before the release of any further reports on hydraulic fracturing?

Response (to the three questions above): If confirmed, I will work to ensure that EPA work is guided by the requirements of the law, the best available science and information, principles of scientific integrity, transparency, and continued stakeholder engagement.

With EPA's record on Pavillion, Dimock, and Parker County, how can the public be confident the largely agency water study will be conducted based upon sound science?

Response: I believe that sound science is crucial for the Agency's work. If confirmed I commit to ensuring that the study integrates sound science.

How will information received at various stakeholder meetings be used with the study?

Response: If confirmed, I will support a transparent research-driven approach, with significant stakeholder involvement to address questions about hydraulic fracturing while strengthening our nation's clean energy future.

When will testing of the prospective sites begin? Can you tell us where these sites are located?

Response: If confirmed, I commit to look into this issue.

What involvement have State officials, and organizations such as the Ground Water Protection Council, have with the study?

Response: The vast majority of my career has been at the State and local level. I know that in order to make environmental progress, we need to have partnerships with the States. If confirmed, I will ensure that States and the Federal government work together, collaboratively to solve problems.

Why did EPA decide to test retrospective sites to start the study? As we have seen with Pavillion and other such sites, going back in time it makes it very difficult to have a baseline and to determine if there are any issues. Why did the agency not start with prospective sites, and test the technology in real time?

Response: If confirmed, I commit to look into this issue.

How much has EPA spent on the hydraulic fracturing study to date? How much do you anticipate that it will spend before it is completed in 2014? Can you provide a breakdown of how that money has been allocated by EPA? Have other agencies spent funds on the study as well? If so, how much?

Response: If confirmed, I commit to look into this issue.

What has been the involvement of the White House Hydraulic Fracturing Task Force? Have they been overseeing they study? Have they been briefed on the study? What about other agencies, who else is now involved with the study?

Response: If confirmed, I will review the Agency's involvement with the Task Force.

What is EPA's policy on Instant Messaging (IM)? Has EPA taken steps to preserve IM communications consistent with their obligations under the Federal Records Act? Have IM records been destroyed? Will EPA commit to releasing IM's that are responsive to FOIA and Congressional requests?

Response: As I said during my confirmation hearing, I do not use Instant Messaging. If I'm confirmed, I commit to reviewing the Agency's policies on this topic. Additionally, I commit that if I'm confirmed, I will work with other agency officials to continue ongoing efforts to ensure compliance with the Federal Records Act and the Freedom of Information Act, in addition to being responsive to Congressional requests.

A few years ago, the EPA Inspector General raised serious procedural questions about EPA's compliance with its own peer review guidelines. What has been done to ensure that the EPA peer Review requirements are followed?

Response: Peer review is a critical step to ensuring the integrity of our scientific and technical work products, as well as to ensuring that our decision makers are fully informed. The EPA has a long and substantial history implementing peer review in its programs. I am told that currently, the EPA uses the 3rd Edition of the *Peer Review Handbook* and the 2009 addendum to promote consistency not only across the Agency, but with the Office of Management and Budget's 2004 *Final Information Quality Bulletin for Peer Review*, as well as other relevant policies and guidelines.

Can you give me assurances that EPA will follow all requirements for having independent peer review of significant technical assessments?

Response: Yes. The EPA continues to evaluate its peer review processes to determine whether improvements are needed.

Do you think that publication in peer reviewed journals is the same thing as the independent peer review discussed in the EPA peer review guidelines?

Response: I understand the need for independent peer reviewed science. Without knowing more about the context of the question, it is difficult to comment beyond that; however, I will commit that if I'm confirmed, independent peer review continue to be an important part of the science used by and conducted by the Agency.

Will you commit to send this committee and the House Speaker a detailed report of how EPA has responded to the Inspector General's report, with a list of those convened independent peer review panels?

Response: I am not familiar with that particular report or to which panels you refer, but if confirmed, I will commit to take a look at the Agency's response and work with you to get additional information that you may be seeking.

Can you commit to ensuring that all draft and final assessments released by the IRIS program are consistent with the recommendations of the recent NAS Formaldehyde committee which recommended changes for all IRIS assessments, not just formaldehyde?

Response: I agree that strong science should be the foundation of all the work that the Agency conducts. If I'm confirmed, I will carefully consider the recommendations of the recent NAS Formaldehyde review and will work with career scientists within the Agency to ensure that we have a robust, open and transparent scientific process.

Currently the IRIS program does not consider natural background levels of chemicals in the environment or levels produced by the human body when developing hazard values. Do you support this approach? As Administrator, how will you improve the development of IRIS hazard values to make sure they pass a reality check and don't overestimate existing natural exposures that are not known to be associated with any adverse effects at naturally low exposure levels?

Response: I completely agree that strong science should be the foundation of all the work that the Agency conducts. If I'm confirmed, I will work with the scientists within the Agency, and outside of the Agency, to ensure that all of our work reflects the best possible science.

In a letter to Dr. Kenneth Olden from the Formaldehyde Panel of the American Chemistry Council dated January 4, 2013, stakeholders called for an "open scientific forum" prior to the release of the revised draft assessment, to focus on the epidemiology studies and mode-of-action data concerning the possible causal association between exposure to formaldehyde and leukemia. As you know, the National Academy of Sciences in its highly critical review of the 2010 draft IRIS assessment of formaldehyde cast significant doubt on such a causal association. It is our understanding the Office of Research and Development is resistant to convening such a science forum. We find this position incomprehensible considering the criticism EPA has endured over this particular IRIS assessment. Will you commit to instructing ORD to convene the workshop prior to release of the discussion draft, to publically document the findings and conclusions of the workshop and to incorporate those findings and conclusions in the discussion draft?

Response: I am unaware of the specifics of this issue, but I believe that it is important to share scientific view points. If I am confirmed, I commit to looking into this issue.

A recent analysis presented at the Society of Toxicology meeting showed that 67% of the Hazardous Air Pollutants (HAPs) have no IRIS value. What are the criteria for selecting chemicals for assessment within the IRIS Program? Do you believe that HAPs should be priorities for assessment within the IRIS program? Will you commit to developing a clearly articulated prioritization process for high priority IRIS assessments that benefits from, and is responsive to, engagement from all stakeholders?

Response: I am quite aware of the impacts associated with Hazardous Air Pollutants from the perspective of EPA's office of Air and Radiation, but I am not familiar with the issue you raise with respect to the IRIS assessment. If I'm confirmed, I will look into this issue and ensure that the prioritization of the IRIS program is appropriate.

The scientific integrity of EPA's hallmark Integrated Risk Information System (IRIS) program has been questioned by Congress as well as the National Academies of Science (NAS). While Dr. Ken Olden is working to bring new leadership to the IRIS program, there is much more work that needs to be done. Can you commit to ensuring that all draft and final assessments released by the IRIS program are consistent with the recommendations of the recent NAS Formaldehyde committee which recommended changes for all IRIS assessments, not just formaldehyde? Will you ensure that as part of the improvements in the IRIS program, the Agency will move away from outdated default assumptions and instead always start with an evaluation of the data and use modern knowledge of mode of action -- how chemicals cause toxicity – instead of defaults? Do you agree that all studies should be independently judged based on their quality, strength, and relevance regardless of the author affiliation or funding source? To further improve the IRIS Program, will you commit to revising the way hazard values are presented to the public to ensure that critical science policy assumptions are transparently presented and not comingled with scientific assumptions? Currently the IRIS program does not consider natural background levels of chemicals in the environment or levels produced by the human body when developing hazard values. Do you support this approach? As Administrator, how will you improve the development of IRIS hazard values to make sure they pass a reality check and don't overestimate existing natural exposures that are not known to be associated with any adverse effects at naturally low exposure levels?

Response: I am unaware of the specifics of this issue, but I completely agree that strong science should be the foundation of all the work that the Agency conducts. If I'm confirmed, I will work with the scientists within the Agency, and outside of the Agency, to ensure that all of our work reflects the best possible science.

Currently the IRIS staff are the sole arbiters of whether and to what extent draft IRIS assessments should be revised to reflect input from peer reviewers and the public. EPA's own Scientific Advisory Board has recommended the use of a "monitor" or "editor." Will you commit to using a 3rd party, independent of the IRIS program, to ensure that EPA staff have sufficiently considered and responded to peer reviewer and public input before assessments and other documents are finalized?

Response: If I'm confirmed, I commit to working with scientists such as Dr. Ken Olden and others to ensure that the IRIS program is as efficient, robust, and transparent as possible. It is imperative that sound science be the basis of all decisions that the Agency, as well as the IRIS program, makes.

317. What role will EPA play in the development of the State Department's Final Environmental Impact Statement for the Keystone XL pipeline permit?

318. What role will EPA play in the development of the Administration's National Interest Determination for the Keystone XL pipeline permit?

319. According to a State Department spokeswoman, the agency has been working with the EPA on the latest Draft Supplemental Environmental Impact Statement. What role has EPA played in the Draft SEIS?

320. The State Department is in the midst of an open comment period on the Draft Environmental Impact Statement for the KXL project. What do you think about State's climate estimates in the new Draft Supplemental EIS? Do you think they took a thorough enough look at the GHG emissions?

321. In the draft SEIS, the State Department seems to indicate that Keystone XL is the safest, most environmentally responsible way to deliver the oil that refineries and consumers need to fuel our economy, businesses, homes and maintain our quality of life. What are your thoughts on that?

322. The DSEIS noted that Keystone XL would result in "no substantive change in global GHG emissions" and it is "unlikely to have a substantial impact on the rate of development in the oil sands, or on the amount of heavy crude oil refined in the Gulf Coast area." Based on your agencies review of the Draft SEIS and your office's work in helping the State Department develop the latest Draft SEIS, would you comment on those statements?

Response (to Keystone XL questions): The State Department has long held the permitting authority for energy projects crossing international boundaries, including the Keystone XL pipeline project, and for gathering all facts necessary to make such permitting decisions. Accordingly, the State Department has overseen a process that provides for input by several federal departments, interested stakeholders, and members of the public. The State Department's publication of the Draft Supplemental Environmental Impact Statement marks an important step in that process. The public and all interested stakeholders will now have an opportunity to comment on the Draft Supplemental EIS. Any comments on the DSEIS should therefore be directed to the State Department. I understand that EPA has reviewed the DSEIS

and made appropriate comments. Ultimately, the decision on TransCanada's permit will be based upon a "national interest" determination, taking all relevant factors into account.

LCFS:

Several bills have been introduced in the U.S. Congress to establish a federal low-carbon fuel standard, or "LCFS" – including by then-Senator Obama in 2007. In fact, LCFS was originally part of the 2009 Waxman-Markey climate bill before being removed at the request of a number of Democrats. However, given that efforts to move LCFS legislation through Congress have failed, some proponents of such a program have raised the question of whether EPA might implement a federal LCFS through regulation. Do you believe that EPA has the statutory authority, under the Clean Air Act to promulgate a federal low-carbon fuel standard? If so, what is the legal basis upon which the EPA has the authority to promulgate an LCFS?

> During the previous administration, in the July 11, 2008, Advance Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act, EPA solicited comment on whether the agency had the authority under the Clean Air Act to design and implement a new GHG fuel program that is broader in scope than the RFS program. EPA has not addressed this issue further at this time. The agency is not considering nor does it currently have any plans to establish an LCFS under the Clean Air Act.

You may be aware a study was done in 2010 by Charles River Associates, a highly regarded economic forecasting firm, on what the impacts of a national LCFS program would be. The results were fairly impressive – up to 4.5 million American jobs lost, a reduction in U.S. GDP of up to $750 billion, and an increase in gasoline prices of up to 170 percent over a 10-year period. In fact, a number of studies have analyzed what the results of an LCFS would be, either at the state, regional, or national level – and the consensus is that there would be universally negative, severe economic impacts. These studies all used the Energy Information Administration's projections for the availability of some of these low-carbon fuel options, such as cellulosic ethanol and electric vehicles. In light of the conclusions from these studies, will the Agency seek to promulgate a federal LCFS during the current Administration? If so, how does the Agency intent to mitigate the consumer costs associated with an LCFS?

> I am not personally aware of the study to which your question refers, and EPA is not considering nor does it have any plans to seek to establish a federal LCFS.

Given the numerous problems now evident with the federal Renewable Fuels Standard, the prospect of simply replacing the RFS with a federal LCFS is starting to be discussed by some in Congress. What is the Agency's position on this possible substitute?

I am not aware of any current legislative proposal to replace the RFS with a federal LCFS, but in any event EPA has no position on any such proposal.

Can you discuss the problems associated with potential "fuel shuffling" that might occur as the result of the imposition of an LCFS? Does the agency have the ability to prevent such compliance approaches?

EPA is not considering nor does it have any plans to seek to establish a federal LCFS, and I am not familiar with the issue to which your question refers.

Lead

According to a recent lawsuit filed by environmental groups, EPA has known for a decade that "general aviation aircraft" are the single largest source of lead emissions. Yet, EPA has made its own judgment not to issue an endangerment finding regarding lead emissions from air plane fuel. Why has EPA decided to not regulate lead emissions from aircraft which it has acknowledged is the largest source of lead emissions?

EPA has not made any decisions on whether to regulate lead emissions from aircraft at this time. EPA is currently conducting the analytical work, including modeling and monitoring, to evaluate whether lead emissions from the use of leaded aviation gasoline (avgas) in piston-engine aircraft cause or contribute to the endangerment of human health or welfare. Any proposed determination with regard to endangerment would be subject to notice and comment, and we estimate the final determination will be in mid-to-late 2015. If a positive endangerment determination were made, as part of any future assessment of control measures, EPA would consider safety, fuel supply, and economic impact issues, including effects on small businesses.

On March 7, EPA responded to questions for the record from a Senate hearing, held last summer, regarding lead-based paint exposures. In the response, EPA cited 8 studies as "relevant" to information to lead-based paint (LBP) and renovations in public and commercial (P&C) buildings. On April 9, EPA responded to another letter on this issue. This time, EPA identified 5 studies as "relevant" to LBP and renovations in P&C buildings. In fact, 3 of the same studies cited in the April 9 letter were also cited in the March 7 letter. One of the studies cited twice plainly states: "There are no data at this time to assess whether environmental exposures monitored in target housing are representative of environmental exposures encountered in public and commercial buildings." (Environmental Field Sampling Study, Volume I Technical Report, (May 1997) at p. 4-5).) Why did EPA cite this study, when it is plainly not relevant to lead-based paint exposures in public and commercial buildings?

In EPA's April 9 letter, one of the new studies that the agency cites is a "Health Hazard and Evaluation Report" out of the University of California at Berkley, from July 2001: http://www.cdc.gov/niosh/hhe/reports/pdfs/1999-0113-2853.pdf. This study states (at p. 1) that the project took place at 3 "unoccupied" buildings that were scheduled for demolition: two 2-story multifamily residences, and a "daycare center." All three of these buildings would be already covered

under EPA's current lead-based paint program for "target housing." Were any public or commercial buildings assessed in this 2001 Berkley study? If no, then why did EPA cite it as relevant to the issue of lead-based paint exposures and renovation activities in public and commercial buildings?

In fact, in looking through all of the studies cited in both the March 7 and April 9 letters, all of the structures assessed in these studies concern "target housing" or "child occupied facilities," which are regulated under EPA's current residential lead paint rules. In all of these studies, the only non-residential structures considered by EPA that we could identify were: (1) a school built in 1967; and (2) a 1-story office building well over 150 years old. Does EPA think that a major new regulatory program, regulating renovation activities in public and commercial buildings across the U.S., can be supported by the studies on a 1960s-era school, and a 150-year old, 1-story office building? In any of the studies cited by EPA, can the agency point to any structure that is a public and commercial building, where lead-based paint issues and renovation activities were assessed? Would you please describe any non-residential structure that was considered in these studies? Will your staff meet with interested private sector stakeholders, who would be immediately affected by any new lead-paint program, to go over these studies jointly with Committee staff? In the April 9 letter, EPA also refers to a lead "technical studies" webpage: http://www2.epa.gov/lead/technical-studies. Can you show us where, in any of these studies, public and commercial buildings specifically were assessed for possible lead-based paint hazards?

Shouldn't EPA have a public and commercial building "hazard" finding in place first, and then determine if it needs to regulate renovation activities? After all, this is the sequence the agency followed for pre-1978 "target housing." Over seven years lapsed between the residential "hazard" finding, and the eventual residential "renovation" rule. Why isn't EPA pursuing the same process here? What "hazard" may any commercial building renovation regulations be designed to prevent?

The February 13 letter to EPA explained that this commercial building rule will have great consequences for federal buildings – including those right here on Capitol Hill. In EPA's April 9 response, the agency generally identified the agencies and departments it has, or plans to, contact in the federal buildings community. But the agency has not provided the Committee with any substantive, detailed plans for how it is coordinating with agencies and departments like the General Services Administration, the Architect of the Capitol, or the military branches. Please give details on the steps EPA has taken to work with GSA and other federal building managers to carefully study lead-based paint hazards in federal buildings. What outreach plans does EPA have in place to gather substantive information on lead-based paint issues in public and commercial buildings? Does EPA know what the lead paint hazards are in its own buildings?

Has EPA contacted the Architect of the Capitol to get an understanding of any lead paint hazards on Capitol Hill – such as at the House Cannon Building, which is undergoing a major renovation project?

Would EPA be willing to meet with the GSA, Architect of the Capitol, the military branches, and other federal facilities owners – along with EPW Committee staff – to get a better understanding of EPA's plan to coordinate with the federal buildings community on this rule?

We understand that affected real estate and contracting trade groups have offered to meet jointly with EPA, GSA, and other federal building managers on this issue. Does EPA plan to hold such a joint meeting with real estate and contracting trade groups? If yes, when?

Response (to the eight questions above): I support the Agency's goals to reduce childhood lead poisoning during renovation and repair activities, including in public and commercial buildings if they pose a risk. If confirmed, the Agency and I will work with you and other members of the Committee, as well as the range of entities who may be affected by the Agency's efforts on this important issue.

In November 2012, EPA's Region 3 wrote a letter to the Federal Energy Regulatory Commission (FERC) recommending that FERC and DOE expand their NEPA analysis of LNG export facilities to include a study of the indirect and cumulative environmental impacts of exporting LNG. Do FERC and DOE have the sole statutory and regulatory authority to review and approve LNG export applications?

Response: I am not familiar with the details of LNG export applications, but it is my understanding that FERC and DOE are the two Agencies with approval authority for export facility applications.

What is your view of EPA's role in the LNG export application process?

Response: Again, I am not familiar with the details of the LNG export application process; however, it is my understanding that as part of the process under the National Environmental Policy Act, EPA can offer comments to FERC on the scope of the environmental review.

What "indirect" environmental impacts might result from LNG exports?

Response: I am not familiar enough with the process of LNG exports or with any specific proposals to offer concrete thoughts on what might constitute direct or indirect effects of any particular project. If confirmed, I would work with the Agency and with the Administration to make an appropriate determination on what, if any, environmental considerations might be appropriate to consider through the FERC led NEPA process.

<u>NAAQS SO2 (Marine)</u>

The International Maritime Convention (IMO) has amended the International Convention for the Prevention of Pollution from Ships (MARPOL) to require ships operating in Emissions Control Areas (ECA), which include the vast majority of the US coastline, to use only low sulfur fuels. The first stage

of this program, which required use of fuel oil with a sulfur content of 1% or less came into effect this past summer and has led to increased shipping costs. There is evidence that these stringent limits are having a significant financial impact on short seas shipping companies, and, in some cases, higher shipping costs are resulting in higher costs for downstream consumers in the U.S.
For this reason, I am troubled that by August 2015, ship owners operating in these waters will be required to use fuel that contains no more than 0.1% sulfur. I have significant concerns about the impact such a cut would have, not just on short seas shipping companies, but the health and safety of the U.S. economy.

The ECA is one of the most important environmental air programs established in the past decade and will result in the prevention of tens of thousands of premature deaths. EPA and Coast Guard are committed to allowing flexibilities allowed under the applicable IMO requirements that can reduce the costs of compliance with the ECA and incentivize advanced technologies, without compromising the environmental benefits of the ECA. In 2030 the combination of our national standards and ECA controls will prevent between 12,000 and 31,000 premature deaths and 1.4 million work days lost. The benefits of the coordinated strategy in 2030 are estimated to be between $110 and $270 billion, which is up to 90 times the projected costs of $3.1 billion.

MATS:

In March 28, 2013 the Environmental Protection Agency (EPA) published updated emissions standards for power plants under the Mercury and Air Toxics Standards (MATS). The MATS rule imposes sweeping new emissions requirements for power plants, and EPA expects that the MATS rule will entail upwards of $10 billion in compliance costs, making it the most expensive rule in EPA's history. In promulgating the MATS rules, EPA relied heavily on the claim that the rule will benefit public health through decreases in particulate matter pollution (PM). However, regulation of PM is primarily accomplished through National Ambient Air Quality Standards (NAAQS), which are required to be set at levels that provide adequate protection for the public health or welfare. Accordingly, it appears that the agency has set a NAAQS standard for particulate matter at a level insufficiently protective of public health and welfare. Can you share your thoughts on this?

Even after several decades of pollution control laws, until MATS there were no national limits on emissions of mercury and other air toxics from power plants. Power plants emit mercury, other metals, acid gases, and other air toxics – as well as particulate matter – all of which harm people's health. The rule regulates mercury and other air toxics, but the control technologies installed to reduce these air pollutants also yield significant reductions in particulate matter.

What percentage of the health benefits in all EPA's air regulations taken together over the last five years are attributable to collateral reductions in particulate matter arising from these regulations?

EPA strives to quantify all of the anticipated benefits for our air rules. Pollution controls often reduce multiple pollutants, leading to significant co-benefits from the application of those controls. For example, pollution control devices such as scrubbers reduce SO2 emissions, which also provide significant PM2.5 co-benefits. In some cases, the EPA does not have the data to quantify all of the benefits associated with reducing air pollution, which prevents EPA from quantifying all the benefits associated with its rules. The agency does not have the specific calculation you request readily available.

EPA's website says that mercury "can travel thousands of miles in the atmosphere before it is eventually deposited back to the earth in rainfall or in dry gaseous forms." If this is true, wouldn't rising consumption of coal in countries like China and India (whose regulatory regimes are less stringent than our own) offset any domestic mercury reductions connected to the MATS rule? In fact, if more US manufacturing moves to these countries, which have less stringent emission controls than the US, wouldn't a possible result of MATS be an increase in global mercury emissions?

A substantial portion of the mercury that is deposited in the U.S. comes from U.S. sources, especially near the source. For example, based on EPA's air quality modeling for the Mercury and Air Toxics Standard, U.S. EGUs contributed up to 30 percent of total mercury deposition in some U.S. watersheds in 2005. To reduce atmospheric transport of mercury globally, EPA together with the State Department is participating in United Nations efforts to encourage all countries to reduce their mercury emissions. Those efforts include negotiations toward an international agreement and partnerships for training and information on strategies for reducing mercury emissions.

During consideration of the MATS rule both Commissioners at FERC and outside electricity experts raised concerns about the potential for forced retirement of generating facilities causing costly reliability problems. EPA even admitted that localized reliability problems could result from the rule. Given that the construction and use of generating facilities is time and capital-intensive, at what point do you think that cumulative regulatory burdens on the electricity sector may create reliability problems?

EPA takes electric reliability concerns very seriously. EPA determined that many existing coal plants are already very well controlled for pollution, and other coal plants have the ability to retrofit with widely available pollution control technologies. EPA and DOE analyzed the resource adequacy impacts of the MATS rule prior to its finalization and determined that the rule would not adversely affect resource adequacy in any region of the country. Additionally, since finalizing MATS, EPA has continued to work with FERC, DOE, state regulators, and the regional transmission organizations and other planning authorities to help ensure early planning and prompt action to assess and mitigate any potential reliability issues associated with implementation of EPA rules. Those efforts have confirmed EPA's analysis that utilities and grid planners have significant tools to address reliability challenges within the timeframes set forth in the Clean Air Act. EPA has taken steps to ensure broad availability of an additional year to comply with the MATS rule where needed for technology installation, including in situations implicating reliability considerations. To the extent any localized reliability challenges emerge, there are adequate tools to address them. For example, concurrent with the final MATS rule EPA has identified a clear pathway for up to one additional (fifth) year to come into compliance where needed to address a documented reliability issue.

In March, 2012, a federal court struck down EPA's retroactive revocation of a mining-related CWA Sec. 404 permit, holding unequivocally that EPA has no authority to retroactively veto CWA Sec. 404 permits issued by the U.S. Army Corps of Engineers. EPA has appealed the decision, maintaining that at any time after the issuance of the permit – even where, as here, the permit has been being properly followed for several years and EPA had worked with the permittee and the Army Corps for ten years prior to permit issuance to reach an acceptable alternative – EPA may veto the permit. What do you

think the practical effect on industry would be of having Sec. 404 permits be subject to EPA's veto whenever the agency chooses?

Response: I understand the important concerns raised by your question regarding the use of EPA Clean Water Act authorities and potential effects on the nation's business community. During the pendency of the appeal of the district court's decision, EPA will not exercise its 404(c) authority after a permit is issued. If I am confirmed, I look forward to working with you to assure that the final court decision is implemented consistent with the law and in careful consideration of the issues you raise.

During deliberations on the Clean Water Act in Congress, Senator Muskie note that there are three essential elements to the Clean Water Act -- "uniformity, finality, and enforceability". How do the assertions made by EPA regarding the scope of its authority under Sec. 404 comport with the notion of permit finality?

Response: I appreciate your concerns regarding the importance of providing permittees with a sense of finality when their permits are issued. If confirmed, I will work to implement the CWA to provide the uniformity, finality, and enforceability that are so important in our regulatory programs.

Has EPA considered what effects its actions might have on state SMCRA permitting programs?

Response: It is very important to me that EPA implements its responsibilities in coordination with our federal, state, and local partners, including our partners in state and federal SMCRA permit programs. If confirmed, I will make respectful coordination with our partners an Agency priority.

EPA is on schedule to propose a new ozone NAAQS this December and finalize it in September 2014. We understand that EPA's Clean Air Science Advisory Committee (CASAC) has recommended that the standard be set between 60 and 70 ppb based on recent health studies and has asked EPA to evaluate a standard at 55 ppb. We are concerned about the economic impacts of any change to the standard (EPA has estimated the costs of a 60 ppb standard to be $90 billion/year). Can you identify the language in Section 109 of the Clean Air Act that prohibits EPA from considering costs? Have you seen any of the maps of projected nonattainment areas at 60 ppb? Most of the country would be nonattainment, and the ability of the regulated community to obtain a permit for the construction or expansion of any new manufacturing or power generation facility could be compromised. I understand such impacts are being felt right now from the rules your department issued in December to tighten standards for particulate matter

The U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting standards that are requisite to protect public health and welfare, as

provided in section 109(b) of the Clean Air Act, EPA may not consider the costs of implementing the standards.

I also understand that while the agency tightened the particulate matter standard, you did not issue any accompanying rules or guidance that would allow for smooth implementation. Can you tell us how and when EPA will prepare implementation rules for particulate matter and ozone to prevent disruptions to the economy, and in particular how EPA will ensure the availability of low-cost offsets to allow new plants and the expansion of existing plants?

The PM2.5 NAAQS were revised in December 2012, and EPA is working to develop guidance and rules to provide for smooth implementation. EPA recently issued guidance on the area designations process. EPA is also developing an implementation rule that we expect to finalize soon after nonattainment areas are designated. Should EPA revise the ozone NAAQS, we would intend to develop an implementation rule for that standard in a similar manner, and finalize that implementation rule around the time that area designations are finalized.

Regarding the new source review (NSR) pre-construction permitting programs, EPA included a transition (or regulatory grandfathering) provision in the final 2012 PM NAAQS rule to help smooth the implementation of new requirements associated with the revised NAAQS under the PSD program. Emission offsets are generally associated with non-attainment NSR, which would apply to any newly designated nonattainment areas upon the effective date of such designations (2015 at the earliest). Most states projected to have areas that may be designated nonattainment for the revised PM NAAQS already have nonattainment NSR programs for PM2.5 (i.e., they currently have areas that are or were previously designated nonattainment for PM2.5), including functioning emission offset programs. Those same programs will apply to any newly designated nonattainment areas. For the limited areas that do not have an existing nonattainment NSR program for PM2.5, the lead time built into the designation process will provide the opportunity for states and sources to plan for projected offset needs.

EPA routinely justifies more stringent air quality standards on the basis of reducing asthma attacks. In fact, EPA credits its rules with avoiding about a million asthma attacks each year. However, while U.S. emissions of criteria pollutants have been cut by about 50% since just 1990, the incidence of asthma attacks has increased. Taken together, these two facts suggest that EPA efforts to further reduce emissions and consequent health benefits will not necessarily be correlated. In fact, the US Government's own CDC cites numerous triggers for asthma attacks that are not related to ambient air quality. Of course, the dramatic improvements to our air quality must be maintained, but each incremental improvement comes at a greater and greater cost. Is it time for EPA to re-think some its valuations of health benefits? Is it time to consider that implementation of the rules, ultimately yield a negative impact on consumers' health and welfare because they make them poorer?

EPA's approach to estimating the health benefits associated with reducing air pollution, including avoided asthma attacks, is based on the best available, peer-reviewed science. Projected health benefits from EPA's recent Clean Air Act rules, including avoided asthma attacks, are substantial and often substantially outweigh projected costs. Newer scientific studies have shown that some pollutants can harm public health and welfare even at lower levels than before.

The U.S. has achieved significant progress in reducing air pollution in the 40 years since the Clean Air Act's passage. According to EPA statistics, total emissions of the six principal air pollutants have dropped by 59 percent since 1970. Current federal regulations will continue this progress by significantly reducing ground level ozone-causing emissions over the next two decades. Emissions from power plants are expected to be cut in half by 2015 and the emissions from cars and trucks are expected to be reduced by 70 percent by 2030. Do you think that Americans are enjoying the benefits of cleaner air, and will continue to enjoy those benefits as the air gets cleaner in the future, regardless whether the existing standards are adjusted?

Despite dramatic progress improving air quality since 1970, air pollution in the United States continues to harm people's health and the environment. Under the Clean Air Act, EPA continues to work with state, local and tribal governments, other federal agencies, and stakeholders to reduce air pollution and the damage that it causes.

Ozone NAAQS

In 2010, EPA proposed to reconsider the existing ozone NAAQS, an effort the Administration ultimately abandoned. The standards your office proposed could have potentially tripled the number of ozone non-attainment counties. In fact, many of America's most pristine national parks would have failed those standards. Do you continue to believe that it make sense to pursue a policy that puts the Grand Canyon and Yellowstone National park in non-attainment? How would developed areas ever comply with such a standard, if wilderness areas cannot?

The Clean Air Act directs EPA to set NAAQS that are requisite to protect public health with an adequate margin of safety and the public welfare from any known or anticipated adverse effects of air pollutants. These standards are based on consideration of the most up- to-date scientific evidence and technical information, advice from CASAC, and public comments. As part of the ongoing review of the ozone NAAQS, EPA will evaluate the extent to which it is appropriate to revise these standards in order to protect against adverse public health and welfare effects.

EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. President Obama halted that effort, citing "regulatory burdens and regulatory uncertainty, particularly as our economy continues to recover." As EPA is now in the process of again reviewing the ozone NAAQS, do you agree with the President that the Administration should be mindful of the potential regulatory burden that revised standards could have on a recovering U.S. economy?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. We are driving manufacturing out of the U.S., to other countries with lax environmental standards. In

analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

EPA revised the ozone NAAQS in 2008 by adopting more stringent standards. Designations for that standard were made last May. EPA has said that it plans to adopt a rule on the content of state plans for implementing the revised standards. The Agency has said that it will propose that rule this coming May. What is the schedule for finalizing that rule?

Once the rule proposing requirements for state plans implementing the standards is published in the Federal Register, EPA will accept public comment for at least 60-days. After carefully considering the comments received, EPA will move as quickly as possible to finalize the rule. Achieving the health benefits required by the CAA will require the combined efforts of federal, state, local, and in some cases tribal governments, each accomplishing the tasks for which it is best suited. The agency is mindful that the requirement to implement the ozone NAAQS comes at a time when many states are facing substantial resource challenges. EPA is committed to working in partnership with states and other stakeholders to share the burden of implementing the ozone NAAQS by promulgating a number of national regulations that will provide significant reductions in ozone precursors.

A tightening of the standard from .075ppb will most likely put a significant amount of new areas into non-attainment. Your Agency has even admitted during the reconsideration in 2009 that "a significant portion of the country" cannot meet EPA's proposed ozone requirements. Studies also show that if the standard is set at .060ppb that most of the counties that already have monitors would be in violation, as well as a vast majority of unmonitored areas would be in violation of the lower standard. How does EPA expect to handle the significant amount of new counties being in non-attainment, especially with some being in non-attainment for the first time?

EPA has not yet reached a decision about what revisions to the ozone standards may be appropriate in light of the current scientific evidence so it is premature to conclude that a significant number of new counties would be in non-attainment.

This year marks the end of the five year review period for the ozone national ambient air quality standard (NAAQS), which was last set in 2008. Currently, the 1997 standard is still not fully implemented and EPA has yet to resolve issues concerning the 2008 standard. Given the problems and delays in implementation, do you think EPA will recommend a further reduction in the ozone NAAQS standard? If so, what justification does the Agency have for further reducing the standard? Is it not true that air quality will continue to improve without a new ozone NAAQS?

The ongoing review of the ozone standards is part of the EPA's periodic review of the science and the NAAQS required by the Clean Air Act. Section 109(d) of the Clean Air Act requires EPA to

complete a review of the science upon which the NAAQS are based and the standards themselves every five years. EPA has not yet reached a decision about what revisions to the ozone standards may be appropriate in light of the current scientific evidence.

Given EPA's issues with implementation of the 2008 standard, and that you are still finishing the work to attain the 1997 standard, do you think the Agency's implementation schedule is too aggressive considering so many areas in non-attainment are still struggling to comply with the standard set more than 15 years ago? Is the Agency required by law to reduce the ozone NAAQS following each 5 year review period?

The ongoing review of the ozone standards is part of the EPA's periodic review of the science and the NAAQS required by the Clean Air Act. Section 109(d) of the Clean Air Act requires EPA to complete a review of the science upon which the NAAQS are based and the standards themselves every five years. EPA is not required to reduce the level of the standard in each review; rather, the agency is required to determine what standards are requisite (i.e., neither more nor less stringent than necessary) to protect public health with an adequate margin of safety.

Further reduction of the ozone standard could cost between $20 and $90 billion annually according to government estimates and if the standard were set at .060ppb, the lowest in the range EPA considered during the reconsideration in 2009, a NAM study estimated that more than 7 million jobs could be lost. When CASAC and EPA are looking at proposing a range for a new ozone NAAQS, do you consider the impact on jobs and manufacturing in the areas that could be captured under the new standard?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in non-attainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

It seems that EPA tends to look at regulations it promulgates in a vacuum and does not consider how a particular regulation affects another. For example, in order for refiners to remove sulfur from gasoline under the new Tier 3 rule, they will be reducing sulfur, but in exchange they will also be increasing their GHGs. Additionally, the lowering of the ozone NAAQS will also result in an energy penalty for refiners, as their RTOs require more natural gas usage. Why does the agency not consider these types of conflicts before moving forward with regulations that conflict with one another?

EPA works to take a comprehensive approach to its regulations, and offices within the agency coordinate closely to ensure that regulations achieve complementary health benefits and pollution reductions whenever possible. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Additionally, the proposed Tier 3 implementation schedule is aligned with the timeframe for EPA's program for reducing greenhouse gas (GHG) emissions from light-duty vehicles starting in model year 2017. Further, the relatively small projected increase from CO2 emissions from

refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

In the Clean Air Act, please provide your definition of cooperative federalism. Can you conceive of any circumstances where EPA has disagreed with a State's approach, on policy grounds, and decided that the Agency will not intervene to override the state?

Response: "Cooperative federalism" is generally used to describe the Clean Air Act's approach of assigning tasks to EPA and States that, when taken together, result in cleaner air and important public health protections. For example, EPA sets the National Ambient Air Quality Standards for specific pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the Standards. If EPA determines that the plans do not meet the Act's requirements, or if a State fails to submit relevant plan provisions, the Act generally requires EPA to issue a federal plan for that area or state. EPA also issues rules (such as the recently proposed Tier 3 fuel and vehicle regulations) that assist areas in meeting the air quality standards. I can conceive of circumstances where EPA has disagreed with State's approach on policy grounds but did not intervene to override the state because the state met the relevant legal criteria.

Are there any circumstances where a State implementing the Clean Air Act should, as a policy matter, be insulated from EPA interference?

Partnership between the states and the federal government in reducing air pollution is one of the cornerstone principles of the Clean Air Act. For example, EPA sets the National Ambient Air Quality Standards for specific pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the Standards. If EPA determines that the plans do not meet the Act's requirements, or if a State fails to submit relevant plan provisions, the Act generally requires EPA to issue a federal plan for that area or state. EPA also issues federal rules that assist areas in meeting the air quality standards.

Do you believe that the NAAQS review and implementation process will ever catch up to its statutory 5 year deadlines for review? what steps would you take to have the timing of the NAAQS program comply with the Clean Air Act?

EPA is continuing to work to streamline its NAAQS review process in order to comply with the five-year review cycle established in the Clean Air Act. EPA's goals are to maximize the efficiency and transparency of the process while maintaining its scientific and technical integrity.

On December 7, 2012, a PM2.5 monitor in the North Pole, Alaska registered a concentration of approximately 172 micrograms per cubic meter for the 24-hours of that day, almost five times the EPA health based standard. The average daily temperature for that location was -26 degrees Fahrenheit. PM2.5 comes primarily from combustion, which, given the temperature, was likely wood or fuel oil burning for heating purposes, meaning that people were generating heat in order to survive the cold. Given the choice, many likely chose to survive the elements that day by burning fuel despite the potential long-term health risk associated with being exposed to such a high concentration of air pollution. If confirmed, how will EPA balance incremental, long-term health improvements with the acute, or short-term, health impacts that could occur if the standards are lowered?

As with all NAAQS, EPA's primary PM2.5 standards are set to protect the public health with an adequate margin of safety, based on the body of available health evidence and technical information. In determining whether a given area meets or violates the EPA's 24-hour PM2.5 standard, it is not appropriate to compare a single high day to the standard level. Rather, the 24-hour PM2.5 standard requires that the 3-year average of the 98th percentile of annual 24-hour average PM2.5 concentrations be below 35 micrograms per cubic meter. This approach to determining whether areas meet or violate the 24-hour PM2.5 standard is meant to ensure appropriate public health protection. A single day with a high PM2.5 concentration, by itself, does not result in a violation of the standard.

EPA currently uses a mass based PM 2.5 NAAQS without regard to the chemical make-up of the particulate. Early in the Bush Administration, OMB's then-Director of OIRA, John Graham, wrote a letter to then-Administrator of EPA Christy Todd Whitman, suggesting that EPA needed to redirect Agency research funds to do speciation studies to determine the source of PM2.5 health effects. Do you know if those studies were done? Doesn't the chemical makeup of PM 2.5 effect determine the degree of health impact? Should the PM 2.5 NAAQS be species weighed to better protect the public?

EPA has funded, and continues to fund, a number of research studies evaluating the links between PM composition and toxicity. The agency has invested in a PM2.5 speciation monitoring program since 1999 to provide ambient air data for tracking air quality and to support scientific studies. In addition, the EPA and other organizations (e.g., HEI, EPRI) have funded research on health effects related to PM composition. In the PM NAAQS review completed in 2012, the agency concluded that the currently available scientific information continues to provide evidence that many different components of the fine particle mixture - as well as groups of components associated with specific source categories of fine particles – are linked to adverse health effects. However, the scientific evidence is not yet sufficient to allow differentiation of those components or sources that are more closely related to specific health outcomes, nor is it sufficient to exclude any component or group of components from the mix of fine particles included in the PM2.5 indicator (78 FR 3123). The CASAC, EPA's statutorily mandated external science advisory committee, agreed with this conclusion and with the approach of continuing to define the PM2.5 standards in terms of PM2.5 mass.

If confirmed, will you commit to address NAAQS implementation issues? Can you give the Committee a schedule of concrete actions you will undertake and the deadlines for those actions? Are you open to delaying the effective date of the PM NAAQS until EPA, states and permittees have the right implementation tools in place?

If confirmed, I will continue to be committed to addressing NAAQS implementation issues. EPA can provide the committee a planned schedule of NAAQS-related rules and policy guidance

documents. In general, the agency's objective is to issue rules and policy guidance as quickly as practicable after a NAAQS has been promulgated to facilitate timely state planning. To avoid any delay in achieving the important health benefits of the PM NAAQS, EPA provided a transition mechanism in the final 2012 PM NAAQS rule that allowed for grandfathering of qualifying PSD permit applications by exempting them from new requirements associated with the revised NAAQS. This was the most urgent immediate concern because the regulations otherwise require that PSD permits address all NAAQS that are in effect as of the date of permit issuance. For permit actions that do not qualify for the grandfathering exemption, prior to the effective date of the 2012 PM NAAQS EPA issued draft guidance on performing required air quality impact analyses for PM2.5 under the PSD program. In addition to these two actions, the agency continues to work diligently on other aspects of NSR/PSD implementation for PM2.5 to ensure that permitting processes are not disrupted or delayed by the revised NAAQS.

What is EPA doing to collect additional relevant data that is necessary in determining the SO2 emission reductions from prior industry investments to reduce SO2?

EPA has conducted an extensive stakeholder process to develop a strategy for improving air quality by reducing emissions of sulfur dioxide. The strategy, available at http://www.epa.gov/oaqps001/sulfurdioxide/pdfs/20130207SO2StrategyPaper.pdf, outlines the Agency's next steps for designating and implementing the 2010 SO2 NAAQS. EPA works closely with our state, local and tribal partners to collect regularly emission information, including emissions information about SO2.

As the EPA considers its approach to implementing the Sulfur Dioxide (SO2) National Ambient Air Quality Standards, we urge you to ensure States have maximum flexibility to determine the most appropriate approach to accurately establish their attainment status. While the preference is the use of actual monitors in gathering the necessary data, we recognize financial constraints may force States to rely on modeling or perhaps a hybrid approach. The current models and assumptions in EPA guidelines are of concern as they over predict expected ambient air quality levels. Factors such as wind speed, the number of SO2 sources in a geographic area and the height of SO2 sources all can create distortions in the data. These distortions can result in pollution controls that are unnecessary from both capital and operating perspectives. Can you assure us that the proposed modeling guidelines will include more accurate assumptions, and not solely worst case scenarios? What types of assumptions are you considering?

EPA is sensitive to and shares the interests of our air quality management partners and others that the modeling to determine compliance with the new national SO2 standard be as accurate and reflective of what might have been monitored as is possible. EPA's forthcoming modeling technical assistance document will reflect input from the extensive stakeholder outreach efforts that have been underway and the latest techniques. The public and stakeholders have and will continue to have opportunities to comment on EPA's modeling guidance.

NAAQS – SO2 (Maritime)

I understand and appreciate the benefits of controlling sulfur emissions, and I understand that EPA has provided estimates of the health impacts of using ultralow sulfur fuels in the North American ECA, but why did EPA put a rule in place that will cause customers to utilize higher emitting modes of transportation? Did EPA's analysis consider the fact that this "intermodal leakage" moves the

emissions source from as much as 200 miles offshore to within a few yards of schools, hospitals, residences, and urban areas? If not, shouldn't EPA take a hard look at the real world consequences of the regulation before it potentially pushes thousands more emissions sources into our communities and neighborhoods?

EPA does not agree that compliance with the ECA fuel sulfur limits will lead to transportation mode shift. The majority of the shipping affected by the ECA sulfur limits is made up of international voyages where land-based transportation is not a realistic alternative. Even in cases where mode shift can be contemplated, ships have significant cost advantages over land-based transportation. The North American ECA requires the use of 10,000 ppm sulfur fuel from August 2012 through December 2014, and 1,000 ppm sulfur fuel for January 2015 and later. The 2015 and later ECA fuel sulfur limits are more than 60 times higher than for the ultra low sulfur diesel (ULSD) used in land based modes of transport. EPA performed a detailed analysis of the economic impact of the ECA on ships operating on the Great Lakes, including whether the ECA would lead to a transportation mode shift. This study, which was developed cooperatively with stakeholders, relied on actual routes and freight rates and indicated transportation mode shift is not likely to occur in the Great Lakes area. If the rail, truck and marine freight rates for coastal areas are similar to those for the Great Lakes, then modal shift would also not be expected in other parts of the country.

Would EPA consider other means of reducing sulfur emissions from maritime shipping? Will EPA consider an equivalency for companies that minimize the impact on onshore air quality, rather than only analyzing the mass of SO2 generated?

EPA is committed to allowing flexibilities allowed under the applicable International Maritime Organization requirements that can reduce the costs of compliance with the ECA and incentivize advanced technologies within the requirements of the ECA. EPA (and Coast Guard) have utilized two flexibilities allowed under the requirements of the North American ECA, approving projects undertaken by TOTE, a U.S. based shipping firm which operates two vessels between Tacoma, Washington and Anchorage, Alaska, and Royal Caribbean Cruises.

In postponing issuance of the revised NAAQS, the President specifically cited economic reasons. Does this conform to EPA's past insistence that they are prohibited by the Clean Air Act from considering economic and other concerns in the setting of standards?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on

reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

A former Administration official (one of your former colleagues) at a panel during the Society of Environmental Journalists meeting in Miami in the Fall of 2012 said that the President committed an impeachable offense by explicitly linking the postponement of the revised ozone NAAQS with the economic recovery. Can you comment?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

In the upcoming ozone NAAQS, EPA has stated that it will rely on one result from one epidemiology study to quantify mortality benefits from reductions in chronic ozone exposure when they are 11 other equally well designed epidemiology studies that suggest there is no increase in risk. Why does EPA focus only on the one positive study and the one positive result within that study to estimate benefits?

As explained in an April 10, 2013 letter sent to you by EPA on this subject (footnotes omitted):

"In developing an ISA [Integrated Science Assessment], the EPA uses a formal causal framework that provides a consistent and transparent basis for integration of scientific evidence and evaluation of the causal nature of air pollution-related health effects. This approach has been reviewed and endorsed by the Clean Air Scientific Advisory Committee (CASAC). This framework employs a five-level hierarchy that classifies the overall weight of evidence and causality using the following categorizations: causal relationship; likely to be a causal relationship; suggestive of a causal relationship; inadequate to infer a causal relationship; and not likely to be a causal relationship. Pursuant to this framework, in order to reach a determination that the weight of scientific evidence is suggestive of a causal relationship, the evidence should include "at least one high-quality epidemiologic study show[ing] an association with a given health outcome."

The previous scientific assessment for ozone in 2006 concluded that an insufficient amount of evidence existed to suggest a causal relationship between chronic ozone exposure and increased risk of mortality in humans. However, two recent studies provided new evidence for the 2013 assessment. This new evidence is consistent and coherent with the evidence from epidemiological, controlled human exposure, and animal toxicological studies for the effects of

short- and long-term exposure to ozone on respiratory effects. The current body of evidence, including these two high-quality, peer-reviewed studies that observed associations between long-term exposure to ozone and mortality, is suggestive of a causal relationship between long-term exposure to ozone and total mortality.

Your letter stated that 11 earlier studies did not find statistically significant associations between long-term exposure to ozone and mortality and that the EPA selectively relied on the one positive study to support the causality determination of "suggestive." A key explanation for the lack of associations found in most of these earlier studies is that they did not specifically assess respiratory mortality. However, unlike the earlier studies, Jerrett et al. (2009) did specifically evaluate respiratory mortality and found a statistically significant association. This finding is consistent with other studies finding associations with respiratory effects (e.g., morbidity and mortality). Because of the strength of the evidence between ozone exposure and respiratory effects, it is reasonable to find associations between long-term exposure to ozone and respiratory mortality but not other sources of mortality (e.g., all-cause, cardiovascular, and cardiopulmonary). As noted above, one high-quality epidemiological study showing an association is sufficient for a determination of "suggestive" under the EPA's causal framework, even if the results of other studies do not consistently show the same association."

Given the significant controversies surrounding the studies supporting a tightening of the ozone standard, will you commit today to taking comment on the current standard?

The review of the ozone NAAQS is ongoing and EPA is committed to following the science and the law in developing the proposal. As with prior NAAQS rulemaking, the public will have the full ability to comment on all elements of EPA's proposal and provide EPA with views on whether to retain or revise the current ozone standard.

According to recent NOAA reports, half of all the current ozone exceedances in many areas in the Western US are due to emissions from Asia. How do you plan to address this important problem?

Ozone concentrations can be affected by local, regional, international, and natural sources. EPA analyses indicate that the majority of ozone exceedances within the U.S. are driven primarily by local and regional sources of ozone precursors. For those rare cases in which international emissions can be shown to result in a violation of the NAAQS, there is a specific Clean Air Act provision (Section 179B) that can be invoked to ensure those cases do not lead to inappropriate regulatory consequences.

EPA's own modeling shows simulated ozone background levels as high as 77ppb – a level that already exceeds the current standard. There is also strong evidence from NOAA, using a more sophisticated model with higher resolution, that EPA is still under-predicting ozone background levels. How will you take into account the fact that even the NOAA model is likely to under predict true background levels due to model limitations? How will you consider these high ozone background levels in setting the standard?

As part of the ozone review, EPA will focus on the health effects evidence and related exposure and risk analyses in determining the appropriate level of the ozone standard, and will provide information on ozone background concentrations from multiple air quality models and discuss spatial and temporal variations in peak and mean concentration levels. Regarding the assertion that current air quality models are underestimating background concentrations, EPA's analyses

have shown that model predictions estimate concentrations at remote sites with considerable accuracy, especially for seasonal averages compared to individual days.

Are you planning on estimating and counting ozone benefits down to zero ozone levels?

EPA does include benefits below the standard using a methodology that is consistent with the best available science. The primary NAAQS is set at a level requisite to protect public health with an adequate margin of safety – and should be neither more nor less stringent than necessary to do so. The NAAQS is not set at a zero risk level. In setting the NAAQS, EPA takes into account health effects experienced by the general population and at-risk groups (like asthmatics, children, and the elderly). While there is lower confidence in estimates of benefits of reductions in exposure occurring at very low ozone levels, the risk assessment for the current ozone NAAQS review provides estimates of total risk from exposure to ozone concentrations well below the standard and also provides information about how much of total risk occurs on days with different ozone concentrations.

How would you count benefits from reductions in exposure that occur far below the level you consider as safe?

EPA's approach to estimating the benefits of reducing ozone pollution is consistent with the best available science. The primary NAAQS is set at a level requisite to protect public health with an adequate margin of safety – and should be neither more nor less stringent than necessary to do so. The NAAQS is not set at a zero risk level. In setting the NAAQS, EPA takes into account health effects experienced by the general population and at-risk groups (like asthmatics, children, and the elderly). While there is lower confidence in estimates of benefits of reductions in exposure occurring at very low ozone levels, the epidemiological evidence suggests a generally linear response with no indication of a threshold. To reflect this, the risk assessment for the current ozone NAAQS review provides estimates of total risk from exposure to ozone concentrations well below the standard The risk assessment also provides information about how much of total risk occurs on days with different ozone concentrations

<u>Navajo Generating Station:</u>

Recently, EPA proposed a regional haze federal implementation plan for NGS that would require the installation of the most expensive emissions-control technology. The proposal is currently open for public comment, and EPA indicated that it will hold public hearings to accept oral and written comments on the proposed rulemaking. Can you give assurances that, if you are confirmed, EPA will host public hearings that allow meaningfully public participation, including at least one hearing apiece in northern Arizona, central Arizona, and southern Arizona, as well as conduct meaningful outreach and consultation with all affected Native American communities?

Yes. EPA has recently invited every tribe in Arizona, including the Navajo Nation, to formal tribal consultation in Phoenix on April 29, 2013. EPA is also available to hold additional consultation with tribes. In addition, EPA intends to hold public hearings this summer in Page, Phoenix, and Tucson AZ as well as a location on the Navajo Nation and a location on or near the Hopi Tribe.

If confirmed, will you commit to identifying an NGS solution that upholds federal trust obligations to Native American communities, supports sustainable water policy, does not impose significant

additional costs on struggling Arizonans, and does not require an appropriation or otherwise add to the national debt?

> EPA is committed to working with the Department of the Interior and the Department of Energy, our federal partners in the Joint Interagency Working Group on Navajo Generating Station, to find a long-term path forward for NGS that meets the needs to the wide variety of stakeholders involved in this issue. DOI, DOE, and EPA will work together to support Arizona and tribal stakeholders' interests in aligning energy infrastructure investments made by the Federal and private owners of the NGS (such as upgrades that may be needed for NGS to comply with Clean Air Act emission requirements) with long term goals of producing clean, affordable and reliable power, affordable and sustainable water supplies, and sustainable economic development, while minimizing negative impacts on those who currently obtain significant benefits from NGS, including tribal nations.

EPA's proposal did not include cost estimates for baghouses. Can you confirm that the NGS owners would not be required to install baghouses as a result of the change in emissions created by installing SCRs?

> EPA's proposed BART determination and BART alternatives do not require the installation of baghouses at NGS. The alternative timeframes for meeting BART limits could extend roughly a decade or more into the future and EPA cannot determine now what a future permit many years down the road might require. However, we note that permitting of SCR on a similar facility in Arizona, the Coronado Generating Station, did not require the installation of a new baghouse.

Re: NHSM rulemaking, Can you tell us what the proposed rule will be completed? Will you keep the committee appraised of the process?

Response: The Agency committed to issuing the Nonhazardous Secondary Materials (NHSM) categorical listing rule in a timely manner. I understand that, recently, the Agency received important new information from industry that will inform the rulemaking. If confirmed, I am committed to keeping the Committee apprised of ongoing NHSM rulemaking efforts.

A federal court in the case of NMA v. Jackson recently struck down several EPA actions – specifically, EPA's Enhanced Coordination Process (ECP) and Multi-Criteria Integrated Resource Assessment (MCIR) for Appalachia surface coal mining, as well as EPA's guidance document, "Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order" – as violating the CWA and Administrative Procedure Act, as well as, in the case of the guidance document, the Surface Mining Control and Reclamation Act. What steps has EPA taken to implement the court's decision?

Response: I appreciate your interest in this important matter. Although the agency's appeal of the District Court's decision is pending, I understand that the Agency has directed its field offices not to use

the guidance documents affected by the court decision and instead to rely on regulations promulgated under the APA.

NSPS (Existing)

In December of last year the NRDC released a report calling on EPA to use Section 111(d) of the Clean Air Act to establish a new greenhouse gas program for existing power plants. Have any officials from your office, or elsewhere in EPA that you are aware of, met with NRDC to discuss their proposal?

A representative of NRDC asked for, and was granted, the opportunity to present the organization's proposal to senior management and staff in the Office of Air and Radiation.

Can you assure us that EPA will not adopt a cap and trade program?

Both former Administrator Jackson and I have said in the past that the EPA has no intention of pursuing a cap and trade program for greenhouse gases and I continue to stand by those statements.

Can you assure us that EPA will adopt a program that will not force new retirements of coal units?

I do not foresee the EPA adopting an NSPS program that would mandate the retirement of coal units.

Do you believe that EPA has the authority under the current language of the Clean Air Act to establish a new climate change program for existing power plants, such as the one called for by the NRDC? If so, what analyses has EPA conducted regarding the practicality or legality of using Section 111(d) of the Clean Air Act to regulate existing power plants?

Section 111(d) of the Clean Air Act (CAA) provides authority to regulate existing sources where EPA establishes a new source performance standard (NSPS) under section 111(b) for a certain pollutants. EPA has not developed an analysis of whether section 111(d) provides the authority to adopt the program proposed by NRDC.

What plans does EPA have to adopt new GHG regulations for existing power plants? Specifically, has your office prepared draft regulations, what regulatory options are you considering, and what is the likely timeline for such action?

EPA is not currently developing any existing source GHG regulations for power plants. Accordingly, the Office of Air and Radiation has not prepared draft regulations. The office's current work is focused on reviewing the comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b).

Once EPA finalizes its proposed NSPS for GG Emissions for New Stationary Sources: Electric Generating Units (EGUs), does the agency intend to propose regulations under Section 111(d) of the Clean Air Act to establish procedures whereby states set standards of performance for GHG emissions from existing EGUs in their jurisdiction? If so, does EPA agree that it can only issue guidance to the

states on regulating GHG emissions from power plants and that each state must submit a plan to the agency that sets standards for performance for existing power plants within the state? Will EPA discuss its plans for the guidance with states prior to issuing such guidance?

EPA is not currently developing any existing source GHG regulations for power plants. As a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to "prescribe regulations which shall establish a procedure ... under which each State shall submit ... a plan which ... establishes standards of performance for any existing source ...." In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency will ensure, as it always seeks to do, ample opportunity for the public and stakeholders to offer meaningful input on potential approaches.

Does EPA believe it has the legal authority to impose a cap and trade mechanism in place under Section 111(d) of the Clean Air Act to reduce GHG emissions from existing power plants? If so, can you please explain how the agency could do so? Please provide citations to any relevant statutes, regulations, or case law in your explanation.

I am aware that in connection with the Clean Air Mercury Rule, issued under the prior Administration, EPA took the position that section 111(d) obligations could be met through a cap-and-trade program.

<u>NSPS (new)</u>

Using the logic in the draft NSPS to create a category for "fossil fuel-fired EGUs," why did EPA stop at including just coal and natural gas units? If you're going to combine power generators into one category, why not extend the proposal to its logical conclusion and include nuclear units? If we did that, what would the practical result be?

CAA section 111(b) requires EPA to list categories of stationary sources that cause or contribute significantly to air pollution anticipated to endanger public health or welfare. When EPA listed fossil fuel-fired electric generating units in the 1970s, those decisions were based specifically on findings with respect to the emissions from combustion of fossil fuels. Other types of electricity generation that do not rely at least in part on fossil fuel combustion, such as nuclear and solar power generation that have not been listed under 111(b) and thus were not included in this source category.

Why did EPA choose to exempt simple-cycle natural gas turbines from the proposed rule?

In the preamble to the proposed new source carbon pollution standard for power plants, the EPA laid out its rationale for not including simple-cycle natural gas turbines in the proposal. Commenters also raised this issue and the agency, of course, will address the matter further in the final rule.

How can EPA justify calling a NGCC turbine the Best System of Emissions Reduction (BSER) for a coal-fueled unit? Has such a BSER determination – that BSER for a specific unit would be to not exist as that type of unit – ever been made in the past?

The preamble set out the extent to which EPA had the latitude under 111(b) and applicable regulations to propose a particular system of emission reduction as the BSER for different types of fossil fuel generating units that have the same function of generating electricity, as well as its rationale for that proposal. EPA has made a comparable BSER determination in the past. See "Standards of Performance for New Stationary Sources, Primary Copper, Zinc, and Lead Smelters," 41 Fed. Reg. 2,332, 2,333 (Jan. 15, 1976) (establishing a single standard for different types of furnaces in primary copper smelters). In addition, the D.C. Circuit recently upheld a similar action EPA took under CAA section 112 in a rulemaking for processing plywood and composite wood products (PCWP). There, EPA adopted a single standard for multiple production methods. The Court noted that in the rulemaking, EPA subcategorized PCWP equipment "according to its function." NRDC v. EPA, 489 F.3d 1364, 1375 (D.C. Cir. 2007) (citing 69 Fed. Reg. at 45,948). The agency received comments on this set of issues and is evaluating them carefully and will take them fully into account before issuing a final rule.

Is CCS considered BSER for coal plants? Assuming CCS was BSER, would it apply to all fossil-fueled plants – both coal and gas?

In the N5PS proposal, EPA proposed that natural gas-fired combined cycle technology represented BSER for intermediate and base-load fossil fuel-fired power plants. We did not make a separate determination as to what represented BSER for coal-fired power plants alone. EPA received many comments on this proposed determination and is considering them.

Last August you stated: "My job is primarily to implement the Clean Air Act. Our Clean Air Act is prescriptive, but it does allow flexibility. It looks at variability in technology and design. It is not a law that picks winners and losers." However, your department just issued a draft New Source Performance Standard (NSPS) that limits carbon dioxide emissions for new power plants to 1,000 pounds per MW and, if we exclude all of the wind and solar, essentially requires all new power plants to be fueled with natural gas. Do you believe that EPA should use the "flexibility" that you referenced in the Clean Air Act to determine what fuels can and cannot be used to power, heat and cool our homes, businesses and manufacturing facilities? What about transportation fuels?

The proposed carbon pollution standard is a fuel neutral emission rate, which can be met by natural gas fired plants or coal- or petroleum-coke fired plants using carbon capture and sequestration. With respect to transportation fuels, the Agency is committed to carrying out the obligations established by Congress for the EPA under the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007 and the Clean Air Act.

EPA has specifically exempted both modified (units that make major changes) and transitional (units that have yet to begin construction but have already secured a Prevention of Significant Deterioration (PSD) operating permit) from adhering to the proposed standard. EPA has stated that it does not intend to issue a standard for modified units. What will the Agency do if sued by environmental groups on this issue? Is it possible that such a lawsuit might result in the application of the new standard to all facilities that are being forced to install major upgrades to comply with other EPA regulations, such as the Mercury and Air Toxics Standards (MATS)?

I believe that the approach we proposed to take with respect to modified sources is sound. Beyond that I believe that it would be neither appropriate nor useful for me to speculate on potential litigation and possible judicial decisions that at this point are entirely hypothetical.

Do you agree that the current proposed standard is completely infeasible for modified power plants?

> The main reason that EPA declined to propose a standard for modifications was that the agency concluded that it lacked sufficient information to propose such a standard.

On March 27, 2012, EPA proposed a rule that would set a limit on the amount of carbon dioxide that new power plants could emit. In this proposal, EPA recognized that coal-fired power plants will not be able to meet this limit unless they install carbon capture and storage – a technology that EPA admits is not commercially available and, according to EPA, would almost double the cost of building a new coal-fired power plant. Do you agree that this rule, if finalized as proposed, will effectively ban new coal-fired power plants in the U.S.?

> As EPA explained in the preamble to the proposed carbon pollution standard for new power plants, it was not the agency's intent to propose a rule that resulted in a de facto ban on the building of new coal-fired power plants nor does EPA believe that would be the effect of the proposed rule. The proposal reflected, instead, EPA's analysis and understanding of new electricity generation capacity expected to be built in the foreseeable future. Further, the proposal offered for comment an alternative compliance pathway for new coal-fired generation that included substantial flexibility for new coal-fired facilities. Finally, commenters raised this and related issues regarding the impact of the proposed standard on prospective coal-fired sources and the agency is still in the process of evaluating those comments, which it will consider and take fully into account in issuing a final rule

When you proposed the NSPS for new powerplants, you acknowledged that it would not be equitable to apply the new standard to plants that have already been under development for many years and have already obtained their air permits. As I understand it, you recognized that these plants will not be able to meet the new standards and you didn't want to pull the rug out from under companies who have already spent a lot of time and money to develop new plants based on EPA's long-standing rules. Is this the basic reasoning behind EPA's proposal for dealing with "transitional sources"?

> In the preamble to the proposed carbon pollution standards, EPA laid out its reasoning in proposing an approach to "transitional" sources. EPA emphasized that sources could qualify as "transitional sources" only if they were on the verge of commencing construction in addition to having obtained their PSD permits.

EPA also said that transitional sources had to officially "commence construction" by April of this year, or they would lose their status as "transitional sources." In other words, they would be required to meet a standard that EPA has said they can't meet. Can you explain why this deadline was chosen?

> As stated in related answers, EPA laid out in detail its reasoning for the approach it proposed to take with respect to "transitional" sources, including the proposal for a one-year time line. EPA included the one-year period because sources on the verge of commencing construction could reasonably be expected to do so within one year. Commenters raised this and related issues regarding "transitional" sources and the agency is still in the process of evaluating those comments, which it will consider and take fully into account in issuing a final rule.

There is a power plant that has been proposed for western Kansas known as Holcomb 2. Two rural co-ops have been developing this plant for more than 6 years and have already invested almost $90 million dollars to develop a plant that they believe is in the best interests of their members. They have obtained all the necessary permits, but their air permit has now been challenged to the Kansas

Supreme Court. When EPA finishes the NSPS for new power plants, will you treat plants like Holcomb 2 fairly? Will you commit to issuing a rule that will allow them to move forward with their project after getting a decision from the Kansas Supreme Court?

EPA included an explicit reference to Holcomb 2 as a potential transitional source under the proposal. The Agency has received comments and additional information with respect to this project and is carefully evaluating those comments, which it will consider and take fully into account in issuing the final rule.

EPA's April 2012 proposed New Source Performance Standards (NSPS) for Greenhouse Gas Emissions for New Stationary Sources: Electric Generating Units (EGUs) sets a standard of performance based on a single fuel – natural gas. This proposed standard cannot be achieved in practice for any source except natural gas combined cycle (NGCC) units. Can you please explain to the committee how setting a standard for all fuel types based on a single one does not violate the definition of "standard of performance" in Section 111(a)(1) of the Clean Air Act?

In the preamble and the supporting documents for the proposal, EPA explained its reasoning for proposing a single standard of performance for the fossil fuel-fired category. As noted in the answer to question 194, there are precedents for this type of action. At the same time, the proposal included an alternative compliance pathway for new coal-fired facilities. The public provided comment on these issues; the Agency is currently evaluating those comments and will take full account of them before issuing a final rule.

Given the price variation in electricity produced from natural gas in New England in the winter of 2013, does EPA still believe that the price of electricity from natural gas-fired generation will remain almost the same as it is today until 2035, as the proposed New Source Performance Standards (NSPS) for Greenhouse Gas (GHG) Emissions for New Stationary Sources: Electric Generating Units (EGUs) projects? If so, could you please provide the committee with a written explanation of EPA's rationale for such a projection? If you do not believe the price in 2035 will remain close to what it is today, will EPA address this changed assumption about electricity prices from natural gas in final NSPS for GHG emissions from new power plants?

As part of the rulemaking package for the proposal EPA included economic analyses that addressed, among a set of related economic issues, projections of future electricity prices. That analysis acknowledged the historic volatility in natural gas markets, including seasonal shifts in response to weather, and also examined the potential impacts of the proposed standard under a range of natural gas prices. EPA also plans to include updated economic analysis addressing these issues in support of a final rule.

EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases from new sources. What analysis did EPA undertake to determine that there are no costs or benefits from the proposed rule?

In the preamble and supporting documents for the proposal, EPA provided an extensive discussion of this analysis of costs and benefits that was undertaken to address this question.

Why did EPA only analyze out until the year 2020 in order to determine the lack of costs and benefits?

Because the Clean Air Act requires that the NSPS be reviewed every eight years, this economic analysis focuses on benefits and costs of this proposal for the years through 2020. Although

2020 is the primary focus of proposed rule, EPA did perform economic modeling out to 2030. The analysis helps confirm the conclusions are consistent even beyond 2020.

A recent comprehensive modeling effort done by ICF International – using the same proprietary ICF Integrated Planning Model with EPA uses to model each of its rules – project forecasts about 50 GW of coal-fired generation retirements over the next few years, driven mostly by pending EPA rules, with the expectation of another 20 GW of retirements after that. How can you explain the difference between this analysis and EPA's?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these ICF figures.**Error! Bookmark not defined.** External analysts, including GAO[xv], CRS[xvi], the Bipartisan Policy Center[xvii], and Analysis Group[xviii],have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

When you served as commissioner of the Connecticut Department of Environmental Protection you expressed concerns that some state policies would cause businesses to leave Connecticut for other states more favorable to business development. Tell us if you share the same concern about EPA acting much the same way on a national level – driving energy and manufacturing companies out of the United States due to stringent, overly burdensome environmental rules.

In the past 40 years, we have made dramatic progress reducing pollution in our air, land and water. That progress has gone hand in hand with long-term economic growth and prosperity. I strongly believe that we can continue to build on this success through smart, pragmatic regulatory and non-regulatory actions that achieve further progress in protecting public health in the environment, while supporting continued economic growth.

The Administration has continuously made the case that new regulations add jobs given the need for more investments for environmental controls. However, a DOE report from only a few years ago says that the compounded burden of various regulations contributed to 66 refineries closing in the last 20 years; they even have a chart that overlays new regulations with refinery closures. If new regulations add jobs, why does DOE say it has led to closed manufacturing facilities?

Your question appears to refer to DOE's 2011 study assessing whether the congressionally mandated renewable fuel standard program would impose a disproportionate economic hardship on small refineries, such that these refineries should receive an exemption under that program. My staff informs me that while this study assessed the potential need for extending relief from the RFS program for small refineries, it did not analyze the impacts of any other EPA

[xv] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[xvi] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf

[xvii] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability

[xviii] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf

regulations or reach the conclusion reflected in your question. Rather, refinery closures over the past three decades have been driven primarily by market factors unrelated to environmental regulation

Like many of my colleagues, I am concerned by the recent onslaught of proposed EPA regulations and the chilling effect they are having on the economy. Many businesses are sitting on the sidelines and are unwilling to make major investments in this uncertain and unpredictable environment. What steps will you take to ensure businesses have a more stable and predictable regulatory environment?

I understand the importance of regulatory certainty to the business community. As I stated in my testimony, I have done my best to keep my door open to businesses, environmental advocates, local communities, the states, tribes, labor and the public at large, and I will continue to do so if I am confirmed as EPA Administrator. Interactions with stakeholders has provided information and insights that have led to the development of smarter, more cost-effective rules, and better designed and implemented policies and programs to build partnerships and enhance collaboration. If confirmed, I hope to continue to build on this record of outreach and engagement.

EPA's proposed rule would impose expensive new study, monitoring, and retrofit requirements on all existing facilities, including "baseload" facilities that are the foundation of our electric system and "peaking" facilities that are used more sparingly to meet periods of peak electricity use. But the peaking units may be used for as little as a few days a year when electricity demand is high, and it would be uneconomic to spend a great deal on money on them for studies and equipment that would be rarely used and would not provide commensurate environmental benefit. In an earlier version of the rule, EPA provided an exemption for such units. Yet in the current proposed rule, which is soon to be finalized, EPA eliminated the exemption. Would you consider reinstating that exemption or providing equivalent relief from the rule's requirements for peaking facilities so they can continue to perform their crucial reliability function?

Response: As you know, I have worked hard to make sure that we carefully monitor the design and implementation of EPA's air pollution rules to keep costs reasonable and ensure that the reliability of our electrical system is protected. If confirmed, I look forward to working to ensure that requirements and implementation of rules like 316(b) are similarly sensitive to electrical reliability issues.

EPA's proposed rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule's requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expect to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?

Response: I fully recognize that this is a period of transition for the power sector and that operators do not want to undertake studies for control technologies if they are certain to retire a unit. If confirmed, I look forward to working to ensure that we carefully consider the special circumstances of retiring units as we finalize the 316(b) rule.

There is currently a project under review by EPA in Arecibo, Puerto Rico that is experiencing a lengthy delay in obtaining a permit under the Clean Air Act. I understand that this state-of-the-art waste to energy facility meets your Agency's most stringent air emissions standards and will help to alleviate Puerto Rico's landfill emissions problem that has created so many health challenges for that island's population. The delay in permitting this facility is even stranger considering your Agency permitted a nearly identical facility in Baltimore in August 2010. That permit process, from application to final order, took only 15 months. In the present case, the permit process has extended well over 2 years and we still have not seen action. Can you explain this situation?

Response: I understand that there has been wide public interest in the proposed permit for the Energy Answers waste to energy facility. Since first proposing the permit in May 2012, the EPA held six public hearings in Arecibo, Puerto Rico. The agency extended its public comment period and ultimately reviewed over 3,000 public comments on the proposed permit. The EPA is carefully considering all comments and is preparing detailed responses to the comments.

Ms. McCarthy, your Agency is well past its statutory deadline for issuing the permit. Your delay is preventing the island of Puerto Rico from reducing greenhouse gas emissions by over 1 million tons per year, as well as creating green technology jobs for that struggling economy. Please give me a date certain when I can expect to see that permit signed.

Response: As noted above, it is my understanding that the EPA has not completed the review of public comments received on the proposed permit for the for the Energy Answers waste to energy facility. The agency is making every effort to ensure a thorough and comprehensive review prior to taking final action on the air permit.

Congress has been informed that there is no process whereby all of the petitions for rulemaking or reconsideration may be available to the public. Recent EPA testimony indicates that at any given time the Administrator does not know what or how many petitions have been filed. Will you promise to establish a system for keeping better track of this correspondence?

Response: If confirmed, I will seek ways to further transparency, and I will learn more about the agency's current systems for tracking these types of documents agency-wide.

In this era of unsustainable federal government budget deficits, if you are confirmed, will you commit to review thoroughly the current status of the perchlorate rulemaking and determine whether regulating perchlorate under the SDWA is a rational and reasonable use of the Agency's limited resources?

If you determine that regulating perchlorate under the SDWA is a rational and reasonable use of the Agency's limited resources will you provide me with an explanation of other EPA priorities that will need to be delayed or abandoned in order to finalize the perchlorate MCL?

If you determine to forge ahead with the perchlorate MCL, will you provide me with a detailed analysis of the costs that will be imposed on private and public drinking water purveyors by that MCL?

Response (to the three questions above): It is imperative that the Agency use the best available science to guide its decision making on Perchlorate and other contaminants. If I'm confirmed, I commit to looking at the science, as well as the requirements of the Safe Drinking Water Act and I will ensure that EPA follows the science and the law.

The manufacturing sector is seeing considerable new investment in new and modified facilities, and the prospect of maintaining and creating thousands of jobs, thanks in part to enhanced production of unconventional oil and gas (e.g., shale gas). Under the Clean Air Act, EPA is required to issue a Prevention of Significant Deterioration (PSD) permit within one year of deeming the permit application "complete." What has your office done to ensure these permits are issued in a timely manner to prevent permits from slowing recovery and growth in the manufacturing sector?

> In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issued permits, which will help avoid delays in issuing permits.

What will you do to ensure PSD permits are timely, especially considering that NAAQS requirements are constantly changing?

> In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issued permits,

which will help avoid delays in issuing permits. EPA will consider adopting similar provisions as warranted whenever the agency changes NAAQS requirements.

How will you ensure that, given the EPA and states' budgetary pressures, facilities are able to get permits and begin operating as soon as possible? Do you expect to develop or modify guidance to State permitting offices?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issue permits, which will help avoid delays in issuing permits.

In an April 10, 2013 response to a January 23, 2013 letter from Senator Vitter regarding EPA compliance with the Regulatory Flexibility Act (RFA), EPA said that it takes its responsibility to comply with the RFA "very seriously." However, while EPA used to post its regulatory agendas on the EPA website, the agency stopped after 2011 (See http://www.epa.gov/lawsregs/regulations/regagenda.html#background). Please explain why EPA stopped posting its regulatory agendas on its website. Does EPA plan to post its regulatory agendas on its website in the future?

Response: I believe that government should be transparent and open. If confirmed, I will ensure that the public has access to EPA's regulatory agenda, either through its website, or through regulations.gov.

In a January 23, 2013 letter, Senator Vitter asked EPA to explain its plan for satisfying its legal obligations under the Regulatory Flexibility Act (RFA) since its regulatory flexibility agenda was an unprecedented 8 months past the statutory April deadline. In its April 10, 2013 response, EPA ignored this question and simply said that it takes its responsibility to comply with the RFA "very seriously," yet EPA did not published its regulatory flexibility agenda in the Federal Register until January 8, 2013. Is it EPA's position that a January 8, 2013 publication of its regulatory flexibility agenda complies with the statutory requirements of 5 U.S.C. § 602 ("During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda.")?

Response: I believe that the Agency should be sensitive to the needs of small business as it implements its regulatory agenda. If confirmed, I will ensure that the Agency meets its statutory deadlines for publishing the regulatory flexibility agenda.

Regarding cellulosic volumes, each year since 2010 EPA has taken EIA's projections about projected cellulosic biofuel production and increased it for the purpose of setting the following year's mandate. Each year, EIA has been wrong, and EPA has been more wrong, leading the U.S. Court of Appeals for the DC Circuit to vacate the 2012 cellulosic mandate. EPA is expected to voluntarily rescind the 2011 mandate. Yet the week after the Court decision, EPA proposed an *increase* in the cellulosic mandate despite the fact that only 1,000 gallons of the 10.45 million ethanol-equivalent gallons mandate was produced for compliance in 2012. The EPA's Moderated Transaction System (EMTS) shows no cellulosic production *again* in January, 2013. Given the Court's admonition and the data we now have, will EPA reduce the cellulosic mandate to zero when it finally promulgates final volumes for 2013, which are now 4 months late?

EPA is required under the CAA to annually set the standard for cellulosic biofuel at the projected volume of cellulosic biofuel production, which EPA determines based on projections from the EIA and considering other available information. In February 2013, EPA released a proposal that projected the volume of cellulosic biofuel production for 2013 at 14 million gallons, which is below the statutory volume of 1 billion gallons. EPA's proposed projection for cellulosic biofuel production is consistent with the DC Circuit's direction and is based on a neutral assessment of reasonably anticipated production for 2013. The agency will fully consider comments on the proposed cellulosic level before finalizing the standard, and will make adjustments to the proposed levels, if appropriate.

The last administrator clearly took on the role of promoting the ethanol industry. Do you believe your role as administrator is promote one industry over others, or that decisions should be made that consider the protection of the environment and the economy?

EPA implements conventional and renewable fuels and fuel additives regulations and programs as required under the CAA. EPA does not promote any specific industry.

Given the multitude of problems from the implementation of Renewable Fuels Standard (RFS), including the issue of the "blend wall," where the amount of ethanol required to be blended into gasoline exceeds the E10 threshold, is it now time to admit that the RFS is a broken program and is need of significant revisions?

Congress mandated that increasing amounts of renewable fuel be used nationwide, while providing industry with flexibility to determine the most cost-effective fuel mix needed to meet the requirements of the law. EPA has met with representatives of a broad array of stakeholders from the oil and renewable fuels industries, and we are working with the Department of Agriculture and the Department of Energy to discuss the E10 blendwall and other issues related to RFS implementation. EPA will take this information into consideration as the agency moves forward with implementation of the program.

In your role as administrator will you have the flexibility to address the longer term issues of the Renewable Fuel Standard? What do you plan to do to address the immediate problems?

EPA is looking at the potential impacts of the blendwall and related RFS implementation issues over the near and longer term. The agency is also reviewing comments submitted in response to the proposed rulemaking for the 2013 RFS volume standards, and will carefully consider this input in setting future RFS standards. Going forward, EPA will consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program. Given the importance of these issues, however, EPA recognizes that it is important to avoid precipitous action that could have adverse effects on the market.

EPA has not yet promulgated the renewable fuel obligations for 2013 for the Renewable Fuel Standard. What action will the Agency take soon to address this problem? Obviously, 2013 has already begun. Will this rule be retroactive as of January 1, 2013? Will EPA get back on schedule and finalize values for 2014 before December 31, 2013?

The public comment period recently closed for the 2013 volume standards. EPA intends to finalize the 2013 standards by the summer of 2013, and intends to propose the 2014 standards in the same time frame.

Do you agree that it is within EPA's legal authority to waive or modify the renewable fuel volume requirements of the RFS if meeting such requirements will cause severe harm to the Nation's economy? Do you think that rising consumer prices constitute the potential for severe economic harm? As Administrator, would you consider waiving or modifying the renewable volume requirements to avoid or mitigate higher gas prices on our Nation's working families?

Congress established a stringent test for granting a waiver under the RFS program. Section 211(o)(7) of the Clean Air Act allows the EPA Administrator, in consultation with the Secretaries of Agriculture and Energy, to waive the requirements of the RFS under certain criteria. The waiver could be issued if the Administrator determines – after a notice and comment period – that implementation of the RFS requirements would severely harm the economy or environment of a State, a region, or the United States. That is a very fact-specific determination, and therefore would be best addressed in the context of a specific request after considering public comments.

EPA is proud of its "global leadership" role. EPA also takes the view that it is the aggregate effects of chemicals and emissions that really matter. Has EPA taken an aggregate, global approach in analyzing the impacts of its ethanol programs? I know you've analyzed national effects, but have you looked at global effects as well?

EPA has analyzed the impacts of the Renewable Fuel Standard (RFS) program in a number of different regulatory actions. For example, EPA issued a regulatory impact analysis (RIA) for the March 26, 2010 RFS final rule, which implemented the requirements of the Energy Independence and Security Act (EISA) of 2007. That RIA provided a detailed assessment of a wide variety of key impacts from the RFS program. EPA's analysis addressed impacts of EISA's requirements both on U.S. food prices and global food consumption, and contains explicit information about the assumptions and limitation of the data used to support the analyses. In

addition, in evaluating whether a fuel meets the greenhouse gas reductions for the RFS program EPA conducts a lifecycle analysis of greenhouse gas emissions that includes both domestic and global impacts.

EPA states, in regard to its RFS mandates, that "the quantity of food brought to market might decrease, resulting in higher food prices and possibly more malnutrition". If these higher prices and increased levels of malnutrition were shown to actually cause deaths, how serious an issue would that be, in your view?

Protecting public health is central to EPA's mission, and we therefore would consider such issues very seriously.

What is your response to recent studies, such as that by Dr. Indur Goklany in 2011, which finds that the higher food prices resulting from ethanol diversion might be responsible for as much as 192,000 deaths annually?

EPA is aware of the Goklany study and other analysis that look at global biofuels policies and their impacts. In the RIA for the March 26, 2010 RFS final rule, EPA analyzed the impacts of EISA's requirements on food prices and global food production.

Studies have been made that show that the increase of food prices due to ethanol policy have increased hunger in countries such as Guatemala and Mexico, causing violent protests in Yemen, Haiti, Egypt, Pakistan, Indonesia and Ivory Coast, and could possibly create 42 million new poor people in India. What is your response to these studies, taking into account that the U.S. alone is responsible for approximately 62 percent of the world's biofuel production?

EPA is aware of studies such as the type referenced, but the agency has not reviewed the specific studies referenced in a level of detail sufficient to enable us to comment on them at this point. In the RIA for the March 26, 210 RFS final rule, EPA analyzed the impacts of EISA's requirements on food prices and global food production.

Last year, the EPA denied petitions from seven governors to suspend RFS blending requirements. The governors contended that by diverting 40% of the U.S. corn crop to ethanol production, the RFS combined with the worst drought in 50 years drove corn prices to record heights, imposing severe hardship on poultry, beef, and pork producers in their states. Citing Section 211(o)(7) of the Clean Air Act, the EPA argued that to grant a waiver it must "determine that the implementation of the mandate itself would severely harm the economy; it is not enough to determine that implementation of RFS would contribute to such harm." But job losses, declining sales, bankruptcies, plant closures, and the like often have more than one cause. An RFS that does no harm when corn production and corn stocks are high and global demand is low might do considerable harm when the opposite conditions prevail, as they did in 2012. By insisting that the RFS "itself" must be responsible for severe harm, the EPA's denial of the petitions was disconcerting. If severe harm is occurring and the RFS contributes to it, what language in the statute prohibits the EPA from taking action?

In responding to the petitions, EPA consulted with the U.S. Department of Agriculture and the U.S. Department of Energy, and examined a wide variety of evidence, including modeling of the impact that a waiver would have on ethanol use, corn prices, and food prices. The agency also looked at empirical evidence, such as the current price for renewable fuel credits, called RINs, which are used to demonstrate compliance with the RFS mandate. EPA's analysis showed that it

is highly unlikely that waiving the RFS volume requirements would have a significant impact on ethanol production or use in the relevant time frame that a waiver could apply (the 2012-2013 corn marketing season) and therefore little or no impact on corn, food, or fuel prices. This was because the modeling showed that in almost all scenarios modeled the market would demand more ethanol than the RFS would require. While EPA recognized that many parties had raised issues of significant concern to them and to others in the nation regarding the role of renewable fuels and the RFS program and the severity of the drought and its major impacts on multiple sectors across the country, the issue directly before the Agency was limited given EPA's authority under section 211(o)(7)(A) of the Act. EPA applied the detailed analysis to the statutory criteria for a waiver. EPA found that the evidence did not support a determination that the criteria for a waiver had been met, and therefore was required by law to deny the waiver.

In October of 2011, two organizations, one of them an anti-hunger group, petitioned EPA to acknowledge the deadly side-effects of its ethanol-fuel programs. EPA took over a year—14 months, to be exact, to deny that petition. In contrast, the White House has a "We Can't Wait" series of policy initiatives that stress the need for urgent action. Why is that, on this issue of life-and-death, EPA obviously could wait? This was a data quality petition, and your own data quality regulations provide for a 90-day response time. What took so long?

EPA received a request for correction under the Information Quality Guidelines from the Competitive Enterprise Institute and ActionAid USA on October 13, 2011, and responded to that request in a letter dated December 13, 2012. Subsequently, EPA has received a request for reconsideration from the same two organizations. EPA acknowledges the length of time it required to respond to the October 13, 2011 letter and is currently in the process of responding to the request for reconsideration, on which the agency hopes to move more quickly.

A recent study conducted by NERA Economic Consulting, the same firm engaged by DOE for analysis of LNG exports, found that the current RFS mandates could lead to a 30% increase in consumer gas prices by 2015. NERA also found that the RFS mandates could result in a $580 billion decrease in take-home pay for working families. In your role as EPA Administrator, what steps do you intend to take to prevent these adverse impacts on our Nation's economy and working families?

The Agency has seen several analyses focusing on the potential impacts of the RFS program on retail gasoline prices. Some of these show minimal or indiscernible price impacts. The agency is carefully monitoring market dynamics. EPA has met with representatives of a broad array of stakeholders from the oil and renewable fuels industries, and is working with the Department of Agriculture and the Department of Energy, to assess current market activity related to the implementation of the RFS. As EPA implements the RFS program, the agency will continue to closely evaluate the impacts of the program and to consider whether any further actions under the directives and authorities provided by Congress are appropriate to address any such impacts.

Almost all analysts agree that we have reached or will soon reach the "blend wall"—or the time when the volumes of renewable fuel required by the RFS require producers to exceed the 10% volume threshold. A recent study by NERA Economic Consulting stated that the blend wall will result in fewer available RINs available for purchase to comply with the RFS and lead to higher gasoline prices at the pump for working families. In recent weeks this analysis has been borne out as RIN prices have skyrocketed from $.05 a RIN to over $1 a RIN. Do you agree that it is within EPA's legal authority to

release more RINs into the RFS market to reduce the impact of the blend wall on gas prices for consumers? As Administrator, would you favor doing so?

> Only qualified registered renewable fuel producers are authorized to generate RINs. However, as we continue implementing the RFS program, EPA recognizes the need to closely evaluate the impacts of the program and consider its options under the authority of the Clean Air Act to address the E10 blendwall and other issues associated with implementation of the program.

Is it within EPA's legal authority to establish a "safety valve" as part of the RFS program whereby the EPA would cap/hold steady RIN prices based on their impact on the Nation's economy? As Administrator, would you consider establishing such a safety valve as part of the RFS?

> The market sets the price of the RINs. However, as EPA continues implementing the RFS program, the agency recognizes the need to closely evaluate the impacts of the program and consider its options under the authority of the Clean Air Act to address adverse issues that may result from the program.

There appears to be increasing capability to calibrate dose-response mechanisms for many chemicals and naturally-occurring compounds, such that an exposure threshold can be established and that exposures below that threshold are safe. This is contrary to the methods EPA has routinely employed in risk assessments as the Agency continues to utilize a linear, no-threshold approach. Do you believe it is timely to revisit the Agency's risk assessment methodologies? Will you commit to requesting the NAS to undertake an appropriate revision to the Silver Book?

Response: I understand that sound science must be the basis for all of EPA's actions. If I'm confirmed, I commit to getting fully briefed on the issues that you raise.

Given tight budgets, shouldn't EPA be focusing its efforts on rulemakings mandated by a specific environmental statute?

Response: Tight budgets are requiring EPA to carefully assess how it prioritizes its actions and deployment of resources with a goal of maximizing its mission to protect human health and the environment in today's challenging context. Many factors, including which rulemakings are mandated by specific environmental statutes, are considered as part of determining the Agency's priority actions. If confirmed, I will ensure that EPA's process for establishing priorities is appropriate and prudent given the fiscal realities we face.

To understand the scientific underpinnings of conclusions provided in many of EPA's documents, the public has had to resort to using Freedom of Information Act requests or other approaches, to try to obtain scientific reviews, assessments, and rulemakings and other information and data that the EPA has relied upon, but which is not made readily available to the public. As use of these tools is time consuming and creates legal hurdles, the information has not been available in a timeframe that can

inform public review and public comment of these documents. As part of a commitment to transparency and openness, do you agree that the data and information which underlies the key scientific studies the agency relies upon in important scientific reviews, assessments, and rulemakings (e.g., National Ambient Air Quality Standards Integrated Science Assessments, IRIS Toxicological Review), should be available to the public? As Administrator, will you commit to making this information available in public dockets?

Response: As I said during the confirmation hearing, I agree with you that transparency should be a major priority for the Agency. If I'm confirmed, I will take steps to increase the availability of data, across the Agency.

EPA is currently involved in a scientific assessment of Selenium that will be used to propose a new national Selenium water quality criterion. EPA has stated that it intends to put out its proposed criteria for public comment this coming Fall. Under your leadership, what would EPA's strategy be for incorporating relevant scientific critiques and comments EPA receives into its final Selenium criteria?

Response: I share your interest in assuring that EPA's decisions regarding selenium are based consistently on the best available science that fairly and effectively takes into account technical critiques. If confirmed, I will work hard to make sure that any future agency decisions regarding selenium adhere to this principle. I understand that if and when the EPA proposes a revised proposed selenium criterion, that criterion would be available for public review and comment, and I commit to ensuring that the EPA reviews the technical comments it receives and makes appropriate revisions to ensure that any final criterion is of high quality.

How is EPA taking the site-specific nature of Selenium issues into account when developing the national standard?

Response: I share your interest in assuring that we consistently apply the highest scientific standards in the development of proposed national water quality criteria, including current efforts to revise the existing selenium criterion. If confirmed, I look forward to working with you to develop a national selenium criterion that the public can be confident satisfies these technical standards while retaining appropriate site-specific flexibility.

EPA is subject to a consent decree requiring it propose revised effluent guidelines for power plants by April 19. I have heard concerns expressed about the cost of the technologies being considered relative to the amount of pollutants removed. Cost effective regulations are important – especially to small utilities and those serving rural or economically disadvantaged communities. Why did EPA not

convene a formal small business advocacy review panel ahead of the pending proposed wastewater rules as required by the Small Business Regulatory Enforcement Fairness Act? Can you assure me that EPA has thoroughly evaluated the potential impacts on small utilities and that the proposed rule will not adversely affect small, member-owned cooperatives, especially those serving rural or economically disadvantaged communities?

Response: The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, requires EPA to convene a Small Business Advocacy Review (SBAR) Panel for proposed rules unless the agency can certify that a rule will not have a significant economic impact on a substantial number of small entities. I will look into the particulars of the above rule if confirmed.

The Definition of Solid Waste (DSW) rule was finalized in December 2008. The rule permits certain valuable secondary material streams that are beneficially reclaimed, such as spent catalysts and spent solvents, to be excluded from RCRA Subtitle C requirements. The reclamation process must be either (1) under the control of the generator of the materials, or (2) the materials may be transferred by the generator to another person or company for reclamation. The 2008 rule was challenged by the Sierra Club but the case was put in abeyance after EPA agreed in a settlement with the Sierra Club that it would reconsider parts of the rule. The reconsidered rule was proposed for comment in July 2011. In that rule EPA proposed to take away the transfer based exclusion and proposed numerous additional requirements and conditions on the recycling and reclamation of valuable secondary materials. The 2011 reconsidered proposed rule creates little to no incentive for parties to recycle or reclaim secondary materials. Even more problematic, EPA has requested comment on subjecting 32 regulatory exclusions or exemptions that have been in existence for decades and have become part of manufacturing operations, for example, the closed-loop recycling exclusion, to a new level of scrutiny, and additional recordkeeping and notification requirements. Do you think that EPA should increase incentives for reuse/recycling, since incentives for recycling not only divert hazardous wastes from landfills and incinerators, but also allow the manufacture of valuable products? Do you think that the increased burden of the proposed DSW rule will tend to drive wastes that are currently recycled to disposal, which directly conflicts with the foundation of RCRA—reduce waste through recycling? Will you commit to reexamine the rule to ensure that it is based on sound scientific data, that it will decrease the burden of facility waste management and increase incentives to recycle materials to recover valuable waste streams?

Response: As a former state environmental agency commissioner, I know the importance of encouraging recycling to reduce waste disposal and the transition to sustainable materials management to support the reclamation of valuable secondary materials. If confirmed, I will plan to be actively engaged in EPA's DSW rulemaking efforts.

Without analysis how can EPA determine that SIP provisions related to start-up, shut-down, and malfunction are "substantially inadequate" for purposes of the Clean Air Act?

EPA's proposed SIP call to amend provisions applying to excess emissions contains 49 pages of analysis that comprehensively discuss each affected SIP provision of each affected state. There, EPA carefully explained its reasoning for proposing to find that a given provision is or is not "substantially inadequate" to satisfy the legal requirements of the CAA. Where EPA proposed to find that a provision is impermissible under the CAA, but the exact meaning of that provision was open to interpretation, the agency solicited comments from all parties including the affected state to determine whether EPA's reading of the provision was accurate or whether the state had an alternative interpretation that would render the provision permissible.

Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?

The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with the requirements of the Clean Air Act. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See "What are potential impacts on affected states and sources?" at 78 FR 12467.

Do you agree that policy changes are not enforceable or mandatory requirements of the EPA?

EPA agrees that policy changes are not enforceable or mandatory until the interpretations reflected in those changes have gone through the appropriate legal process, such as notice-and-comment rulemaking. EPA's interpretation of the CAA with respect to the treatment of excess emissions during SSM periods is expressed in a series of guidance documents issued in 1982, 1983, 1999, and 2001. While these guidance documents are not themselves binding on the states, EPA has consistently applied the SSM policy contained therein in a number of individual rulemaking actions that were subject to notice and comment. Therefore, because the SSM policy has undergone and survived the rigors of public scrutiny associated with the rulemaking process, and has previously been upheld by courts, EPA believes that the SSM policy is correct interpretation of the requirements of the CAA.

Has EPA done any analysis like it did for the NOx SIP call to determine if the SIP provisions in question are threatening the NAAQS?

EPA has not based its proposed findings of inadequacy on a quantitative assessment that the specific SIP provisions in question resulted in a specific violation of the NAAQS. In fact, it is because of SSM exemptions that excess emissions during periods of SSM are not accurately accounted for in SIPs, with the result that even though the attainment and maintenance of the NAAQS is potentially compromised by SSM exemptions, there are few data readily available on which to conduct a quantitative assessment.

EPA argues that SSM prevents the enforcement of emissions limits. Isn't this circular since the validly approved SIP exempts such events from the emissions limits?

EPA's proposed action addresses existing SIP provisions with several types of deficiencies, including automatic exemptions from emissions limits and discretionary exemptions from emissions limits during SSM events. Because these types of exemptions are not valid under the CAA, EPA's approval of these types of provisions was in error. Reliance on such provisions has thus frustrated effective enforcement of emissions limits in SIPs. Other types of provisions addressed in the proposal also interfere with effective enforcement of emissions limits by purporting to prevent enforcement by EPA or citizens if the state elects not to enforce or to preclude the availability of penalties or injunctive relief for violations in enforcement actions by any party.

Were the existing SIP provisions in question legally approved and promulgated by EPA and the states? What is the legal basis for declaring a validly-approve SIP provision invalid after the fact?

Under CAA section 110(k)(5), EPA is authorized to require states to revise previously approved SIP provisions. In this instance, EPA has acknowledged that it should not have approved the provisions in the first instance, and thus is proposing to require the affected states to correct these provisions.

Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?

The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with the requirements of the Clean Air Act. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See "What are potential impacts on affected states and sources?" at 78 FR 12467.

Rulemaking is increasingly being accomplished through the use of consent decrees that commit the EPA to taking specific regulatory actions. The consent decrees agreed to by EPA and outside groups often commit EPA to specific actions and timeframes. If EPA is going to make specific regulatory commitments to outside groups, shouldn't there be an opportunity for Congress or the public to comment on these commitments before they are made, rather than having the opportunity to comment only after legally enforceable policy commitments are made by EPA?

Response: Most of these settlements are under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court. In addition, while EPA may commit in settlement to promulgate a rule or standard required by statute, the substantive level or nature of that required action is determined through the rulemaking process, which offers ample opportunity for regulated entities to provide meaningful comment on the proposed regulation itself.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

It is often not feasible to operate or use pollution control equipment during SSM periods without causing damage to that equipment. Some types of pollution control equipment cannot operate at full efficiency during startup periods, and some facilities and equipment must use alternative fuels during startup periods that pollution control equipment was not designed to target. What steps will EPA take to avoid a one-size-fits-all approach to implementing this rulemaking? Why is the EPA proposing to take away the ability of states to use enforcement discretion for excess emissions resulting from startup, shutdown and malfunctioning periods? Does EPA think that states are abusing this authority?

EPA is not taking a "one-size-fits-all" approach in the February 2013 proposed rulemaking. Under the principles of cooperative federalism, the CAA vests air agencies with substantial discretion as to how their SIP provisions meet the legal requirements and objectives of the CAA. EPA is not prescribing to states exactly how they must implement the CAA, nor is EPA directing states to adopt particular control measures. Rather, in issuing a SIP call, EPA is requiring that states bring their SIPs into compliance with the legal requirements of the CAA but leaving discretion to the states to remove or revise impermissible provisions, consistent with CAA requirements. Implementation concerns would be more appropriately considered during the state's process of revising its SIP to remove illegal SSM-related provisions. EPA's proposed rule also does not take away the ability of states to use enforcement discretion.

<u>State Primacy</u>

Do you agree that it was Congress' intent for the States to play the lead role in relevant air quality regulatory decisions? Are you committed to having the EPA implement the Clean Air Act in a manner that reflected that intent?

Congress established the Clean Air Act as a system under which the EPA and States both have important roles in setting and implementing the Clean Air Act. Congress assigned different roles to EPA and the states, respectively, depending on the nature of the air pollution problem. If confirmed as Administrator, I am committed to ensuring that EPA continues to implement the Clean Air Act in partnership with state, local, federal and tribal governments, consistent with the Clean Air Act's requirements.

States have the primary responsibility for implementing the environmental programs and regulations that EPA develops. Most States receive less than 20% of their overall budget from EPA, and in some cases, significantly less; yet EPA continues to adopt new regulations and programs without providing the States with commensurate funding. If confirmed, how will you balance the increasing demand for the State's services with the decreasing availability of the resources needed to implement EPA's ever expanding programs?

Response: Having over two decades of experience at the State and Local level, I recognize and appreciate the need for funding to States. If I'm confirmed, I will work with you and others to find innovative solutions to balance the need for federal funding to States with the need to continue important State efforts.

Tier 3

Why did EPA withhold the findings of its backsliding study until the Tier 3 rule was released?

The proposed Tier 3 rule is independent of the anti-backsliding study required by sections 211(q) and 211(v) of the Clean Air Act. EPA is currently conducting analysis and peer review for the anti-backsliding study and is not currently prepared to release it.

Generally, EPA shows the results of its studies, but withholds the modeling. Why is this a common practice of EPA?

It is unclear to which modeling this question refers. When EPA runs the IPM model for analysis of power sector rules, for example, it places model output in the docket for public review.

Last year, EPA identified 36 marginal ozone nonattainment areas that must attain by 2015. This means 3 clean summers, 2013 through 2015. Tier 3 will not be effective during this period. There are not many areas with attainment dates after 2015. Do they all need Tier 3? Do we need a national Tier 3 program to help a few areas?

Reductions in motor vehicle emissions from the proposed Tier 3 standards would improve air quality across the country, helping areas to attain and maintain the NAAQS. The proposed standards would significantly decrease ambient concentrations of harmful pollutants such as ozone, $PM_{2.5}$ and air toxics by 2030, and would immediately reduce ozone in 2017 when the proposed sulfur controls take effect. NO_x emissions would be reduced by about 284,000 tons, or about 8 % of emissions from on-highway vehicles, in 2017 alone. In 2030, when Tier 3 vehicles would make up the majority of the fleet, NO_x and VOC emissions from on-highway vehicles would be reduced by about 525,000 tons and 226,000 tons, respectively, or about 25%. By 2050, when Tier 3 vehicles would make up almost the entire fleet, NO_x and VOC would be reduced by nearly 40% for on-highway vehicles.

EPA's Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as "forward looking" while admitting that E15 is now only commercially available in a limited number of fuel retailers. Is it appropriate for EPA to use its Tier III regulation to compel automakers to produce E15 vehicles? Why is EPA making this change now?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is are seeking comment on whether we should finalize E10 for certification test fuel.

Wouldn't it be prudent for EPA wait to see how E15 performs in the marketplace prior to mandating its use as the new certification fuel?

EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA will fully consider comments from stakeholders and the public before making a final decision.

If E10 is now the predominant gasoline blend, why wouldn't EPA consider this fuel first as the new certification fuel?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time, EPA is seeking comment on whether the agency should finalize E10 for certification test fuel.

Last year, the D.C. Circuit ruled that petitioners did not have standing to challenge EPA's decision to approve E15. The court did not rule on the merits, but judges on the panel expressed concerns over EPA's interpretation of its Clean Air Act authority to grant a waiver for E15. Different affected parties have filed for certiorari at the Supreme Court. Will EPA wait to see what happens to these petitions prior to finalizing any changes to certification fuel? Would EPA consider withdrawing the proposed changes for E15 certification fuel if the court grants cert?

During the rulemaking process EPA expects to receive helpful comments on the issue of what level of ethanol to use in the fuel used for testing motor vehicles. It is premature to judge now what action EPA will take in the rulemaking based on the potential action the Supreme Court might take on petitions for certiorari on the D.C. Circuit's decision on review of the E15 waiver. This is especially the case as the issues raised in the petitions to the Supreme Court involve jurisdiction for judicial review, and not the merits of the E15 waiver itself.

Does it concern you that the D.C. Circuit expressed serious concerns over EPA's interpretation of the Clean Air Act waiver provision, both at oral argument and in a dissenting opinion? How should this affect EPA's approach to future waiver requests?

In the E15 waiver decision EPA explained in detail its views on the authority to grant a partial waiver. The D.C. Circuit later rejected petitions for review on the grounds that the petitioners did not have standing, and the Court did not decide on the merits of EPA's waiver decision. While one Judge expressed his view that EPA lacked authority for a partial waiver, there was no decision by the D. C. Circuit on this issue. In any future waiver proceeding EPA will carefully consider this issue of authority to the extent it arises.

EPA has been working on a Tier 3 rule for some time. When was the decision made to propose E15 as a certification fuel? Please provide the committee with a list of all meetings or contacts with non-governmental entities, as well as any associated records and documents (whether internal EPA records or documents or otherwise) with regard to the issue of proposing E15 as a certification fuel prior to the release of the proposed rule.

Consideration of the need to change the certification test fuel to include ethanol goes back to at least 2006 as ethanol use began increasing dramatically. During this multi-year period, the topic was discussed on numerous occasions with all relevant stakeholders, including the vehicle manufacturers, refiners, ethanol producers, nonroad engine manufacturers, the California Air Resources Board, State organizations, and NGOs. EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA further anticipates that the agency will again have numerous discussions with many stakeholders in the post-proposal timeframe prior to making any decision for the final rule, and all meetings and comments from stakeholders will be placed in the rulemaking docket. EPA will fully consider comments and feedback from stakeholders and the public before making a final decision. With regard to your request for documents, EPA staff inform me that the appropriate protocol is to make such a request through a separate letter to the agency. I will ask that the agency respond to any such request.

Please provide the committee with a detailed written analysis regarding how finalizing E15 as a certification fuel would affect EPA's assessment of future waiver requests for higher ethanol blends under Clean Air Act section 211(f)(4).

Waiver requests under section 211(f)(4) for ethanol blends higher than E15 would need to show that the fuel or fuel additive at issue will not cause or contribute to the failure of an engine or vehicle to achieve compliance with the emission standards to which it has been certified over its useful life. The assessment would look, for example, at the levels of emissions when tested on the higher ethanol blend compared to emissions when tested on the fuel used for new vehicle certification. If E15 were the certification fuel, then for those vehicles E15 would be used as the reference or baseline test fuel. This would not change the issue that would be before EPA – determining whether the higher ethanol blend caused or contributed to the vehicle violating the emissions standards.

Has EPA ever previously required changes in certification fuel prior to the introduction of a fuel into the mass market?

It has been more than 10 years since any changes have been made to federal certification test fuel, but it is time to change the certification fuel to reflect the fact that ethanol is found in most retail gasoline today. In an effort to focus on the longer term, EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA will fully consider comments from stakeholders and the public before making a final decision.

The Tier 3 rule solicits comments on various alternative approaches in transitioning to E15 as certification fuel. Would E10 be an appropriate certification fuel since it appears to meet EPA's criteria of that test fuel that "better align(s) with the current and projected in-use fuel"?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol

concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether we should finalize E10 for certification test fuel.

Would your estimates of the benefits of the Tier 3 proposed rule appreciably change if E10 was selected as the new certification fuel?

Selecting E10 as the certification fuel would not impact the exhaust emissions benefits of the proposed Tier 3 rule. However, it could effectively increase the stringency of the evaporative emission standards if the volatility of the E10 certification fuel were to be set at 10 psi, consistent with in-use fuel.

Have you considered whether the proposed tailpipe and evaporative standards are appropriate if E10 is the new certification fuel, or would they need to be adjusted?

EPA does not believe there would need to be any adjustment to the exhaust emission standards. However, it could effectively increase the stringency of the evaporative emission standards if the volatility of the E10 certification fuel were to be set at 10 psi, consistent with in-use fuel.

E15 is not the certification fuel in California. It is E10. I understand that California does not permit its gasoline to be E15. EPA has touted national uniformity in many areas of mobile source regulation. Why have you proposed E15 as a federal certification fuel when it cannot be used as such in California?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of this uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether the agency should finalize E10 for certification test fuel. If EPA finalizes E15, it intends to allow use of E10 as the certification test fuel through 2019.

Your Regulatory Impact Analysis assumes that E15 utilization for 2001 and later model vehicles will be 50% by 2017, about 80% by 2019 and 90% by 2020. You also project that use of E15 will be substantially higher in Reformulated Gasoline (RFG) areas, which are major population areas by Clean Air Act definition – EPA projects nearly 75% of gasoline will be E15 in RFG areas by 2017. Yet E15 is now almost entirely absent from the market by EPA's own assessment. Are you assuming, then, that nearly all MY 2001 and later car owners will be using E15 even if automobile companies don't warrant such cars for using E15? Why do you assume such levels of consumer acceptance?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

EPA data indicates that pre-MY 2001 vehicles and other equipment that cannot use E15 were almost 40% of the gasoline market in 2010. How will EPA ensure that E10 will be available for older model cars less than a few years from now?

EPA is not mandating E15 and the market will determine what among the range of legal fuels are sold to satisfy customer demand. Regardless, since E15 is currently distributed from less than 20 of the approximately 150,000 retail stations nationwide, this would not appear to be a near-term concern. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Doesn't EPA analysis of RFG areas effectively project that 3 out of 4 retail outlets will have to be selling E15 in major cities in less than four years?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Your Regulatory Impact Analysis assumes that E15 utilization in nonroad equipment (like construction equipment, lawnmowers and chain saws) will ramp up from zero percent in 2017 to 100 percent by 2030. Yet, to date, EPA has not acted to waive restrictions on using E15 for any nonroad vehicle or piece of equipment. On what analysis is this E15 penetration rate for nonroad vehicles based?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Please detail what other regulations or EPA determinations will be necessary to force this amount of E15 into the nonroad sector within the time period projected.

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal. The Tier 3 proposal has no bearing on fuels used in the nonroad sector. The Tier 3 proposal does not change the fact that the partial waiver for E15 does not allow for its use by nonroad equipment.

Is EPA currently considering issuing a Clean Air Act section 211(f)(4) waiver for use of E15 blends in nonroad equipment, motorcycles and other vehicles and equipment not covered by current waivers?

No, there is no such action under consideration by the Agency.

Doesn't this mean that EPA considers E85 not to be a viable option for meeting renewable fuel standard requirements?

EPA considers a wide range of renewable fuel types as the agency conducts assessments for the annual RFS volume standards as required under the CAA. E85 is one of several means that can be used to deliver renewable fuel volumes required to meet the renewable fuel standard requirements. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Recent reports on the proposed Tier 3 rule have warned that it could actually increase greenhouse gas emissions from the production of gasoline due to the energy-intensive equipment that would be needed to comply with the rule. Would you support rescinding the proposed Tier 3 rule if compliance with the rule was found to increase greenhouse gas emissions?

The proposed Tier 3 standards would result in very large emission reductions from both new and existing vehicles. The additional gasoline hydrotreating would also cause a relatively small increase in greenhouse gas (GHG) emissions at the refinery due to the additional gasoline hydrotreating. EPA analyzed these impacts in detail using our refinery-by-refinery analysis. The relatively small increase in GHG emissions from refining would be offset though reductions in vehicle emissions of GHG pollutants (methane and N_2O) from the improved operation of the vehicle catalysts.

Is it EPA's intention to use the E15 cert fuel to force the automakers to produce E15 capable vehicles? Is it appropriate for EPA to use its Tier III regulation to force autos to produce E15 capable vehicles? Is the cost of hardening vehicles for E15 included in the Tier III cost calculations?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since the proposed Tier 3 standards would phase in from 2017-2025 this would mean in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether the agency should finalize E10 for certification test fuel. Many of the vehicle manufacturers are already warranting their new vehicles to operate on E15. The change of certification fuel to E15 would thus have little impact on vehicle hardware, but would ensure manufacturers design their vehicles to account for emission impacts of ethanol concentrations up to E15 over the life of the vehicle.

In 2009 EPA issued a set of principles on TSCA modernization. In 2010 EPA participated in the House Energy and Commerce Committee's dialogue on discussion draft TSCA legislation. Over the last

several years, EPA has provided technical support to both Senate Democratic and Republican staff on TSCA reform matters. But it's my understanding that EPA has not taken a public position on any of the House or Senate TSCA reform bills introduced to date. Do you anticipate that EPA will take a position on TSCA legislation going forward? What is the Administration's view of its role in the TSCA debate? Will EPA continue to provide just technical support, or will EPA provide more leadership in the TSCA debate under your administration?

EPA's TSCA principles set out several key objectives for reform. TSCA is a complex statute, with many different programs intended to address new and existing chemicals. What are EPA's most important objectives in reforming TSCA?

Most of the concerns raised about TSCA have focused on its "existing chemicals" program, not its "new chemicals" program. Do you agree that EPA's new chemicals review program is successful? What level of confidence does EPA have in its new chemical review program?

Response (to the three questions above): While I am not familiar with any position that the Administration may or may not take, I do agree with you that our chemical safety laws are antiquated and need to be reformed. Furthermore, I understand that the TSCA law, as written in 1976, creates challenges with the new and existing chemicals program.

I understand that the Agency's principles for TSCA reform are:

Principle No. 1: Chemicals Should be Reviewed Against Safety Standards that are Based on Sound Science and Reflect Risk-based Criteria Protective of Human Health and the Environment.

EPA should have clear authority to establish safety standards that are based on scientific risk assessments. Sound science should be the basis for the assessment of chemical risks, while recognizing the need to assess and manage risk in the face of uncertainty.

Principle No. 2: Manufacturers Should Provide EPA with the Necessary Information to Conclude That New and Existing Chemicals are Safe and Do Not Endanger Public Health or the Environment.

Manufacturers should be required to provide sufficient hazard, exposure, and use data for a chemical to support a determination by the Agency that the chemical meets the safety standard. Exposure and hazard assessments from manufacturers should be required to include a thorough review of the chemical's risks to sensitive subpopulations

Where manufacturers do not submit sufficient information, EPA should have the necessary authority and tools, such as data call in, to quickly and efficiently require testing or obtain other information from manufacturers that is relevant to determining the safety of chemicals. EPA should also be provided the necessary authority to efficiently follow up on chemicals which have been previously assessed (e.g., requiring additional data or testing, or taking action to reduce risk) if there is a change which may affect safety, such as increased production volume, new uses or new information on potential hazards or

exposures. EPA's authority to require submission of use and exposure information should extend to downstream processors and users of chemicals.

Principle No. 3: Risk Management Decisions Should Take into Account Sensitive Subpopulations, Cost, Availability of Substitutes and Other Relevant Considerations.

EPA should have clear authority to take risk management actions when chemicals do not meet the safety standard, with flexibility to take into account a range of considerations, including children's health, economic costs, social benefits, and equity concerns.

Principle No. 4: Manufacturers and EPA Should Assess and Act on Priority Chemicals, Both Existing and New, in a Timely Manner.

EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on relevant risk and exposure considerations. Clear, enforceable and practicable deadlines applicable to the Agency and industry should be set for completion of chemical reviews, in particular those that might impact sensitive sub-populations.

Principle No. 5: Green Chemistry Should Be Encouraged and Provisions Assuring Transparency and Public Access to Information Should Be Strengthened.

The design of safer and more sustainable chemicals, processes, and products should be encouraged and supported through research, education, recognition, and other means. The goal of these efforts should be to increase the design, manufacture, and use of lower risk, more energy efficient and sustainable chemical products and processes.

TSCA reform should include stricter requirements for a manufacturer's claim of Confidential Business Information (CBI). Manufacturers should be required to substantiate their claims of confidentiality. Data relevant to health and safety should not be claimed or otherwise treated as CBI. EPA should be able to negotiate with other governments (local, state, and foreign) on appropriate sharing of CBI with the necessary protections, when necessary to protect public health and safety.

Principle No. 6: EPA Should Be Given a Sustained Source of Funding for Implementation.

Implementation of the law should be adequately and consistently funded, in order to meet the goal of assuring the safety of chemicals, and to maintain public confidence that EPA is meeting that goal. To that end, manufacturers of chemicals should support the costs of Agency implementation, including the review of information provided by manufacturers.

I look forward to working with you, and others on these reforms.

In 2012 EPA identified 83 chemicals as priorities for further assessment by the Agency. Earlier this year EPA released draft targeted assessments on five of these chemicals. What has EPA learned to date from the TSCA Work Plan chemical assessment process and in particular? How is the TSCA Work Plan chemical program relevant to the debate on TSCA reform?

Response: While I am not familiar with the specifics of the assessments, I can tell you that the Agency and I are committed to ensuring the American public that the chemicals manufactured and used in the products that they and their families use are safe.

In 2010, EPA announced a very significant policy shift in its interpretation of the CBI provisions under TSCA. This policy shift abandoned more than 35 years of EPA's legal and policy interpretation and adopted a very narrow interpretation as to when claims for confidential chemical identity will receive trade secret protection under TSCA -- significantly harming the protection of legitimate confidential business information. The Agency has never responded to public comment on that 2010 CBI policy announcement. Do you believe that President Obama's Strategy on Mitigating Theft of U.S. Trade Secrets should affect EPA's 2010 CBI policy change? If so, how? As Administrator, do you intend to pursue regulations implementing the 2010 CBI policy change?

Response: I strongly support this Administration's efforts to increase the public's access to critical chemical information and to reduce unwarranted confidentiality claims by industry. However, if a company has a legitimate confidential business information claim, EPA takes very seriously its commitment to protect that information so as not to cause harm to the company. Please be assured that I share this commitment and look forward to working with the Committee on this issue.

In a January 23, 2013 letter, Senator Vitter asked EPA to provide the dates EPA submitted its Spring 2012 Unified Agenda and Fall 2012 Unified Agenda to the Office of Information and Regulatory Affairs (OIRA). In its April 10, 2013 response, EPA stated that they complied with OIRA's data call letters. Please provide the specific dates EPA submitted its 2012 Spring Unified Agenda and Fall 2012 Unified Agenda to OIRA.

Response: The Office of Air and Radiation complied with all internal deadlines related to the Regulatory Agenda. If confirmed, I will respect the deadlines specified in OIRA call letters.

EPA is increasingly using ""willingness-to-pay"" (WTP) surveys to supplement the expected benefits of regulatory actions with substantial projected costs. Two recent examples include the proposed Clean Water Act section 316(b) requirements for cooling water intake structures (CWIS) and total maximum daily load (TMDL) cleanup plans for nutrients and sediments in watersheds. EPA estimated CWIS costs at over $300 million, although the final rule could change significantly. EPA estimated TMDL

capital costs of $28 billion and an additional $2.7 billion dollars per year for operating and maintaining costs. The surveys are intended to represent what price people might assign to a theoretical effect (e.g., having a healthy fish population) of a proposed rule from which they gain no direct benefit. Thus the effects are a hypothetical and subjective justification for the proposed rule. As such, it would be inappropriate for EPA to count the results of these surveys as actual monetary benefits for a proposed rulemaking. Economic experts have concluded that there are very few instances in which such a complicated subjective tool can be used with any degree of reliability. Following a National Oceanic and Atmospheric Administration (NOAA) blue-ribbon panel review of contingent valuation surveys, a Nobel laureate economist on the panel noted that ""many departures from the guidelines or even a single serious deviation would, however, suggest unreliability prima facie."" Should EPA address public concerns about the direction of EPA's monetization of these survey results and their use in benefit calculations for proposed rulemakings? What steps will you take as Administrator to ensure that EPA's assessment of economic costs and benefits of its proposed rules meet standards for high quality, reliability, and reproducibility?

Response: My understanding is that stated preference is a tool that EPA has used in the past and that the appropriate use of stated preference, and the challenges, are discussed in the Agency's peer-reviewed "Guidelines for Preparing Economic Analyses". If confirmed, I am committed to ensure that EPA's economic studies are conducted in a high quality fashion, consistent with best economic practices.

As you know, EPA has granted a waiver to California for its Zero Emission Vehicle (ZEV) program. As a general matter, what is your view on sales mandates, or, in this case, using environmental laws to require that automakers sell a certain number of a particular type of vehicle? Do you believe that a manufacturer should be required to sell the mandated vehicles at a loss if that is the only way to meet the required Government sales volume? What is EPA's role in assessing the efforts of states that adopt this program to create the infrastructure, incentives, and other mechanisms that will help this program be successful? What recourse do automakers have if EPA does not exercise this oversight?

EPA's waiver decisions are governed by section 209(b) of the Clean Air Act, which requires the Administrator of EPA to grant a California waiver request unless the Administrator makes any of the following three findings:

- California's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious,
- California does not need its standards to meet compelling and extraordinary conditions, or
- California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Clean Air Act.

At the direction of Congress, EPA has contracted with the National Academy of Sciences to assist in the development and eventual peer review of the IRIS assessment of inorganic arsenic. Recently, the newly formed NAS panel on arsenic convened a workshop to explore answers to some key science policy questions. In advance of the convening of the NAS panel, the EPA's National Center for Environmental Assessments conducted a workshop in December 2012. A member of the NCEA staff at

that workshop seemed to trivialize the impact of the NAS work in this matter and stated that although IRIS is re-writing the document, several old sections will be used, and the bottom-line conclusion is not going to change. This statement seems to summarize the current position of the IRIS program. On the one hand, Dr. Olden, the recently named director of NCEA, makes claims of a new, improved and transparent IRIS process but, on the other hand, this approach does not appear to have devolved to the staff, leaving one to question whether real change in the program is actually occurring. What steps do you plan to take to ensure the IRIS program reflects a thorough and objective review of the science and develops hazard assessments that can withstand rigorous independent scrutiny?

Response: If I'm confirmed, the first step I will take to understand the IRIS review process is getting a full and robust briefing from staff on the current status of their work in the program. I will then work with other scientific groups, industry and health advocates to understand their perspectives.

In the April 9 letter, EPA recognizes that it only has authority to regulate renovation activities in P&C buildings if it finds that renovations in those structures create a lead-based paint hazard. EPA also states that it is in the "very early stage of evaluating approaches" in determining whether such a lead hazard exists in P&C buildings. EPA also recognizes that, based on a litigation settlement agreement with the Sierra Club, EPA has deadlines in place to propose and finalize regulations for renovation activities in commercial buildings. In short, EPA has deadlines in place to establish regulations for renovations activities in P&C buildings. But, it does not have deadlines in place to guide the fundamental decision on whether a hazard even exists. Why does EPA have a schedule to develop regulations for renovation activities in commercial buildings, but does not have a schedule to determine if any lead paint hazard even exists in these buildings in the first place?

Response: I support the Agency's goals to reduce childhood lead poisoning during renovation and repair activities, including in public and commercial buildings if they pose a risk. If confirmed, the Agency and I will work with you and other members of the Committee, as well as the range of entities who may be affected by the Agency's efforts on this important issue.

James M. Inhofe

Questions for the Record

Gina McCarthy Confirmation Hearing

Environment and Public Works Committee

Regional Haze

The Regional Haze program is purely for aesthetics, has nothing to do with public health, and was intended to improve visibility at national parks. States were given control by Congress to establish the emission standards and the appropriate controls for implementation. Your agency overruled Oklahoma's Regional Haze State Implementation Plan (SIP) following a Sue & Settle Consent Decree with environmental groups because you said Oklahoma's cost estimates were inaccurate. In response, EPA issued its own implementation plan that would cost $1.8 billion and would not have any more favorable impact on visibility than the SIP.

1. **Inhofe 1. Did EPA do a technical, an economic, and a cost-benefit comparative analysis between Oklahoma's State Implementation Plan (SIP) that was overturned by EPA and the Federal Implementation Plan (FIP) that EPA imposed instead? If EPA performed any of those three analyses for either or both the SIP and the FIP, please provide them to me. If EPA did not perform any or all of those three analyses for the two plans, please explain why you did not do so.**

   EPA carefully assessed the costs and the visibility benefits associated with the controls in both Oklahoma's Regional Haze SIP and our FIP. The Clean Air Act and EPA's implementing regulations require that both the costs of controls and the visibility benefits be taken into account in making a determination of the appropriate controls. The agency took comment on our analyses before taking final action on our FIP for Oklahoma. The analysis can be accessed at http://www.regulations.gov/#!documentDetail;D=EPA-R06-OAR-2010-0190-0019.

2. **Inhofe 2. Do you agree that Oklahoma's low-cost SIP is more cost effective than EPA's FIP? What is the comparative cost-benefit analyses of the SIP vs. the FIP? Are there any additional or greater visibility gains achievable by the FIP that are not attainable by the SIP?**

   EPA does not agree that Oklahoma's SIP is more cost-effective than our FIP. The agency's analysis of the costs of control indicated that the six coal-fired units in question could install air pollution controls at less than half the cost that Oklahoma estimated, while at the same time resulting in greater visibility benefits at several Class I areas than Oklahoma's plan. However, EPA has recently reached an agreement with the state and one of the companies affected by the FIP on an alternative pathway that the agency expects will be submitted by the state as a SIP to replace the FIP. EPA is also in negotiations with the remaining company about possible replacements for the FIP at one of its plants.

3. **Inhofe 3. Did EPA use the Regional Haze program to force Oklahoma utilities to install scrubbers on coal fired utilities despite Oklahoma's equally effective, less expensive SIP?**

   EPA disagrees that Oklahoma's plan was equally effective, as explained in the answer to Question 2. EPA's FIP follows the requirements of the Regional Haze rule, which implements the requirements established by Congress in Sections 169A and 169B of the Clean Air Act. The FIP does not close off other paths toward compliance, as evidenced by our agreement on an alternative to the FIP controls with one of the companies involved and our continuing negotiations with the remaining company.

4. **Inhofe 4. Did EPA alert the state of Oklahoma or utilities in the state prior to entering into a consent decree involving Oklahoma's SIP?**
   a. **If EPA did, did EPA provide both the state and the utilities with an opportunity to participate in the settlement discussions?**
   b. **If EPA did not, why not?**
   c. **Do you believe EPA should allow states and affected utilities to participate in any negotiation process prior to a Consent Decree being agreed to that would affect the SIP, the state, and the state's utilities?**

   In keeping with the requirements of the Clean Air Act, the states and the utilities had an opportunity to comment on the proposed consent decree before EPA provided its final agreement and the consent decree was approved by the court. EPA recently has begun providing notices of intent to sue the agency on EPA's publicly available website, which will help to provide states and others notice of potential litigation that may affect their interests. See http://epa.gov/ogc/noi.html

5. **Inhofe 5. Will you please provide me with all of the unredacted correspondence between EPA and the environmental groups regarding the Regional Haze program during your tenure at the Air Office?**

   I am informed by agency staff that the normal protocol for such a request for documents is to submit a separate letter to the agency, rather than through a question for the record. EPA will respond appropriately to any such request it receives.

6. **Inhofe 6. Through the Consent Decree, did EPA intend to establish an unrealistically aggressive set of targets and timelines for approving State Implementation Plans to artificially constrain the amount of time available to work with states on procedural issues like cost estimates so that it could ultimately force a Federal Implementation Plan at a much greater cost?**

   EPA's efforts to work with the states on submitting SIPs are long-standing. At the time EPA negotiated the consent decrees for taking action on the regional haze plans, the deadline for submitting the state plans had passed by more than two years. In these negotiations, EPA sought to obtain a schedule that would allow EPA time to responsibly discharge its overdue mandatory duties under the CAA through notice-and-comment rulemaking. The agency was mindful that the plaintiffs had the option of seeking an even more expedited schedule from the court, and that there was a significant risk that that the court might establish a very aggressive schedule. In EPA's judgment, a

court addressing the issue of an overdue mandatory duty by EPA would be unlikely to provide time for a second chance for a state to complete the planning obligation it has already failed to meet. Some states have been able to submit SIP updates as EPA was taking action on their original submissions, and the agency has been able to approve such updates in some cases. Where a federal plan has been established under this consent decree, it is still EPA's preference that it be replaced by an approvable state plan. EPA has sought, and mostly obtained, numerous extensions to the dates in the original consent decrees when EPA determined that additional time was needed; in most instances, these extensions have allowed the agency to consider additional information provided by the states.

7. **Inhofe 7. Why did EPA decide to overrule Oklahoma's State Implementation Plan (SIP) and impose a FIP instead of working with the State to address whatever deficiencies EPA saw in the SIP's cost estimate?**

   The Agency disapproved Oklahoma's plan because Oklahoma's cost analysis for scrubbers did not follow the requirements outlined in the Regional Haze rule. EPA pointed out this concern while Oklahoma was still developing its SIP, but the state did not change its cost evaluation before submitting the SIP. Consequently, EPA disapproved Oklahoma's SIP, which triggered a legal obligation to issue a FIP in its place. While it is the agency's preference to allow states the opportunity to correct deficiencies in their SIPs, EPA was unable to negotiate enough time in the consent decree for Oklahoma to submit a new SIP with a corrected cost analysis. Nonetheless, EPA still prefers that the state replace the FIP with a SIP.

8. **Inhofe 8. As Administrator, what will your primary objective be when implementing the Regional Haze program?**
   a. **Will you assure me that EPA will make every conceivable effort to work with states to ensure that their SIPs are approved, and that FIPs will only be implemented once EPA has exhausted the Clean Air Act's cooperative federalism concepts and conclusively determines through a technical comparative analysis that the overruled SIP will not meet the visibility requirements outlined in the Regional Haze program?**
   b. **Will you also ensure that any FIP is the least expensive option available to EPA to meet the minimum requirements of the Regional Haze law? Will you provide economic comparative analysis of the separate plans?**

   In general, it is my goal to work with the states as closely as possible and I will continue to look for opportunities to involve them in decision making that affects their interests. The states are required to submit their next full regional haze plans in 2018. I am committed to work with states to approve their SIPs.

9. **Inhofe 9. In the CAA, please provide your definition of cooperative federalism. Can you conceive of any circumstances where EPA has disagreed with a State's approach, on policy grounds, and decided that the Agency will not intervene to override the state?**

   "Cooperative federalism" is generally used to describe the Clean Air Act's approach of assigning tasks to EPA and States that, when taken together, result in cleaner air and important public health protections. For example, EPA sets the National Ambient Air Quality Standards for specific

pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the standards. If EPA disapproves a plan for failing to meet the Act's requirements, or if a State fails to submit a plan in whole or in part, then the Act requires EPA to issue a federal plan for the State unless there is a timely correction of the deficiency and subsequent approval by EPA. EPA also issues rules (such as the recently proposed Tier 3 fuel and vehicle regulations) that assist areas in meeting the air quality standards. In instances where EPA has not been under a consent decree deadline for a federal plan, the agency has disapproved SIPs with technical errors without immediately putting into place a federal plan. Except for a few instances in which EPA and the state agreed in advance that EPA would promulgate a FIP because of resource and technical capacity limitations at the state level (Hawaii, Virgin Islands, and Montana), in every instance in which EPA has adopted a federal regional haze plan, the agency had found errors in the state's technical analysis that the agency concluded would make EPA approval of the state plan unsustainable under legal challenge. In all cases without such technical errors, EPA has accepted the state's balancing of costs and visibility benefits.

Aggregation

The Clean Air Act requires facilities to obtain a Federal Operating Permit for air emissions from the EPA if they emit 100 tons or more of any criteria pollutant per year. Properties that are truly next to one another are generally considered one facility. But if one owner has multiple facilities spread out over a large area, say 42 square miles, the facilities are considered separate. In 2007, the Bush Administration issued a memo applying this policy in the oil and gas industry, but you overturned this memo in 2009 and instead issued one that would combine the emissions of wells that are spread over a large area, triggering significantly greater permitting requirements. When this was challenged in the 6th Circuit last year, the court agreed that "adjacent" is a plain word with plain meaning, but you have not yet applied the decision outside that circuit. Also, the states have regulations that adequately address the aggregation matter, which regulations have been reviewed and found acceptable by the state regulatory bodies as well as the stakeholder groups.

10. EPA lost this case because the court found it misinterpreted the plain meaning of the law. Will you commit to apply the 6th Circuit Court decision to the rest of the country?

Response: Outside the 6th Circuit, rather than using a one-size-fits-all approach in determining which nearby, commonly-controlled emitting units should be treated as one source, EPA will continue to apply the agency's decades-old approach of making case-by-case determinations based on a review of each facility's specific situation, including the relationship between the activities at the units. The agency is concerned that national application of the 6th Circuit decision would require EPA to treat as one source facilities that are nearby and under common control, even when their activities are completely unrelated.

Hydraulic Fracturing Studies and Review Board

As you know, the EPA is currently engaged in a study on the impact of Hydraulic Fracturing on drinking water. The Agency has assembled a panel to review the study's findings, but very few industry participants were included because many hold too much stock in the oil and gas industry. It is my understanding that EPA has significant authority to waive these restrictions for participants.

11. Will you agree to reassemble the panel and, using your waiver authority, ensure an equal representation of industry participants with other stakeholders?

Response: From what I understand, members of the SAB Hydraulic Fracturing Research Advisory Panel were chosen because of their scientific expertise. If confirmed, I would be happy to discuss this issue with you further.

12. Do you think EPA should consider the potential bias of scientists who receive grant money from environmental groups when determining whether they should be included on EPA review panels and boards?

Response: For the Science Advisory Board, all members are hired as Special Government Employees (SGEs). They are therefore subject to the federal conflicts of interest laws and the Standards of Ethical Conduct for Employees of the Executive Branch. For the members who serve as SGEs, EPA does consider conflict of interest, appearance of loss of impartiality, and potential bias of all candidate experts when determining whether they should be included as members of the SAB and its review panels.

13. What is EPA's current objective for the 2014 final hydraulic fracturing study report? Will the report merely report on the results of EPA's Study? Or will the report also contain recommendations? What would be the purpose and scope of any such recommendations?

Response: As I understand, the objective of the 2014 hydraulic fracturing study report is to identify potential impacts to drinking water resources, if any, and to identify the driving factors that may affect the severity and frequency of such impacts. If confirmed, I will certainly review this topic.

14. EPA's Progress Report contains information about potential hazards associated with the chemicals used in hydraulic fracturing operations. Is EPA planning to evaluate not only these potential chemical hazards, but also whether there exist any potential human or ecological exposures to these chemicals? Standard EPA risk assessment protocols require not only an assessment of potential hazards, but also potential exposures.

Response: It is my understanding that the agency is not conducting a full risk assessment as part of this study. If confirmed, I can explore this issue further.

15. EPA's draft report regarding groundwater contamination in the Pavillion area has been the subject of significant criticism from BLM and others. I presume that EPA will not make use of the draft

Pavillion report in connection with its broader hydraulic fracturing study unless and until that draft Pavillion report is peer reviewed and a final report is issued that takes into account all of the comments that EPA has received. Is that correct?

Response: As I understand, the EPA will consider the results of the Pavillion report only after it is peer reviewed and finalized.

16. To date, there has been no evidence of groundwater contamination caused by hydraulic fracturing. The nonexistence of incidents related to the fracturing undermine claims that a systemic environmental management problem exists. Do you share this view and do you believe states have effectively managed the risks of hydraulic fracturing on state and private lands?

Response: The purpose of the EPA's study is to identify potential impacts to drinking water resources, if any, and to identify the driving factors that may affect the severity and frequency of such impacts. I do not believe that the EPA intends to address the efficacy of the regulatory framework at the federal or state level as part of this study.

Section 321

Section 321 of the Clean Air Act (42 U.S.C. § 7621) requires the EPA Administrator to "conduct continuing evaluations of potential loss or shifts of employment" which may result from the administration or enforcement of regulations issued under the Act, "including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement." Most other major environmental statutes contain similar language to Section 321.

17. Inhofe 17. Do you believe the Agency has an obligation to conduct continuing evaluations of the impact its regulations could have on jobs?

CAA section 321 authorizes the Administrator to investigate, report and make recommendations regarding employer or employee concerns that requirements under the Clean Air Act will adversely affect employment. In keeping with congressional intent, EPA has not interpreted this provision to require EPA to conduct employment investigations in taking regulatory actions. Section 321 consistently has been interpreted by EPA to provide a mechanism for investigating specific allegations by particular employers or employees that specific requirements applied to individual companies would result in layoffs. EPA has found no records indicating that any Administration since 1977 has interpreted section 321 to require job impacts analysis for rulemaking actions. Nevertheless, since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine regulatory impact analyses (RIAs) conducted for each major rule.

18. Inhofe 18. Has EPA done a Section 321 jobs analysis for any of the major regulations it has proposed or finalized since you took office in 2009?

EPA has found no records indicating that any Administration since passage of the 1977 Amendments has interpreted CAA section 321 as requiring jobs analysis of rulemaking actions. Section 321 consistently has been interpreted by EPA to provide a mechanism for investigating specific allegations by particular employers or employees that specific requirements applied to individual companies would result in layoffs. Nevertheless, since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine regulatory impact analyses (RIAs) conducted for each major rule.

19. Inhofe 19. EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. These are straight-up, added costs to American manufacturing. I'm concerned that, during this slow economic recovery, we are driving manufacturing out of the U.S., to other countries with lax environmental standards. In analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls? Do you believe this analysis could be covered under the Section 321 review requirement of the Clean Air Act?

EPA has found no records to indicate that CAA section 321, since its inclusion in the 1977 amendments, has been interpreted by any Administration to provide for job impacts analysis of rulemakings. Section 321 does provide a mechanism for EPA investigation of particular claims of job loss related to plant closure or layoffs in response to environmental regulation, and this would presumably include plant closures resulting from alleged environmental regulation-induced overseas relocation. However, EPA could not find any records of any requests for section 321 investigation of job losses alleged to be related to regulation-induced plant closure, including overseas relocation. This is not surprising since data from the Bureau of Labor Statistics consistently indicate that labor markets are primarily influenced by other, larger factors including routine business cycles, changes in production technology, and the state of the overall economy. Nevertheless, since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine regulatory impact analyses (RIAs) conducted for each major rule.

Renewable Fuel Standard

Failure to exercise EPA discretion:

20. Inhofe 20. Are you aware of the run-up in RIN prices and do you agree that it is evidence that the industry has or soon will hit the E-10 blendwall? If not, what is your explanation for the run-up?

EPA is aware of the recent activity in the RIN markets, and together with the Department of Agriculture (USDA) and the Department of Energy (DOE), we have been monitoring this activity

closely. EPA and industry alike expected a more dynamic RIN market in 2013. Industry stakeholders and market observers have expected some upward pressure on RIN prices, as the volumes of biofuel required by law approach the E10 blendwall, and as market pressure for the use of higher blends of ethanol increases. EPA has met with representatives of a broad array of stakeholders from the oil and renewable fuels industries, and we are working with USDA and DOE to assess current RIN price activity and any related impacts.

21. Inhofe 21. In light of the clear evidence that the market is anticipating dire consequences from the E10 blendwall, why has EPA refused to use its discretionary powers under EISA to lower the total and advance mandates by the same amount it is lowering the cellulosic mandate?

EPA is monitoring market conditions closely and staying engaged with key stakeholders in the private sector and with other relevant federal agencies. We are also reviewing comments submitted in response to the Agency's proposed rulemaking for the 2013 RFS volume standards, and we will carefully consider this input as we set future RFS standards. Going forward, we will continue to consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program. We will continue to watch this issue carefully, but given the size of the market it is important that the Agency not act precipitously in a way that could adversely affect the market.

Warranty coverage:

22. Inhofe 22. Why do you think that the automakers, except for GM on 2012+ and Ford on 2013+ have refused to warrant E15 use in their existing fleet?

I would defer to the automakers with regard to explanations of the rationale for their decisions with regard to warranties.

23. Inhofe 23. Have you reviewed the fuel pump and fuel sender system test report issued by CRC in January? DO you agree that the results of that testing go a long way towards explaining why the automakers are concerned about the use of E15 in their vehicles, since it showed significant and extensive damage to fuel pumps and fuel senders?

EPA has reviewed the limited portions of the CRC test program made available to the public. Unfortunately, complete information on the testing program has not been made available to the government, and the CRC expressly denied EPA and the Department of Energy (DOE) a role in the test program). The CRC E15 test programs have a number of significant scientific shortcomings, including failure to test components or vehicles on E0 and E10 to provide information on typical failure rates for baseline fuels.

<u>New Source Performance Standards – New Sources</u>

EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases (GHGs) from new sources. If that is true, then:

24. Inhofe 24. Why is EPA promulgating a rule that has no benefits, especially in light of the President's numerous Executive Orders that are intended to eliminate unnecessary regulatory burdens on the business community? Did EPA factor in the need to have a diverse mix of electric generation into its analysis?

Power plants are the biggest emitters of carbon pollution. This proposed rule would require that any new power plants use modern technology to minimize this harmful carbon pollution, while at the same time maintaining diversity of our electric generating fleet. Companies building power plants today are already making cleaner generation choices, such as the use of natural gas combined cycle or coal with CCS, and this trend is projected to continue.

25. Inhofe 25. Why did EPA only analyze out until the year 2020 in order to determine the lack of costs and benefits?

As the Clean Air Act requires that the NSPS be reviewed every eight years, this economic analysis focuses on benefits and costs of this proposal for the years through 2020. Although 2020 is the primary focus of the proposed rule, EPA did perform economic modeling out to 2030 which can be found in the docket for the proposed rule (EPA-HQ-OAR-2011-0660). The analysis helps confirm that the conclusions are consistent even beyond 2020.

26. Inhofe 26. Did EPA perform a robust analysis on the true cost of a long term switch to natural gas powered electric generation, as the rule assumes?

Yes. Moving forward, EPA predicts a mix of coal and natural gas-powered electric generation. EPA has conducted a series of sensitivity analyses to further examine the role that natural gas prices could play in the future choices of new power plants. The analyses support the conclusion that new conventional coal-fired plants, without CCS technology, are not likely to be built under a wide range of natural gas prices, even prices considerably higher than today's prices. Other independent analyses, like the Energy Information Administration's Annual Energy Outlook, support this conclusion. Even with considerably higher prices of natural gas and increased future energy demand, EPA and EIA analyses project that new coal plants will not be economic relative to other technologies in 2020.

27. Inhofe 27. A recent comprehensive modeling effort done by ICF International – using the same proprietary ICF Integrated Planning Model (IPM) with EPA uses to model each of its rules – project forecasts about 50 GW of coal-fired generation retirements over the next few years, driven mostly by pending EPA rules, with the expectation of another 20 GW of retirements after that. How do you explain the difference between this analysis and EPA's?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in ICF's figures[xix]. External analysts, including GAO[xx], CRS[xxi], the Bipartisan Policy Center[xxii], and Analysis Group[xxiii], have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

28. Inhofe 28. Can you explain why you used your "discretion" at the Air Office to abandon the long-standing Clean Air Act precedence of subcategorizing fuel types? Will you commit to reproposing the rule so that EPA's precedent is maintained and fuel types are subcategorized?

The Clean Air Act gives EPA the discretion to subcategorize a source category based on size, type or class. EPA has previously set fuel neutral standards (e.g., the 1998 utility boiler NSPS for NOx). The agency is still actively considering a wide range of comments on this issue. A final decision will reflect careful consideration of the issue.

29. Inhofe 29. Do you intend to continue using one source category for all power plants in the final rule as opposed to issuing different NSPSs or emission limits for different types of plants burning different types of fuel?

The agency is still considering a wide range of comments on this issue. A final decision will reflect careful consideration of the issue.

30. Inhofe 30. Using the logic in the NSPS to create a category for "fossil fuel-fired EGUs," why did EPA stop at including just coal and natural gas units? If you're going to combine power generators into one category, why not extend the proposal to its logical conclusion and include nuclear units? Or solar units? If EPA did that, what would the practical result be?

CAA section 111(b) requires EPA to list categories of stationary sources that cause or contribute significantly to air pollution anticipated to endanger public health or welfare. When EPA listed fossil

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[xix] New Insights from ICF's Integrated Energy Outlook: January 2013
http://www.icfi.com/insights/webinars/2013/recording-new-insights-icfs-integrated-energy-outlook-january-2013
[xx] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf
[xxi] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?"
http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf
[xxii] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability"
http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability
[xxiii] Analysis Group – "Why Coal Plants Retire"
http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf

fuel-fired electric generating units in the 1970s, those decisions were based specifically on findings with respect to the emissions from combustion of fossil fuels. Other types of electricity generation that do not rely at least in part on fossil fuel combustion, such as nuclear and solar power generation that have not been listed under 111(b) and thus were not included in this source category.

31. **Inhofe 31. How can EPA justify calling a NGCC turbine the Best System of Emissions Reduction (BSER) for a coal-fueled unit?**
    a. **Has such a BSER determination – that BSER for a specific unit would be to not exist as that type of unit – ever been made in the past?**
    b. **Is CCS considered BSER for coal plants? Assuming CCS was BSER, would it apply to all fossil-fueled plants – both coal and gas?**

In the NSPS proposal, EPA proposed that natural gas-fired combined cycle technology represented BSER for intermediate and base-load fossil fuel-fired power plants. We did not make a separate determination as to what represented BSER for coal-fired power plants alone. EPA received many comments on this proposed determination and is considering them.

32. **Inhofe 32. We have heard people say, on many occasions, that this proposed rule represents the first time that EPA has proposed a new source performance standard for the electricity generation sector without subcategorizing by fuel source, thereby pitting one source against another. For example, Phase I and Phase II of the Acid Rain Program utilized separate categories for reducing sulfur dioxide and nitrogen oxides. The recently-finalized Utility MACT Rule did the same thing. Considering the differences between coal and natural gas on greenhouse gas emissions, and carbon capture and sequestration technology is not commercially available, why would EPA intentionally put coal into such an untenable position?**

EPA has previously set an NSPS for the electricity generation sector without subcategorizing by fuel source. The 1998 utility boiler NSPS for NOx is an example of such a fuel neutral standard. The agency is still considering a wide range of comments on this issue. A final decision will reflect careful consideration of the issue. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

Best Available Control Technology

In their guidance establishing what could be considered Best Available Control Technology (BACT) for regulating GHGs in the permitting process, EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT:

33. Inhofe 33. Since NSPS are traditionally interpreted to set the BACT "floor" for permitting purposes, how can a NSPS that eliminates the ability to construct new coal units without the implementation of commercially infeasible carbon capture and storage (CCS) be consistent with EPA's previous guidance?

The statement that "EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT" is not entirely correct. EPA's March 2011 GHG Permitting Guidance says that, "a permitting authority retains the discretion to conduct a broader BACT analysis and to consider changes in the primary fuel in Step 1 of the analysis." Thus, EPA never ruled out the possibility that a permitting agency could require that an applicant consider natural gas, or other cleaner fuels, when proposing a coal-fired EGU. EPA is still carefully evaluating public comments on the proposed carbon pollution standards for new power plants, including comments related to the issue raised in your question. The agency will take these comments into consideration in taking any final action on the proposal. While EPA did not propose that CCS represented BSER, the agency stated in the preamble of the proposed NSPS rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO_2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. Furthermore, it is worth noting that, today, coal-fired power plants are being constructed that will have CCS, and EPA's view is that coal-fired units can meet the proposed limit.

34. Inhofe 34. EPA's BACT guidance stated that units should consider the "most energy efficient design and control options" when determining GHG BACT for power plants, regardless of fuel source. Why, then, did the Agency deviate from this plan in setting standards for new sources?

The EPA's GHG BACT guidance was intended to provide general guidance to permitting authorities on pollution control methods worthy of evaluation in a Best Available Control Technology assessment for a wide range of sources, and the guidance does not represent an EPA determination regarding the control method that must be selected as BACT for a particular source or category of sources. Subsequent to issuance of the guidance, EPA undertook a more detailed technological assessment of emissions control systems for the purposes of developing a proposed NSPS for the power plant category. At this time, CCS is the only system that EPA has identified for coal-fired electric generating units as being capable of meeting the proposed standard. EPA is still carefully evaluating public comments on the proposed carbon pollution standards for new power plants, including comments related to the issue raised in your question. We of course will take these comments into consideration in taking any final action on the proposal.

<u>Carbon Capture and Storage</u>

EPA makes several statements and assumptions regarding CCS in the proposed standards, and proposes that new coal fired units could comply with the rule through a 30 year "averaging" option that would allow them to deploy CCS in year 11 of operation and average their emissions over a 30 year span:

35. Inhofe 35. While conceding that CCS does not meet the requirements of BSER, EPA claims that CCS is an available compliance option. In your estimation, is CCS commercially feasible today? Are there any CCS plants that are deployed and demonstrated on a large scale? In what year do you expect CCS to be commercially viable, given current funding?

In the NSPS proposal, EPA did not state or propose to determine that CCS is not BSER. The agency is still considering a wide range of comments on this issue. EPA stated in the preamble of the proposed rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO_2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. EPA's view is that new coal-fired units can meet the proposed limit. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development.

Existing Units – GHG

36. Inhofe 36. Does EPA intend to propose and adopt a standard to regulate greenhouse gases from existing power plants? If so, when, and what role will states play in promulgating rules related to this new regulation?

At this time, EPA is working to finalize the proposed NSPS for new sources. The agency is not currently developing any existing source GHG regulations. In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency would ensure, as it always seeks to do, ample opportunity for States, the public and stakeholders to offer meaningful input on potential approaches. In addition, as a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to "prescribe regulations which shall establish a procedure ... under which each State shall submit ... a plan which ... establishes standards of performance for any existing source ...."

Modified and Transitional Sources – GHG

EPA has specifically exempted both modified (units that make major changes) and transitional (units that have yet to begin construction but have already secured a Prevention of Significant Deterioration (PSD) operating permit) from adhering to the proposed standard.

37. Inhofe 37. EPA has stated that it did not have the information to issue a standard for modified units – under your leadership, will EPA work to establish GHG rules for modified units?

EPA's proposed carbon pollution standard does not apply to modified sources. In the proposal, the agency stated that, at that time, EPA did not have enough information, to set a standard for modified sources.

a. Inhofe 37(a). Would such a move force EPA to apply this standard to all plants that are being forced to install major upgrades to comply with other EPA regulations, such as the Mercury and Air Toxics Standards (MATS)?

EPA's proposed carbon pollution standard does not apply to modified sources. If EPA were to set a standard for modified sources, technologies installed by sources to comply with MATS are currently exempted under EPA regulations from triggering any such modified source standard.

b. Inhofe 37(b). Why did EPA only grant sources with a PSD permit one year to commence construction? If those sources already had permits that would prevent any more emissions than is already allowable, why did EPA force them to comply with a one year limitation?

In EPA's proposal (published in the Federal Register on April 13, 2012), EPA did not propose to apply the NSPS requirements for greenhouse gases to new coal-fired power plants that were on the verge of commencing construction, as indicated by the fact that they already had a PSD permit and would commence construction within one year of the proposal. For sources that were not on the verge of construction, EPA proposed to apply the NSPS requirements because, according to the proposal, it was reasonable to expect those sources to build in the proposed greenhouse gas emission limits. EPA received many comments on this proposal and is reviewing them closely to determine the appropriate action to take.

<u>Utility MACT (UMACT) and Coal Plant Retirements</u>

EPA projected that UMACT would cause 4.7 GW of coal plant retirements (RIA, P. 3-16). The North American Electric Reliability Corporation (NERC) recently issued its Long-Term Reliability Assessment, determining that over 70 GW of fossil-fired generating capacity – predominantly coal – will retire over the next ten years. According to NERC, 90% of those retirements will take place over the next five years, resulting in the loss of 20% of the nation's coal-fired generation by 2017.

38. Inhofe 38. Please explain - how can EPA's estimates of retirements be so low when compared with NERC's estimate?

Included in NERC's 2012 Long-Term Reliability Assessment are a number of economic factors influencing retirements well beyond EPA's clean air rules. External analysts, including GAO[xxiv], CRS[xxv], the Bipartisan Policy Center[xxvi], and Analysis Group[xxvii], have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

National Ambient Air Quality Standards

39. Inhofe 39. Last June, EPA proposed to lower standards for fine particulate matter from 15.0 micrograms to 12 to 13 micrograms. EPA also took comment on levels as low as 11, but did not take comment on retaining the current standard at 15, or on other possible levels. Given that there is uncertainty in different studies and given that EPA received lengthy comments during its review process arguing against revising the 15 microgram standard – why did EPA not solicit comments on maintaining the current standard? Do you believe EPA is limiting its ability to consider alternative science by only taking comment on options that would substantially lower fine particulate standards and other NAAQS?

In formulating proposed and final decisions on the PM NAAQS, the EPA considered the available scientific evidence, advice of CASAC and extensive public comments. Based on these considerations, the agency concluded that the previous suite of primary $PM_{2.5}$ standards was not requisite to protect public health with an adequate margin of safety, and that revision was needed to increase public health protection. In the proposal EPA explained in detail its reasons for believing the then current annual standard of 15 micrograms/cubic meter was inadequate and needed to be revised to a level between 11-13 micrograms/cubic meter. EPA's proposal invited comment on all elements of the proposal, including these proposed judgments. The agency received – and considered – comments supporting retaining the standard at a level of 15 ug/m3.

[xxiv] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[xxv] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf

[xxvi] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability

[xxvii] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf

40. Former EPA policy advisor Lisa Heinzerling said that the reason given for the withdrawal of the ozone standard was unlawful. Do you agree? Could the President instruct EPA where to set national ambient air quality standards based on policy considerations, or could he delay a decision?

Response: On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time."

41. OMB cited Executive Order 13563 in its 2011 letter to EPA on the ozone NAAQS and stated that EPA should avoid "inconsistent, incompatible, or duplicative" regulations. In EPA's most recent E.O. 13563 statement on the PM NAAQS, however, the Agency only cites the fact that it performed a cost-benefit analysis.

- **a. Why did EPA not perform a regulatory overlap analysis?**
- **b. If you are confirmed, how will you instruct EPA to consider whether NAAQS, in particular, may be duplicative of all the other EPA regulations that impose direct standards on powerplants, major industrial facilities and mobile sources?**

The PM NAAQS are not "inconsistent, incompatible, or duplicative" of other regulations. The reference to E.O. 13563 in the September 2, 2011 letter from OMB concerned the unique circumstances where the proposed rulemaking to reconsider the 2008 ozone NAAQS was occurring at the same time EPA was conducting the required 5-year periodic review of the science and the ozone NAAQS. That is not the case with the PM NAAQS rulemaking. The NAAQS – promulgation and periodic review of which is required by the Clean Air Act – focus on the identification of pollution concentrations in the ambient air that are necessary to protect public health and welfare. The Clean Air Act requires states to adopt and implement State Implementation Plans that meet the requirements of the Act, including the requirement to achieve the NAAQS. The Clean Air Act also requires the EPA to establish federal emission standards applicable to sources such as power plants, industrial sources, and mobile sources, which in many instances help states to meet the PM (and other) NAAQS.

42. Inhofe 42. It is my understanding that EPA is now reviewing the Ozone rule again. Will you commit to proposing the current standard so that the public can comment on whether it will meet the health standards established in the Clean Air Act?

The review of the ozone NAAQS is ongoing. EPA is committed to following the science and the law in developing the proposed rule. As with prior NAAQS rulemakings, the agency expects the public will

have the full ability to comment on all elements of EPA's proposal and provide EPA with views on whether to retain or revise the current ozone standard.

43. Inhofe 43. If EPA is considering a similar range for ozone as they did in 2010, is there any reason to believe the economic impacts will be substantially different than the estimates from the 2010 reconsideration?

The review of the ozone NAAQS is ongoing. The Supreme Court held in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that the Clean Air Act prohibits EPA from considering costs of implementation in setting or revising the NAAQS. To inform the public and consistent with applicable Executive Orders, EPA will provide an updated economic analysis in conjunction with the issuance of the proposed rule.

Cross-State Air Pollution Rule (CSAPR) and the Clean Air Interstate Rule (CAIR)

44. Inhofe 44. This rule caused great concern in the industry because of its incredibly short compliance timeline. Final rule wasn't published in the Federal Register until August 2011, yet utilities were expected to begin complying in 2012. In late December 2011, on the eve of the rule going into effect, the D.C. Circuit Court of Appeals stayed the rule and the Court subsequently overturned it. One of the reasons the Court overturned the rule is because EPA did not give states the time to develop their own compliance plans. What are EPA's intentions with respect to a new transport pollution rule? What timeline will EPA give to states and utilities to comply with the rules? Will you set a timeline that states and utilities agree to?

EPA and the states are responsible under the Clean Air Act for addressing inter-state transport of air pollution. EPA is assessing how to move forward to address transport pollution and is taking the Court's *EME Homer City* opinion into account. EPA has already invited the states to participate directly in the assessment of the path forward and will continue working with the states collaboratively in determining the next steps needed to address the threat of transported air pollution to public health. As these efforts continue, the agency will be mindful of the need to provide appropriate timelines for states and the regulated community.

45. Inhofe 45. EPA had determined that electric generating units in the East that were subject to the CAIR program did not have to comply with regional haze best available retrofit technology (BART) requirements because CAIR would reduce emissions more than BART. When EPA replaced CAIR without CSAPR, it revoked the determination that compliance with CAIR constituted compliance with BART, and instead determined that compliance with CSAPR constituted compliance with BART. But now CSAPR has been overturned in court. Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements on a source by source basis? When does EPA expect to decide?

EPA is waiting to learn whether the Supreme Court will grant certiorari on the *EME Homer City* decision, as that action will affect the agency's options for regional haze and EGUs in the East.

The agency will move as quickly as possible once the Court decides. Depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court's decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

Greenhouse Gases and Global Warming

46. Inhofe 46. During the Administration's first term, EPA promulgated its endangerment finding and adopted GHG regulations for motor vehicles. It also proposed GHG NSPS for the power sector. What other areas of the economy can we expect GHG regulations in the second term? (Oil and gas, refineries, cement kilns, other industrial facilities) Do you have a plan for addressing GHG emissions in the rest of the economy?

EPA is currently focused on reviewing the more than 2 million comments received on its proposed carbon standards for new power plants. While the agency is evaluating GHG emissions information from a limited number of source categories, EPA has not determined that it is appropriate to regulate GHG emissions from the oil and gas sector, or from other industrial sectors. EPA has previously acknowledged that it is appropriate to issue regulations for refinery greenhouse gas emissions, but as stated in the answer to a related question, the Agency has no current plan for issuing such regulations. The agency also has previously said that it had insufficient data to regulate Portland cement facilities, and we do not have a timetable or plan for issuing GHG regulations of this sector.

47. Inhofe 47. Do you plan on issuing a GHG NSPS rule for refineries or oil and gas delivery systems? If so, when?

EPA has not made a determination that it is appropriate to regulate GHG emissions from oil and gas delivery systems. While the Agency acknowledged that it is appropriate to regulate greenhouse gas emissions from refineries, we do not have a current plan or timetable for regulating carbon pollution from refiners.

48. Inhofe 48. EPA has been petitioned to establish NAAQS for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs? Do you agree with such a proposed approach?

Although EPA has not taken any action on the petition, I do not believe that setting a national ambient air quality standard for greenhouse gases would be advisable.

Hazardous Waste (Coal Ash)

Suzanne Rudzinski, Director of the Office of Resource Conservation and Recovery, on Oct. 11, 2012, documented in a declaration to the U.S. District Court for the District of Columbia in *Appalachian Voices v. Jackson* (Civ. No. 1:12-cv-00523-RBW) why the agency could not promulgate a final rule on the disposal and management of coal combustion residuals in surface impoundments and landfills in the six-month timeframe requested by plaintiffs. Ms. Rudzinski told the court that EPA could not meet that deadline because "such a schedule does not provide EPA with the time necessary to allow sound-decision making, and would result in final agency actions that, in [her] view, are neither scientifically sound nor legally defensible." EPA's semi-annual regulatory agenda provides no projected date for completion of this rulemaking.

49. What are EPA's plans for issuing a final rule? Specifically, what are the major actions EPA plans to complete prior to issuing a final rule and the projected deadlines for completing those actions (i.e., plans for issuing a notice of data availability or any other rulemaking steps requiring public comment)?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

<u>Definition of Fill Material</u>

The current definition of fill material, finalized in May, 2002, unified the Corps and EPA's prior conflicting definitions so as to be consistent with each other and the structure of the CWA. The current rule solidifies decades of regulatory practice, and includes as fill material those materials that, when placed in waters of the U.S., have the effect of raising the bottom elevation or filling the water. However, both EPA and the Corps have stated that they are now considering revising the definition of fill material.

50. What is EPA's rationale for revisiting the well-established division of the Sec. 402 and Sec. 404 programs?

> **a. What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?**
>
> **b. Has EPA yet considered the time and costs associated with making such a change to the two major CWA permitting schemes – Secs. 402 and 404?**

Response: I understand the importance of clarity, with respect to the permitting process. If I'm confirmed, I'll work closely with the Army Corps and others to ensure that there is increased clarity in the permitting process.

Cooling Water Intake Structure Rule for Electric-Generating Facilities Under CWA Sec. 316(b)

The proposed § 316(b) rule applies to facilities whose construction began before 2002 and that withdraw more than two million gallons per day. It would apply to facilities that have either closed-cycle or once-through cooling, and focuses on reducing fish and shellfish mortality attributable to "impingement" on intake structure screens and "entrainment" into cooling water systems.

Industry has urged that any acceptable § 316(b) rule for existing facilities be applied site-by-site, recognize constraints involved in modifying existing technology, include the designation of pre-approved technologies, and include provisions for taking into account prior actions to reduce impacts. A fair cost-benefit test reflecting the Supreme Court's opinion endorsing EPA's historical decision to balance costs and benefits in setting national § 316(b) standards and site-specific requirements is central to an acceptable final rule. A final rule is expected by the court-ordered deadline of June 2013.

More than 890 electric generations facilities would be affected by the rule as even facilities operating closed-cycle cooling would have to comply with the study requirements and significant technological modifications associated with impingement. This could affect approximately 35 percent of existing U.S. generation capacity—a controversial proposition that could have negative environmental, energy, cost and reliability impacts. Some facilities will be unable to meet expensive new cooling water intake structure (CWIS) requirements and remain economic. A rigid rule requiring unnecessary retrofits could cause extended outages and loss of capacity; in turn, this could affect reliability-related capacity margins.

51. Relief for "peaking" facilities – EPA's proposed rule would impose expensive new study, monitoring, and retrofit requirements on all existing facilities, including "baseload" facilities that are the foundation of our electric system and "peaking" facilities that are used more sparingly to meet periods of peak electricity use. But the peaking units may be used for as little as a few days a year when electricity demand is high, and it would be uneconomic to spend a great deal on money on them for studies and equipment that would be rarely used and would not provide commensurate environmental benefit. In an earlier version of the rule, EPA provided an exemption for such units. Yet in the current proposed rule, which is soon to be finalized, EPA eliminated the exemption. Would you consider reinstating that exemption or providing equivalent relief from the rule's requirements for peaking facilities so they can continue to perform their crucial reliability function?

Response: As you know, I have worked hard to make sure that we carefully monitor the design and implementation of EPA's air pollution rules to keep costs reasonable and ensure that the reliability of

our electrical system is protected. If confirmed, I look forward to working to ensure that requirements and implementation of rules like 316(b) are similarly sensitive to electrical reliability issues.

52. Relief for facilities being retired – EPA's proposed rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule's requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expect to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?

Response: I fully recognize that this is a period of transition for the power sector and that operators do not want to undertake studies for control technologies if they are certain to retire a unit. If confirmed, I look forward to working to ensure that we carefully consider the special circumstances of retiring units as we finalize the 316(b) rule.

53. Improvements in impingement provisions – In EPA's proposed 316(b) rule, EPA has adopted starkly different approaches to managing "impingement" and "entrainment" at existing cooling water intake structures. For entrainment, EPA appropriately adopted a site-specific approach, recognizing that (a) existing facilities already have measures in place to protect fish, (b) further measures may or may not be needed, and (c) the costs, benefits, and feasibility of such measures have to be evaluated at each site. Yet for impingement, EPA adopted rigid, nationwide numeric criteria that appear unworkable and in many cases unnecessary. In a notice of data availability issued last year, EPA signaled that it would consider a more flexible approach for impingement. In the final rule that is due this summer, would you support replacing the original impingement proposal with a more flexible approach that pre-approves multiple technology options, allows facility owners to propose alternatives to those options, and provides site-specific relief where there are de minimis impingement or entrainment impacts on fishery resources or costs of additional measures would outweigh benefits?

Response: It is my understanding that EPA explicitly discussed possible changes to the proposed 316(b) rule's impingement standard in the NODA published in the Federal Register on June 11, 2012, and that EPA is carefully reviewing those comments as the agency develops the final rule. If confirmed, would be willing to look closely at flexibilities for compliance with the impingement standard.

54. Improvements as to "closed cycle" cooling – In EPA's proposed 316(b) rule, EPA has correctly NOT required existing facilities to retrofit "closed cycle" systems such as cooling towers or cooling ponds if the facilities do not already have such systems, because such retrofits are not generally necessary, feasible, or cost effective. At the same time, facilities that do have closed-cycle systems have long been viewed as satisfying the requirements of section 316(b). Yet in the proposed rule, EPA has defined "closed cycle" cooling much more narrowly for existing facilities than EPA did for new

facilities several years ago , thereby excluding a number of facilities. And even for the facilities that qualify, EPA is still imposing new study and impingement requirements. In the final rule that is due this summer, would you support a broader definition of closed-cycle cooling and measures that more fully view these facilities as compliant?

Response: My understanding is that EPA explicitly discussed the proposed 316(b) rule's definition of closed cycle cooling in the NODA published in the Federal Register on June 11, 2012. If confirmed, I look forward to working towards an appropriate definition for closed cycle systems.

55. Concerns about EPA's willingness-to-pay survey – EPA is seeking to justify its costly proposed 316(b) rule, which would affect more than 1,260 power plants and industrial facilities nationwide, on the basis of a public opinion survey asking "how much" a random group of individuals would be willing to pay to reduce fish losses at intakes. This willingness-to-pay approach to determining "benefits" contrasts sharply with the far more traditional approach used by EPA in its earlier 316(b) rulemakings. The earlier analyses relied on actual market prices and costs incurred by individuals, rather than hypothetical questions in a public survey. The "willingness-to-pay" or "stated preference" survey is clearly intended to increase the anticipated benefits of the proposed rule. Yet such stated preference surveys are notoriously difficult to design and implement and often are very unreliable. Using such unreliable benefit estimates will inappropriately lead to cooling water controls that are neither necessary nor cost beneficial and that will not deliver the anticipated benefits but will materially affect compliance and consumer costs. Given all these problems, in the final rule that is due this summer, would you support withdrawing the survey and clarifying that the survey and its results are inappropriate to use in implementing the final rule?

Response: It is my understanding that EPA is still reviewing the peer-review comments on the 316(b) stated preference study as well as concerns raised by stakeholders in comments. EPA would need to complete that review before it can make any decisions about applicability and appropriateness of the study results.

56. In October 2010, NERC issued a report concluding that a one-size-fits-all 316(b) approach could have economic impacts nearly three times greater than the combination of the Cross State Air Pollution Rule and the Mercury and Air Toxis Standards. See NERC, 2010 Special Reliability Scenario Assessment: Resource Adequacy Impacts of Potential U.S. Environmental Regulations (October 2010). How will EPA ensure that its 316(b) rulemaking will not precipitate the reliability and cost implications discussed in the NERC report?

Response: NERC's hypothetical analysis assumed that states will choose to mandate that all affected plants install cooling towers, even if this leads to plant retirements causing reliability problems. EPA did not propose a "one-size fits" all approach for entrainment for its 316(b) rule, instead EPA proposed a site-specific approach to entrainment. My understanding is that EPA rejected a uniform closed-cycle cooling requirement based on consideration of possible local energy reliability concerns, air quality

issues, geographical constraints on the installation of closed-cycle cooling and facilities with a limited remaining useful plant life.

57. In June 2012, EPA proposed replacing the results of its conventional benefits analysis performed for its proposed 316(b) cooling water intake structure rule with the results of a public opinion survey. The survey results are 140 times greater than EPA's conventional analysis using tried and true methods. Public opinion surveys have never been used to justify a major rulemaking, such as EPA's 316(b) rule. We understand that EPA received many comments criticizing EPA's potential replacement of the survey results with the results of its conventional analysis. What are your thoughts on whether stated preference surveys are an appropriate tool to measure benefits?
Response: My understanding is that stated preference is a tool that EPA has used in the past and that the use of stated preference is discussed in detail in the Agency's peer-reviewed "Guidelines for Preparing Economic Analyses". If confirmed, I am committed to ensure that all such studies are conducted and used in an appropriate fashion.

58. EPA's proposed rule pursuant to section 316(b) of the CWA contains a one-size fits all impingement standard. EPA received many critical comments indicating that most facilities could not meet the proposed standard even if they were to install the technology upon which EPA based the standard. Determining the best available technology at a given site requires a consideration of many site-specific factors, such as the geographic location, type of ecosystem and plant design. In June 2012, EPA issued a Notice of Data Availability indicating that EPA was considering designating a suite of pre-approved technologies as compliant with the rule. Do you agree that it is important for EPA to consider site-specific factors in determining best available technology?

Response: It is my understanding that EPA explicitly discussed possible changes to the proposed 316(b) rule's impingement standard in the NODA published in the Federal Register on June 11, 2012 and that EPA is carefully reviewing those comments as the agency develops the final rule. If confirmed, I would be happy to look closely at site-specific flexibilities for compliance with the impingement standard.

59. EPA has continually maintained that closed-cycle cooling (i.e., cooling towers) is the best technology available to minimize environmental impacts from cooling water intake structures. [76 Fed. Reg. 22207]. In fact, Ms. Stoner testified in a March 28th Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment budget hearing that facilities with closed-cycle cooling satisfy both the impingement and entrainment requirements of the proposed rule. However, EPA's proposed rule nonetheless subjects facilities that have spent hundreds of millions of dollars on cooling towers to additional costly controls without additional benefits. Why would facilities with closed-cycle cooling systems be required to install additional controls? What are the benefits from the additional controls?

Response: It is my understanding that, in the June 11th, 2012 NODA, EPA took comment on a possible alternative compliance provision that would deem a facility in compliance with impingement limitation if

the facility employed a closed cycle cooling system that minimizes water withdrawals, and is reviewing those comments. If confirmed, I would look be happy to examine this issue further.

60. How many human health impacts are avoided if the proposed CWA 316(b) standards are promulgated?

Response: It is my understanding that Section 316(b) of the Clean Water Act requirements primarily relate to aquatic life; however, if confirmed, I will work to ensure that this and all Agency rules meet the appropriate scientific and legal standards with regard to all types of benefits.

61. How does EPA intend to utilize its final stated preference report? If EPA intends to use it in the final rule, what process will EPA undergo to address concerns raised by stakeholders about the applicability and appropriateness of its use?

Response: It is my understanding that EPA is still reviewing the peer-review comments on the 316(b) stated preference study as well as concerns raised by stakeholders in comments. EPA would need to complete that review before it can make any decisions about applicability and appropriateness of the study results.

<u>Startups, Shutdowns and Malfunctions (SSM) and State Implementation Plans (SIP)</u>

62. Inhofe 62. EPA recently proposed to disapprove provisions in 36 state SIPs based on a change in EPA policy in response to a petition for rulemaking. Were the existing SIP provisions in question legally approved and promulgated by EPA and the states?

- **a. What is the legal basis for declaring a validly approved SIP provision invalid after the fact?**
- **b. Has EPA done any analysis to determine if the SIP provisions in question are threatening attaining the NAAQS?**
- **c. Without such an analysis, how can EPA determine that such SIP provisions are "substantially inadequate" for purposes of the CAA?**
- **d. Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?**

The bulk of the proposed action is not based on any change in EPA policy. The majority of the existing SIP provisions at issue were adopted by the states and approved by EPA, mostly before 1982. EPA realized and announced in 1982 that some SIP actions taken in the early phase of implementing the CAA were simply incorrect. In the SSM rulemaking, EPA is proposing to clarify and update the SSM policy and to correct mistakes we have generally recognized and communicated to the states for over 30 years. To evaluate these SIP provisions, EPA is using the public notice-and-comment rulemaking process explicitly set out in the Clean Air Act for addressing existing deficient

provisions in SIPs. For each state, there will be another notice-and-comment rulemaking to approve the SIP revisions that are submitted in response to the SIP call.

With regard to your more specific questions:

a. CAA section 110(k)(5) provides the legal basis for EPA to call for a SIP revision whenever the Administrator finds that the SIP for an area is substantially inadequate to attain or maintain a NAAQS, to mitigate interstate pollutant transport adequately, or to otherwise comply with any requirement of the CAA.
b. EPA has not based its proposed findings of inadequacy on a quantitative assessment that the specific SIP provisions in question resulted in a specific violation of the NAAQS. EPA's proposal that the affected SIP provisions are substantially inadequate is based upon the concern that the provisions in question do not meet legal requirements of the CAA.
c. EPA's proposed SIP call to amend provisions applying to excess emissions contains 49 pages of analysis that comprehensively discuss each affected SIP provision of each affected state, including an explanation of the agency's reasoning for proposing to find that a given provision is or is not "substantially inadequate" to satisfy the legal requirements of the CAA.
d. The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with CAA requirements. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See *"What are potential impacts on affected states and sources?"* at 78 FR 12467.

Independent Peer Review & Scientific Integrity

63. A couple of years ago, serious procedural questions were raised by the EPA Inspector General about EPA's compliance with its own peer review guidelines. What has been done to ensure that the EPA peer review requirements are followed?

Response: Peer review is a critical step to ensuring the integrity of our scientific and technical work products, as well as to ensuring that our decision makers are fully informed. The EPA has a long and substantial history implementing peer review in its programs. I am told that currently, the EPA uses the 3rd Edition of the *Peer Review Handbook* and the 2009 addendum to promote consistency not only across the Agency, but with the Office of Management and Budget's 2004 *Final Information Quality Bulletin on Peer Review*, as well as other relevant policies and guidelines.

64. Can you give assurances that EPA will follow all requirements for having independent peer review of significant technical assessments?

Response: Yes. The EPA continues to evaluate its peer review processes to determine whether improvements are needed.

65. Will you commit to send this committee and the House Speaker a detailed report of how EPA has responded to the IG's report, with a list of those convened independent peer review panels?

Response: I am not familiar with that particular report or to which panels you refer, but if confirmed, I will commit to take a look at the Agency's response and work with you to get additional information that you may be seeking.

Sue and Settle

66. EPA is constantly being sued for missing statutory deadlines for rulemaking and then settles the litigation in a court approved settlement agreement. The deadlines in these settlements often put pressure on the EPA to act and also may create hardships for regulated businesses by interfering with construction plans or requiring large investments in a short period of time. Do you believe that EPA should first consult with the adversely affected businesses before agreeing to such deadlines?

Response: Where EPA settles a mandatory duty lawsuit based on the Agency's failure to meet a statutory rulemaking deadline, the settlement agreement or consent decree acts to relieve pressure on EPA resulting from missed statutory deadlines by establishing extended time periods for agency action. Most of these settlements are under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court. In addition, the agency does not agree to the final substantive outcome of the required action through settlement, so interested parties have an opportunity to provide input on the action itself through normal channels such as the notice and comment rulemaking process.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

67. Where there are no statutory deadlines EPA may be required to Act within a "reasonable time." EPA is also subjected to citizen suits for not meeting the plaintiff's sense of when EPA should have acted. EPA also often signs a rulemaking schedule with a court enforceable deadline and does not provide enough time for regulated entities to do the necessary technical studies to properly comment on the proposed regulations. Additionally, the schedules result in very short compliance timelines making it difficult to install the mandated pollution controls. Why hasn't the EPA consulted with the regulated entities that have to comply with these regulatory timelines to determine if the required deadlines provide feasible periods for meaningful comment and compliance? Why doesn't EPA have a policy of insisting on intervention into law suits by adversely impacted regulated businesses and industry?

Response: While EPA may agree in settlement to promulgate a rule or standard required by statute, the substantive level or nature of that required action is determined through the rulemaking process, which offers ample opportunity for regulated entities to provide meaningful comment on the proposed regulation itself. EPA, in conjunction with the U.S. Department of Justice (DOJ), rarely opposes motions to intervene.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

68. On December 23, 2010, EPA entered into a settlement agreement with environmentalists and some states in which the agency agreed to set new source performance standards for greenhouse gases from new power plants and, eventually, existing power plants. All of the parties to the settlement agreement are clearly in favor of drastically reducing the amount of coal that we burn for electricity. Yet the type of regulations that could come out of this settlement will impact much of the country by eliminating thousands of jobs, raising electricity rates and jeopardizing reliability, which we are already seeing. I should also add that these policies will disproportionately impact the poor and working poor.

Should the Sierra Club and Natural Resources Defense Council have more access to the federal government than the average citizens who will be most impacted by these types of settlements? Isn't that exactly what they have gotten in the case of this NSPS settlement?

Response: The Clean Air Act allows citizens, including organizations like Sierra Club, to sue EPA if they believe the agency's actions are unlawful. In addition, the statute provides all citizens the opportunity to comment on settlement agreements before they become final. Before finalizing the greenhouse gas power plant settlement agreement, EPA published the proposed agreement in the Federal Register and sought comment on it from the public.
Citizens also have the right to comment on proposed rules such as the NSPS addressing greenhouse gas emissions from power plants. In fact, EPA is currently considering the more than 2 million comments that have been filed by the public in response to EPA's proposed NSPS for greenhouse gas emissions from new power plants.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

69. Of the states that were party to the settlement agreement, all but one of them generate between zero and 17 percent of their electricity from coal, yet the states that were not privy to the settlement agreement generate as much as 96 percent from coal. In other words, the people who were in the room have the least to lose while those who were not in the room will suffer the most.

a. **Do you consider that to be good policy-making? I consider this a yes or no question.**

b. **Should the states have equal access to the EPA in formulating a path forward on consequential issues that will impact a broad swath of the economy?**

c. **If they should, why then did EPA and the Administration enter into closed door settlement negotiations on the NSPS that included the states it agreed with and excluded the states that it didn't agree with?**

Response: The standards that were the subject of the settlement agreement are being set through a rulemaking process that provides for participation by all states, as well as all interested members of the public and the regulated industry in question, through a public notice and comment process. EPA routinely receives substantive input from States through the rulemaking process, and considers all comments it receives before taking final action. The EPA is currently reviewing the 2 million plus public comments received on the proposed NSPS. The settlement agreement, which was also put out for public notice and comment before it was finalized, addressed only the timing of the rulemaking; the substance will be determined through the rulemaking process where everyone has the opportunity to comment.

70. Over the past four years, EPA frequently allowed its rulemaking agenda and schedule be driven by voluntary settlements entered in response to lawsuits by environmental advocacy groups. How will EPA respond to these sorts of lawsuits if you are confirmed? Does it damage respect for the rule of law among your state partners when you enter settlements that affect specific states without first consulting with the affected states. Does it damage respect for the rule of law when EPA fails to vigorously defend its prerogatives in responding to these lawsuits?

Response: It is current and longstanding practice to determine whether or not to seek settlement principally upon an assessment of the Agency's duties under the relevant statute, and the legal risks presented by the litigation. The rule of law, along with sound science and transparency, is one of EPA's core values and, if I am confirmed, it will continue to guide all EPA action.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

<u>Court Cases – National Mining Association v. Jackson</u>

The U.S. District Court for the District of Columbia in the case of *NMA v. Jackson* recently struck down several EPA actions – specifically, EPA's Enhanced Coordination Process (ECP) and Multi-Criteria Integrated Resource Assessment (MCIR) for Appalachia surface coal mining, as well as EPA's guidance document, "Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean

Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order" – as violating the CWA and Administrative Procedure Act, as well as, in the case of the guidance document, the Surface Mining Control and Reclamation Act.

71. What steps has EPA taken to implement the District Court's decision?

Response: I appreciate your interest in this important matter and assure you that EPA takes very seriously the decision of the court in this case. I understand the Agency has directed its field offices not to use the guidance documents affected by the court decision.

Court Cases – *Mingo Logan Coal Co. v. EPA*

In March, 2012, the U.S. District Court for the District of Columbia struck down EPA's retroactive revocation of a mining-related CWA Sec. 404 permit, holding unequivocally that EPA has no authority to retroactively veto CWA Sec. 404 permits issued by the U.S. Army Corps of Engineers. EPA has appealed the decision, maintaining that at any time after the issuance of the permit – even where, as here, the permit has been being properly followed for several years and EPA had worked with the permittee and the Army Corps for ten years prior to permit issuance to reach an acceptable alternative – EPA may veto the permit.

72. What do you think the practical effect on industry would be of having Sec. 404 permits be subject to EPA's potentially ever-changing list of acceptable disposal sites?

Response: Please see response to question 74.

73. How do the assertions made by EPA regarding the scope of its authority under Sec. 404 comport with the notion of permit finality, which Congress clearly acknowledged was needed in the context of the CWA (see remarks of Sen. Muskie - there are "three essential elements" to the CWA: "uniformity, finality, and enforceability")?

Response: Please see response to question 74.

74. Has EPA considered what effects its actions might have on state SMCRA permitting programs?

Response (to 72-74): I understand the important concerns raised by your question regarding the use of EPA Clean Water Act authorities and potential effects on the nation's business community. During the pendency of the appeal of the district court's decision, EPA will not exercise its 404(c) authority after a permit is issued. If I am confirmed, I look forward to working with you to assure that the final court decision is implemented consistent with the law and in careful consideration of the issues you raise.

Water Quality Criteria – Conductivity

While EPA's conductivity "benchmark" that it had applied to Appalachian streams got set aside by the U.S. District Court for the District of Columbia in the case of *NMA v. Jackson*, EPA recently published several papers supporting its conductivity actions.

75. What are EPA's next steps with respect to conductivity? Is EPA intending to propose a national conductivity criteria? Regional criteria?

Response: Please see response to question 77.

76. In the past, EPA has not addressed scientific critiques that have produced evidence that conductivity is not a good indicator of benthic/aquatic health. Going forward, what plans does EPA have to take this growing number of studies into account?

Response: Please see response to question 77.

77. How, if at all, does EPA intend to convert a field-based study performed in Appalachian waters into a national standard?

Response (to 75-77): I share your interest in assuring that EPA's decisions regarding conductivity are based consistently on the best available science that fairly and effectively takes into account technical critiques. If confirmed, I will work hard to make sure that any future agency decisions regarding conductivity adhere to this principle.

<u>Financial Assurance</u>

On March 8, 2011, Senator Lisa Murkowski (D-Alaska) sent a letter jointly addressed to Secretary of the Interior Ken Salazar and Secretary of Agriculture Tom Vilsack regarding EPA's planned rulemaking under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to impose financial assurance regulations on the hardrock mining industry. The letter highlighted the history and effectiveness of the Bureau of Land Management (BLM) and U.S. Forest Service (USFS) financial assurance requirements. Expressing concern that EPA is moving forward without properly taking into consideration the existing financial assurance programs, Senator Murkowski posed a series of questions to Secretaries Salazar and Vilsack regarding whether EPA's rulemaking is warranted. One of those questions asked how many hardrock mining and beneficiation plans of operation had their agencies approved since 1990, and how many of those sites were placed on the CERCLA National Priorities List (NPL). On June 21, 2011, Robert Abbey, Director of BLM, responded that the bureau held $1.7 billion dollars in financial assurances, 659 plans of operations authorized by BLM's Mining Law Administration Program had been authorized since 1990 and none of those sites had been placed on the CERCLA NPL. Secretary Vilsack replied on July 20, 2011 that his department had permitted 2,685 hardrock mines since 1990 and that none of those sites had been placed on the CERCLA NPL list.

78. Given the response from the Departments of Interior and Agriculture, what evidence does EPA have that additional financial assurance requirements under CERCLA are warranted for *currently* operating hardrock mining sites?

Response: EPA's 2009 Federal Register Notice identified classes of facilities within the hard rock mining industry as those for which EPA would first develop CERCLA 108(b) financial assurance requirements based upon several factors, including the quantities of hazardous substances released to the environment and clean up expenditures on these types of facilities. If confirmed, I can examine this issue more thoroughly.

79. What steps has EPA taken to consider the BLM and USFS programs implementing financial assurance requirements on the hardrock mining industry to avoid unnecessary and costly duplication of existing federal programs?

Response: It is my understanding that EPA is working with the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS).

Additionally, the Western Governors' Association (WGA) in Policy Resolution 11-4 on "Bonding for Mine Reclamation" expressed concern that "a new federal program could not only duplicate, but in fact supplant the state's existing and proven regulatory programs" for bonding of reclamation activities for hardrock mining. According to the WGA, "[t]he member states have a proven track record in regulating mine reclamation in the modern era, having developed appropriate statutory and regulatory controls, and are dedicating resources and staff to ensure responsible industry oversight." The WGA sent this policy resolution to EPA on Aug. 10, 2010, asking the agency to work in partnership with the states on this issue.

80. What has or is EPA doing to learn about and address the state pre-emption concerns voiced by the WGA in advance of issuing a proposed rule? Has EPA formally reached out to the WGA to forge a partnership on this issue?

Response: Having worked for state government, I understand the importance of working with our state agency partners. It is my understanding that EPA is reaching out to states, including states in the Western Governors' Association, to discuss the interaction of a Section 108(b) rule with existing state hard rock mining state financial responsibility programs. If I'm confirmed, I commit to working with States, and other stakeholders.

Natural Gas Star Program

81. Inhofe 81. The emission factor applied to Completions with Hydraulic Fracturing remains an overestimate and an inappropriate use of Natural Gas Star data, and EPA has so far failed to incorporate a method of correctly using this data. The EPA staff bears a responsibility to the public to use the best available scientific data provided to them. If confirmed, will you commit to adopting the scientific data and methodology provided to EPA during the Expert Review Period, and accordingly revise your emission factor?

I am committed to ensuring that EPA uses sound science and maintains open and transparent processes. EPA continues to use the best available data to produce its estimates of GHG emissions in the U.S. Inventory. EPA's emission factor is used to reflect a nationally averaged potential release of gas from hydraulic fracturing, absent controls to either capture or flare the gas. An independent study from MIT (2012) concluded that the factor was a reasonable estimate for this purpose. EPA's emissions estimates take into account emission reducing activities (including Gas STAR voluntary actions and regulatory activities) to get a more accurate picture of actual emissions from hydraulically fractured gas wells. EPA has had several technical discussions with industry about their suggestions for different methodologies for estimating emissions from hydraulically fractured gas wells. In the latest Inventory, EPA explains the Agency's plans to consider alternative methods, and has requested the data necessary to consider making such an update to future inventories.

82. Inhofe 82. EPA's 2013 Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2011 does not account for the flaring of gas wells where flaring is not required by state regulations, and therefore text in the inventory is incorrect and misleading. The assumption that flaring is not used where there is no state regulation mandating its use is not an accurate representation of industry practice. Will the EPA commit to creating an alternate category for those wells that are flared, reflective of actual survey data provided in the URS Memo Data, to more accurately represent the industry practice of flaring completion emissions from wells using hydraulic fracturing?

EPA recognizes the need to ensure that the U.S. Inventory reflects current industry practices, and we have made improvements to the Inventory this year through incorporating industry data on liquids unloading, updating our coverage of gas wells with hydraulic fracturing, and updating the refracture rate. In the latest Inventory, EPA commits to continuing to seek information on flaring to ensure that the Inventory reflects industry practices and evaluating data reported to the GHG Reporting Program. This Inventory also notes that several methods are being considered for estimating well completion emissions reductions to account for reduced emission completions (RECs) and flaring not reported to Gas STAR.

83. Is EPA still planning to issue a notice of proposed rulemaking under TSCA for chemicals used in hydraulic fracturing operations in light of the fact that EPA has generated and will continue to generate information on fracturing fluids as part of its study of hydraulic fracturing and has a wealth of other information regarding fracturing fluids available to it through FracFocus and a variety of other sources?

Response: It is my understanding that the EPA plans to engage stakeholders before the agency makes any final decisions regarding the notice of proposed rulemaking on oil and gas exploration and production chemicals. If confirmed I look forward to working with you and the stakeholders to address this issue.

Natural Gas

Some environmental organizations filed comments on the DOE economic impact study of LNG exports that argued that DOE should examine the upstream environmental impacts of the natural gas that supplies the gas to the LNG export facilities. EPA did not file any comments on the DOE study and did not take the opportunity to weigh in on the point raised by the environmental organizations. Two regional EPA offices have filed comments on LNG exports projects calling for an EIS that assesses the upstream impact of the natural gas to the LNG export facility – basically taking the position of the environmental activists.

84. As EPA Administrator would you oppose DOE LNG export approvals if DOE did not change its established practice of deferring to FERC, as the lead NEPA agency, given that FERC has long-established practices of looking at a project's direct environmental impact but not the upstream impacts of those projects?

Response: I am not familiar with the details of how the LNG export approval process works. It is my general understanding that EPA has the ability to submit comments to other agencies, such as FERC, as part of the NEPA process. If confirmed, I can examine this issue more thoroughly.

85. Inhofe 85. Testifying before Congress in 2011, EPA Administrator Lisa Jackson said that natural gas creates less air pollution than other fossil fuels, "so increasing America's natural gas production is a good thing." Do you agree with this statement and could you please explain why or why not?

As I stated in my opening remarks at my nomination hearing, during these past four years, one of the most dramatic and potentially beneficial changes that our energy markets and overall economy has seen has come in the steep growth in the production and use of natural gas. I share the President's view that we must have an all of the above strategy to achieve energy independence, and a clean energy future.

Senator Barrasso

1. EPA has the ability to conduct cost-benefit analysis that considers the impact of regulations on the economy, including the effects of job losses caused by the regulations and how increased costs ripple through society. EPA used this method for two major rules in 2005.

NERA, a nationally recognized consulting firm, recently conducted a study where they did this analysis for a number of recent EPA rules, including Utility MACT, and the Cross State Air Pollution Rule. NERA's analysis demonstrates that under this EPA approved analysis tool, EPA is better able to inform Congress and the American public of the true costs of its regulations. If confirmed, will you commit to do "whole economy modeling" on all pending Clean Air Act and Clean Water Act regulations?

Response: I believe that whole economy modeling is an important type of modeling for the agency to conduct, when it is technically appropriate and when relevant data exists. I believe it is important to develop regulations with a clear understanding of the impacts on industries from the array of regulatory requirements. If confirmed, I will continue to take this approach in regulatory development and the agency will continue to work on whole economy modeling.

2. Do you believe the severe weather events that have occurred over the last few years are a direct result of anthropogenic, manmade climate change?

Response: The scientific research indicates that man made emissions of greenhouse gases do contribute to climate change. While it is difficult to pinpoint the cause of any specific weather event, the scientific evidence indicates that climate change does and will lead to more extreme weather events.

3. Do you believe we can predict what the weather will be in Wyoming or any other State 10, 20 or 50 years from now with any accuracy, and what the impact will be to the landscape from that weather?

Response: I do not believe that we can predict the weather years in advance; however, scientists can predict changes to the climate and patterns of effect from those changes.

4. With regard to question 3, if you cannot predict with any accuracy, how will U.S. taxpayer investments made today to protect communities decades from now, based on inaccurate computer models, guarantee any success?

Response: The scientific predictions of climate change (not weather) have proven to be reliable and that scientific modeling is used as the basis for many public and private sector actions with great success.

5. Do you believe sue and settle agreements are an open and transparent way to make public policy that significantly impacts Americans?

Response: The EPA does not agree to the final substantive outcome of an agency action through settlement. All interested parties have an opportunity to provide input on the action itself through the rulemaking process, which offers ample opportunity for regulated entities to provide meaningful comment on the proposed regulation.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

6. Do you believe States and communities impacted by sue and settle agreements should have a say in court agreements that might severely impact them?

Response: As explained above, the substantive level or nature of a required action is not determined through the settlement process. Nonetheless, most litigation against EPA arises under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

7. If confirmed, would you agree not to enter into closed-door settlements where the public and affected States are not a party to these agreements?

Response: I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

8. If confirmed, would you open up litigation to local stakeholders and give impacted States and communities a seat at the table before any final agreements are signed?

Response: I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

9. In a recent appropriations hearing on the House side, Assistant Secretary Jo-Ellen Darcy of the U.S. Army Corps of Engineers testified that her agency and yours had written regulatory language regarding redefining "waters of the United States."

a) Is it your intent to increase the authority of the EPA beyond the current regulations and, if so, in what way?

Response: No. It is my understanding that the Agency's goal is to respond to requests from members of Congress, the Supreme Court, the regulated public, states, and others to improve predictability, consistency, and clarity in the process of identifying waters protected under the CWA after the Supreme Court decisions in SWANCC and Rapanos.

b) Does the regulatory language increase the number of waters that will come under federal jurisdiction?

Response: It is my understanding that the Supreme Court decisions in SWANCC and Rapanos have resulted in reducing the scope of waters protected under the CWA, and any guidance and/or rulemaking will recognize that reduction.

c) Does the regulatory language or the guidance wrap any isolated waters under Clean Water Act (CWA) jurisdiction?

Response: Consistent with existing law as clarified by the Supreme Court in SWANCC and Rapanos, the only waters, including isolated waters, that may be protected under the CWA are those waters that

meet the tests established in the SWANCC and Rapanos decisions. The agencies' regulations and/or guidance will continue to adhere to the standards established by the Court and the CWA.

d) When does the Corps and EPA intend to propose such a rulemaking?

Response: The agencies currently do not have a schedule for this rulemaking.

e) Do you intend to finalize the guidance first? If so, what would be the point? Wouldn't the rulemaking make any such guidance moot?

Response: The agencies are interested in proceeding with a rulemaking and have not decided whether or not to issue guidance in the interim.

f) Have you done an economic analysis on the rulemaking? If so, how much will it cost?

Response: I strongly agree that a thorough economic analysis is very important. I understand that EPA is working with the Corps of Engineers to conduct this important analysis. I want to emphasize that the Agency's goal is to improve clarity, consistency, and predictability in a way that reduces costs and delays for the regulated community.

g) Did you evaluate it in terms of the entire Clean Water Act or just the 404 program, which is what you did for the proposed guidance?

Response: I am advised that the Agency's analysis will encompass programs across the entire Clean Water Act.

h) Have you done an economic analysis on the rulemaking? How much is this guidance document projected to cost?

Response: I understand that EPA and the Corps are continuing to develop an economic analysis. I appreciate and share your interest in the importance of developing a thorough economic analysis of any Waters of the U.S. rule or guidance and assure you that you will be provided a copy of the analysis. I want to emphasize that the Agency's goal is to improve clarity, consistency, and predictability in a way that reduces costs and delays for the regulated community.

10. Do you believe there are waters that are beyond the jurisdiction of the CWA? If so, what are they?

Response: Yes, the Supreme Court decisions in SWANCC and Rapanos have resulted in reducing the scope of waters protected under the CWA, and any guidance and/or rulemaking will recognize that reduction.

11. What do you believe is the meaning of the phrase "significant nexus" as it relates to jurisdictional determinations under the CWA?

Response: I understand the importance of clarifying the meaning of this term, which Justice Kennedy has relied on in Rapanos as the test for determining which waters are protected under the CWA. If confirmed, I look forward to working with you as we further clarify this important term in order to provide needed predictability in the process of determining waters protected under the Act.

12. Many of our farmers and ranchers are concerned with the recent vigorous efforts by the EPA to re-write U.S. environmental policy through administrative rulemaking. Some agricultural interests claim that, in several of EPA's efforts, the emphasis appears to be on ratcheting up a regulatory enforcement philosophy, rather than encouraging incentive-driven efforts to address the Nation's water quality challenges.

If confirmed, how would you respond to this observation as Administrator? Do you believe collaborative, incentive-based approaches to water quality problems have merit or would you support a more regulatory compliance approach?

Response: The vast majority of my career has been at the State and local level. I know that in order to make environmental progress, we need to have partnerships with the States. I believe in an approach where States and the Federal government work together, collaboratively to solve problems.

13. There is growing concern about so-called "closed door" settlements between federal agencies and environmental organizations who sue those agencies, often over minor administrative errors. By the time those settlements are approved, the plaintiffs have essentially been paid by our government for suing our government. In his January 21, 2009, Open Government Directive, President Obama instructed federal agency heads to promote openness in government by "establishing a system of transparency, public participation, and collaboration." EPA has responded to the President's directive by developing and implementing an Open Government Plan.

Can you tell us more about this plan, and do you think it could be improved by including a notification system that would immediately provide all stakeholders with timely and transparent access to information involving any legal action, or notice of intended legal action, against the EPA in advance of any "settlement" discussions?

Response: The EPA's Open Government Plan implements the Administration's Open Government Directive to ensure that the EPA's work supports the tenets of open government – transparency, participation and collaboration – and upholds EPA's mission to protect human health and the environment. I am happy to consider suggestions about how to best implement this plan. If I am confirmed, transparency, participation and collaboration will continue to be priorities at the EPA.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

14. Do you believe the statutory limits placed on EPA's authority by Congress are important and should be respected when EPA promulgates rules and takes other actions?

Response: Yes.

15. As Administrator, will you continue to permit the promulgation of rules and the taking of actions that are outside the scope of EPA's statutory authority, or will you only allow such activities to be taken within the confines of authority delegated to EPA by Congress and, by extension, the American people?

Response: I believe that EPA should continue to take actions that are within the scope of its statutory authority.

Barrasso 16. As Assistant Administrator for EPA's OAR, you have had direct responsibility for promulgating the Mercury and Air Toxics Standards (MATS) for power plants. On March 20th 2012 before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety, you testified that "only a modest amount of generating capacity" -- 4,700 megawatts (MW) -- will become uneconomic to operate under MATS. This rule will cause 35,000 MW to retire, according to the Institute for Energy Research, and 42,000 MW to retire, according to Barclays.

Do you stand by your testimony that "only a modest amount" of coal-fired generating capacity will be forced to retire by EPA regulations? Or would you reconsider your testimony in light of more recent analyses and already announced retirements that show EPA's projections to be off by as much as 800 percent?

> A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figures[xxviii]. External analysts, including GAO[xxix], CRS[xxx], the Bipartisan Policy Center[xxxi], and Analysis Group[xxxii], have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

Barrasso 17. On March 20th, 2012 before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety, you testified that MATS would have a "very small" impact on electricity rates, yet they have soared by 23 percent in the Mid-Atlantic region and 183 percent in the northern Ohio region from the 2014/2015 Delivery Year to the 2015/2016 Delivery Year. According to PJM Interconnection, this is due to "an unprecedented amount of planned generation retirements (more than 14,000 MW) driven largely by environmental regulations, which drove prices higher than last year's auction."

Do you stand by your testimony that MATS will have a "very small" impact on electricity rates? Or would you reconsider your testimony in light of market evidence that electricity rates have increased by up to 183 percent in response to EPA regulations?

[xxviii] New Insights from ICF's Integrated Energy Outlook: January 2013
http://www.icfi.com/insights/webinars/2013/recording-new-insights-icfs-integrated-energy-outlook-january-2013
[xxix] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf
[xxx] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?"
http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf
[xxxi] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability"
http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability
[xxxii] Analysis Group – "Why Coal Plants Retire"
http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf

The cited percent increases are capacity prices, which are only a small component of the retail electricity prices paid by consumers. Regionally, PJM's auction prices were middle-of-the-road prices compared to other years. EPA's MATS analysis, which accounts for these capacity prices, found that electricity rates are projected to stay well within normal historical fluctuations and result in relatively small changes in the average retail price of electricity, keeping electricity prices below 1990 levels.

Barasso 18. The EPA stated in the Federal Register on February 16th, 2012 that the "great majority" of benefits from MATS will come from reductions in particulate matter, not mercury or air toxics. "The benefits of controlling mercury and air toxics comprise less than one ten-thousandths of the total benefits reported for the mercury and air toxics rule," according to George Washington University Research Professor Susan Dudley's testimony on April 17th of last year before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety. She stated "Ninety-nine percent of the benefits attributed to the MATS rule were derived by assigning high dollar values to reductions in emissions of fine particles (PM2.5), which are not the focus of this regulation and which are regulated elsewhere." You and other EPA officials decided to refer to this rule in the Federal Register on February 16th, 2012 as "in short as the Mercury and Air Toxics Standards (MATS)." But this rule really targets particulate matter emissions, not mercury and air toxics. Why did your team decide to label this rule as something it is not?

Even after several decades of pollution control laws, until MATS there were no national limits on emissions of mercury and other air toxics from power plants. Power plants emit mercury, other metals, acid gases, and other air toxics – as well as particulate matter – all of which harm people's health. The rule targets mercury and other air toxics, but the control technologies installed to reduce them also yield significant reductions in particulate matter.

Barasso 19. You and other EPA officials have repeatedly ignored congressional requests to make publicly-available the taxpayer-financed databases used to conduct the cost-benefit analysis for MATS. Do you believe Congress, stakeholders, and the American people can adequately review EPA's cost-benefit analysis for MATS and other rules without access to the actual data upon which it rests?

While not legally relevant for setting maximum achievable control technology (MACT) standards under the Clean Air Act, the EPA did assess the costs and benefits of MATS, as we do for all major MACT standards, to improve public understanding of the impacts of MATS. Our economic analysis of MATS was conducted in compliance with relevant Executive Orders and guidance on economic analysis from the Office of Management and Budget (OMB), and was reviewed by OMB before we publicly released it. It followed standard, peer-reviewed methodologies and provided consistent information about anticipated benefits and costs, ensuring the public would have access to an effective and reliable comparison of benefits and costs. EPA relies on published peer-reviewed scientific studies for regulatory decisions.

20. As Administrator, would you advocate for requiring the federal government and/or other parties to consider, under NEPA or any other environmental law, greenhouse gas emissions

produced outside the United States by any good exported from the United States? If yes, can you please explain the rationale behind that position and how you believe it would impact the American economy?

Response: I believe that the NEPA process allows for the consideration of a number of factors as part of its process and that these factors can vary based on the parameters of a particular project. If confirmed, I commit that EPA will continue to use its ability to comment as part of the NEPA process in accordance with the law.

21. Relief for "peaking" facilities – EPA's proposed rule would impose expensive new study, monitoring, and retrofit requirements on all existing facilities, including "baseload" facilities that are the foundation of our electric system and "peaking" facilities that are used more sparingly to meet periods of peak electricity use. But the peaking units may be used for as little as a few days a year when electricity demand is high, and it would be uneconomic to spend a great deal on money on them for studies and equipment that would be rarely used and would not provide commensurate environmental benefit. In an earlier version of the rule, EPA provided an exemption for such units. Yet in the current proposed rule, which is soon to be finalized, EPA eliminated the exemption. Would you consider reinstating that exemption or providing equivalent relief from the rule's requirements for peaking facilities so they can continue to perform their crucial reliability function?

Response: As you know, I have worked hard to make sure that we carefully monitor the design and implementation of EPA's air pollution rules to keep costs reasonable and ensure that the reliability of our electrical system is protected. If confirmed, I look forward to working to ensure that requirements and implementation of rules like 316(b) are similarly sensitive to electrical reliability issues.

22. Relief for facilities being retired – EPA's proposed rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule's requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expect to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?

Response: I fully recognize that this is a period of transition for the power sector and that operators do not want to undertake studies for control technologies if they are certain to retire a unit. If confirmed, I look forward to working to ensure that we carefully consider the special circumstances of retiring units as we finalize the 316(b) rule.

23. Improvements in impingement provisions – In EPA's proposed 316(b) rule, EPA has adopted starkly different approaches to managing "impingement" and "entrainment" at existing cooling water intake structures. For entrainment, EPA appropriately adopted a site-specific approach, recognizing that (a) existing facilities already have measures in place to protect fish, (b) further measures may or may not be needed, and (c) the costs, benefits, and feasibility of such measures have to be evaluated at each site. Yet for impingement, EPA adopted rigid, nationwide numeric criteria that appear unworkable and in many cases unnecessary. In a notice of data availability issued last year, EPA signaled that it would consider a more flexible approach for impingement. In the final rule that is due this summer, would you support replacing the original impingement proposal with a more flexible approach that pre-approves multiple technology options, allows facility owners to propose alternatives to those options, and provides site-specific relief where there

are de minimis impingement or entrainment impacts on fishery resources or costs of additional measures would outweigh benefits?

Response: It is my understanding that EPA explicitly discussed possible changes to the proposed 316(b) rule's impingement standard in the NODA published in the Federal Register on June 11, 2012 and that EPA is carefully reviewing those comments as we develop the final rule. If confirmed, I would be willing to look closely at flexibilities for compliance with the impingement standard.

24. Improvements as to "closed cycle" cooling – In EPA's proposed 316(b) rule, EPA has correctly NOT required existing facilities to retrofit "closed cycle" systems such as cooling towers or cooling ponds if the facilities do not already have such systems, because such retrofits are not generally necessary, feasible, or cost effective. At the same time, facilities that do have closed-cycle systems have long been viewed as satisfying the requirements of section 316(b). Yet in the proposed rule, EPA has defined "closed cycle" cooling much more narrowly for existing facilities than EPA did for new facilities several years ago, thereby excluding a number of facilities. And even for the facilities that qualify, EPA is still imposing new study and impingement requirements. In the final rule that is due this summer, would you support a broader definition of closed-cycle cooling and measures that more fully view these facilities as compliant?

Response: My understanding is that EPA explicitly discussed the proposed 316(b) rule's definition of closed cycle cooling in the NODA published in the Federal Register on June 11, 2012. If confirmed, I look forward to working towards an appropriate definition for closed cycle systems.

25. Concerns about EPA's willingness-to-pay survey – EPA is seeking to justify its costly proposed 316(b) rule, which would affect more than 1,260 power plants and industrial facilities nationwide, on the basis of a public opinion survey asking "how much" a random group of individuals would be willing to pay to reduce fish losses at intakes. This willingness-to-pay approach to determining "benefits" contrasts sharply with the far more traditional approach used by EPA in its earlier 316(b) rulemakings. The earlier analyses relied on actual market prices and costs incurred by individuals, rather than hypothetical questions in a public survey. The "willingness-to-pay" or "stated preference" survey is clearly intended to increase the anticipated benefits of the proposed rule. Yet such stated preference surveys are notoriously difficult to design and implement and often are very unreliable. Using such unreliable benefit estimates will inappropriately lead to cooling water controls that are neither necessary nor cost beneficial and that will not deliver the anticipated benefits but will materially affect compliance and consumer costs. Given all these problems, in the final rule that is due this summer, would you support withdrawing the survey and clarifying that the survey and its results are inappropriate to use in implementing the final rule?

Response: It is my understanding that EPA is still reviewing the peer-review comments on the 316(b) stated preference study as well as concerns raised by stakeholders in comments. EPA would need to complete that review before it can make any decisions about applicability and appropriateness of the study results.

26. Where do you stand on the proposed coal residuals regulation? Regulation as hazardous waste would mean important efforts to reuse or recycle material would be curtailed. Is a "one size fits all" policy for the nation really necessary, or would it better to let the states manage coal waste? Do you believe a system of state led oversight based on sound science would be much more preferable than the top-down approach currently proposed by EPA?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and

stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

Barasso 27. My home state of Wyoming is the largest coal producer in the country. I have deep concerns about the process for developing and implementing the regional haze program in Wyoming. Can you commit to a process that does not disadvantage generation or the coal based resource in Wyoming?

> Because of public comments that were critical of some of the basic technical analysis supporting our first proposed action on Wyoming's regional haze SIP, EPA plans to re-propose that action soon and provide the public with another comment period to review our revised technical analysis before taking final action. The agency is sensitive to the large number of coal-fired units that are at issue in Wyoming, and to the challenges of addressing the best available retrofit technology and reasonable progress requirements for these units in the limited compliance time period allowed under the CAA. EPA plans to note these challenges in our new proposal and invite comment, including supporting technical information, on a number of alternative paths forward.

28. In your personal meeting with me, you often sympathized with the concerns I have regarding the impact of EPA regulations on jobs. However, you also expressed in many instances that you would look for flexibility, but you were bound by agency processes, and law. If you are concerned about the impact of EPA regulations on jobs and communities, I believe you should seek the flexibility you need from Congress through policy recommendations to help save these communities and jobs. What specific legislative changes would you recommend to provide flexibility to protect workers, families and communities from job losses that might occur as a result of EPA's regulations?

Response: As you note in your question, I am very sensitive to the state of the economy and to the impacts of EPA regulation on jobs. If confirmed, I would continue to work hard to seek opportunities to find more cost-effective approaches to protecting human health and the environment.

29. Some in EPA and outside activist groups have been critical of the work of the Small Business Administration's Office of Advocacy in playing a role in the evaluation EPA regulations to protect small business. If confirmed, what steps will you take to work with the Small Business Administration's Office of Advocacy to ensure that their role is respected and maintained?

Response: I believe the Small Business Administration has an important role in the evaluation of regulations. If confirmed, I will continue to work to ensure that EPA regulations are developed in a common sense manner without unnecessarily harming small businesses.

Barrasso 30. Please explain why you decided to ignore your responsibilities as a federal trustee to the Navajo Nation during the development of the Utility MACT rule, when your offices had prior knowledge of the Navajo Nation's concerns about EPA regulatory impacts to Four Corners Power Plant and Navajo Generating Station; and when your offices had collaborated with the Navajo Nation in proposing and promulgating the Clean Air Mercury Rule? Since 2010, EPA has

proposed new regulations that impact coal fired power plants, yet there has been very little communication between EPA and Navajo Nation about the Navajo Nation's desire to continue the use of coal for generating electricity and other purposes. Further EPA may be developing greenhouse gas and carbon dioxide regulations without consulting or understanding what impact this may have on Indian Country and tribes that rely on natural resources to fuel their economies.

EPA has held a number of meetings, conversations, and consultations with the Navajo and other Tribes in the region regarding both MATS and BART. Many of these meetings have been face-to-face meetings in Arizona. For example, in January 2012, I went to the Navajo Generating Station and also met with the Navajo Nation. Additionally, the Deputy Assistant Administrator Janet McCabe held at least 5 different meetings with Tribes, including the Navajo Nation, between mid-September and early-November 2011. EPA also held national conference calls and webinars for Tribes on MATS, given that MATS is a national rule and many Tribes have an interest in it. EPA intends to continue to work with the Navajo and all other Tribes to meet federal trust obligations and provide opportunities for consultation on issues that are of interest to individual Tribes and groups of Tribes.

Barasso 31. Ms. McCarthy, what is your view of the EPA's responsibilities to consult with Indiau Tribes about the potential impacts of these forthcoming regulations on the tribal economies that rely on non renewable natural resources?

EPA values its relationship with Indian Tribes and takes its federal trust responsibility seriously. I have learned from experience that working closely with tribes can lead to better programs. EPA regularly conducts consultation and outreach activities with tribal governments because dialogue and partnerships with stakeholders are an important part of EPA's efforts to reduce pollution under the Clean Air Act. The Office of Air and Radiation consults with Tribal governments to review EPA regulatory actions for possible impacts on tribes and Indian country. Consulting with and offering early, meaningful tribal involvement is consistent with the federal trust responsibility to federally-recognized tribes.

Barrasso 32. On April 4, 2013, *Politico* reported that you continue to support the Renewable Fuel Standard (RFS). However, there is a growing recognition from people across industries and the political spectrum that the RFS is fuudamentally broken and beyond reform. The RFS has failed to result in large-scale production of advanced biofuels. It has failed to provide any meaningful environmental benefits, and in certain respects, has accelerated environmental degradation. The RFS has contributed to significant increases in feed and food prices which is hurting low-income people in this country and around the world. The RFS has led EPA to approve E15 gasoline which threatens our nation's transportation and fueling infrastructure, and will almost certainly result in widespread litigation against engine manufacturers, refiners, and fuel marketers, among others. The RFS has facilitated widespread fraud in the marketing and sale of Renewable Identification Numbers (RINs). Finally, the RFS, and specifically the dramatic rise RIN prices, will significantly increase fuel costs for Americans.

a) **Is it true that you continue to support the RFS? If so, why?**
b) **Do you consider the RFS a success?**
c) **Do you believe Congress should repeal the RFS? If not, what changes to the RFS would you propose to Congress if confirmed?**

EPA is required by statute to implement the RFS program, and I support doing so in a manner consistent with Congressional requirements. Thus far, the program has created a substantial market for renewable fuels and enhanced the volume of advanced fuels that result in greater

greenhouse gas reductions than traditional renewable fuels. The agency does not have a position on legislative changes to the program.

Senator Sessions

General Questions: Transparency, Accountability & Cooperation with the States

1. Over-regulation harms American workers. Today, the United States has 3 million fewer jobs than in January 2008.

(a) Do you commit to do everything within your authority as Administrator of the EPA to ensure that the United States economy is more, not less, productive?

Response: I believe that a healthy economy and clean air and water go hand in hand. If confirmed, I commit to you that I will follow the law, the science and work with all stakeholders on commonsense solutions to our problems.

(b) Do you commit to do everything within your authority as Administrator of the EPA to ensure that more, not fewer, jobs are available for American workers?

Response: I believe that a healthy economy and clean air and water go hand in hand. If confirmed, I commit to you that I will follow the law, the science and work with all stakeholders on commonsense solutions to our problems.

2. I am the Ranking member of the Senate Subcommittee on Clean Air and Nuclear Safety. It is important that I have your commitment that EPA staff will provide briefings to my staff on a regular basis during the development of important new air regulations.

a. **Will you commit to ensure that my staff receives regular updates and briefings on all pending major air regulations?**

Response: Yes.

b. **In particular, to the extent EPA seeks to initiate new rulemaking proceedings in light of the D.C. Circuit's recent vacatur of the Cross State Air Pollution Rule (CSAPR), will you commit to ensure that EPA provides me and/or my staff with regular briefings on the status of any EPA decisions or efforts related to the CSAPR?**

Response: Yes

3. I am concerned that EPA is not working as cooperatively with the States as it should under the law. That was the clear message of the D.C. Circuit in its recent decision striking down the CSAPR. I am concerned that EPA is not giving due deference to the States.

a. **The Clean Air Act is based on a principle of "cooperative federalism." Do you agree?**

Response: As someone who spent the bulk of my career at the State level, I certainly appreciate that cooperative federalism is a cornerstone of the success of the Clean Air Act.

b. **Will you commit to sit down with State leaders—Governors, State Attorneys General, and State Environmental Agencies—to solicit their ideas for improving the Clean Air Act,**

including steps that can be taken to reduce red-tape, increase efficiencies, reduce costs, and minimize economic impacts?

Response: Yes

4. The Clean Air Act has not been updated since 1990—23 years ago.

a. Do you agree that the Clean Air Act should be modernized to take into account economic impacts when establishing air quality standards?

b. What specific amendments to the Clean Air Act would you recommend?

Response (to a and b): History has shown us that the Clean Air Act has numerous flexibilities to allow EPA to craft reasonable, flexible rules with benefits that far outweigh the costs.

5. EPA has been increasingly relying on a tactic known as "sue and settle" with non-governmental organizations (NGOs) over issues with nationwide significance. In many of these cases, an NGO notifies EPA of its intent to sue the agency over an alleged failure by EPA to take a particular action. In many instances, EPA has negotiated settlements with these NGOs with any advance notice to impacted stakeholders or the States. Then, the NGO takes the perfunctory step of filing a lawsuit against EPA along with a proposed consent decree for the Court's approval; and, then, and only then, do affected parties, including State regulatory agencies, become aware of the often severe consequences to them of the negotiated settlement. An example of this is EPA's recent 36-State SIP call regarding startup, shutdown, and malfunction (SSM), which was discussed in my recent letter to you.

a. Do you believe that State agencies should have an opportunity to participate in negotiating terms of a settlement when the effects are greatest upon them as the primary regulatory authorities?

b. Do you believe other impacted stakeholders should be notified before EPA initiates settlement discussions in these circumstances and that those impacted stakeholders should be given an opportunity to participate in the settlement process?

c. Will you commit to increase transparency in this process?

d. Do you agree that this transparency should include public, online disclosure of the use of federal funds to cover any plaintiffs' attorneys fees or other legal costs in civil actions filed under Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2); Section 505(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. § 1365(a)(2); or Section 7000(a)(2) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(2); or other similar statutes?

Response (to a through d): I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

e. With respect to the SSM issue, should EPA analyze whether the nationwide costs to impacted industries of the action are sufficient to trigger the necessity of OMB review?

The SIP call would leave to states the choice of how to revise their SIP provisions in question to make them consistent with Clean Air Act (CAA) requirements, and states have substantial

discretion when revising their SIPs as to treatment of excess emissions from sources during SSM events. The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events consistent with CAA requirements and how the state chooses to revise the SIP to address excess emissions during SSM events. Analysis of impacts to emissions sources as a result of removing SSM exemptions from a SIP would appropriately be conducted as part of the state's process of revising its SIP.

f. With respect to the SSM issue, should EPA be required to show that air quality is harmed by SSM excursions before calling for States to revise their SIPs?

The Clean Air Act requires continuous compliance with emission limitations by sources, including during periods of startup, shutdown, and malfunction. The law requires that EPA disapprove (or find to be substantially inadequate) SIPs with provisions that are inconsistent with this fundamental requirement of the Clean Air Act. That said, EPA notes that an impermissible SIP provision could have adverse impacts, such as by interfering with attainment and maintenance of the NAAQS, protection of PSD increments, protection of visibility, or meeting other Clean Air Act requirements. For citations to court decisions supporting EPA's position, see EPA's February 2013 proposed rulemaking (footnote 22, 78 FR at 12470) and EPA's supporting "Statutory, Regulatory, and Policy Context for this Rulemaking" memorandum in the rulemaking docket (see pages 17 and 21).

Sessions 6. I am concerned about EPA's failure to fully defend the laws and regulations of the United States. That is partly a concern for EPA, and partly a concern for the Department of Justice. But there is no doubt that the Administration has not always defended existing laws and regulations to the fullest extent possible. For example, in June 2011 when you appeared before our committee, I asked you about EPA's plans to reconsider the ozone standards. You explained: "Senator, we are moving forward with the five-year review of ozone, but when Administrator Jackson came into office, we were facing litigation [regarding] the prior administration's decision to make a determination that 75 ppb was the appropriate level for ozone. ... The Administrator decided that rather than litigate, she would work with the litigants to put that litigation on hold; she would revisit the science. ... [and] rather than to defend that standard and to move forward with it, [EPA decided] to reconsider that..." Fortunately, after a bipartisan group of Senators raised serious concerns about EPA's ozone reconsideration—an effort that I was glad to lead with Sen. Landrieu, the President directed EPA to not finalize a new ozone standard at that time.

a. Would you agree that, in light of the President's subsequent decision to forego changing the ozone standard, EPA Administrator Jackson made the wrong decision to "reconsider" the ozone standard instead of, in your words, to "defend that standard"?

b. Did EPA incur significant costs as part of the ozone reconsideration process; if so, how much?

c. Do you agree that the ozone reconsideration process created significant regulatory uncertainty throughout the U.S. economy that could have been avoided if EPA had chosen to defend the standard, as ultimately decided by the President?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

7. Another recent example of the "sue and settle" problem involves EPA's recent decision to propose to eliminate a 40-year old regulatory exemption for emissions during periods of startup, shutdown, and malfunction (SSM). Senator Vitter and I recently wrote you about this topic, and on the issue of EPA's failure to defend the law, our letter stated: "In November 2011, the Environmental Protection Agency (EPA) and the Sierra Club negotiated a settlement whereby EPA unilaterally agreed to respond to a petition filed by Sierra Club seeking the elimination of a longstanding Clean Air Act (CAA) exemption for excess emissions during periods of startup, shutdown, and malfunction ("SSM"). The EPA went out of its way further to deny the participation of the States, and other affected parties. Oddly, it appears that, instead of defending EPA's own regulations and the SSM provisions in the EPA-approved air programs of 39 states, EPA simply agreed to include an obligation to respond to the petition in the settlement of an entirely separate lawsuit. In other words, EPA went out of its way to resolve the SSM petition in a coordinated settlement with the Sierra Club. Our concerns with the Agency's sue and settle tactics are well documented—these settlement agreements are often accomplished in a closed door fashion that contravenes the Executive Branch's solemn obligation to defend the law, avoids transparency and accountability, excludes impacted parties, and often results in the federal government paying the legal bills of these special interest groups at taxpayer expense. The circumstance under which EPA has agreed to initiate this new rulemaking reaffirms a pattern and practice of circumventing transparency."

(a) Please list all instances since January 2009 where EPA decided to settle a lawsuit challenging the validity of a law or regulation that had been in effect before January 20, 2009.

Response: I am aware of some instanees since January 2009 where EPA decided to settle a lawsuit challenging the validity of a CAA-related regulation that had been in effect before January 20, 2009. For example, Navistar brought a case in the D.C. Circuit Court challenging a 2001 final rule that promulgated standards for new heavy-duty engines and vehicles. EPA settled that lawsuit by agreeing to a hold a public process to reexamine our policies regarding the use of SCR technology (a type of NOx control) in

future model year engines. However, I am not aware of every instance in which EPA has entered into such an agreement. If confirmed, I can examine this issue more thoroughly.

(b) Please include all disbursements of federal funds to cover plaintiffs' attorney fees or legal costs in such cases.

Response: In the *Navistar* case discussed above, EPA did not pay any such fees or costs. While I am generally aware that EPA has paid such fees and costs in some cases—for example, under the Equal Access to Justice Act—I do not have specific information regarding those payments in all cases brought against EPA.

(c)Do you commit to defend all existing statutes and regulations to the extent required by law?

Response: The rule of law, along with sound science and transparency, is one of EPA's core values and, if I am confirmed, it will continue to guide all EPA action.

8. I am told that EPA often issues guidance on important issues when rules would be appropriate. EPA staff then treats this guidance as if it were rules, when in fact guidance is just one path States or the regulated community can take to reach EPA's desired goal.

a. When, in your view, is it appropriate for EPA to issue agency guidance documents and what procedures should be followed in those circumstances?

Response: In my view, it is appropriate for EPA to issue guidance documents to help the regulated community understand environmental statutes and regulations, assist in the implementation of environmental regulations, give regulated parties information on the types of things we would look for in enforcement actions, encourage compliance with environmental requirements, and suggest promising practices.

Because guidance documents do not contain legally binding requirements, but instead provide information and suggestions that may be helpful to the regulated community, they are considered advisory. The procedure that should be followed in issuing agency guidance documents depends on the purpose of the particular guidance document. For significant guidance documents, EPA should, and does, follow the EPA and OMB procedures outlining good guidance practices, including creating opportunities for meaningful public participation in the development of guidance documents.

b. When, in your view, it is appropriate for EPA to initiate rulemaking proceedings and what procedures should be followed in those circumstances?

Response: In my view, it is appropriate for EPA to initiate rulemaking proceedings when implementation of its statutory authority makes it necessary to impose legally binding requirements on outside parties. In promulgating rules, EPA should, and does, comply with rulemaking procedures set out in applicable statutes and executive orders, including the notice and comment procedures in the Administrative Procedure Act.

c. What will you do to increase the use of rulemaking rather than guidance documents and to impart to EPA staff the proper use of guidance documents?

Response: As a general matter, I believe that the EPA properly uses guidance. The agency is cognizant of the distinction between guidance and rulemaking and the appropriate use of each, as discussed above in question 8a and 8b. If confirmed, I will direct the agency to make appropriate and effective use of Agency guidance.

9. EPA often goes outside the bounds of its statutory authority to achieve ends it deems desirable. Examples include a recent push to regulate water quantity (flow) as a pollutant and the attempt to add unwarranted conditions to coal mining permits. What will you do to ensure that EPA stays within the bounds of its authority?

Response: The rule of law, along with sound science and transparency, is one of EPA's core values and, if I am confirmed, it will continue to guide all EPA action.

Budget

10. I am the Ranking member of the Senate Budget Committee. I am very concerned about where EPA places its priorities, as reflected in the Administration's budget requests over the past several years. Your budgets have tended to reduce funding for programs at the state level in favor of increasing funding for EPA regulations. For example, the largest reductions in EPA programs under the President's latest budget proposal come from the drinking water and clean water state revolving funds, which provide assistance to states for water programs. The Brownfields program would also be cut under the President's proposal. Yet, the President's budget proposes increasing spending on EPA Clean Air Act regulatory programs.

a. Can you please justify that rationale for these EPA budget priorities?

Response: I understand that EPA's proposed budget defines EPA's program goals for fiscal year 2014 (October 1, 2013 to September 30, 2014) and associated resource requirements. The President's proposed budget reinforces our firm commitment to keeping American communities clean and healthy, while also taking into consideration the difficult fiscal situation and the declining resources of state, local and tribal programs.

EPA's 2014 budget request supports our ongoing effort to transform the way EPA does business. It takes a balanced approach to funding the Agency and underscores our commitment to finding the most efficient and effective ways to work toward our core mission of protecting people's health and the environment.

Most importantly, the request allows the Agency to build on progress in reducing climate change; protecting our air, waters and lands; supporting sustainable water infrastructure; and assuring the safety of chemicals.

b. Within EPA's annual budget request, will you commit to maximize EPA's financial commitment to state-level programs?

Response: If confirmed, I will work with States and others to maximize environmental benefit from federal funds.

11. Under the Budget Control Act, sequestration has resulted in across-the-board cuts to an expansive list of accounts, including those at EPA, and lowered discretionary appropriations levels for the next several years. Can you please describe your priorities as Administrator to deal with the impact of sequestration?

Air Quality

Response: I am hopeful that Congress can agree to a long term budget deal that gives the Agency an ability to engage in long term planning. If confirmed, I will work with Congress and my colleagues in the Executive Branch on implementing the budget.

Sessions 12. Air quality in the United States has improved significantly over the past 40 years. The Clean Air Act and the clean air laws of the States deserve great credit for these improvements, as do the voluntary efforts of millions of Americans and businesses. Air quality is not a political issue. We all want our friends, families, and fellow Americans to breathe clean air. A recent report about Alabama emissions[1] found that since 1999:

a. NOx emissions have dropped more than 35% overall—and more than 65% for coal-fired power plants. Do you agree that, even without additional new regulations from EPA on NOx, this downward trajectory will continue?

b. SO2 emissions have dropped more than 50% overall—and more than 60% for coal-fired power plants. Do you agree that, even without additional new regulations from EPA on SO2, this downward trajectory will continue?

c. PM2.5 emissions have decreased by more than 30% overall. Do you agree that, even without additional new regulations from EPA on PM2.5, this downward trajectory will continue?

d. Ozone levels in Alabama are also on a downward trend. Do you believe an even tighter ozone standard is necessary? Did you support EPA's decision to reconsider the ozone standard in 2011, and did you agree with the President's decision to forego changing the ozone standard at that time?

e. For these pollutants, the numbers are on a downward trajectory even without new EPA air regulations regarding those pollutants. Do you agree?

Although emissions are likely to continue to decline as state and federal control programs already 'on the books' continue to be implemented, it is not at all clear that, without additional state or federal efforts, emissions would continue to decline in perpetuity. It also is possible that, absent additional state or federal efforts, emissions could increase depending on a number of factors. Great progress has been made to reduce emissions considerably since the 1970s, including in Alabama, but more work remains to be done to protect public health.

Under President Obama's leadership, the EPA has worked to ensure health protections for the American people, and has made tremendous progress to ensure that Clean Air Act standards protect all Americans by reducing our exposures to harmful air pollution. In accordance with the requirements of the Clean Air Act, EPA currently is engaged in reviewing the ozone NAAQS and the science underlying these standards. Given the importance of this decision, it makes sense to ensure that the agency gives full consideration to all of the scientific evidence that is available since the conclusion of the last review in 2008. Any decisions as to whether to revise the ozone standard will be based on the available scientific evidence, exposure/risk information, the advice

of CASAC, and public comments. The reconsideration will be concluded in conjunction with the ongoing review.

Sessions 13. As the Assistant Administrator in charge of EPA's air programs since 2009, were you the principal architect of (that is, the person primarily responsible for) the Administration's efforts on Boiler MACT, Utility MACT/MATS, Greenhouse Gas NSPS, Ozone, PM2.5, and the Cross-State Air Rule?

Under the Clean Air Act, the Administrator of EPA has authority to promulgate the rules to which your question refers, and it was Administrator Lisa P. Jackson who signed the proposed and (where applicable) final rules for each of these rulemakings. As Assistant Administrator for the Office of Air and Radiation, I was responsible for overseeing the development of these proposed and (where applicable) final rules and for advising the Administrator in these areas.

14. I have been advised that, several years ago, EPA in conjunction with the States devised a new formula for allocating State and Tribal Air Grants (STAG grants/105 grants) to the ten EPA regions. This new allocation scheme was necessary, I am told, because no adjustments had been made to it for years, resulting in a substantial misallocation of resources. In Region IV, which includes the State of
Alabama, the new formula would have resulted in a 25% increase in STAG/105 funds. I am told that EPA planned to transition into the revised scheme beginning in FY2012. However, this effort has apparently not been implemented. Why has the new allocation program not been implemented, and do you support immediate use of the new allocation scheme? When do you anticipate EPA will implement the new funding scheme?

Response: Senator, having 25 years of experience at the State and Local level, I agree with you that it is crucial to provide adequate funding at the State level. If I'm confirmed, I will look into this issue and would be happy to speak with you further.

Sessions 15. States justifiably should expect that, when reductions in air pollutants result in areas transitioning from non-attainment to attainment for the air quality standards, this success should be recognized by EPA quickly by completing the formal re-designations. My understanding is that EPA has often taken several years to complete this process.

a. Do you agree that clean air attainment designations should be formally adopted as soon as possible when the data show that air standards have been met?
b. What will you do to insure that EPA acts quickly to complete re-designation actions, given the immediate job growth implications of these actions?

When areas in a state attain the standards, states have to submit plans to satisfy certain Clean Air Act requirements. When valid plans documenting these requirements are submitted, EPA generally moves to approve these in a timely manner. There have been cases where litigation about programs that the states have relied on to control air quality has created uncertainty and delayed EPA's ability to take these actions. However, the agency is committed to keeping states

informed in these circumstances, moving quickly to resolve issues, and processing redesignations in a timely manner.

Sessions 16. I have been advised that EPA has, in several instances, illegally made unilateral revisions to State SIP's when the proper procedure was through a SIP Call.

a. Please explain how you determine if a SIP call or a FIP should be used.

The use of a SIP call or a FIP is governed by the provisions of the Clean Air Act. Under section 110(c), the EPA is legally required to issue FIPs in two specific circumstances:

1. If EPA finds that the state failed to make a required SIP submission that is complete (including failure to make any SIP submission whatsoever),or
2. If EPA disapproves a required SIP submission in whole or in part.

EPA's legal obligation to promulgate such a FIP only ends if the state makes, and EPA fully approves, the required SIP submission before the promulgation of the FIP. EPA does not have legal authority or a legal obligation to promulgate a FIP in other circumstances.

By contrast, EPA is authorized to promulgate a SIP call under section 110(k)(5) whenever EPA determines that a state's existing SIP is substantially inadequate to provide for attainment and maintenance of the NAAQS, to mitigate interstate transport adequately, or to meet any other requirements of the CAA. EPA has discretion regarding whether to make a finding on whether a state's SIP is substantially inadequate. If EPA makes such a finding, however, then the agency has a legal obligation to issue a SIP call and to require the state to revise its SIP to bring it into compliance with CAA requirements.

b. Will you limit the use of FIPs to the situations actually anticipated in the CAA?

States and EPA both have authorities and responsibilities under the CAA. As noted above, EPA has a mandatory duty under the CAA to promulgate a FIP in certain circumstances that are required by law when a state does not meet its SIP obligations under the CAA. In practice, EPA already strives to avoid situations in which a FIP is necessary. EPA's strong preference is for states to develop and submit their own SIPs that meet CAA requirements, and EPA works with states to help them to develop approvable SIPs in order to avoid a FIP in the first instance or to replace a FIP with an approvable SIP as soon as possible. EPA does not use FIPs in situations not anticipated in the CAA.

Sessions 17. You oversaw development of "Utility MACT," also referred to as the Mercury and Air Toxics Standards (MATS). Testifying before Congress, you stated that the MATS rule would lead to the loss of only a "modest amount of generating capacity." However, according to the Institute for Energy Researeh, the MATS rule will result in at least 35,000 MW closing and Barclay's estimates that 42,000 MW will close because of MATS. Your own estimates fall significantly short of those estimates.

a. Do you agree that the United States is losing some of its coal-fired generating capacity as a result of recent EPA regulations?

A number of factors may influence an owner/operator's independent business decision to retire a plant. Environmental rules are only a part of the equation. External analysts, including GAO[xxxiii], CRS[xxxiv], the Bipartisan Policy Center[xxxv], and Analysis Group[xxxvi],have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal- fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth.

b. Why were EPA's estimates for the impact on the electricity generating sector so much different than those identified by Barclay's and the Institute for Energy Research?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figures[xxxvii]. As noted above, external analysts, including GAO[xxxviii], CRS[xxxix], the Bipartisan Policy Center[xl], and Analysis Group[xli], have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

Sessions 18. In the Utility MACT proposal, EPA stated that: "EGUs are the subject of several rulemaking efforts that either are or will soon be underway....EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies. ... Thus, EPA recognizes that it needs to approach these rulemakings, to the extent that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health

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[xxxiii] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[xxxiv] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf

[xxxv] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability

[xxxvi] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf

[xxxvii] New Insights from ICF's Integrated Energy Outlook: January 2013 http://www.icfi.com/insights/webinars/2013/recording-new-insights-icfs-integrated-energy-outlook-january-2013

[xxxviii] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[xxxix] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf

[xl] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability

[xli] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf

benefits that the rulemakings must achieve. The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings....The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking."

a. Does EPA intend to follow through on this commitment and provide a forum in which EPA notifies utilities of all of the impending power sector regulations and discusses ways for industry to comply with all of these regulations in a least cost fashion?

As stated in the cited portion of the preamble to the Mercury and Air Toxics Standards (MATS) NPRM, the Agency's intent was to use the rulemaking process itself to address issues of flexibility that might support industry's efforts to develop integrated compliance strategies for affected sources. In developing the final MATS, for example, the Agency received substantial comment suggesting ways in which the final rule could provide compliance flexibility and the Agency adopted several of these suggestions, which according to the Regulatory Impact Analysis for the final standards, resulted in $1.3 billion in annual cost-savings relative to the proposed standards.

EPA is still in the process of reviewing comments submitted in response to the carbon pollution standard for new power plants proposed under section 111(b). The agency is not currently developing any existing source GHG regulations for power plants under section 111(d).

b. Can you give a timeframe at which time this process will begin?

Please see the response to provided to question (a), above.

Sessions 19. I have been advised that, as a general matter, market-based approaches to reducing emissions of traditional air pollutants have proven to be more cost-effective than command-and-control approaches.

a. Do you agree?

As a general matter, market-based approaches provide flexibility to sources in determining how best to comply with an environmental program. This flexibility gives sources the opportunity to comply in the most cost-effective manner. Market-based approaches reward efficiency, innovation, and early action and provide environmental accountability without inhibiting economic growth.

b. It has been said that NOx and SO2 from Electric Utility Fuel Combustion sources show significant decreases over time as a result of the Acid Rain Program, NOx Budget Trading Program, and CAIR control implementation. Do you agree?

These programs have been very successful in reducing SO2 and NOx emissions from the U.S. power sector. Recent EPA air programs continue and complement the Acid Rain Program's (ARP) history of emission reductions. In 2011, sources in the ARP and the Clean Air Interstate Rule (CAIR) SO2 annual program reduced SO2 emissions by over 11 million tons (a 71 percent reduction) from 1990 levels (before ARP implementation). Similarly, sources in the ARP and CAIR NOx annual program emitted 4.4 million fewer tons of NOx (a 60 percent reduction) in 2011 than in 1990.

Sessions 20. We understand that EPA is currently evaluating whether to finalize a consent decree with the Sierra Club for the issuance of new MACT standards for the brick industry. EPA began the rulemaking process for the second MACT several years ago, requiring two sets of information collection requests (ICRs) to be completed by the industry. However, EPA recently proposed a new schedule whereby the rule would be finalized in July 2014. I am concerned that the proposed schedule for this new Brick MACT is too short to allow meaningful review of brick industry emissions, how the proposed rule would affect the economic survival of the brick industry - especially with respect to impacted small businesses - and whether the proposed rule would provide discernible environmental and health benefits.

a. How did EPA arrive at the Brick MACT schedule contained in the proposed consent decree?

Environmental plaintiffs sued the EPA, arguing that the Agency should be subject to a court-imposed schedule. EPA asked the court to dismiss the case, but the court ruled in the plaintiffs' favor. In order to avoid a court-imposed schedule that might be more difficult to meet, EPA negotiated a proposed schedule for new rulemaking with the litigants. The proposed schedule was based on consideration of the efforts needed to gather and evaluate information relevant to developing standards that meet the requirements of CAA section 112(d)(2) and (d)(3). The proposed consent decree, including the proposed schedule, was published in the Federal Register on December 7, 2012, with a request for public comment. EPA has subsequently negotiated a revised schedule that will allow us additional time to, among other things, address small business concerns. The final schedule provided in the consent decree that was filed with the U.S. Court of Appeals for the D.C. Circuit on April 12, 2013, extends the period for rulemaking to February 6, 2014, for the proposal, and December 18, 2014, for the final rule.

b. Does EPA's schedule allow for adequate consideration of the Small Business Administration's (SBA) Small Business Panel review pursuant to SBREFA?

Yes. EPA takes very seriously the potential impacts of its rules on small businesses, as well as its obligations to confer with those businesses and to work to minimize any avoidable adverse impacts. The final schedule provided in the consent decree that was filed with the U.S. Court of Appeals for the D.C. Circuit on April 12, 2013, extends the period for rulemaking to February 6, 2014, for the proposal, and December 18, 2014, for the final rule. This will ensure adequate time for review by the SBA's Small Business Panel.

c. What emissions reductions would be achieved pursuant to full implementation of the proposed standards?

Because the agency has neither concluded its analyses of the available information, nor consulted with interested stakeholders, let alone developed or issued any proposed emission standards, it is premature to speculate about the emission reductions that would result. This process will include small business consultation under SBREFA, as well as interagency review prior to proposing any emission standards.

d. What are the potential economic impacts and costs to the domestic US brick industry related to the proposed standards?

Because the agency has neither concluded its analyses of the available information, nor consulted with stakeholders, let alone developed or issued any proposed emission standards, it is premature to speculate about the economic impacts and costs of compliance. However, EPA fully intends to consult with members of the U.S. brick industry, including through the SBREFA process, to identify potential impacts and ways to minimize any unnecessary and avoidable adverse economic impacts on the brick industry.

c. How would the costs of these new standards compare, on a per-ton basis, with other industries recently subjected to new MACT standards?

Because the agency has not yet concluded its analyses of the available information, nor consulted with stakeholders, let alone developed or issued any proposed emission standards, it is premature to speculate about the costs of compliance or how they would compare with other industries subject to MACT standards.

21. The brick industry was subject to a Brick MACT issued in 2003. The industry came into compliance with that MACT (and continues to comply) at a cumulative cost upward of $100 million. This MACT was vacated by the D.C. Circuit in 2007, but many of the controls installed by the brick industry remain in place. I am told that these new controls are now being used to establish a new "floor" for brick industry emissions. This "MACT on MACT" situation (i.e. full compliance with a MACT standard for almost a year before the rule was vacated) is very concerning to brick manufacturers around the country.

a. What other industries have been subject to successive rounds of regulation similar to the situation the brick industry now finds itself?

Several rules have been remanded to EPA for further justification or revision based on court decisions holding that EPA's original MACT standards were unlawful. This includes, for example, rules for Hospital, Medical, and Infectious Waste Incineration; Commercial and Industrial Waste Incinerators; and Commercial, Industrial, and Institutional Boilers. The D.C. Circuit has upheld the agency's ability to correct errors in its MACT standards and rejected the "MACT on MACT" argument where the agency is either responding to a court remand or otherwise correcting a legally deficient MACT standard.

b. What other industries have installed emissions controls pursuant to an EPA requirement then had those controls used to establish more stringent emissions limitations within the operational lifetime of the previously installed control equipment?

EPA has revised a number of MACT standards to comply with court decisions. Some of the revised standards can be complied with using the same control technologies as those needed to comply with the original remanded standards, while others could require sources to employ additional methods to reduce emissions.

c. What steps will EPA take to ensure that controls installed in good faith are not needlessly removed before the end of their useful life?

In accordance with the requirements of the Clean Air Act, EPA will continue to establish standards in a way that does not dictate the use of any particular type of control technology. Source owners and operators remain free to employ whatever process or technological improvements will result in compliance with the standards. This could include, for instance, actions to improve the efficiency of existing systems, thereby making it highly unlikely that existing equipment must be replaced before reaching the end of its useful life.

d. Why would EPA propose standards that do not utilize the full discretionary power granted by the Clean Air Act, such as the ability to create subcategories or distinguish among sizes, types and classes within a category or subcategory to minimize or eliminate that cost and economic impacts that do not create commensurate environmental benefit?

EPA is sensitive to the economic impacts of its rules on affected industries and seeks to minimize any unnecessary adverse impacts. In that regard, EPA does, and will continue to, determine whether distinguishing among sources within a given category based on meaningful differences in size, type or class will achieve the environmental benefits called for by the Clean Air Act at lower costs to affected sources.

Sessions 22. I am aware that the EPA is considering whether a health-based standard is possible for the brick industry. I also understand that the brick industry has supplied you with all information necessary to evaluate a health-based compliance alternative for every major source.

a. What are the impediments to establishing a health-based rule for this industry comprised of a large number of small businesses, and how could those impediments be overcome?

Under the Clean Air Act, EPA is authorized to establish MACT standards that consider a health threshold where the science supports a finding that such a threshold exists. In order to establish such a standard, EPA would need sufficient information to determine whether a threshold for health effects indeed exists and that the health-based standard being established provides for an ample margin of safety. EPA is currently evaluating information provided by the industry to determine whether such a standard would be appropriate and consistent with the statutory requirements.

b. An emission standard is broadly defined in the Clean Air Act. Why would EPA look to a single facility to establish the emission level for all facilities to meet, rather than consider a health-based metric as a possible emission standard format?

As stated above, under the Clean Air Act, EPA may only establish a standard considering a health threshold where the science supports a finding that such a threshold exists, and where the

standard provides an ample margin of safety. EPA is currently considering the range of potential approaches that could be used to set a standard.

Sessions 23. Do you believe Congress intended to give EPA the authority to regulate emissions of CO2 as a "pollutant" when it enacted the Clean Air Act?

Congress in the Clean Air Act defined "air pollutant" as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air." 42 U.S.C. 7602(g). The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 528-29 (2007), held that "greenhouse gases fit well within the CAA's capacious definition of air pollutant," as established by Congress.

Sessions 24. I am told that China is the world's largest producer of CO2, and that CO2 levels have been steadily declining in the United States in recent years. EPA Administrator Lisa Jackson testified at a July 7, 2009 Senate EPW hearing that "U.S. action alone will not impact world CO2 levels." Do you agree that, even if the United States reduces CO2 emissions in line with legislative proposals in recent Congresses, such U.S. action alone would have little or no impact on global average temperatures?

In order to achieve the reductions in greenhouse gas emissions that science indicates are necessary to address climate change, all major emitting countries will need to take action. As I indicated in my testimony before the Committee, I believe that the United States can achieve meaningful reductions in greenhouse gas emissions through common sense steps, such as the light duty vehicle emission and fuel economy standards established by this Administration, that are fully consistent with domestic economic growth. I also believe that U.S. leadership in reducing carbon pollution helps to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

Sessions 25. During the Administration's first term, EPA promulgated an endangerment finding and adopted GHG regulations for motor vehicles. It also proposed GHG NSPS for the power sector.

a. What other areas of the economy can we expect GHG regulations during your tenure as Administrator?

EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b) and is not currently developing any existing source GHG regulations for power plants under section 111(d). The agency has previously acknowledged that it is appropriate to issue regulations for refinery greenhouse gas emissions, but has no current plan for issuing such regulations. The agency has also previously said that it had insufficient data to regulate Portland cement facilities, and EPA does not have a timetable or plan for issuing GHG regulations of this sector.

b. What standard is EPA going to apply in determining what sectors GHG regulations should apply to?

Please see the answer to question (a), above. Administrator Jackson stressed a common sense approach to the issue of GHG regulations that included focusing on the largest sources of GHG emissions; I continue to believe that general approach was correct.

Sessions 26: On December 4, 2012, I wrote EPA Administrator Lisa Jackson regarding the President's statement that "the temperature around the globe is increasing faster than was predicted even 10 years ago." I asked EPA to provide the specific data supporting the President's assertion along with a "chart of the actual global average temperature increases since 1979 [] versus the latest IPCC predictions..." You responded in a letter dated February 14, 2013, by asserting that "there are multiple lines of evidence that clearly demonstrate that average global temperatures are rising...," yet you did not provide any data relating to average global temperatures.

a. Will you provide me with data showing actual global average temperatures since 1979 versus IPCC predictions, as was requested in my letter?

The agency's original response provided global temperature graphics from NOAA, but the underlying data for these global annual average temperature data are available from NOAA's National Climate Data Center (www.ncdc.noaa.gov/oa/ncdc.html) and can also be seen in EPA's *Climate Change Indicators in the United States, 2012* Report [EPA 430-R-12-004] (http://www.epa.gov/climatechange/science/indicators/weather-climate/temperature.html). These data include the University of Alabama-Huntsville lower tropospheric satellite measurements referred to in your letter dated December 4, 2012. Regarding a comparison of recent observations to former temperature projections of the IPCC, EPA has not produced its own analysis, but we expect a definitive comparison in the forthcoming IPCC Fifth Assessment Report. Until then, for a peer-reviewed study of this question, we refer you to Rahmstorf et al. (2012)[xlii], which found that, "global temperature continues to increase in good agreement with the best estimates of the IPCC, especially if we account for the effects of short-term variability... The rate of sea-level rise of the past few decades, on the other hand, is greater than projected by IPCC models."

b. Your letter also states that "2012 set a new record high for average temperatures in the United States." Do you agree that global temperature averages are more relevant for evaluating climate change than record high temperatures for a single year in a single country?

Long-term changes in global average temperatures are indeed one of the most important metrics to gauge climate change. The IPCC (2007)[xliii] was referring to global average temperature in its finding that "Most of the observed increase in global average temperatures since the mid-20th century is very likely [where very likely signifies a 90-99% probability the statement is true] due to the observed increase in anthropogenic GHG concentrations." Worldwide, 2001-2012 was the warmest decade on record since thermometer-based observations began. However, there are important regional indicators of climate change as well, and trends in U.S. climate data should not be ignored. Though we agree that one year's data for one region alone is not sufficient to reach

[xlii] S. Rahmstorf, G. Foster, and A. Cazenave, "Comparing climate projections to observations up to 2011", *Environmental Research Letters*, vol. 7, pp. 044035, 2012.http://dx.doi.org/10.1088/1748-9326/7/4/044035

[xliii] IPCC (2007). Summary for Policymakers. In: Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M.Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA

conclusions about long-term climate change trends, the degree to which 2012 broke records in the U.S. was noteworthy and relevant to human health and welfare.

c. A March 30, 2013 article in The Economist stated: "Over the past 15 years, air temperatures at the Earth's surface have been flat while greenhouse-gas emissions have continued to soar..." Is this statement correct?

Although most of the warmest years on record have occurred in the last decade, the rate of warming has, for a short time, slowed (Karl et al., 2009). It is important to recognize, however, that year-to-year fluctuations in natural weather and climate patterns can produce a period—of individual years or even individual decades—that does not follow the long-term trend (NRC, 2010; Karl et al., 2009). EPA has responded to similar comments in the record for the 2009 Endangerment Finding regarding differences between models and observed temperatures, and has found that the possible slowdown in warming over the last decade or so does not undermine the linkage between greenhouse gases and temperature over appropriately long timescales.

d. In your letter, you stated that "only looking at 10 years of a single dataset cannot provide a full picture of climate change trends, and should also not be the sole test by which to judge the usefulness of climate models in either simulating past climates or projecting further climate change." What is the best test for judging the usefulness of a climate model? Should policymakers rely on climate models that have over-predicted the degree of warming every year since at least 1990?

Observations over short time periods (e.g., ten years) examined in isolation may be misleading in the interpretation of the longer-term trend in temperatures. It is reasonable and appropriate to rely on climate models that do not (and cannot) accurately model every aspect of the global climate but which are nonetheless useful for attribution, projections, and understanding of climate phenomena. This is particularly the case when multiple models are applied, as is done in the climate assessment literature, and the results are examined across them all. Thus the possible slowdown in the rate of warming over the past decade or so does not undermine confidence in the utility of climate models for either attributing or projecting climate change over appropriately long timescales.

e. Your letter provides a series of charts (from NOAA's State of the Climate in 2009 report) related to land surface air temperatures, sea surface temperatures, marine air temperatures, tropospheric temperatures, and stratospheric temperatures. Importantly, while you did not provide the requested chart comparing global temperature averages that correlate to the global temperature averages predicted by the IPCC, the charts you provided are, nonetheless, intriguing because all of these charts show no increases in temperatures for at least the past decade. Do you agree that the data for each these charts shows no increases in these temperature sets for at least the past decade? Of these temperature data sets, which one was the President referring to when he said that "temperature around the globe is increasing faster than was predicted even 10 years ago"?

As stated above, observations over short time periods (e.g., ten years) examined in isolation may be misleading. That can be seen in nearly every data set in the NOAA graphic that the most recent decade indicates greater changer than all previous decades. However, EPA recognizes that

analysis of surface and lower tropospheric temperature data over the last 10 years or so indicates that the *rate* of surface warming may have temporarily slowed, although the magnitude of the slowdown varies depending on dataset and choice of start date. Warming has been pronounced in the last 30 years or so and the warmth of the short-term period of the last decade should be viewed in the context of temperature and other climatic data spanning the last century, such as global sea surface temperatures, precipitation, Arctic sea ice extent, ocean acidification, etc. EPA's Climate Change Indicators in the United States, 2012 Report [EPA 430-R-12-004] provides other examples of observed climate changes.

Water Quality

27. I am concerned about the expansive interpretation the current Administration gives to the jurisdictional term "waters of the United States." In your opinion, do non-navigable streams constitute "waters of the United States," as originally intended by Congress when it enacted the Clean Water Act? In your opinion, do isolated ponds without significant hydrological connections to navigable waters constitute "waters of the United States," as originally intended by Congress when it enacted the Clean Water Act?

Response: I believe that clarity is important at the State, and local level, and also for industry to understand the scope of EPA regulations, including what waters fall into the scope of the Clean Water Act. If I'm confirmed, I will work with all of these entities, in addition to other stakeholders, to examine the issue that you have raised.

28. I understand EPA is in the process of developing a Section 316(b) rule.

a. Do you support a technology-based standard for the Section 316(b) rule?

b. I am told that the EPA Water Office conducted a willingness-to-pay survey for the 316(b) rule to monetize benefits, noting that this methodology is widely used and supported by the academic literature. It is my understanding that this literature specifies that a given survey should focus on one or two rare species and be geographically restricted to the area where these species live. It is my understanding that the EPA survey, on the other hand, involves all species in the waters of the United States nationwide, including common species with a commercial market. When the 316(b) survey results are published, will EPA specify that its survey was not conducted according to the accepted methodology?

c. Will states be required to use EPA's survey results in 316(b) BTA [best technology available] decision-making?

Response (to a through c): It is my understanding that EPA is still reviewing the peer-review comments on the 316(b) stated preference study as well as concerns raised by stakeholders in comments. EPA would need to complete that review before it can make any decisions about applicability and appropriateness of the study results.

29. I am concerned about EPA's continuation of efforts to establish effluent limitation guidelines (ELG) for coalbed methane (CBM) production. As outlined in my letter to the EPA dated May 10, 2012, the ELG process, which started in 2008, cannot be justified in light of prevailing economic conditions and the price of natural gas in today's market. Natural gas prices are much lower now

than in 2008 when EPA started this process. Moreover, I am advised that there is no need for these ELGs because Alabama has successfully managed the National Pollutant Discharge Elimination System (NPDES) for more than 25 years with EPA regional supervision, and that an ELG is even less necessary now because of decreased gas and water production. A CBM ELG would threaten production across the country and could even end production in Alabama, thereby harming the great progress this country has made toward energy independence and progress in domestic natural gas production. I appreciate EPA's response dated June 12, 2012, that acknowledges the ELG mnst be economically achievable. The EPA has been working on a proposed rule regarding effluent limitation guidelines (ELG) for CBM since 2008. During tbat time, natural gas prices have decreased significantly. I am told that this dynamic renders a CBM ELG economically unachievable. Rather than devoting additional time and resources to an effort that the EPA cannot justify - economically or on the merits - I encourage you to abandon any efforts to establish a CBM ELG. Please provide an update on this process. Does EPA intend to continue this ELG process even though EPA acknowledges that it cannot issue new guidelincs if they are economically unachievable? What are the costs to EPA of the entire ELG process for coalbed methane? I am told that EPA has actively been working on the CBM ELG since 2007 including an extensive survey of companies and that, to date, no economic information has been provided to the public even though the Clean Water Act requires an economic feasibility test. When can stakeholders expect to see such an analysis?

Response: I understand the importance of your questions to natural gas producers in Alabama and elsewhere. I have not been directly involved in this CWA issue, but if confirmed, I look forward to working with you as EPA looks at this important issue under the CWA.

30. EPA released proposals to further regulate coal fly ash in 2010, but has since failed to give any indication on how it might move forward. One of the proposals that EPA put forth would regulate coal fly ash as a "hazardous material" (under Subtitle C of RCRA). The uncertainty created by EPA's proposal and subsequent years of inaction are adversely impacting many industries including those that reuse and recycle coal fly ash to make safe products like cement, wallboard and carpet backing. These industries not only provide valuable products for Americans all over the country, but they help avoid disposing of coal fly ash in landfills and other impoundments. To what extent is EPA still considering this "hazardous materials" treatment for coal fly ash? Do you support regulating coal fly ash instead under Subtitle D and treat it as a "solid waste"? When can we expect EPA to announce a final determination on this important matter?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

Nuclear Radiation Monitoring (RadNet)

Sessions 31 In EPA's response to the accident at the Fukushima Daiichi nuclear power plant in Japan, I am told that the RadNet system carried out its mission "to monitor environmental radioactivity in the United States in order to provide high quality data for assessing public exposure and environmental impacts resulting from nuclear emergencies." In particular, my understanding

is that the timely, comprehensive and publicly accessible monitoring data generated from RadNet provided a factual basis for federal and state governments to reassure the American people that levels of radioactivity reaching the United States from Fukushima were "hundreds of times below levels of concern." As recognized at the time of inception of the RadNet system, it would be impractical to attempt to stand up such a monitoring system only in the event of an actual nuclear emergency. This is particularly true considering the need to make near-term assessments of potential risks and formulate protective actions, if needed, to protect public health. In addition, I am told that maintaining RadNet in a monitoring mode is necessary to maintain data on ambient levels of radiation in the environment for baseline and trend analysis, as well as in assuring continual readiness, including maintaining equipment and training personnel to respond rapidly to an event. Nevertheless, I am also told that some shortcomings in the RadNet system were noted during the Fukushima event and thereafter. What is needed to assure that the RadNet system will be fully maintained at a high level of readiness? What has EPA learned from the Fukushima event in regard to potential improvements to the system? More generally, what has EPA learned from the Fukushima event in regard to our nation's capability to monitor and analyze radiation in real-time to be able to more effectively fulfill its mission?

EPA agrees that the RadNet System performed well in providing information to the American public during the Fukushima event. As you noted, the Agency also identified challenges during this event and has taken a number of steps to further improve the program. Foremost, EPA has established stricter readiness goals and improved internal reporting for RadNet. EPA has an established goal of at least 80% of the RadNet monitors operating at all times, with the expectation that the Agency will regularly exceed that goal in practice. Additionally, the Agency has improved these elements:

- EPA personnel at the National Analytical Radiation Environmental Laboratory (NAREL) in Montgomery, Alabama, evaluate the status of each monitor daily.
- NAREL staff use high-speed computer connections to each air monitor to perform significant remote maintenance each day. NAREL is also installing backup telecommunications methods.
- Monitors requiring repair are returned to full service within two weeks, or sooner if EPA is responding to an emergency such as the Fukushima event. NAREL has worked with the monitor manufacturer to ensure that essential components are available, and appropriately stocked in inventory.
- EPA has also improved the presentation of RadNet data on the Agency's website so that it is easier to access and understand. This is an ongoing project and EPA will continue to work on ways to improve how radiation information is presented.

Senator Crapo

1. More than a year after the Supreme Court ruled unanimously against the EPA in the Sackett case, your agency continues its relentless harassment of the Sackett family in Idaho. In fact, for six years—and using an expansive view of power under the Clean Water Act--EPA has prevented the Sacketts from completing the construction of their dream home. It is unclear how exactly EPA's assertion of regulatory jurisdiction over the Sacketts would further the Clean Water Act's environmental objectives, especially given that the Sacketts have completed all the necessary local permitting. Given the toll this has taken on the Sackett family and the message it sends to small landowners across America, isn't it time for EPA to move on to higher priorities? When will your agency's harassment of the Sacketts cease?

Response: I believe that it is crucial that we follow the law with respect any statute that EPA implements, including the Clean Water Act. I understand that the Agency has taken steps to fully address the issues raised in the Supreme Court case that you reference. If confirmed, I commit to looking into this important issue.

2. Over the past couple of years, I have worked with a bi-partisan group of Senators to address the Ninth Circuit's 2011 ruling that forest roads are subject to a mandatory permit requirement under EPA's point source rules. Our legislation would codify into law EPA's 37-year policy that that forest management and associated forest roads are nonpoint sources under the Clean Water Act best regulated through state-adopted Best Management Practices. The litigation threatens the rural road network which is owned and managed, in large part, by counties, states and federal agencies. This is a priority and there is bi-partisan support to address this issue. While the U.S. Supreme Court recently ruled favorably on the mandatory permit issue, the court left open the question of forest roads as point sources of pollution. How will the agency comply with the recent Supreme Court rulings? Do I have your commitment that the EPA will work in cooperation with Congress as it develops a statutory fix for forest roads as point sources?

Response: I look forward to working with Congress on this key issue, if confirmed. In the meantime, the Agency will work with states, the forest industry, and other stakeholders to identify best management practices that can be used to protect water quality without creating burdensome or costly rules.

3. The US coordinated framework for the regulation of biotechnology was created to ensure environmental protection and consumer safety. This framework is the basis for a science based system and along with later laws that apply to EPA, such as the Pesticide Registration Improvement Act (PRIA), provide a predictable regulatory pathway across multiple government agencies for innovative new technologies to be put in the hands of American farmers. Given this Administration's policy positions supportive of development and use of biotechnology, including those articulated in the Bioeconomy Blueprint in April 2012 and commitment to transparency and science based decision making, I am troubled by recent delays in the regulatory process and impact on our agricultural competitiveness. Rather than embracing the coordinated framework, the EPA instead continues to operate under an unwritten policy that resists interagency coordination and ignores EPA's timelines under PRIA. This is especially important with respect to the approval of chemistries when they are tied to a deregulation of a biotech trait at USDA. How do you propose to deal with EPA's lack of timely chemistry approval with the respect to biotech traits given the administration's clear position on biotechnology?

Response: As the Assistant Administrator for the Office of Air and Radiation, I have not been involved in this issue. If confirmed, I can examine this issue more thoroughly and would be happy to discuss it with you in the future.

4. Many of our farmers and ranchers are concerned with the recent vigorous efforts by the EPA to re-write U.S. environmental policy through administrative rulemaking. Some agricultural interests claim that, in several of EPA's efforts, the emphasis appears to be on ratcheting up a regulatory enforcement philosophy, rather than encouraging incentive-driven efforts to address the Nation's water quality challenges. If confirmed, how would you respond to this observation as Administrator? Do you believe collaborative, incentive-based approaches to water quality problems have merit or would you snpport a more regulatory compliance approach?

Response: Senator, my entire career prior to coming to EPA in 2009 has been at the State and local level. I know that in order to make environmental progress, we need to have partnerships with the States. I believe in an approach where States and the Federal government work together, collaboratively to solve problems.

5. EPA has historically supported implementation and use of water quality trading as an innovative approach to achieve water quality goals more efficiently. As you know, trading is based on the fact that sources in a watershed can face very different costs to control the same pollutant. Trading programs allow facilities facing higher pollution control costs to meet their regulatory obligations by purchasing environmentally equivalent (or superior) pollution reductions from another source at lower cost, thus achieving the same water quality improvement at lower overall cost. In Idaho, for example, the Boise River watershed represents a unique opportunity to reduce non-point source pollutants coming from area agriculture communities to significantly lower costs for downstream municipalities to achieve even higher levels of pollution control. Given the success of trading mechanisms in the air program, would you support a trading structure for water quality improvements such as in the Boise River watershed? If water quality trading does not work everywhere, can the agency prioritize areas where water quality trading mechanisms could achieve cost effective environmental results?

Response: I understand that water quality trading has worked well in numerous circumstances, most recently associated with efforts to restore the Chesapeake Bay. The EPA has supported these efforts and works closely with states and local agencies who seek to initiate water quality trading opportunities. If confirmed, I look forward to working with you to learn more about water quality trading opportunities in Idaho and how the EPA could support them.

Crapo 6. The Air Pollution Cost Manual currently used by EPA in estimating costs for regional haze and other "best available retrofit technology (BART) determinations was published in 2002. Costs for designing, engineering and installing controls obviously have increased significantly since then. Given that the current cost manual was published over a decade ago, is it out-of-date? What steps are being taken by EPA to update it? Doesn't the use of an outdated cost manual increase the likelihood that EPA is underestimating regional haze compliance costs?

EPA encourages the use of up-to-date, case-specific cost information. The Control Cost Manual and EPA's Best Available Retrofit Technology (BART) Guidelines state that users of the manual, including states when developing regional haze state implementation plans (SIPs) and EPA when developing federal implementation plans (FIPs), can and should use more recent and more case-specific information provided it is properly documented so that the public and the state can assess its relevance and technical validity.

Crapo 7. EPA uses an air dispersion model, called CALPUFF Version 5.8, to assess projected improvements in visibility from proposed Nox retrofit technologies. How does EPA respond to scholarly, peer-reviewed studies asserting that CALPUFF Version 5.8 overestimates visibility

improvements? What does EPA need to do to update CALPUFF Version 5.8? Is this underway? Why is EPA not allowing the use of more recent versions of CALPUFF, such as Version 6.4?

> EPA has a long-standing practice of, and is committed to, using state-of-the-art models in the agency's efforts to improve air quality and reduce regional haze. EPA solicits and incorporates information and suggestions from the technical expertise in the modeling community as a matter of course. To that end, EPA is currently updating CALPUFF Version 5.8 to address issues identified by stakeholders and federal partners. EPA is aware of conference presentations that have evaluated CALPUFF version 5.8; however, none of these studies are considered scholarly, peer-reviewed studies. EPA has committed, as part of a recent grant of a 2011 petition, to revising its *Guideline on Air Quality Models* (published as Appendix W to 40 CFR Part 51) to incorporate model(s) or technical approaches, as appropriate, to address chemistry for assessing source impacts on ozone and secondary PM2.5.

Crapo 8. A large number of plants are expected to retire in 2015/16 – as the economy recovers and electric demand recovers. Experts expect regional problems because there are areas not served by natural gas pipelines where needed infrastructure may not be able to be put in place in this time frame or where replacement plants cannot be permitted and built within this time frame. MISO has done an analysis that shows 9% of capacity (12.9 GW at last estimate) is closing and there is not sufficient gas infrastructure to serve existing demand let alone new demand. Did EPA examine natural gas availability (via infrastructure such as pipelines and permitting timelines) when you issued the utility MATS rule, CASPR and the PM NAAQS and NSPS for GHGs?

> Electric utilities and electric regulatory bodies, like state public utility commissions, have a wide variety of options for meeting electric demand. There are adequate provisions in EPA regulations to allow for planning flexibility in response to reliability challenges. EPA conducts detailed analysis to support its actions and projects that fuel diversity will be maintained in the future and that the full range of electric generating resources will be maintained, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting its analyses.

9. I understand EPA is conducting an evaluation of how well the EDSP Tier 1 screening methods and Battery actually performed.
- If certain methods are found to be flawed or aren't performing adequately, will EPA make the necessary adjustments to the methods or test Battery before requiring additional substances to undergo EDSP Tier 1 screening?
- What challenges does EPA see in this next phase?
- What lessons has EPA drawn from its implemeutation of the EDSP program to date?

Response: As I understand it, the EDSP screening methods are undergoing external peer review. If confirmed, I will work to ensure that the endocrine program is on sound scientific footing.

10. EPA's endocrine disruptor regulatory program is risk based, which allows EPA to set safe levels of exposures based on a determination of both hazard and exposure.
- Do you agree that a risk-based approach is more scientifically sound than a hazard based approach?
- Do you think this approach provides EPA adequate authority for addressing the "endocrine

disruptor" issue?

Response: My understanding is that the EPA's endocrine disruptor screening program is a risk based program and is statutorily based. If confirmed, I will work with you and the committee to ensure that the endocrine program is on sound scientific footing.

11. The Definition of Solid Waste (DSW) rule was finalized in December 2008. The rule permits certain valuable secondary material streams that are beneficially reclaimed, such as spent catalysts and spent solvents, to be excluded from RCRA Subtitle C requirements. The reclamation process must be either (1) under the control of the generator of the materials, or (2) the materials may be transferred by the generator to another person or company for reclamation. The 2008 rule was challenged by the Sierra Club but the case was put in abeyance after EPA agreed in a settlement with the Sierra Club that it would reconsider parts of the rule. The reconsidered rule was proposed for comment in July 2011. In that rule EPA proposed to take away the transfer based exclusion and proposed numerous additional requirements and conditions on the recycling and reclamation of valuable secondary materials. The 2011 reconsidered proposed rule creates little to no incentive for parties to recycle or reclaim secondary materials. Even more problematic, EPA has requested comment on subjecting 32 regulatory exclusions or exemptions that have been in existence for decades and have become part of manufacturing operations, for example, the closed-loop recycling exclusion, to a new level of scrutiny, and additional recordkeeping and notification requirements.
- Do you agree that EPA should increase incentives for reuse/recycling, since incentives for recycling not only divert hazardous wastes from landfills and incinerators, but also allow the manufacture of valuable products?
- Do you agree that the increased burden of the proposed DSW rule will tend to drive wastes that are currently recycled to disposal, which directly conflicts with the foundation of RCRA—reduce waste through recycling?
- EPA is still at the proposal stage on the DSW rule. The proposal does not promote an "all-ofthe-above" national energy strategy consistent with the President's stated objectives. Will you commit to reexamine the rule to ensure that it is based on sound scientific data, that it will decrease the burden of facility waste management and increase incentives to recycle materials to recover valuable waste streams?

Response: As a former state environmental agency commissioner, I know the importance of encouraging recycling to reduce waste disposal and the transition to sustainable materials management to support the reclamation of valuable secondary materials. If confirmed, I will plan to be actively engaged in EPA's DSW rulemaking efforts.

12. On March 8, 2011, Senator Lisa Murkowski (D-Alaska) sent a letter jointly addressed to Secretary of the Interior Ken Salazar and Secretary of Agriculture Tom Vilsack regarding EPA's planned rulemaking under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to impose financial assurance regulations on the hardrock mining industry. The letter highlighted the history and effectiveness of the Bureau of Land Management (BLM) and U.S. Forest Service (USFS) financial assurance requirements. Expressing concern that EPA is moving forward without properly taking into consideration the existing financial assurance programs, Senator Murkowski posed a series of questions to Secretaries Salazar and Vilsack regarding whether EPA's rulemaking is warranted. One of

those questions asked how many hardrock mining and beneficiation plans of operation had their agencies approved since 1990, and how many of those sites were placed on the CERCLA National Priorities List (NPL). On June 21, 2011, Robert Abbey, Director of BLM, responded that the bureau held $1.7 billion dollars in financial assurances, 659 plans of operations authorized by BLM's Mining Law Administration Program had been authorized since 1990 and none of those sites had been placed on the CERCLA NPL. Secretary Vilsack replied on July 20, 2011 that his department had permitted 2,685 hardrock mines since 1990 and that none of those sites had been placed on the CERCLA NPL list. a. Given the response from the Departments of Interior and Agriculture, what evidence does EPA have that additional financial assurance requirements under CERCLA are warranted for currently operating hardrock mining sites?

Response: EPA's 2009 Federal Register Notice identified classes of facilities within the hard rock mining industry as those for which EPA would first develop CERCLA 108(b) financial assurance requirements based upon several factors, including the quantities of hazardous substances released to the environment and clean up expenditures on these types of facilities. If confirmed, I can examine this issue more thoroughly.

13. What steps has EPA taken to consider the BLM and USFS programs implementing financial assurance requirements on the hardrock mining industry to avoid unnecessary and costly duplication of existing federal programs?

Response: It is my understanding that EPA is working with the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS).

14. Additionally, the Western Governors' Association (WGA) in Policy Resolution 11-4 on "Bonding for Mine Reclamation" expressed concern that "a new federal program could not only duplicate, but in fact supplant the state's existing and proven regulatory programs" for bonding of reclamation activities for hardrock mining. According to the WGA, "[t]he member states have a proven track record in regulating mine reclamation in the modern era, having developed appropriate statutory and regulatory controls, and are dedicating resources and staff to ensure responsible industry oversight." The WGA sent this policy resolution to EPA on Aug. 10, 2010, asking the agency to work in partnership with the states on this issue. c. What has or is EPA doing to learn about and address the state pre-emption concerns voiced by the WGA in advance of issuing a proposed rule? Has EPA formally reached out to the WGA to forge a partnership on this issue?

Response: Having worked for state government, I understand the importance of working with our state agency partners. It is my understanding that EPA is reaching out to states, including states in the Western Governors' Association, to discuss the interaction of a Section 108(b) rule with existing state hard rock mining state financial responsibility programs. If I'm confirmed, I commit to work with States and other stakeholders on this issue.

15. On April 9, 2013, EPA notified my office that the Agency is suspending its action to compel my constituent, Tru Prodigy, to change its product trade name that was previously approved by the Agency and that is similar to trade names used by manufacturers of comparable products. I presume no further agency action will be taken on this matter, especially in light of the significant sums invested by Tru Prodigy to support its product trade name following the Agency's initial approval.

a. **Will you assure me that my office will be informed in advance of any action to change its position on this matter, that any new policy would apply uniformly to all trade names of a**

similar nature, and that any entity using a trade name previously approved by the EPA will not be forced to abandon use of that name?

Response: If confirmed, I assure you that your office will be informed in advance of any such actions.

Senator Wicker

Wicker 1. Should our nation's steady progress in making reductions to air pollution be considered in the NAAQS revision process?

While great progress has been made in achieving national air quality standards, air pollution levels remain unhealthy in numerous areas of the country. The Clean Air Act requires EPA, every five years, to review the body of scientific evidence on the effects of air pollution on public health and

welfare, and, based on that, determine whether to revise the standards to meet the requirements of the Act.

Wicker 2. NAAQS regulations are purely to benefit public health and not economic cost, but has the EPA considered how health is negatively impacted by the job losses caused by these regulations?

The over 40-year history of the Clean Air Act is one in which reducing harmful air pollution has gone hand in hand with economic growth and job creation. EPA's mission is protecting Americans from pollution and its adverse health and environmental effects, including through implementation of Clean Air Act's requirements in accordance with the law and the best available science. Congress mandated that the NAAQS be set based on a scientific assessment of the effects of relevant air pollution on public health and welfare. The air quality standards must be set based on science without regard to costs of implementing pollution controls to achieve the standards. Costs are considered during implementation of the standards.

Wicker 3. Will you be accepting comment on maintaining the current ozone standard once you propose the new rule? Do you believe it is appropriate to consider only new proposals that lower the current standard? Doesn't that prevent EPA from considering science showing that the current standard or even a higher standard is sufficient to maintain public health?

As with prior NAAQS rulemakings, the public will have the full ability to comment on all elements of EPA's proposal and provide EPA with views on whether to retain or revise the current ozone standard.

Wicker 4. Can the President tell EPA where to set national ambient air quality standards based on policy considerations?

a. Since the President directed EPA not to reconsider the 2008 ozone standard, can he also direct EPA to take additional time to consider revisions to NAAQS?

The Clean Air Act requires EPA periodically (every five years) to review the body of scientific evidence on the effects of air pollution on public health and welfare, and based on that determine whether to revise the standards to meet the requirements of the Act. In the rulemaking to reconsider the 2008 ozone NAAQS, the President did not instruct EPA where to set the ozone standard; instead, his request concerned the timing of the reconsideration, which is a separate rulemaking from the ongoing, five-year periodic review

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, the Office of Management and Budget (OMB) returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama

had requested that the draft rule be returned as he did "not support finalizing the rule at this time."

Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

Wicker 5 How do you view the importance of input from the states when formulating standards and reviewing implementation?

In the Clean Air Act, Congress established a system under which EPA and states each have important roles in setting standards and implementing the Act. Dialogue and partnerships with States are an important part of EPA's efforts to reduce air pollution under the Clean Air Act. I have learned from experience, including my experience working for state governments, that working closely with stakeholders, including state government partners, can lead to better programs. *If I am confirmed, EPA will continue to work with states and other stakeholders under the Clean Air Act to reduce air pollution and the damage that it causes.*

Wicker 6. If you do lower the standard for ozone, what will be the compliance burden on the states?

Implementation of the NAAQS will be achieved through a combination of state plans and federal measures. The states' obligations are set forth in Title I of the Clean Air Act.

Wicker 7. Do you believe that the NAAQS review and implementation process will ever catch up to its statutory 5 year deadlines for review? What steps would you take to have the timing of the NAAQS program comply with the Clean Air Act?

EPA is continuing to work to streamline its NAAQS review process in order to comply with the five-year review cycle established in the Clean Air Act. The agency's goals are to maximize the efficiency and transparency of the process while maintaining its scientific and technical depth and integrity

Wicker 8. Please identify language in Section 109 of the Clean Air Act that specifically prohibits the consideration of costs in the setting of National Ambient Air Quality Standards?

The U.S. Supreme Court held in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting national ambient air quality standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. The Court's reasoning is found at 531 U.S. 464-472.

Wicker 9. As part of the standard setting process, is EPA prevented from comparing the health and other effects of a considered NAAQS standard with the health and other effects of unemployment and economic dislocation?

In *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), the Supreme Court held that EPA may not consider the costs of implementing the standards in setting NAAQS that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act. The Court rejected the argument that EPA could consider costs of implementation because health

and other effects could stem from implementation strategies. Although the EPA cannot consider the costs of implementing the standards when setting the NAAQS, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans (SIPs) to implement the NAAQS. Likewise EPA has discretion to consider costs in many of the Clean Air Act provisions authorizing EPA to set standards to control emissions.

Wicker 10. Leaving aside the question of cost, how does EPA assess the health benefits associated with economic dislocation caused or likely to be caused by the new standards? How are they quantified when making health-based assessments for revised National Ambient Air Quality Standards?

The over 40-year history of the Clean Air Act is one in which reducing harmful air pollution has gone hand in hand with economic growth and job creation. EPA's benefits assessments focus on the benefits associated with reductions in air pollution. EPA acknowledges in the regulatory impact analyses that there are unquantified benefits and disbenefits that are not included in our estimates of total net benefits.

Wicker 11. How will you work with the CDC and others outside the agency to ensure you are using the very best science before you set the new ozone standard?

EPA is committed to using the best available science in its NAAQS reviews, which is why the process ensures extensive peer-review by EPA's Clean Air Scientific Advisory Committee and public comment on the Integrated Science Assessment (ISA), the Risk and Exposure Assessments (REAs) and the Policy Assessment (PA), which the agency relies upon in making judgments on the current and potential alternative standards. CDC has been involved in the ongoing Ozone NAAQS review.

E-15 / Ethanol

Earlier this year I introduced with Senator Vitter a bill to reverse an EPA regulation that would lead to an increase in the amount of ethanol in gasoline. Ethanol is less energy efficient than oil and adds to the cost consumers pay at the pump. Furthermore, many environmental organizations have raised concerns about the increased inputs of energy, pesticides, and fertilizer needed to grow more corn for ethanol production. World hunger organizations have raised concerns about the mandate's effect on food prices. If ethanol production is a profitable venture, some claim it should not need to be mandated.

12. Can you justify why we should continue mandating the use of ethanol?

Response: EPA implements conventional and renewable fuels and fuel additives regulations and programs as required under the Clean Air Act, passed by Congress.

13. The last administrator clearly took on the role of promoting the ethanol industry. Do you believe your role as administrator is to promote one industry over others, or that decisions should be made that consider the protection of the environment and the economy?

Response: EPA implements conventional and renewable fuels and fuel additives regulations and programs as required under the Clean Air Act. EPA does not promote any specific industry.

Wicker 14. EPA has granted a waiver to California for its Zero Emission Vehicle (ZEV) program. As a general matter, what is your view on sales mandates, i.e., using environmental laws as authority to require that automakers sell a certain number of a particular type of vehicle?

Wicker 15. Do you believe that a manufacturer should be required to sell the mandated vehicles at a loss if that is the only way to meet the required Government sales volume?

Wicker 16. What is EPA's role in assessing the efforts of states that adopt this program to create the infrastructure, incentives, and other mechanisms that will help this program be successful?

Response to questions 14, 15 and 16: EPA's waiver decisions are governed by the Section 209(b) of the Clean Air Act, which requires the agency to grant a waiver request from California unless the Administrator makes any of the following three findings:

- California's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious,
- California does not need its standards to meet compelling and extraordinary conditions, or
- California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Clean Air Act.

Wicker 17. What recourse do automakers have if EPA does not exercise this oversight?

The automakers have supported one national vehicle program, and harmonization of federal greenhouse gas and criteria emission vehicle standards with California standards. EPA's role in providing a waiver for California is governed Section 209(b) as described above.

Wicker 18. EPA recently mandated a third-party certification regime for products in order to participate in the ENERGY STAR program. This appears to be an effort to address concerns raised in a 2010 GAO report. I am concerned the EPA's response is overly broad and attempts to use a one-size-fits-all approach to a program with over 60 diverse product categories. Will you closely review these changes, specifically the addition of the third-party certification process, and meet with industry stake-holders to discuss the real impact of these regulatory changes?

Yes, EPA continues to monitor the new third-party certification process, working with EPA-recognized certification bodies and industry stake-holders on an ongoing basis to minimize adverse impacts.

Wicker 19. Will you ensure that a consensus-based process is utilized, as accredited by the American National Standards Institute, to safeguard transparency and fairness in any changes to and development of the ENERGY STAR program?

In changing or developing new elements of the ENERGY STAR program, EPA remains committed to an open and transparent process that actively engages stakeholder input.

Wicker 20. What is EPA's plan for product categories to "test-out" of the new testing mandates based on their compliance track record?

EPA is open to adjusting aspects of the ENERGY STAR third-party certification program, in consultation with our industry partners, as our experience with it grows.

Water Issues

21. In 1941, Congress authorized the Yazoo Backwater Project to protect the Delta area of Mississippi from flooding on the Mississippi River. This project included a combination of levees, drainage structures, and pumps. When the time came to complete the final component of the project, backwater pumps to protect homes and agricultural lands, EPA vetoed its construction. How does the construction of a pump, that would complete the Yazoo Backwater Project to protect vulnerable Mississippians from catastrophic flooding, differ from pumps constructed in Louisiana following Hurricane Katrina?

Response: I am not familiar with the issues associated with the proposed Yazoo pumps or the veto decision made in the previous administration. If confirmed, however, I am eager to learn more and to understand better what options may be available for providing Mississippians with flood protection.

22. How could EPA be more transparent in the decision-making process for situations like the Yazoo Backwater Project, so a congressional hearing is not required to learn what the differences are between the proposed pump project in my state and the important pump projects that were constructed in other states?

Response: Opportunities for public participation and transparency are key elements for any agency as we establish policy and develop regulations. I am not familiar with the details of the Yazoo Backwater project, but, if confirmed, I am eager to learn more and to understand better what options may be available for flood protection.

23. Much of your time at EPA has been spent directing the office of Air and Radiation overseeing regulations pertaining to the Clean Air Act. As Administrator of EPA you would oversee a significant amount of regulations and policy development under the Clean Water Act. How would you approach balancing our nation's economic recovery and growth with commonsense policies to ensure Americans have clean water?

Response: Yes, my time at EPA thus far has been spent focused largely on issues related to implementation of the Clean Air Act. I agree with you that administration of agency programs requires a commonsense approach that works to protect public health and the environment as well as jobs and the economy. If confirmed, I look forward to benefiting from your experience and advice regarding the Clean Water Act and implementing the law with fairness, predictability, and common sense.

24. How would you interact with states when updating or developing water regulations, such as determining numeric nutrient standards for the Mississippi River and Gulf of Mexico?

Response: I have experience working in a state agency and understand the importance of an effective partnership between federal and state programs. If confirmed, I will rely extensively on my state background to assure that CWA requirements, such as the water quality standards program, are effectively implemented as partnerships and that reflect the specific circumstances present in each state.

25. Do you agree that States should be able to provide meaningful input and direct the development process of water regulations with the assistance, not coercion or threat by EPA?

Response: Yes, I agree.

26. Across Mississippi and the country, many small towns and municipalities have come under pressure by EPA to upgrade their wastewater treatment facilities by more stringent water regulations. A significant and pervasive problem is that many of these towns do not have the tax base or means to meet the cost of upgrading their wastewater systems. However, not acting could result in harsh fines imposed by EPA.
Does the concept of imposing fines on small towns across the country for not upgrading water and wastewater facilities – when they have no capital or means to do so – make sense?

Response: I am not as familiar with Clean Water Act issues but, if confirmed, I look forward to better understanding these concerns and improving the manner in which we implement our programs. I look forward to working with you to identify opportunities to increase flexibility for small communities so they may focus tight resources on infrastructure improvements that yield the greatest results. This is a commonsense solution we can work together to apply in communities in Mississippi and across the nation.

27. What options could EPA offer to small towns and rural communities to realistically help them achieve cleaner water standards besides imposing fines?

Response: I share your interest in working to increase flexibility and improve opportunities for small towns and rural communities to achieve their clean water goals. I believe a key is to allow communities to establish cost effective priorities based on results that achieve the greatest clean and safe water return on their investments. If confirmed, I look forward to working with you and communities in Mississippi to achieve cost effective and common sense solutions to their aging infrastructure concerns.

28. Why has the Administration proposed cutting funding from Drinking Water and Clean Water state revolving funds, in the amount of $472 million, when localities depend on this funding to help maintain and upgrade critical water infrastructure?

Response: Senator, I share your view that the Drinking Water and Clean Water SRF are crucial for our States. I understand that the American Recovery and Reinvestment Act made a major investment into these funds. If confirmed, I will continue to work with States on water infrastructure.

29. Can the cost-savings of this cut to state revolving funds be found elsewhere within EPA's budget that would not significantly impact rural communities?

Response: Senator, I am not familiar with the entirety of the EPA budget request. If I'm confirmed, I would work to ensure that the proper emphasis is given to the crucial issue of infrastructure.

30. In reference to the EPA's recent letter to the U.S. Army Corps of Engineers (USACE), Mobile District, related to the Port of Gulfport Harbor Expansion project: Are you aware that the Port of Gulfport (hereafter referred to as "the Port") is currently undergoing an EIS review of its expansion plan?

Response: Please see response to question 40.

31. Are you aware that the EIS process is well underway, and in fact is almost half complete?

Response: Please see response to question 40.

32. Are you aware of the projects that Region 4 NEPA Chief, Heinz Mueller, has recommended the USACE look at includes the cumulative impacts of the Port expansion project, the proposed MS DOT Hwy 601 project, and a separate project apparently called the "Domain at Prime Centre"?

Response: Please see response to question 40.

33. Is Region 4 aware that the ongoing EIS process for the Port expansion is currently reviewing cumulative impacts?

Response: Please see response to question 40.

34. Are you aware that the "Domain at Prime Centre" project is in no way a part of the Port expansion project, that it has no official sanction from the Port, that it is not contemplated in any future expansion plans of the Port, and that any claims to the contrary are purposefully misleading and in direct conflict with what has been communicated by the Port and the State to the developers of that property?

Response: Please see response to question 40.

35. Please explain why the EPA is attempting to utilize the EIS process of the Port expansion to advance the special interest request of a developer.

Response: Please see response to question 40.

36. Can you share all written communications and a list of meetings, with attendees and purposes, between Region 4 and/or EPA HQ employees with representatives of the "Domain at Prime Centre?"

Response: Please see response to question 40.

37. Please explain what Mr. Mueller meant in the aforementioned letter by: "...the EPA recommends the use of both regulatory and non-regulatory approaches in an effort to better evaluate the cumulative impacts of these projects...?"

Response: Please see response to question 40.

38. Are you of the opinion that the process used by the USACE and governed by law and established regulations are somehow insufficient and requires "non-regulatory" additions?

Response: Please see response to question 40.

39. What other "non-regulatory" review processes are currently being promoted by EPA and will you attempt to push "non-regulatory" efforts in regulatory processes if you are confirmed as Administrator?

Response: Please see response to question 40.

40. Please explain why EPA's Region 4 has suggested the Partnership for Sustainable Communities be engaged in an EIS process for a project that proposes the expansion of a port terminal into the Mississippi Sound and a deepening of the federal channel?

Response (to 30-40): I am not familiar with the issues surrounding the Port of Gulfport Harbor, but if I am confirmed I look forward to working with you and with EPA's Region 4 office in Atlanta to better understand the situation.

Senator Boozman

SDWA (Electronic Water Quality Reports)

Historically, most water utilities have sent hard copies of annual water quality reports to their customers through the postal mail, at a cost of millions of dollars per year. During the 112th Congress, I was pleased to be the lead original cosponsor of S. 1578, the "End Unnecessary Mailers Act," with Senator Toomey. We were joined on this legislation by Senators Casey, Harkin, Pryor, and several others. Our bill would have given most community water systems the option to: (1) mail the annual consumer confidence report on the level of contaminants in the drinking water purveyed by that system to each customer (required under current law); or (2) make such report available on the system's website and, upon request, by mail. S. 1578 would have required a system that elects the latter to provide customers notice, in the manner elected by the customers to pay their bill, of such report's availability and that the system has remained in compliance with maximum contaminant levels. S. 1578 did not pass last year, but in January 2013 it was rendered unnecessary following EPA's "Retrospective Review of Existing Regulations," when the EPA issued an "interpretive memorandum" and determined that water utilities may stop mailing hard copies of the reports if they appropriately notify customers of their availability on the Internet, and mail customers a hard copy upon request. This decision actually increases transparency, by making more reports available online and in hard copy, and it allows utilities to spend resources cleaning our water, instead of printing and mailing unnecessary mailers to citizens who would often rather be notified and review reports electronically. I strongly support this EPA action. Question: If confirmed, will you support the EPA's interpretive memorandum on this issue?

Response: Yes, if confirmed, I will support the implementation of the interpretive memo on this issue.

Safe Drinking Water Act (SDWA) - MCL

EPA is considering regulating several naturally occurring contaminants found in drinking water that originates as groundwater or surface waters. Some have suggested that EPA regulate these contaminants to low levels because they can cause cancer at high levels. However, regulation at low levels would raise technical feasibility and implementation cost challenges. Given the potentially enormous compliance burdens on water utilities throughout the U.S., reasoning would lead to EPA redirecting some of its research budget to conduct health-based studies of these naturally occurring substances – before regulating them. The studies would determine whether naturally occurring levels of these substances affect human tissues in the same way as high levels do in experimental animals. I recognize these types of studies are time intensive, are expensive to undertake, and involve sophisticated scientific protocols and analyses. At the same time, I think we all recognize that the costs of over-regulation are likely to dwarf the costs of a very good research program to answer the relevancy question of high-dose animal studies for the public.

2. Why has EPA not lead such a research effort that would have broad applicability for public health and will you commit your leadership at EPA to implementing such a program?

Response: Please see response to question 3.

3. What incentives do you believe are needed for EPA to encourage the regulated community to invest research dollars in providing the agency highly relevant information illuminating the mechanisms of toxicity of substances in order for EPA to make better regulatory decisions?

Response (to 2 and 3): These are very important questions that address issues associated with implementation of EPA's Safe Drinking Water Act responsibilities with which I am not yet familiar. If confirmed, I will look forward to further discussing these concerns with you and to better understand options available under the SDWA to respond to them. I strongly share your interest in providing leadership on these key questions.

4. Petitions to ban or restrict the use of ammunition and tackle containing lead components for use in hunting, fishing and shooting continue to arise. The EPA has correctly denied these petitions in the past. If you are confirmed, will you uphold EPA's decision that it does not have authority under the Toxic Substances Control Act (TSCA) to regulate ammunition and fishing tackle? Would you support efforts to amend TSCA in order to provide additional reassurances that the EPA does not have the authority to regulate traditional ammunition with lead components and lead fishing tackle?

Response: Senator, I understand that EPA has denied petitions to regulate ammunition and fishing tackle. I have no position on Congressional efforts to codify that denial.

5. In March 2011, EPA issued a document that said states should take the lead in addressing nutrient pollution. Some states took the agency at its word and have developed robust plans for reducing nutrient loading into waterways. Despite state actions that will actually reduce nutrient loading, EPA still is pressuring states to waste resources on trying to develop scientifically defensible numeric nutrient criteria – an effort that failed in Florida and is proving equally challenging elsewhere. Will you commit that EPA will not try to force states to agree to a schedule for adopting numeric nutrient criteria, particularly if they are already taking other actions to address nutrients?

Response: I believe that States should take the lead, with respect to numeric nutrient criteria. If confirmed, I commit to working with States to find innovative solutions to pressing water quality challenges.

6. I am told that EPA is linking the federal assistance that Congress appropriates to fund state water quality programs to state commitments to a timetable for the development of numeric nutrient criteria. Congress has not authorized these conditions on funding. Will you commit that EPA will not use congressionally appropriated funding to black mail states into taking actions that are not required by the Clean Water Act, including the development of numeric nutrient criteria to replace legally adopted, EPA-approved, narrative nutrient criteria?

Response: While I am not familiar with this specific issue, I commit that the Agency will not take any action that would be inconsistent with the Clean Water Act if I am confirmed. I believe that States should be in the lead, with respect to numeric nutrient criteria.

7. In 2012, the Secretary of the Interior signed Secretarial Order 3321, establishing the National Blueways System (NBS). According to the Department of the Interior, the NBS was established to recognize large river systems conserved through diverse stakeholder partnerships and to promote cooperation in support of economic development, natural resource conservation, outdoor recreation, and education in these river systems. Secretary Salazar has written that the NBS is "locally-led, voluntary and non-regulatory." Accordingly, I have been pleased to see that the EPA is not participating in the NBS program. If confirmed, would you maintain EPA's non-participatory status in the National Blueways System?

Response: I am not familiar with this Department of Interior program. However, if confirmed, I will certainly review it before any decision is made regarding participation.

Senator Fischer

Spill Prevention, Control, and Countermeasure (SPCC) Plans

1. In order to comply with the Spill Prevention, Control, and Countermeasure (SPCC) rule for on-farm fuel storage, EPA officials have said farmers and ranchers need to determine if fuel storage on their farm and ranches "would reasonably be expected" to discharge oil into waters of the United States. If so, they are then subject to the rule. But when questioned, EPA officials have refused to further define the phrase "reasonably be expected" and only say farmers and ranchers should consider a worst case scenario. Could you help my constituents by better defining when a "reasonable expectation" exists? If a farmer determines a reasonable expectation for a spill to reach waters does not exist, what criteria will EPA use to evaluate whether they agree with a farmer's determination? What certainty do farmers and ranchers have that their determinations will be agreed to by EPA if inspected?

(a) Does agriculture have a history of large oil or fuel spills?

Response: As the Assistant Administrator for the Office of Air and Radiation, I have not been involved in this issue. If confirmed, I will commit to helping ensure the EPA's oil spill prevention program offers and welcomes an open discussion with the farming and ranching sectors.

b) If not, why did EPA seek to include farms and ranches in the SPCC regulation?

Response: Please see response to (a).

(c) How does EPA justify the possibly significant compliance cost to farmers and ranchers given the lack of history of spills?

Response: As a former state environmental agency commissioner, I know the importance of preventing oil spills from contaminating water resources. If confirmed, I will commit to helping ensure the EPA's oil spill prevention program offers and welcomes an open discussion with the farming and ranching sectors.

2. Because of the SPCC regulation, I have heard farmers and ranchers are now buying smaller fuel tanks in order to avoid the high cost of compliance. The smaller tanks mean that fuel delivery personnel would likely need to deliver fuel more often (at a higher cost to the farmer) in order to meet the needs of their customers. Would you agree that large fuel trucks making more trips and spending more time on the road not only increases the potential for a spill from those trucks, but also increases the environmental impacts because of the increased time spent on the road?

Response: If confirmed, I commit to learning more about the issue of fuel tank replacement in the farming and ranching sector and will provide you with information resulting from EPA review of this issue.

Concentrated Animal Feeding Operation (CAFO) Data Release

3. In 2011, the Department of Homeland Security (DHS), U.S. Department of Agriculture (USDA), EPA, and others engaged in discussions with the Office of Management and Budget's Office of Information and Regulatory Affairs with regard to information sought by EPA through its

proposed Clean Water Act Section 308 Concentrated Animal Feeding Operation Reporting Rule. At that time, food and agriculture stakeholders, including DHS and USDA, raised concerns related to biosecurity of the facilities about which information was to be collected and compiled. Concerns were expressed that such information, available in a single publically accessible database, constituted a potential threat to the security of the animal feeding operations listed in the database and even a potential threat to the owners/operators living in close proximity to the operations. At the hearing, you stated, "I'm not familiar with this database." So, I would like to ask again, for the record, will you commit to not developing, contracting for, or implementing a national animal feeding operation database during your tenure, should you be confirmed as Administrator?

Response: As the Assistant Administrator for Air and Radiation, I have not had the opportunity to become familiar with the database in question. However, I share your concerns about the protection of our nation's food supply, and I commit to you that if confirmed, I will take a closer look at this issue and will work with you on this and other agricultural issues going forward.

CAFO Clean Water Act Permits for "Dust and Feathers"

4. It is my understanding that EPA has been issuing enforcement orders compelling livestock and poultry farmers to seek a federal Clean Water Act permit for small, incidental amounts of dust, feed, feathers, and manure on the farmyard that could be washed away by rainwater, even if the farm is located a long way from any stream.
Do small amounts of dust, feathers, and manure found on any livestock farmyard require a federal Clean Water Act permit when washed by rain into a stream, or is this ordinary agricultural stormwater specifically exempted from regulation by the Clean Water Act?

Response: As the Assistant Administrator for the Office of Air and Radiation, I have not been involved in the regulation of stormwater from poultry and livestock operations under the Clean Water Act. Your question raises very important issues about the commonsense implementation of the Act and appropriate application of existing agricultural exemptions. If I am confirmed, I will work with you to better understand these issues and to identify options for fairly and effectively responding to them.

Electric Utility Issues

5. Since 2009 EPA has issued or proposed over 2,900 pages of greenhouse gas regulations and you have stated in the past your intent to pursue a "deliberate, common sense approach"[1] to regulating carbon. However, I am concerned that there are inconsistencies with this statement and EPA's actions. For example, EPA entered into a consent decree to issue greenhouse gas New Source Performance Standards for existing units by May 26, 2012. Yet EPA has not clearly stated its plans regarding regulation of existing fossil fuel power plants. I represent a state that gets approximately 70% of its electricity from coal. How do you reconcile these inconsistencies, and can you please explain what the plan really is?

With regard to power plants, EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants and is not currently developing any existing source GHG regulations for power plants. It should be noted for the record that a significant portion of the regulations to which your question refers are those addressing greenhouse gas emissions from light-duty vehicles for model years 2012-2016 and

2017-2025 and from heavy-duty vehicles from 2014-2018. As I stated in my testimony before the Committee, these common-sense regulations will achieve substantial oil savings and consumer cost savings, while dramatically reducing greenhouse gas emissions. Other relevant regulations include those implementing the congressionally mandated greenhouse gas reporting program, which helps to provide the general public, industry and policymakers with transparent information with regard to greenhouse gas emissions.

6. Issuing proposed greenhouse gas (GHG) New Source Performance Standards for new and existing power plants carries an additional burden, insofar as these regulations are deemed to be in effect when proposed, not when finalized. Done incorrectly, just proposing these rules has significant negative consequences for our economy. Will you commit that when the EPA is ready to address GHGs from existing fossil fuel power plants, it will issue an Advanced Notice of Proposed Rulemaking (ANPRM) that includes substantive content and a record backing up the proposal to allow industry and others to fully comment on EPA's contemplated approach before moving forward with a proposal?

EPA is not currently developing any existing source GHG regulations for power plants. In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency would ensure, as it always seeks to do, ample opportunity for States, the public and stakeholders to offer meaningful input on potential approaches.

7. Regarding impacts from final, proposed, and expected EPA regulations on coal-fired generation, please explain the significant differences on coal-fired generation shutdown projections between the EPA projections and industry expert organizations projections, such as those from FERC, NERC, EIA, and others.

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figures. External analysts, , including GAO[xliv], CRS[xlv], the Bipartisan Policy Center[xlvi], and Analysis Group[xlvii] have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal- fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

8. How will you assure us that the finalized greenhouse gas New Source Performance Standards for new coal fired power plants will address the concerns that the standards be technically achievable and cost effective?

[xliv] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[xlv] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf

[xlvi] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability

[xlvii] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf

In response to its proposal, EPA received extensive public comment, much of it addressed to issues related to technical achievability and to cost. The agency is evaluating those comments and will take those comments fully into account before issuing a final rule. Any final rule that EPA issues will reflect the agency's best analysis of cost and achievability.

9. What are your plans to lead the EPA in the forthcoming development of the carbon dioxide New Source Performance Standards for existing power plants? How would you assure these new standards will be technically achievable and cost effective for existing coal fired power plants?

EPA is not currently developing any existing source GHG regulations for power plants, but if the agency does undertake existing source guidelines, it will ensure that they meet the Clean Air Act requirements of achievability and cost considerations.

10. How would you assure the upcoming EPA proposed rules to tighten the Clean Water Act power plant effluent discharge standards are reasonable, technically achievable, and cost effective for all fuel types?

Response: As you know, I have worked hard to make sure that we carefully monitor the design and implementation of EPA's air pollution rules to keep costs reasonable. If confirmed, I look forward to working to ensure that requirements and implementation of rules like the Clean Water Act power plant effluent discharge standards are reasonable, technically achievable, and cost effective.

11. **In your experience and opinion, do you believe states do a good job of protecting state and local environments? Do you believe the states have the first responsibility to develop environmental compliance plans? If so, how would you explain the EPA's recent efforts to put Federal Implementation Plans in place prior to allowing the States to implement their State Implementation Plans?**

My experience is that states and EPA need to work together to protect the environment. This is the approach taken in the Clean Air Act, which gives both states and EPA authorities and responsibilities to provide clean air and protect public health. As discussed below, EPA has a mandatory duty under the CAA to promulgate a FIP in certain circumstances that are required by law when a state does not meet its SIP obligations under the CAA. In practice, EPA strives to avoid situations in which a FIP is necessary. EPA's strong preference is for states to develop and submit their own SIPs that meet CAA requirements, and EPA works with states to help them to develop approvable SIPs in order to avoid a FIP in the first instance or to replace a FIP with an approvable SIP as soon as possible.

The use of a SIP call or a FIP is governed by the provisions of the Clean Air Act. Under section 110(c), the EPA is legally required to issue FIPs in two specific circumstances:

1. If EPA finds that the state failed to make a required SIP submission that is complete (including failure to make any SIP submission whatsoever), or
2. If EPA disapproves a required SIP submission in whole or in part.

EPA's legal obligation to promulgate such a FIP only ends if the state makes, and EPA fully approves, the required SIP submission before the promulgation of the FIP. EPA does not have legal authority or a legal obligation to promulgate a FIP in other circumstances.

Coal Ash

12. What is EPA doing to encourage the recycling of coal ash? As Administrator, will you help the growth in coal ash recycling resume by at least taking the threat of a hazardous waste designation off the table?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

Regulatory Certainty for Animal Feeding Operations

13. Livestock and poultry operations are seeking regulatory certainty on the applicability of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, the Superfund law) and the Emergency Planning and Community Right-to-Know Act (EPCRA) to their operations. Superfund and EPCRA include citizen suit provisions that have been used to sue poultry producers and swine operations. If you are confirmed as EPA Administrator, will you clarify that manure is not a hazardous substance, pollutant, or contaminant under CERCLA and that the notification requirements of both laws would not apply to releases of manure?

Response: My understanding is that EPA already addressed the burdens to farmers related to air release reporting. In December 2008, EPA issued a final rule that became effective on January 20, 2009. The final rule exempts all farms that release hazardous substances from animal waste to the air from reporting under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 103. The final rule also exempts farms that release hazardous substances from animal waste to the air from reporting under the Emergency Planning and Community Right to Know Act (EPCRA) section 304 if they stable or confine fewer than the number of animal species of the large CAFO threshold as defined in Clean Water Act National Pollutant Discharge Elimination System program regulations.

City of Omaha-CSO Affordability

14. Our communities are facing a number of environmental challenges associated both with aging infrastructure and federal mandates. Many of our rural communities are facing huge economic challenges in financing upgrades to drinking water and wastewater infrastructure, while their demographics are aging and overall populations are declining. It is difficult for many communities to finance such improvements, and the economic sustainability of these communities is highly problematic.

Our urban centers are also facing economic challenges to comply with a number of sometimes competing federal environmental mandates. Nebraska's largest city, Omaha, is one of 772 U.S. communities that is mandated to reduce combined sewer overflows (CSOs) from its regional

wastewater treatment system. Omaha's cost for CSO compliance over the next 15 years is estimated at $2 billion and will more than double the city's existing debt burden. Residential sewer bills are projected rise from $10/month to more than $50/month by 2017. On January 18, 2013, EPA Headquarters issued a memo presenting a framework for community financial capability assessment. Under your leadership, how do you see EPA and state and local governments working together to prioritize local environmental investments in an affordable, financially sustainable manner for all community stakeholders?

Response: As I mentioned during my confirmation hearing, I believe it is important for the EPA, states and local governments to work together to prioritize local environmental investments in a sustainable manner for all community stakeholders. Prioritizing and sequencing water projects to get the best and most affordable environmental results is exactly what we are doing with our integrated planning framework for wastewater and stormwater. If confirmed, I will work with you, the states and local communities on this issue.

Ozone

15. Funding for mitigation activities related to ozone is currently tied to "non-attainment" status. Therefore, communities such as the Omaha metro area, which are currently in "attainment" but are trying to be pro-active and address ozone-forming emissions prior to violating air quality standards, have little financial assistance available. This places communities in the unenviable situation of having to violate air standards in order to become eligible for additional funding. EPA recently developed the Ozone Advance program to attempt to provide funds for metro areas, such as the Omaha region. Would you take proactive measures, such as participation in Ozone Advance, into consideration when designating whether a region will be deemed "non-attainment"? And would you champion opportunities to provide funding for communities that are in attainment?

Participation in Ozone Advance can help areas maintain air quality that meets the health standards. EPA is currently providing technical assistance to participants in the Advance Program but has not offered direct funding to participants. However, I have been and will continue to be a strong advocate for providing support at the community level, including EPA assistance and funding, to the extent possible given budget constraints.

16. High ozone formation frequently occurs as a result of natural processes (heat, lack of wind, etc.) that are beyond human control. Emissions traveling from other metro areas can also have an impact. For instance, in the Omaha metro area, one can track a direct correlation between the number of high ozone days and extreme high temperature days, whereas mild summers usually result in few, if any, high ozone days. We also have annual burns that occur in the Flint Hills in Kansas that appear to contribute air quality problems. It is unfair to punish communities for factors that are beyond their control. How would EPA take into account factors that are beyond a region's control when designating attainment and non-attainment areas?

The Clean Air Act directs the EPA to designate an area "nonattainment" if it is violating a national ambient air quality standard (NAAQS) or if it is contributing to a violation of the NAAQS in a nearby area. Air quality monitoring data affected by exceptional events (e.g., wildfires, high wind dust events, stratospheric intrusions) may be excluded from use in identifying a violation at a monitor, and subsequently excluded from regulatory actions (e.g., area designations or classifications) that rely upon these data, if the data meet the criteria for exclusion

specified in EPA's Final Rule on the Treatment of Data Influenced by Exceptional Events, commonly known as the 2007 Exceptional Events Rule.

17. The EPA Clean Air Scientific Advisory Committee (CASAC) last recommended the Ozone standard be set at a range between 60 and 70 parts per billion (ppb). If the standard were set at 60 parts per billion, the vast majority of the United States—including the Nebraska Panhandle (due to emissions from the Denver metro area), one of the most sparsely populated regions of the United States—would be in violation of the standard. Many metro areas who struggled for years to attain the standard set in 1997 now fear the standard will be set at an unrealistic level that will only result in perpetual nonattainment status. How would you apply common sense and reasonableness in setting air quality standards? Do you think that there are diminishing returns of further reducing air quality standards past a certain point?

Response: EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

Hazardous Air Pollutant Regulations for Stationary Irrigation Engines

18. In 2009, the EPA released their new National Emissions Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines. For engines with less than 300 brake horsepower—which would include many diesel irrigation engines across Nebraska, EPA has essentially turned regular maintenance (changing oil filters and inspecting equipment regularly) into a federal mandate. Please explain the air quality value of making it a federal requirement for farmers to conduct maintenance that they are already doing and maintaining five years' worth of records to show to EPA if they knock on the door of a farmer?

EPA is statutorily required to set emission standards for hazardous air pollutants (HAP) for stationary reciprocating internal combustion engines under section 112 of the Clean Air Act. The management practices in the rule require the engine owner/operator to maintain and replace the oil and oil filters, spark plugs, hoses, and belts of stationary engines subject to the rule. According to manufacturers and operators of such stationary engines, these management practices are the most appropriate ones to ensure proper operation for minimizing HAP emissions, by allowing the engine to operate at peak efficiency. Public comments submitted on the proposed rule by owners and operators of these engines were supportive of these management practices. The requirement to maintain records is intended to ensure that regulatory agencies have the necessary information to determine if the engine has been in compliance with the applicable requirements. In many cases maintenance records are already being kept, and it already is in the best interest of the owner and operator to maintain such documentation to ensure that the engine is properly taken care of and that necessary warranty information is maintained.

19. How does EPA plan to enforce this rule and what type of financial resources is EPA planning to put forth for enforcement and compliance?

States generally assume primary enforcement authority, with federal oversight, through delegation from EPA. EPA does not budget for enforcement on a source-category basis.

Biotechnology

20. Agricultural biotechnology provides farmers with new tools to manage weeds, insects, and drought. In the case of weeds, the need for herbicides with multiple modes of action is something farmers are demanding in order to preserve yield while trying to manage resistant weeds. Approximately 60% of all biotechnology traits pending review have a herbicidetolerant component to them, requiring timely EPA review and action. What will your agency do to meet the needs of growers and accelerate the approval of these products that not only enable solutions to weed management, but also preserve the ability to utilize environmentally beneficial soil-conserving practices, like conservation tillage?

Response: It is my understanding that the USDA, not the EPA, regulates plants genetically engineered for herbicide tolerance. The EPA does, however, regulate the herbicides used to protect those plants. I look forward to working closely with USDA to ensure our respective reviews are conducted in a timely and coordinated manner

21. Over 13 years ago this month, the National Research Council of the National Academy of Sciences released its report on EPA's proposed regulation of insect-resistant traits in transgenic plants. While the report noted that EPA's intent to regulate such substances was consistent with its statutory authority, it recommended that EPA dispel any notion that transgenic plants themselves were being regulated by EPA as pesticides. Under the Executive Branch's Coordinated Framework for Regulation of Biotechnology, in effect since 1986, EPA is responsible for regulating pesticides while the Secretary of Agriculture is responsible for regulating plants and seeds.

In July of 2011, more than 60 members of the National Academy including two Nobel Laureates wrote to Administrator Jackson to voice their concern that EPA was attempting to "expand its regulatory coverage over transgenic crops in a way that cannot be justified on the basis of either scientific evidence or experience gained over the past several decades, both of which support the conclusion that molecular modification techniques are no more dangerous than any modification technique now in use. The increased regulatory burdens that would result from this expansion would impose steep barriers to scientific innovation and product development across all sectors of our economy and would not only fail to enhance safety, but would likely prolong reliance on less safe and obsolete practices."

Not long after, the Biotechnology Industry Organization wrote to Administrator Jackson expressing similar concerns and citing specific examples that "suggest rather strongly that, as a practical matter, [EPA] is looking to expand its oversight over biotechnology products and regulate plants themselves as pesticides." The industry's letter warned that such policy shifts would create a regulatory system for low-risk products with substantial environmental benefits that "is not only duplicative but also dismissive of science and experience" and conflicts with the Principles for Regulation and Oversight of Emerging Technologies that was issued by the White House in support of Executive Order 13563.

In spite of these pleas to the Administrator, reports of EPA's efforts to regulate transgenic plants and seeds that have insect resistant traits continue to be received. Can you assure this Committee that, if confirmed, you will work to ensure that, in regulating products of biotechnology that contain insect-resistant traits, EPA will respect sound scientific principles and the division of responsibility set out in the Coordinated Framework?

Response: As the Assistant Administrator for the Office of Air and Radiation, I have not been involved in this issue. If confirmed, I can examine this issue more thoroughly and would be happy to discuss it with you in the future.

Ethanol

22. Nebraska is a leading ethanol producer, and I want to ensure that my constituents continue to have the ability to purchase Flex Fuel Vehicles (FFVs) and fuel up with higher ethanol blends. Do the new Corporate Average Fuel Economy (CAFE)/greenhouse gas rule and accompanying guidance appropriately incentivize production of FFVs? If so,how? Is the incentive on par with that of electric vehicles?

Through Model Year (MY) 2015, the CAFE and GHG programs treat FFVs the same, i.e., they receive the same credits under the GHG program that FFVs have long received under the CAFE program. Beginning in MY2015, the CAFE credits begin a phase-out period under the Energy Independence and Security Act (EISA) of 2007. Starting in MY2016, EPA's GHG program provides credits for FFVs based on the actual use of E85 and the related GHG emissions benefits of ethanol combustion relative to gasoline. EPA believes that the GHG and CAFE credits will continue to provide an incentive to automakers to continue to build FFVs. While the FFV credits are not as large as the temporary and limited incentives that have been provided for the production of electric vehicles, the FFV credits do not phase-out over time and may actually provide stronger incentives, as the incremental costs of FFVs are much lower than for electric vehicles.

23. It is my understanding that the evaporative emissions profile for E15 and higher ethanol blends is actually somewhat better than conventional E10 gasoline. Is this true, and if so, why are EPA's current Vapor Control requirements locking these blends out of the year-round fuel market?

The evaporative emissions profile for E15 is typically better than for E10, assuming the same gasoline is used for blending. However, the volatility of E15 is limited to 9 psi Reid Vapor Pressure (RVP) in the summer for two reasons. First, the emissions testing and analysis for the waiver demonstrated that E15 needed to have an RVP of no higher than 9 psi for motor vehicles to meet EPA's evaporative emissions standards. Since compliance with the emissions standard was the criterion for granting a waiver, EPA conditioned the waiver on E15 having an RVP no higher than 9 psi. Second, the Clean Air Act (CAA) provides that summertime RVP can be no higher than 9 psi, with a 1 psi RVP increase for blends with ethanol between 9 and 10%. E15 is not eligible for this 1 psi wavier, thus the CAA limits the RVP of E15 to 9 psi in the summer.

Consultation Process for Pesticides under the Endangered Species Act

I am very concerned about how the Endangered Species Act (ESA) is being used to disrupt the supply of pesticides that are vital to American agriculture. I know that this is not a subject that has come within your authority in your prior position, but I need to be sure it will receive your attention if you are confirmed as Administrator.

As I understand it, EPA has been subjected over the last decade to several lawsuits on the issue of its ESA responsibilities, and is now working hard to balance its obligations under both the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide statute and the ESA. To that end, I also understand that the Agency's Office of Pesticide programs intends to catch up on most of its ESA responsibilities through the registration review program that was mandated by Congress in 1996, and which is statutorily required to be completed by 2022. That will be a very big job, since there are thousands of individual products that contain over 1000 different active ingredients. But addressing ESA issues in the structured registration review program seems to me sensible and a reasonable use of limited budgetary resources.

But it seems to me there is a big problem here, because in reality the U.S. Fish &Wildlife Service and National Marine Fisheries Service with which EPA is supposed to consult cannot keep up with you. The Services have been pretty clear about this. They have told both EPA (in a January 2009 letter) and a House Oversight Committee (at a May 2011 hearing) that they do not have adequate resources to keep up with the pace of EPA consultation requests. Indeed, EPA told that same House Oversight Committee that, at least as of 2011, about a third of your consultation requests were met by the Services with claims that they needed more information from EPA, and about half received no response at all.

Response: I understand that the EPA, USDA and the Services have asked the National Academy of Sciences' National Research Council for recommendations on scientific and technical issues related to the methods and assumptions used to conduct scientific assessments of ecological risks from pesticides. I look forward to seeing their report, which I understand should be out soon. If confirmed, I will continue to work with other agencies to find an efficient and effective path forward.

24. In view of these facts, do you think that there is any realistic basis to believe that registration review can be completed in the timeframe set by Congress? If so, please explain. How, as Administrator, would you overcome the roadblock to completion of registration review on a timely basis that the Services' limited capabilities obviously present?

Response: If confirmed, I will continue to work with our federal agency partners to find an efficient and effective path forward.

25. I understand that a policy notice that the EPA published on March 19 said that the Agency hoped to limit its burdens in this area by convincing registrants to limit the use of their products in some areas, so that no consultation would be necessary. Do you believe this is a realistic strategy? If so, please explain. Do you believe EPA adequately has considered the economic impact of imposing such limitations on farmers? Do you believe EPA has adequately considered what the ecological impact might be if farmers switched to alternative pesticides or agronomic practices?

Response: As the Assistant Administrator for the Office of Air and Radiation, I have not been involved in this issue. I understand that the EPA's notice describes process changes developed with the benefit of significant input from the regulated community, and I believe that an open process leads to better decisions.

I also have been very troubled to hear that confusion over the Agency's policy in implementing ESA requirements is delaying the approval of several products that are of critical importance to farmers who are facing increasing difficulties with glyphosate-resistant weeds. Almost a decade ago, in what I understand is generally referred to as the "Overview Document" (but more formally known as the *Overview of the Ecological Risk Assessment Process in the Office of Pesticide Programs*), EPA stated a policy of deferring until registration review all ESA reviews except those for new pesticide active ingredients, for "new uses" for existing products, or for emergency or special local need situations. Again, this makes good sense to me. But I also understand that the Agency in fact is allowing fear of additional ESA suits to hold up other registration actions, including some of critical importance to growers. So here are my questions on this subject:

26. Has the agency abandoned or modified the policy stated in the Overview document? If so, why? And how has it communicated its change(s) in policy to stakeholders? If not, in your view, what circumstances are sufficient to allow deviation from that policy?

Response: Please see response to question 27.

27. Are you personally satisfied that the deviations that have occurred received adequate consideration at appropriate levels of the agency?

Response (to 26 and 27): As I understand it, the EPA is actively discussing with the companies how best to address any issues relating to protection of endangered species that arise in connection with the Agency's review of their application.

28. Finally, I am concerned that EPA has moved away from respecting a key policy stated by Congress in 1988—that the concerns of those involved in producing food and fiber be respected as ESA is implemented and, most importantly, that the impacts of the implementation of the ESA on agricultural production be minimized. (That policy was embodied Section 1010 of Pub. L. 100-478.) I recognize that the publication last month of the policy statement on stakeholder participation in ESA consultation processes, to which I referred above, was one effort to address those concerns. But I am very concerned about how that policy is going to be implemented, and whether other steps can be taken to assure farmland is not forced out of production without very solid evidence of an imperative need to do so. What further steps do you believe EPA should take to achieve that result?

Response: I am committed to ensuring that the agency carefully considers the interests of all stakeholders as it makes decisions regarding how best to meet the requirements of the federal law concerning protection of endangered species.

Insecticide Review Process Changes

29. As a result of litigation, it is my understanding that EPA is accelerating its timetable in reviewing important agricultural crop protection products (chlorpyrifos) and attempting its first ever assessment of volatility exposures from the use of nonfumigant products. I understand that because of this short litigation-driven time-frame, the assessment is highly precautionary and assumption-based, and EPA lacks an established regulatory policy on which to proceed. This unrefined assessment could result in posted buffers all the way around the perimeter of treated fields that measure 361 feet to as high as 4,724 feet, and this approach would also create precedents for other pest control products that would become increasingly burdensome over time. Given these potential impacts, shouldn't adequate time be taken to develop a regulatory policy that considers feasibility and economic impact on agriculture, rather than placing our American farmers at a

competitive disadvantage to satisfy frequent litigators? Has the Agency actually evaluated if there is any data that indicates exposure to vapors of these compounds have ever caused observable effects in animals by inhalation without first creating aerosol droplets of the product?

Response: As the Assistant Administrator for the Office of Air and Radiation, I have not been involved in this issue. It is my understanding that the EPA has evaluated all available information, from laboratory studies to appropriate field studies, and is seeking public comment on the Agency's risk assessment. This is consistent with my commitment to an open and transparent process in which decisions are based on sound science.

Sulfuryl Fluoride

In January of 2011, the Agency proposed rulemaking to withdraw the food tolerances for the fumigant sulfuryl fluoride (SF)—a product the Agency has aggressively promoted as a substitute for methyl bromide, a pesticide being phased out due to environmental concerns. SF helps safeguard public health by helping keep food and feed safe from dangerous and destructive pest infestations. The U.S. Department of Agriculture, Natural Resources Defense Council, and numerous industry groups have objected to the Agency's proposal. Even the Agency noted in the January 19, 2011, Federal Register notice that SF contributes no more that 2-3% of the public's exposure to fluoride, that use of SF is responsible for a tiny fraction of aggregate fluoride exposure, and elimination of SF does not solve, or even significantly decrease, the fluoride aggregate exposure problems.

30. Why then has the Agency included exposure to naturally occurring fluoride in drinking water systems and fluoride to toothpaste in its Section 408 Federal Food, Drug and Cosmetic Act aggregate risk assessment of the pesticide SF when neither naturally occurring fluoride nor toothpaste is a "pesticide chemical residue" under the statute and the Agency has another statute—the Safe Drinking Water Act—that expressly applies to the naturally occurring fluoride exposure issue?

Response: I believe it's critical that the Agency follow both the science and the law, with respect to Sulfuryl Fluoride, FIFRA and the Safe Drinking Water Act. If confirmed, I will work with scientific staff to understand the interaction between the statutes and this pesticide.

Fill Material

31. The current definition of fill material, finalized in May, 2002, unified the Corps and EPA's prior conflicting definitions so as to be consistent with each other and the structure of the CWA. The current rule solidifies decades of regulatory practice, and includes as fill material those materials that, when placed in waters of the U.S., have the effect of raising the bottom elevation or filling the water. However, both EPA and the Corps have stated that they are now considering revising the definition of fill material.

a. What is EPA's rationale for revisiting the well-established division of the Section 402 and Section 404 programs?

b. What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?

c. Has EPA yet considered the time and costs associated with making such a change to the two major CWA permitting schemes—Sections 402 and 404?

Response (to a-c): I understand the importance of clarity, with respect to the permitting process. If I'm confirmed, I'll work closely with the Army Corps and others to ensure that there is increased clarity in the permitting process.

Willingness-to-Pay Surveys/Economic Impact Analysis

EPA is increasingly using "willingness-to-pay" (WTP) surveys to supplement the expected benefits of regulatory actions with substantial projected costs. Two recent examples include the proposed Clean Water Act section 316(b) requirements for cooling water intake structures (CWIS) and total maximum daily load (TMDL) cleanup plans for nutrients and sediments in watersheds. EPA estimated CWIS costs at over $300 million, although the final rule could change significantly. EPA estimated
TMDL capital costs of $28 billion and an additional $2.7 billion dollars per year for operating and maintaining costs. The surveys are intended to represent what price people might assign to a theoretical effect (e.g., having a healthy fish population) of a proposed rule from which they gain no direct benefit. Thus, the effects are a hypothetical and subjective justification for the proposed rule. As such, it would be inappropriate for EPA to count the results of these surveys as actual monetary benefits for a proposed rulemaking.

Economic experts have concluded that there are very few instances in which such a complicated subjective tool can be used with any degree of reliability. Following a National Oceanic and Atmospheric Administration (NOAA) blue-ribbon panel review of contingent valuation surveys, a Nobel laureate economist on the panel noted that "many departures from the guidelines or even a single serious deviation would, however, suggest unreliability prima facie."[3] Although guidelines for WTP studies require that surveys be well-designed, extensively peer-reviewed, and subject to reliability testing, EPA has largely ignored comments from the public that raise serious concerns about the nature of the survey.

32. Do you believe these willingness-to-pay surveys should be used to enhance the benefits of a proposed rule?

Response: I believe it is important to consider regulatory decisions within the framework of a clear sense of the costs and benefits for the options under consideration, where allowable under the statute. I also believe that the agency should make decisions based on the fullest understanding of the benefits to society from protecting the environment. If confirmed, I will continue to follow this pattern of decision making.

33. Do you believe that EPA should address public concerns about the direction of EPA's monetization of these survey results and their use in benefit calculations for proposed rulemakings?

Response: Please see response to question 34.

34. What steps will you take as Administrator to ensure that EPA's assessment of economic costs and benefits of its proposed rules meet standards for high quality and reliability?

Response (to 33 and 34): My understanding is that stated preference is a tool that EPA has used in the past and that the appropriate use of stated preference, and the challenges, are discussed in the Agency's peer-reviewed "Guidelines for Preparing Economic Analyses". If confirmed, I am committed to ensure that EPA's economic studies are conducted in a high quality fashion, consistent with best economic practices.

Uranium

35. It is my understanding that over the past three years EPA has caused significant delays and interference with the implementation of several state's Underground Injection Control (UIC) programs with respect to the approval of new EPA Class I disposal well permit applications, renewal of existing disposal well permits, and EPA Class III well permits. These particular states have for many years maintained their UIC program primacy and have successfully implemented EPA's UIC programs with limited EPA oversight. Why is EPA now inserting itself into the permitting process for UIC programs where the states have primacy for these activities?

Response: Please see response to question 37.

36. To the extent that EPA does seek to make changes to the existing requirements, will you commit to a public process that includes input from members of the uranium industry?

Response: Please see response to question 37.

37. Will you commit to adding at least one representative from the uranium industry on EPA's Science Advisory Board that is currently evaluating the need for pre-operational baseline monitoring as well as additional post-mining monitoring?

Response (to 35-37): As a former administrator of a state agency, I am particularly sensitive to the significance of your question and issues associated with effective and helpful coordination between EPA and delegated state programs. As the Assistant Administrator for the Office of Air and Radiation, I have not been involved in the implementation of EPA's UIC program roles and responsibilities. If confirmed, however, I will work with you to understand the circumstances involved in this important matter and to identify options for a timely and effective solution under the law.

Senator Boxer

1. Perchlorate is a dangerous drinking water contaminant that can harm the mental and physical development infants and children. In February 2011, EPA said it would regulate perchlorate under the Safe Drinking Water Act, and the Agency has stated that it anticipates issuing a proposed drinking water standard for perchlorate in 2013.

If you are confirmed, will you commit to provide me with a detailed status report and regular updates on the schedule for issuing a proposed and final rule to address perchlorate in drinking water?

Response: Yes.

2. Last year, USA Today published a series that investigated hundreds of old industrial sites that had emitted lead into the nearby areas, including where people live today. While EPA and states have tracked and begun cleanups at some sites, I believe that more must be done to protect families and children who live in neighborhoods near these sites. Cleaning these sites up is particularly important in light of the best available science demonstrating that lead is even more dangerous to the health of infants and children than we had previously known.

If you are confirmed, will you commit to review the adequacy of lead-contaminated soil and dust
standards to ensure they are set or revised at a level that protects pregnant women, infants, and
children, and will you commit to an open and public process of tracking and cleaning up these old
lead-contaminated sites?

Response: Yes.

3. The EPA is revising a Chrome 6 risk assessment before deciding whether to regulate this toxic metal under the Safe Drinking Water Act. If confirmed, will you commit to provide me with:

a. Records that describe the conflict of interest disclosures by members of the panel reviewing the Chrome 6 risk assessment and follow-up actions undertaken by the Agency to address any conflict of interest concerns raised by members on the review panel; and

Response: Yes.

b. A schedule for expeditiously finishing this risk assessment and making a decision on whether
to regulate Chrome 6 as a drinking water contaminant?

Response: Yes.

4. In April 2013, EPA issued proposed revisions to the Protective Action Guidelines (PAGs), which should be used to help federal, state, and local officials make decisions that protect public health and environment when addressing an emergency involving the release of radiation.

If confirmed, will you agree to review the proposed guidance and work to ensure strong public health protections in the final guidance, including reviewing whether the guidance is sufficient to protect public health and ensure that the public is fully informed about the potential health threats from exposure to radiation at or below levels that the guidance uses to initiate or complete agency actions?
Response: Yes.

5. In February 2013, EPA issued a final rule strengthening protections for pesticide research that involves people, including pregnant women and children. If confirmed, will you commit to ensure that the rule's protections are strictly applied and that Agency guidance on these matters incorporates, at a minimum, the protections contained in the February 2013 rule?

Response: Yes

6. EPA issued a proposed rule on whether to regulate the safe disposal of coal ash waste in June,
2010. If confirmed, will you agree to immediately provide a detailed report of the Agency's plans and actions in connection with issuance of a final rule on this important Agency initiative?

Response: Yes.

7. I believe that it is important for Congress to pass bipartisan legislation to reform and improve the Toxic Substances Control Act (TSCA) so that it protects people, including pregnant women, infants, and children, from dangerous chemicals and ensures that chemicals used in everyday products are safe for our children and families. If confirmed, will you work closely with me on the Agency's activities in connection with modernizing TSCA and provide me with timely technical assistance in assessing such efforts?

Response: Yes.

8. While the Agency has made important strides in helping to address environmental injustice in communities harmed by dangerous air pollution, toxic waste sites, and other environmental health threats, many environmental justice communities continue to suffer. As Administrator Jackson stated in EPA's plan to help the Agency better address environmental justice issues: "Plan EJ 2014 offers a road map that will enable us to better integrate environmental justice and civil rights into our programs, policies and daily work. The plan focuses on agencywide areas critical to advancing environmental justice, including rulemaking, permitting, compliance and enforcement, community-based programs and our work with other federal agencies."

If confirmed, do you agree to provide me with a comprehensive overview of the Agency's efforts to implement the 2014 Plan and to update me on the Agency's achievement of specific interim and long-term goals to better integrate agency environmental justice activities, as described in the 2014 Plan and other EPA and White House policies and guidance documents?

Response: Yes.

Senator Carper

1. In my written statement, I complement your efforts to work across the aisle and with various stakeholders toward a consensus-based approach. One such example is your work regarding poultry and feedstock air monitoring. It is my understanding that the EPA – under your leadership in the air office– has been working to review and process air emissions monitoring data collected by leading air researchers from U.S. poultry and livestock farms as part of EPA's National Air Emissions Study. This collaborative effort between industry and the EPA is intended to help develop tools to help poultry and livestock farmers better monitor their emissions. It is also my understanding that the development of these tools has been more challenging than expected, and you have asked the Science Advisory Board for assistance. If confirmed as EPA Administrator, will you continue to ensure good and sound science is applied to the development of these estimating tools, and for taking the time necessary to see that is done?

Response: Yes.

2. Last year, this country saw one of the worst droughts it has seen in over fifty years. As a result, corn prices skyrocketed, which in turn caused huge price spikes for those farmers that depend on corn feed for the animals they raise. In response to these high prices, some governors petitioned the EPA for a waiver to the RFS for fuels made from corn. As you know, the agency denied the waivers because EPA determined there would be no impacts to our economy – for better or worse – if the waivers were approved.

a. Since you oversee the part of EPA responsible for the RFS, what were the critical factors and thresholds EPA used to determine economic disruptions from the RFS?

b. If confirmed as EPA Administrator, what data will you need to see to approve a RFS waiver if we continue to have record droughts into the future?

Response:

While EPA recognized that many parties had raised issues of significant concern to them and to others in the nation concerning the role of renewable fuels and the RFS program and the severity of the drought and its major impacts on multiple sectors across the country, the issue directly before the Agency was limited given EPA's authority under section 211(o)(7)(A) of the Act.
In consultation with the U.S. Department of Agriculture and the U.S. Department of Energy, EPA examined a wide variety of evidence, including modeling of the impact that a waiver would have on ethanol use, corn prices, and food prices. The agency also looked at empirical evidence,

such as the current price for renewable fuel credits, called RINs, which are used to demonstrate compliance with the RFS mandate. EPA's analysis showed that it is highly unlikely that waiving the RFS volume requirements would have a significant impact on ethanol production or use in the relevant time frame that a waiver could apply (the 2012-2013 corn marketing season) and therefore little or no impact on corn, food, or fuel prices. This was because the modeling showed that in almost all scenarios modeled the market would demand more ethanol than the RFS would require.

EPA applied the detailed analysis to the statutory criteria for a waiver. EPA found that the evidence did not support a determination that the criteria for a waiver had been met, and therefore by law must deny the waiver.

3. During your term as Assistant Administrator for Air, you finalized the Cross-state Air Pollution Rule which addresses transport pollution that crosses state boundaries. This is air pollution that drifts downwind across state lines to states like Delaware– making it hard for Delaware to comply with public health air quality rules. Unfortunately, this rule was vacated by the DC Circuit Court. If confirmed as EPA Administrator, can I have your assurances that you will continue to address the problem of air transport – an ongoing issue that risks the lives of thousands of Americans, many of which are living in my home state of Delaware?
Response: Yes

4. If confirmed as EPA Administrator, you will likely oversee the finalization of new standards under Section 316(b) of the Clean Water Act regarding the best technology available for the location, design, construction and capacity of cooling water intake structures. Many of the constituents that will be impacted by this rule are similar to the ones you have dealt with in your days as Assistant Administrator for Air. As you know from experience, facilities in the same source category can be constructed very differently depending on various factors such as location and age – making it hard at times to have a one-size-fits-all approach. The 316(b) rule crosses over so many different types of source categories – the variants between facilities are likely to be exponential – which makes a blanketed approach even less practical. If confirmed, do I have your assurances that when issuing the 316(b) rule you will consider flexibilities that will allow facility owners to comply with a rule in a way that makes it as economical as possible for that facility, while still putting in standards that protect our water wildlife? When determining the cost-benefit ratio for new 316(b) regulations or other rules coming before you, do I have your assurances that you will use the best science available to determine both costs and benefits?

Response: As you know, I have worked hard to find practical approaches to regulation under the Clean Air Act. If confirmed, I look forward to working to ensure that rules like 316(b) are

similarly sensitive to the variations across the electric utility industry and to look for flexibilities that can reduce costs while maintaining environmental protection. Similarly, I will always work to ensure that the EPA uses the best science available for regulatory analysis.

Senator Baucus

1. EPA plans to finalize nonattainment designations in June 2013 for the revised sulfur dioxide national ambient air quality standard. EPA has proposed a nonattainment designation for Yellowstone County, Montana, where almost 1,000 Montanans work at the three local oil refineries. Given the status of documented anomalies in the county's 2010 monitored emissions that appear unrepresentative of recent and projected emissions trends, will you commit to work closely with me on Yellowstone County's final designation?

Response: Yes

2. EPA is currently revising a draft toxicological assessment of the type of amphibole asbestos found in Libby, Montana. This assessment will quantify the danger posed by "Libby Amphibole." While cleanup of asbestos in Libby under the Comprehensive Environmental Response, Compensation, and Liability Act began in 2002, it remains essential that the final cleanup reflect the best available science. Will you commit that EPA will proceed deliberately with finalizing the assessment and determining its impact on the cleanup in Libby?

Response: Yes, EPA will continue its work to finalize its toxicological efforts which will inform final cleanup decisions for the site.

3. On February 4, 2013, the EPA Office of Water released unredacted state-collected information about an estimated 85,000 to 100,000 livestock and poultry operations under the Freedom of Information Act. The data related to concentrated animal feeding operations (CAFOs). I am deeply disappointed at how this action confirms a common perception in rural states like Montana that EPA approaches every farm or ranch activity as if it is a violation waiting to happen.

For example, the data related to Montana includes sensitive information about deceased spouses, elderly widows, speculation about pasture leasing within families, and confidential business information about the precise size of livestock operations. Our federal sunshine laws appear to have been used to empower private citizens to obtain personal information about other private citizens.

a) Given this very recent EPA action, the agency's admission that it incorrectly failed to redact information collected by ten states (including Montana), and your experience as the Assistant Administrator of the Office of Air and Radiation, what specifically do you plan to do to prevent incidents like this in the future?

b) More generally, why the heck should Montana farmers and ranchers trust EPA in the future?

Response: My understanding is the agency has taken steps to prevent incidents like this from happening in the future. I am committed to conducting all EPA activities with the highest legal and ethical standards and in the public interest. I also want to affirm my commitment to working cooperatively with agriculture producers to achieve our mutual goals for protection of the environment and our food supply.

4. In the wake of the 2008 failure of a dike used to contain fly ash at the Tennessee Valley Authority's Kingston Fossil Plant, EPA initiated a rulemaking for coal combustion residuals under the Solid Waste Disposal Act. Four and a half years after the Kingston spill, the rulemaking is ongoing and coal combustion residuals remain regulated only by inconsistent state laws. Will you commit to work with members of Congress on amending the Solid Waste Disposal Act to authorize the regulation of coal combustion residuals under a nonhazardous waste permit program?

Response: Yes, EPA stands ready to provide technical assistance to members of Congress in its efforts to develop legislation regarding coal combustion residuals (CCR).

Senator Merkley

1. During the last several years, the windows manufacturing and installing industry has been through difficult market declines and destabilizing economic times. While the overall economy has been challenging to many Americans, those in the housing sector have been particularly hard hit. One of the major areas of interaction between those who provide windows to the market and consumers is the Energy Star program.

The Energy Star program is essential to delivering information to consumers on how to buy the most energy efficient appliances and products. My understanding is that the EPA is currently reevaluating the proposed standards for the Energy Star for Windows, Doors, and Skylights. The original proposed effective date the new standard was targeted for the end of this calendar year. Obviously, the Agency's thoughtful review of the standard has taken longer than envisioned.

New standards involve significant and expensive changes to production, which means that manufacturers need substantial notice to give time to make those changes. In the interest of providing certainty to this important domestic manufacturing industry, EPA's own guidelines for progressing from final proposal to effective date requires no less than 9 months and the product cycle for manufacturers really requires a January 1 effective date. Can you confirm that the effective date for whatever the new standards may come from this process will be January 1, 2015 to prevent unnecessary and extraordinary ramp up costs for a sector struggling to recover from the recession?

Response: EPA recognizes that it needs additional time to review and respond to the comments received on the ENERGY STAR for Windows, Doors, and Skylights Version 6.0 Draft 2 specification and revised skylight criteria. While a revised timeline is not yet available and we are not ready to make a formal announcement, it is likely this additional work will result in delaying the effective date closer to the January 1, 2015 timeframe. EPA plans to keep stakeholders informed of its process on the criteria revision. We are committed to ensuring that our partners have adequate time to respond to the final Version 6.0 specification and will make adjustments to the implementation schedule as needed.

2. The forestry sector is very important in my state. It provides 120,538 jobs, $4 billion in payroll, $11.8 billion in sales and $4.15 billion toward Oregon's state GDP.

An important decision made under your direction was the three-year deferral of "biogenic GHG emissions" from biomass under the Tailoring Rule. Until the deferral, the Tailoring Rule would have treated biogenic GHG emissions the same as GHG emissions from fossil energy.

The decision by your office at EPA was to defer the regulation of biomass under the Tailoring Rule to take a closer look at the science and policy. My understanding is that EPA has now completed the Biogenic Carbon Accounting Framework, and that framework has been reviewed by an independent Scientific Advisory Board.

Now we need a final policy that fully recognizes the carbon benefits of biomass energy, and we need it done before the deferral period you put in place expires in July of 2014. When the deferral expires, we revert back to the policy in the original Tailoring Rule.

When do you intend to issue a proposal?

Response: EPA does not have a schedule for a proposed rule; however, I intend for the Agency to undertake the process before the July 2014 deferral expiration date. The Agency will keep you and your staff updated on the process as we work to move forward in a way that is appropriate and takes into consideration the requirements of the Clean Air Act and existing regulations as well as the results of the scientific study.

3. Among the Potential Responsible Parties for cleaning up the Portland Harbor Superfund site, there is a group of stakeholders called the Lower Willamette Group who have chosen to work in collaboration with the Environmental Protection Agency to expedite the planning and cleanup process. The fourteen members of the Lower Willamette Group have already invested close to $100 million in the past 12 years since the Portland Harbor Superfund site was put on the National Priorities List by the EPA.

(a) Will you closely follow the Portland Harbor Superfund process as the EPA Regional Office and the parties involved try to reach a balance between protecting the environment and public health on the one hand, and incurring reasonable cost and time requirements on the other hand?

(b) Can I also count on the EPA to work collaboratively with the Lower Willamette Group to ensure the planning process is completed expeditiously, so that the cleanup of the river can begin?

Response: Yes

Senator Udall

1. San Juan Generating Station

During my opening remarks, I mentioned the recent settlement between EPA, the State of New Mexico and PNM Resources.

(a) EPA has been charged with overreaching on regional haze rules. The story of the San Juan Generating Station would suggest otherwise, wouldn't it?

Response: Yes, the story of San Juan Generating Station is a great example of EPA working with the State of New Mexico, PNM, and other stakeholders to finalize a plan that will improve visibility in the surrounding areas while also being cost-effective.

(b) In the end, we want the states implementing these programs, don't we?

Response: Yes, it is EPA's preference to work with states to approve a State Implementation Plan, rather than issue a Federal Implementation Plan.

2. Navajo Generating Station

Last spring, I understand that you toured the Navajo Generating Station in Arizona to see first-hand the plant operations and community. With your five hour drive there, I am sure the remoteness of the location was very apparent to you.

As you know, the plant and mine have 1,000 jobs, over 800 of which come from the Navajo Nation, where unemployment levels fluctuate between 40 and 45 percent. This is particularly important to Navajo living and working in New Mexico.

(a) Given the importance of the plant, and the impact potential regulations can have on it, can EPA continue to work with the Navajo Nation the way it worked with the State of New Mexico and PNM to ensure that the economic necessities of the tribe and its unique reliance on the Navajo Generating Station are appropriately taken into consideration in EPA decision-making?

Response: Yes, it is EPA's intent to work with the Navajo Nation and other stakeholders as we move forward in the rulemaking process.

(b) Do you believe EPA will work with all stakeholders who are seeking reasonable ways forward to address pollution issues, but to preserve jobs and keep electricity rates down?

Response: Yes

3. Uranium Cleanup

Ms. McCarthy, EPA Region 9 recently concluded a five year plan to address uranium contamination in the Navajo Nation. In coordination with several other agencies, including the Bureau of Indian Affairs, Department of Energy, Nuclear Regulatory Commission and others, EPA Region 9 was able to take significant steps towards addressing uranium legacy issues in the Navajo and Hopi Nations. It is my understanding that the EPA is coordinating with the other agencies to identify next steps in cleanup of uranium contamination and expects to have a new five year plan for this region put together by this coming fall.

Additionally, EPA Region 6, which covers the rest of New Mexico, is currently carrying out a similar 5 year plan to address legacy uranium in my state. I applaud the agency for taking these deliberate steps to address this important public health and environmental issue.

(a) If confirmed, will support the efforts being carried out by EPA Regions 6 and 9 to address legacy uranium issues?

Response: Yes, EPA is committed to continue working with the Navajo Nation to understand and address the health and environmental risks and to find long-term solutions to the remaining uranium issues on Navajo lands.

(b) Will you continue to seek out and collaborate with the other relevant agencies to ensure that cleanup of legacy uranium is completed in New Mexico and the Navajo Nation?

Response: Yes

(c) Will you continue to ensure that these efforts are carried out in coordination with, and through consultation with the Navajo Nation and other local tribes and communities?

Response: Yes

Senator Lautenberg

1. The Government Accountability Office has listed the Toxic Substances Control Act (TSCA) as a "high risk" area of the law due to its limited ability to protect Americans from toxic chemicals. In September 2009, former Administrator Jackson unveiled six principles to reform and modernize TSCA.

Do you support these principles?

Response: Yes

2. In 2012, the Environmental Protection Agency (EPA) announced plans to conduct risk assessments for 83 chemical substances under the Toxic Substances Control Act (TSCA). These chemicals were selected based on existing information demonstrating health hazards and widespread exposure. In many cases, these chemicals are found in everyday consumer products.

What constraints does the EPA face in performing these risk assessments, including potential efforts to pursue risk management for chemical substances that are found to pose a risk, due to the statutory limitations of TSCA?

Response: The EPA should have the necessary tools to assess the safety of chemicals and to take action on chemicals that cause harm. If confirmed, I look forward to working with you and the committee on this issue.

3. Superstorm Sandy decimated New Jersey's coastal communities, claiming lives and causing tens of billions of dollars in damage. Since climate change will continue to increase the intensity of hurricanes and other extreme weather, this type of damage will only be more likely in the future.

How will the EPA incorporate the rising cost of extreme weather damage when considering actions to address climate change?

Response: Senator, as I said indicated at my confirmation hearing, climate change is one of the greatest challenges of our generation and our great obligation to future generations. I am convinced that we can take steps to combat climate change in a common sense manner. If confirmed, I look forward to working with you and other members of Congress on this important issue.

4. There are currently 1,312 Superfund sites in the U.S., including 111 sites in New Jersey. Over the past decade, construction completions have steadily declined as federal funding for the program has been reduced.

Would the EPA be able to increase the number of construction completions and site removals from the National Priorities List if the Superfund tax were reinstated?

Response: The revenues from reinstated Superfund taxes would be placed in the Superfund Trust Fund and made available to EPA through Congressional appropriation. If Congress were to use Superfund tax revenue to increase the level of appropriations, then the level and rate of construction work would be expected to increase, which would lead to more site construction completions.

Senator Gillibrand

1. I would like to thank you for all of the hard work that you put into the proposed Tier 3 rule to reduce tailpipe emissions. I believe that this is a good rule, and will result in significant health and air quality benefits for the American people by reducing the amount of sulfur emissions released into the environment. Regions across my State of New York are expected to see ozone reductions by 2030 because of Tier 3.
Can you discuss for the Committee some of the positive health and environmental benefits that we could be expected to see by implementing the Tier 3 rule by the end of this year?
Response: By 2030, EPA estimates that the proposed cleaner fuels and cars program will annually prevent up to 2,400 premature deaths, 23,000 cases of respiratory ailments in children, 3,200 hospital admissions and asthma-related emergency room visits, and 1.8 million lost school days, work days and days when activities would be restricted due to air pollution. Total estimated health-related benefits in 2030 for the proposal are between $8 and $23 billion annually.

The proposal would substantially reduce emissions of a range of harmful pollutants that can cause premature death and respiratory illnesses. This includes reducing smog-forming volatile organic compounds and nitrogen oxides by 80 percent, establishing a 70 percent tighter particulate matter standard, and reducing fuel vapor emissions to near zero. The proposal would also reduce vehicle emissions of toxic air pollutants, such as benzene and 1,3-butadiene, by up to 40 percent.

2. Thank you for mentioning the need to reform our country's chemical laws in your testimony. I have been working closely with Senator Lautenberg on reforming the Toxic Substances Control Act. I have been appalled to learn that under the current TSCA regime, the EPA is practically powerless to regulate chemicals that are known carcinogens – such as asbestos and formaldehyde, and other dangerous hormone-disrupting chemicals such as BPA, which are found in childrens' products.

Would you agree that the current TSCA system is inadequate to protect public health and give consumers the necessary information that they need to make informed decisions about which products are safe for themselves and their families?

Response: The EPA should have the necessary tools to provide the public with greater access to chemical information. If confirmed, I look forward to working with you and the committee on this issue.

3. When we met a few weeks ago, I discussed with you the importance of Long Island Sound, and asked for your help to build on the progress that we have already made to improve the water quality and natural ecosystems of the Sound. I know that you are very familiar with this issue from your time as the Connecticut Commissioner for Environmental Protection.

If confirmed, will you make the Long Island Sound a priority and work with my office to ensure that the programs to improve the Sound receive adequate attention and funding?

Response: The EPA is committed to working with states on ways to maintain and build upon the successes achieved in our nation's estuaries. If confirmed, I look forward to working with you on this priority issue.

4. The New York Times recently wrote an article on March 15th highlighting the serious issue of blue-green algae on to Lake Erie. While the algae is currently concentrated on the western end of the Lake, there are concerns that the algae problem could spread more widely and threaten Western New York's economy and aquatic resources.
If confirmed, will you make it a priority to address the spread of harmful algae in the Lake Erie?

Response: Harmful algal blooms are a focus of concern for the EPA. If confirmed, I look forward to working with you to address this problem in Lake Erie waters.

Senator BOXER. Thank you so much, Assistant Administrator McCarthy, for that statement.

I want to place in the record, if there is no objection, letters that have come in in support of your nomination. Six presidents of the American Association for the Advancement of Science, the Executive Director of the American Public Health Association, Charles Warren, former regional administrator under the Reagan administration, Gloria Bergquist, Alliance of Automobile Manufacturers, Randy Spronk, President, National Pork Producers Council, William Becker, National Association of Clean Air Agencies. I like particularly what he wrote: "She is brutally honest, very fair, humorous and an incredibly hard worker. She is not an ideologue, she is a practitioner." I just thought that sums it up.

John McManus, Vice President, American Electric Power, Jodi Rell, former Republican Governor of Connecticut, Scott Segal, Partner, Bracewell and Guiliani, Houston law firm that works on business law, finance, litigation and regulatory policy, and Chris Wood of Trout Unlimited.

[The referenced information follows:]

Statements of Support for Gina McCarthy,

Nominee to be Administrator of the Environmental Protection Agency

Six Presidents of the American Association for the Advancement of Science, James McCarthy Ph.D., Nina Fedoroff Ph.D., Alice Huang Ph.D., Peter Agre M.D., David Baltimore Ph.D., Gilbert Omenn M.D., Ph.D., and:

- "[Gina's] candor, pragmatism, and fidelity to science as the foundation for public policy decisions, as well as her openness to diverse stakeholders, have earned her the respect of environmentalists, state regulators, and industry groups...[H]er record demonstrates a deep commitment to scientific integrity within the EPA, and that she will serve our nation well if she is given an opportunity to serve as EPA Administrator."

Georges Benjamin, MD, FACP, FACEP (E), Executive Director, American Public Health Association:

- "Ms. McCarthy has been a true champion for public health and has consistently demonstrated her leadership in developing sensible safeguards to protect the public's health from pollution...Ms. McCarthy is well respected by both the public health community and industry and has a solid record of working across the aisle with both Democrats and Republicans in her efforts to develop sensible and evidence-based solution to leading public health threats."

Charles Warren, former Regional Administrator, Reagan Administration, currently, Partner at Kramer Levin Naftalis & Frankel, which represents various industrial clients:

- "At EPA, as a regulator, you're always asking people to do things they don't want to do. But Gina's made an effort to reach out to industries while they're developing regulations. She has a good reputation."

Gloria Bergquist, Vice President, Alliance of Automobile Manufacturers:

- "She's a pragmatic policymaker. She has aspirational environmental goals, but she accepts real-world economics."

Randy Spronk, President, National Pork Producers Council:

- "Under McCarthy's leadership as assistant administrator for EPA's Office of Air and Radiation for the past four years, the staff in the EPA Air Office has been smart, professional, transparent and trustworthy; they say what they mean and mean what they say. And for the stakeholders affected by the policies of that office, that has been, well, a breath of fresh air...The Air Office answered the industry's questions honestly about internal processes and regulatory directions and gave producers an opportunity to express their views and concerns...However, in these times of adversity, it is promising to U.S. hog farmers that the new EPA administrator will treat us as partners and not adversaries."

William Becker, Executive Director, National Association of Clean Air Agencies:

- "She's brutally honest, very fair, humorous, and an incredibly hard worker. She's not an ideologue. She's a practitioner."

John McManus, Vice President, Environmental Services, American Electric Power:

- "My sense is that Gina is listening, has an open mind; she wants to hear the concerns of the regulated sector."

Jodi Rell, former Republican Governor of Connecticut:

- "Her leadership on climate issues is nationally respected, so it comes as no surprise that the Obama administration would reach out to Commissioner McCarthy, a dedicated public servant with tremendous talent and passion."

Scott Segal, Partner, Bracewell & Giuliani, Houston law firm that works on business law, finance, litigation, and regulatory policy:

- "Gina McCarthy is engaging, effective and willing to listen to the regulated community — even if we don't always agree with her final rules."

Chris Wood, President, Trout Unlimited

- "In her current role, Assistant Administrator McCarthy has earned a reputation as a tireless advocate for clean air and sound environmental policy. Perhaps most importantly, she has drawn praise from both industry and the conservation community for her willingness to engage with all stakeholders during the regulatory process."

8 April 2013

The Honorable Barbara Boxer, Chair
The Honorable David Vitter, Ranking Minority Member
Senate Environment and Public Works Committee
United States Senate

Dear Senators Boxer and Vitter:

We are writing to strongly endorse Ms. Gina McCarthy's nomination as Administrator of the Environmental Protection Agency. Ms. McCarthy has had a long and outstanding career as an EPA official who is committed to science. Her candor, pragmatism, and fidelity to science as the foundation for public policy decisions, as well as her openness to diverse stakeholders, have earned her the respect of environmentalists, state regulators, and industry groups.

She has served with distinction under two Republican Governors as Commissioner of the Connecticut Department of Environmental Regulation under then-Governor Jodi Rell, and as climate and energy advisor to then-Governor Mitt Romney of Massachusetts. Rell called her a "dedicated public servant with tremendous talent and passion."

As assistant administrator for the EPA Office of Air and Radiation since 2009, Ms. McCarthy has promoted science-based regulation while demonstrating flexibility in addressing the legitimate concerns of the regulated community.

Under her leadership, the first ever air emission standards for mercury and air toxics were finalized in 2011. This regulation was strongly supported by public health groups because it was expected to prevent 11,000 premature deaths, 4,700 heart attacks and 130,000 cases of childhood asthma every year. Working with stakeholders, Ms. McCarthy structured the regulation to give companies the flexibility to comply with this new rule at the least possible cost. Similarly, Ms. McCarthy's staff worked with car companies and other stakeholders to craft a new standard that would double fuel economy for new cars. As a result of this new standard, in year 2030 we will avoid using 1.5 million barrels of oil per day with corresponding reductions in emissions of heat-trapping gases of 270 million metric tons per year. These reductions are relative to expected usage without this new standard. Importantly, this reduction in usage also means that by 2030 consumers will be saving approximately $50 billion per year. As a testament to Ms. McCarthy's ability to work with all stakeholders, thirteen major automakers supported the new standard.

We in the scientific community have not always agreed with all the decisions of Assistant Administrator McCarthy, but we believe that her record demonstrates a deep commitment to scientific integrity within the EPA, and that she will serve our nation well if she is given an opportunity to serve as EPA Administrator.

Yours Sincerely,



James J. McCarthy, Ph.D.
Alexander Agassiz Professor of Biological Oceanography
Harvard University
President, American Association for the Advancement of Science (AAAS) 2008-2009

And on behalf of:
Nina Fedoroff, Ph.D.
Distinguished Professor
King Abdullah University of Science and Technology (KAUST)
AAAS President 2011-2012

Alice S. Huang, Ph.D.
Division of Biology
California Institute of Technology
AAAS President 2010-2011

Peter Agre, M.D.
University Professor and Director, Johns Hopkins Malaria Research Institute
Johns Hopkins Bloomberg School of Public Health
AAAS President 2009-2010

David Baltimore, Ph.D.
Robert Andrews Millikan Professor of Biology
California Institute of Technology
AAAS President 2007-2008

Gilbert S. Omenn, M.D., Ph.D.
Professor of Medicine and Public Health
University of Michigan
AAAS President 2005-2006

[Institutional affiliations are for identification and informational purposes only]

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April 4, 2013

The Honorable Barbara Boxer
Chairman
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable David Vitter
Ranking Member
Senate Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Boxer and Ranking Member Vitter:

On behalf of the American Public Health Association, a diverse community of public health professionals who have championed the health of all people and communities around the world for more than 140 years, I write to offer our full support for the nomination of Ms. Gina McCarthy for Administrator of the U.S. Environmental Protection Agency. Ms. McCarthy has been a true champion for public health and has consistently demonstrated her leadership in developing sensible safeguards to protect the public's health from pollution.

During her tenure as the current assistant administrator for EPA's Office of Air and Radiation, EPA has put forth significant science-based public health protections that would protect millions of Americans from dangerous air pollution. Under Ms. McCarthy's leadership, EPA has tightened standards to reduce exposure to fine particle or soot pollution, which contributes to premature death, increased hospitalization and health conditions such as heart attacks, stroke and asthma attacks. Additionally, under her leadership, EPA set Mercury and Air Toxics Standards to reduce mercury, arsenic and other toxic air pollutants coming from power plants. The Mercury and Air Toxics Standards alone are expected to prevent up to 11,000 premature deaths, 4,700 heart attacks and 130,000 asthma attacks every year.

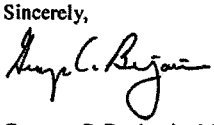
Ms. McCarthy also led EPA's development of important standards to reduce greenhouse gas emissions from new vehicles and power plants. These standards will help to address the potential adverse health effects of climate change caused by increased air pollution, extreme heat and other extreme weather events.

As EPA Administrator, we are confident that Ms. McCarthy will bring the same level of leadership and appreciation of sound science she has shown in protecting the public's health from air pollution as she works to address other important areas such as toxics, water pollution and pesticides.

Ms. McCarthy is well respected by both the public health community and industry and has a solid record of working across the aisle with both Democrats and Republicans in her efforts to develop sensible and evidence-based solutions to leading public health threats. We believe she has the right experience and credentials to serve as a strong leader and Administrator of EPA.

We strongly endorse Ms. McCarthy's nomination and urge the Senate's swift approval. Please feel free to contact me with any questions regarding our support for her nomination.

Sincerely,



Georges C. Benjamin, MD, FACP, FACEP (E)
Executive Director

Cc: Members of the Senate Environment and Public Works Committee



Back to Article

Spronk: New Administrator Can Change Culture at EPA

Gina McCarthy is willing to reach out and listen to industry concerns

By Randy Spronk
March 14, 2013, 6:39 p.m.

The management of the Environmental Protection Agency and how it interacts with industries it regulates is in need of a major overhaul. The U.S. Pork Industry believes that Gina McCarthy, President Barack Obama's nominee to be the agency's new administrator, is poised to make that happen.

Under McCarthy's leadership as assistant administrator for EPA's Office of Air and Radiation for the past four years, the staff in the EPA Air Office has been smart, professional, transparent and trustworthy; they say what they mean and mean what they say. And for the stakeholders affected by the policies of that office, that has been, well, a breath of fresh air.

The U.S. pork industry, which in 2006 negotiated a consent agreement with EPA's Air Office to determine the emissions from farms, didn't always agree with McCarthy and her department, but she was consistently willing to reach out and listen to pork producers' concerns and discuss solutions.

The Air Office answered the industry's questions honestly about internal processes and regulatory directions and gave producers an opportunity to express their views and concerns. While not all EPA offices have traditionally worked as constructively with us, we are now optimistic of a change from an "us versus them" culture in the agency to one of "us AND them."

Administrator McCarthy has a genuine interest in learning about our industry and the challenges we face. Because of that, she is aware of our industry's record of environmental stewardship. She is aware that we have invested time and money to educate producers on Clean Water Act compliance, which has led to significant improvements on the environmental management of hog farms and resulted in zero discharge operations.

There are many who fear that ongoing gridlock between Congress and Obama will result in government being run by regulatory action. That result creates a lot of uncertainty and anxiety among U.S. business owners, including farmers, because they don't know what government action to expect, when to expect it and who to expect it from. Therefore, communication and expectations between government and industry will be crucial.

There are some challenging roads ahead for the U.S. pork industry. The real effect of one of our nation's biggest droughts in history is expected to be felt for years to come; the threshold for temporarily waiving the renewable fuel standard, especially in times of drought, continues to be too high; and we continue to be attacked with non-scientific claims by well-funded special interest groups. However, in these times of adversity, it is promising to U.S. hog farmers that the new EPA administrator will treat us as partners and not adversaries.

Randy Spronk is president of the National Pork Producers Council.

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Chris Wood
President and CEO

April 4, 2013

President Barack Obama
The White House
1600 Pennsylvania Ave.
Washington, D.C. 20500

Dear President Obama:

Trout Unlimited (TU) is pleased with your nomination of Gina McCarthy to be the next Administrator of the Environmental Protection Agency (EPA). Throughout her long tenure in public service in Massachusetts and Connecticut, and in her current position as EPA Assistant Administrator for Air and Radiation, Ms. McCarthy has shown a commitment to policies that conserve aquatic resources and safeguard public health. She has the skills and experience needed to be an effective Administrator.

As an organization dedicated to conserving, protecting and restoring North America's trout and salmon fisheries and their watersheds, TU is particularly pleased by Ms. McCarthy's record on water issues. As Commissioner of the Connecticut Department of Environmental Protection, she took strong and swift action against polluters of state waterways. She also spearheaded the expansion of the Upper Housatonic River Trout Management Area, improving water quality and sport fishing opportunities on the river.

In her current role, Assistant Administrator McCarthy has earned a reputation as a tireless advocate for clean air and sound environmental policy. Perhaps most importantly, she has drawn praise from both industry and the conservation community for her willingness to engage with all stakeholders during the regulatory process. These traits will serve her well in her new position.

Topping the list of decisions that the EPA will encounter is ensuring that Bristol Bay, Alaska – known to anglers across the United States for its abundant trout and salmon runs – is protected from potentially devastating hard rock mining development. The EPA has taken a strong first step through its draft Bristol Bay Watershed Assessment, but it must now finish the job. Should Assistant Administrator McCarthy be confirmed, one of her first actions should be to finalize and release the Bristol Bay Watershed Assessment, which will be the basis for future regulatory decisions in the region. As the draft watershed assessment has already made abundantly clear, Bristol Bay's 14,000 jobs and $600 million salmon economy cannot co-exist with large scale mining.

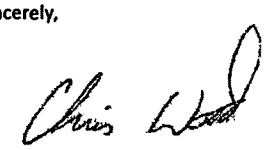
Ensuring that the Clean Water Act is an effective tool for protecting and restoring trout and salmon habitat is another vital issue for TU. Last February, the Army Corps of Engineers and EPA took the most meaningful action in a decade to begin restoring Clean Water Act protections lost over a decade of harmful Supreme Court cases and ill-conceived agency guidance. The agencies submitted

to OMB a final draft of a policy firmly grounded in science and hydrology. This policy would replace existing guidelines that are inconsistent with the intent of the Clean Water Act. Yet despite a public review process and widespread public support for this final draft, OMB has not allowed the guidance to move forward. If Ms. McCarthy is confirmed, we ask that you work with her to finalize the guidance and implement a rulemaking process.

Finally, we were pleased to hear your commitment to addressing the effects of a changing climate during your inaugural address and State of the Union speech, and we urge you to work with Ms. McCarthy, if confirmed, to deliver on this promise by supporting EPA's vital efforts to curb greenhouse gas emissions and implement climate change adaptation strategies that support the resiliency of fish and wildlife populations.

TU hopes to work with Ms. McCarthy on the protection of Bristol Bay and many other issues, and we look forward to her confirmation. The EPA will continue to be one of the most important agencies implementing your second term agenda, and Gina McCarthy is well-qualified and suited to lead it. Again, we commend you on her nomination as EPA Administrator.

Sincerely,



Chris Wood

Senator BOXER. So the point is, putting these in the record, there is a reason. This is a very balanced group of people. They don't agree with each other and I am sure they don't always agree with you, Madam Administrator. So I think it speaks well.

The second thing I would like to put in the record, without objection, is this. I want to make sure this is OK with EPA. Senator Vitter and his colleagues sent you some very important letters with some very important questions. And it is my understanding, and I have these letters here, you have responded to him. And I would like to put these letters in the record at this time, if there is no objection, in the interest of transparency that is so important to both sides of the aisle.

So we will do that.

[The referenced information follows:]

DAVID VITTER
LOUISIANA

DEPUTY WHIP

Armed Services

Banking, Housing, and Urban Affairs

Environment and Public Works

Small Business and Entrepreneurship

United States Senate

WASHINGTON, DC 20510

January 23, 2013

WASHINGTON, D.C.
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Washington, DC 20510
(202) 224-4623
Fax: (202) 228-5061

BATON ROUGE
[illegible]
Baton Rouge, LA 70802
(225) 383-0331
Fax: (225) 383-0953
Website with E-Mail Access
senator.vitter.gov

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Administrator Jackson:

I am concerned that the Obama Administration is not meeting its legal obligations to inform Congress and the public of its anticipated regulatory agenda through timely publication of the Unified Agenda. The purpose of the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda) is to inform Congress and the public of anticipated agency regulation. This information is invaluable to all parties as it provides insight into upcoming federal regulation. As you are aware, Executive Order 12866 requires the Unified Agenda to be issued biannually, once in the spring and again in the fall.[1] According to the Environmental Protection Agency (EPA) website, the spring issue is published in April or May, and the fall issue is published between October and December.[2] In addition, the Regulatory Flexibility Act (RFA) mandates that federal agencies publish a regulatory flexibility agenda in the Federal Register every April and October.[3] Specifically, Section 602 of the RFA instructs, "[d]uring the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda."[4] As you are aware, agencies meet their statutory RFA obligations by combining their regulatory flexibility agendas with their submission to the Office of Information and Regulatory Affairs (OIRA) for the Unified Agenda.[5]

The prompt publication of the Unified Agenda has become a cornerstone of federal transparency. Yet despite questions raised by multiple congressional committees, including the Committee on Environment and Public Works under Ranking Member Inhofe, the Obama Administration did not publish the Spring 2012 Unified Agenda until December 21, 2012, and it has so far failed to publish the Fall 2012 Unified Agenda.[6] OIRA notified federal agencies on March 12, 2012, of their obligation to submit their individual Spring 2012 agendas by April 13, 2012, and on June 13, 2012, OIRA notified federal agencies of their obligation to submit their individual Fall 2012 agendas by September 7, 2012.[7] Despite these deadlines, in October 2012

[1] *See* Exec. Order No. 12866, 58 Fed. Reg. 51735 (Sept. 30, 1993).
[2] *See* http://www.epa.gov/lawsregs/regulations/regagenda.html (last accessed January 22, 2013).
[3] 5 U.S.C. § 602.
[4] *Id.*
[5] *See* http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/UA_About.jsp (last accessed January 22, 2013).
[6] *See* http://www.reginfo.gov/public/ (last accessed January 22, 2013).
[7] *See* http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/agenda-data-call-and-guidelines-spring-2012.pdf (last accessed January 22, 2013); *see also* http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-

OIRA stated that, "[a]gencies [were] currently compiling the most updated information about their anticipated regulatory actions."[8] This statement indicates that as of October 2012, at least some agencies had failed to meet the April 13, 2012, and September 7, 2012, agenda deadlines.

Moreover, the Committee has learned that when OIRA was asked to provide a specific list of all agencies that met the specified deadlines and the dates on which they submitted their agendas, OIRA failed to respond. As OIRA has yet to provide Congress a satisfactory explanation for the unprecedented ten-month delay of the Spring 2012 Unified Agenda and the outstanding status of the Fall 2012 Unified Agenda, I am seeking answers directly from the EPA on when its 2012 regulatory agendas were submitted. Accordingly, I request that you answer the following questions by February 6, 2013:

1. When did the EPA submit its Spring 2012 regulatory agenda to OIRA? If EPA submitted its agenda after the April 13, 2012 deadline, please explain why EPA failed to meet the deadline.

2. Has the EPA submitted its Fall 2012 regulatory agenda to OIRA?
   a. If so, did the EPA meet the September 7, 2012 deadline?
   b. If EPA has submitted its agenda, but after the deadline, please explain the basis for EPA's delay in submitting its Fall 2012 regulatory agenda.
   c. If EPA has not yet submitted its Fall 2012 agenda to OIRA, when does the agency plan to submit its agenda to OIRA? Please explain the basis for the delay.

3. In light of the delayed publication of the Fall 2012 Unified Agenda, what is EPA's plan to satisfy its legal obligations under the RFA?

4. Was the EPA ever instructed not to submit the Spring 2012 regulatory agenda or instructed to delay its submission? If so, by whom?

5. Was the EPA ever instructed not to submit its Fall 2012 regulatory agenda or instructed to delay its submission? If so, by whom?

6. Please describe any instruction or direction that EPA received from OIRA regarding submission of the Spring 2012 agenda. This description should include the date upon which the instruction was received, whether it was communicated verbally or via correspondence, and a detailed description of the guidance given.

7. Please describe any instruction or direction that EPA received from OIRA regarding submission of the Fall 2012 agenda. This description should include the date upon which the instruction was received, whether it was communicated verbally or via correspondence, and a detailed description of the guidance given.

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agencies/fall-2012-regulatory-plan-and-unified-agenda-of-federal-regulatory-and-deregulatory-actions.pdf (last accessed January 22, 2013).

[8] Letter, Kristen J. Sarri, Assoc. Dir. For Legis. Affairs., Office of Management and Budget, to the Honorable Lamar Smith, Chairman, H. Comm. On Judiciary, et al. (October 12, 2012).

Thank you for your prompt attention to this matter. If you have any questions, please contact Kristina Moore with the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,

David Vitter
Ranking Member
Committee on Environment and Public Works

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 10 2013

OFFICE OF
POLICY

The Honorable David Vitter
United States Senate
Washington, D.C. 20510

Dear Senator Vitter:

Thank you for your January 23, 2013, letter to Administrator Jackson concerning the Environmental Protection Agency's (EPA) compliance with Section 4(b) of Executive Order (EO) 12866, *Regulatory Planning and Review* (58 FR 51735, Oct. 4, 1993) and Section 602 of the Regulatory Flexibility Act, as amended.

EPA works to ensure that our regulatory system is cost effective, informed by science, and consistent with economic growth without sacrificing health, safety, and the environment. The *Unified Regulatory Agenda*, which includes EPA's Semiannual Agenda, generally covers regulatory actions anticipated within the next 12 months, with the option to include long-term actions beyond that period. EPA's recent Semiannual Agenda includes both active and long-term actions. The Regulatory Flexibility Agenda, published pursuant to 5 U.S.C. 602, specifically describes EPA's regulatory actions that are likely to have a significant economic impact on a substantial number of small entities.

EPA takes its responsibility to comply with EO 12866 and the RFA very seriously. Like other agencies EPA received spring and fall call letters (available at http://www.whitehouse.gov/omb/inforeg_regpol_agency_review) from the Office of Information and Regulatory Affairs (OIRA) in preparation for the spring and fall updates to the *Unified Regulatory Agenda*. EPA complied with the guidelines in each of those call letters. The *Agenda* can only serve its function when it maintains a consistent standard of clear, accurate, and coherent information across its separate entries from the approximately 60 executive departments, agencies, and commissions (including independent regulatory agencies) that contribute to the *Agenda*. OIRA coordinates the work of departments, agencies, and commissions to help ensure that these standards are met. After that coordination process was completed, the most current *Regulatory Plan* and *Unified Regulatory Agenda* were published on the website (http://www.reginfo.gov/public/) on December 21, 2012 and EPA's corresponding Regulatory Flexibility Agenda was published in the **Federal Register** on January 8, 2013 (78 FR 1624).

EPA believes strongly in the benefits of a transparent regulatory system and keeping the public informed and engaged. To that end, EPA supplements the information provided in the Regulatory Agenda by maintaining a public website, the Regulatory Development and Retrospective Review Tracker or Reg DaRRT (http://www.epa.gov/rulemaking) that provides information on the status of EPA's priority rulemakings and retrospective reviews of existing regulations. The priority rulemakings can be sorted by phases, topics, or effects (e.g., those that are expected to affect small businesses). The information

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and projected dates of those priority rulemakings may be updated more frequently on the Reg DaRRT website than EPA's Semiannual Regulatory Agenda.

EPA also publishes a monthly "Action Initiation List" identifying the agency's newly commenced rulemakings (http://www.epa.gov/lawsregs/regulations/ail.html). This list also supplements the information provided in the Regulatory Agenda by providing basic information about EPA's new regulations each month.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Laura Gomez in EPA's Office of Congressional and Intergovernmental Relations at 202-564-5736.

Sincerely,

Michael L. Goo
Associate Administrator

BARBARA BOXER, CALIFORNIA, *CHAIRMAN*

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ZAK BAIG, *REPUBLICAN STAFF DIRECTOR*

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510–6175

February 20, 2013

The Honorable Bob Perciasepe
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Dear Acting-Administrator Perciasepe:

We write to express our concern for actions taken by the Environmental Protection Agency (EPA) pursuant to authority the agency claims to have under the Clean Water Act (CWA). Specifically, we are deeply troubled by EPA's unreasonable claim that it has "preemptive veto authority" over the Pebble Mine Project *before* the sponsor has the opportunity to apply to the Army Corps of Engineers (Corps) for a CWA permit.[1] Such an interpretation is unreasonable and contrary to both the plain text of the CWA and its legislative history. Moreover, in EPA's attempt to rewrite the CWA and grant itself "preemptive veto authority," EPA has resorted to improvising a new system by using its general research authority under Section 104(a) of the Act to conduct a watershed assessment of Bristol Bay.[2] This assessment has suffered from intense criticism, being described as "hogwash" by one of EPA's own peer reviewers namely because of the highly creative fictional mine study. [3] Accordingly, we call on you to disavow this unjustified power grab and instead allow the permitting process designed by Congress to move forward.

As you are aware, Congress delegated to the Army Corps of Engineers the full authority to, "issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at *specified* disposal sites."[4] Under Section 404 (b) – the law is clear that a permit may be issued only for a *specified site* and only by the Corps. [5] While section 404(c) authorizes the EPA to "prohibit the *specification*…of any *defined area* as a disposal site,"[6] EPA must first determine that "the discharge of *such materials* into *such area* will have an unacceptable adverse effect."[7] In the statute, Congress consistently and repeatedly

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1 *See* 40 C.F.R. § 231(a) (2010).

2 Letter from Arvin Ganesan, Associate Administrator, U.S. EPA to the Honorable Darrell E. Issa, Chairman, House Oversight and Gov't Reform (June 22, 2012).

3 *Editorial: The EPA's Pebble Beaching: Rewriting the Clean Water Act to kill an Alaska mining project,* The Wall Street Journal, Sep. 30, 2012, *available at* http://online.wsj.com/article/SB10000872396390443989204577603311958126108.html#articleTabs%3Darticle.

4 33 U.S.C. § 1344(a) (emphasis added).

5 *See* 33 U.S.C. § 1344(c).

6 *Id.* (emphasis added).

7 *Id.* (emphasis added).

referred to EPA taking action with respect to a specific site, namely the site identified in the application to the Corps. Therefore, it follows that Section 404(c) was intended to give EPA the authority to initiate the veto process only in the context of a specific permit application for areas designated by the Corps as specified disposal sites. In the absence of a permit application detailing the materials involved and the exact location it is to be discharged, the EPA does not have the requisite information needed to initiate the veto process. Accordingly, it is clear from the four corners of the statute that EPA does not have "preemptive veto authority."

Assuming *arguendo* that there was some room for interpretation in the statute, its legislative history removes any doubt that Congress did not intend for EPA to have preemptive veto authority. As stated in Senator Muskie's transmittal of the Conference Committee report:

> The decision [to give EPA veto authority] is not duplicative or cumbersome because the *permit application transmitted to the Administrator for review* will set forth both the site to be used and the content of the matter of the spoil to be disposed. The Conferees expect the Administrator to be expeditious in his determination as to whether a site is acceptable or if specific spoil material can be disposed of at such site.[8]

This language unambiguously demonstrates that Congress created a system wherein the Army Corps receives, evaluates, and issues CWA permits, and EPA has authority to lodge a powerful objection to the permit under evaluation. Moreover, Congress explained that it was not their wish to, "*create a burdensome bureaucracy*"[9] and therefore it was not deliberately creating two separate tracks to evaluate a site.

Despite this clear language, EPA has done precisely what Congress was trying to avoid by inventing a separate regulatory track complete with new and ever evolving hurdles designed to derail a project before it receives due process under the law. However, this *ad hoc* process has no support in the statute. EPA's procedures regarding the implementation of Section 404(c) state that "consideration should be given to the relevant portions of the Section 404(b)(1) guidelines."[10] The analysis required under the Section 404(b)(1) guidelines is very detailed. In contrast, a watershed ecological risk assessment authorized under Section 104(a) is not intended to provide the site-specific details required by the guidelines and therefore would not support a Section 404(c) veto.[11] The analysis contained in the Bristol Bay Watershed Assessment is based on a hypothetical mine scenario, rather than an actual one, and is therefore unworkable. It contains only speculative data and ignores restoration and mitigation requirements. Therefore, it could not support a decision under Section 404(c).

If EPA continues on this unwieldy path, the agency is jeopardizing billions of dollars of investment and thousands of high paying jobs, all without due process. In the past, EPA has

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[8] *See Senate Consideration of the Report of the Conference Committee*, s. 2770, 93rd Cong. 1st Sess., Oct. 4, 1972, *reprinted in* 1 *Legislative History of the Water Pollution Control Act Amendments of 1972*, at 177 (1973). (emphasis added).

[9] *Id.* at 177.

[10] 40 C.F.R. § 231.2(e) (2010).

[11] *See* 40 C.F.R. § 230 (2010).

rebuffed the suggestion that their actions have "killed jobs,"[12] but in the case of Pebble Mine, it is undeniable that EPA is attempting to preemptively eliminate over 2,000 jobs projected for mine construction and an additional 1,000 ongoing skilled mining jobs, averaging $95,000 per year.[13] Moreover, EPA's unauthorized actions would eliminate approximately 10,000 jobs outside of Alaska. Under EPA's current view, these jobs, along with a reliable source of copper ore, an important mineral vital to the economy, could be eliminated at the sole discretion of the Administrator, before the applicant has the opportunity to design and submit a plan through regular process. This is not what Congress intended. Accordingly, EPA should reverse course and acknowledge that the agency is indeed bound to the letter of the law, which requires the Corps to lead in the permitting process, while taking into full account the environmental concerns articulated by EPA.

Additionally, we request that you respond to the following questions no later than March 12, 2013:

1. How much time, money, and staff have been dedicated to developing the Bristol Bay Watershed Assessment? Please detail expenditures both cumulatively and on an annual basis.

2. Did EPA ever receive a petition or other form of request to conduct a watershed assessment of Bristol Bay? If so, please provide the Committee with a copy of the request.

3. Does EPA believe that environmental damage will accrue to the Bristol Bay Watershed simply by allowing the sponsors of the project to apply to the Corps for a 404 permit?

    a. If so, please explain the environmental impact that that EPA anticipates will accrue to the Bristol Bay watershed between the time that EPA conducts its watershed assessment and the time that the sponsors of Pebble Mine would otherwise submit their application to the Corps for review.

4. EPA has stated that they intend to have a second peer review panel evaluate the changes EPA made to the watershed assessment in response to the criticism that was leveled at the agency during the first round of peer review. Was the second round of peer review part of the original plan? Is EPA following a standard process to develop the watershed assessment? Please identify all precedent EPA is relying on to develop the Bristol Bay Watershed assessment and any instances where EPA has convened a second peer review panel.

5. Under Section 404(c) of the CWA, the EPA must determine that the discharge of dredged or fill material at specified disposal sites will have an unacceptable adverse effect. When determining whether these effects are unacceptable, the EPA's procedures regarding the implementation of Section 404(c) state that "consideration should be given to the relevant

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[12] James Rosen, *Regulation Nation: EPA Chief Rejects GOP Charges She's Imposing Job-Killing Rules*, FOXNews.com, Sep. 22, 2011, *available at* http://www.foxnews.com/politics/2011/09/22/regulation-nation-epa-chief-rejects-gop-charges-shes-imposing-job-killing-rules/.

[13] *See Facts & FAQs*, The Pebble Partnership, *available at* http://www.pebblepartnership.com/project/facts-faqs.php.

portions of the Section 404(b)(1) guidelines." Has EPA followed the guidelines established in 404(b)(1) in the watershed assessment?

6. Has EPA followed its 1998 Guidelines for Ecological Risk Assessment as it has conducted the Bristol Bay Watershed Assessment? Please provide all documents that refer or relate to EPA's incorporation of the 1998 Guidelines into the Bristol Bay Watershed Assessment.

7. The 1998 guidelines state that "[n]o matter what technique is used, the sources of uncertainty…should be addressed." However, EPA's construction of a fictitious mine is riddled with uncertainty. How has EPA addressed this massive uncertainty generated by the agency itself? Please provide all documents that refer or relate to the hypothetical mine used in the Bristol Bay Watershed Assessment, as well as for the specific purpose of measuring and identifying levels of uncertainty.

8. What office/team at EPA developed the theoretical scenario to run this analysis, and what was done to ensure conformance with the Data Quality Act?

9. Who specifically at the agency made the decision to run the assessment and analysis under 404(c) authority?

If you have any questions regarding this request, please feel free to have your staff contact Kristina Moore with the Senate Environment and Public Works Committee at 202-224-6167.

Sincerely,

David Vitter
Ranking Member
Environment and Public Works

Roger Wicker
U.S. Senator

BARBARA BOXER, CALIFORNIA, CHAIRMAN
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United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

February 26, 2013

The Honorable Bob Perciasepe
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Acting Administrator Perciasepe:

The Senate Environment and Public Works Committee is interested in working with you in your new role as Acting Administrator of the U.S. Environmental Protection Agency (EPA). We sincerely hope that as the current head of EPA, you will work toward fulfilling President Obama's call for increased transparency in the operations of the federal government. Furthermore, we view this as an opportunity for the EPA to be more amenable to congressional oversight efforts, as both your agency and our Committee have the shared goal of advancing transparency and accountability in government.

The use of private e-mail accounts for official business has been an issue in the past at the EPA, among other federal agencies. Such actions raise the prospect of potential violations of the Presidential Records Act[1] (PRA) and the Federal Records Act[2] (FRA). Additionally, using non-official accounts, as defined by the PRA and the FRA, to conduct government business will likely engender challenges to compliance with the Freedom of Information Act[3] (FOIA), litigation requests, and congressional requests. We believe that with your cooperation as acting head of the EPA, we can work together to prevent these concerns from creating additional problems.

As you may know, EPA policy explicitly prohibits the use of non-EPA e-mail accounts, instructing employees to "[not] use any outside e-mail account to conduct official Agency business."[4] In 2008, EPA wrote to the Government Accountability Office that "EPA has a clear and consistent policy framework against the use of nongovernmental e-mail systems for official EPA business."[5] Regretfully, under the direction of Administrator Jackson, EPA officials frequently neglected to follow this policy, creating a widespread problem. As Acting

[1] *See* 44 U.S.C. § 2201.
[2] *See* 44 U.S.C. § 31.
[3] *See* 5 U.S.C. § 552.
[4] ENVTL. PROT. AGENCY, *Frequent Questions about E-Mail and Records* http://www.epa.gov/records/faqs/emails.htm (last accessed Feb. 19, 2013).
[5] GOV'T ACCOUNTABILITY OFFICE, FEDERAL RECORDS: NATIONAL ARCHIVES AND SELECTED AGENCIES NEED TO STRENGTHEN E-MAIL MANAGEMENT, 61, GAO08-742 (June 2008).

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Administrator, you are in a position to rectify this and facilitate the proper treatment of federal records.

As such, we would like to alert you to our continued interest in such matters. Specifically, we draw your attention to four violations that arose in the course of our investigation. Our purpose in outlining the following areas of concern is to draw your attention to the ongoing problem which you now have the opportunity to correct. First and foremost, we are deeply troubled by the practice of Administrator Jackson's alias e-mail account under the name of Richard Windsor, of which concern we are sure you are aware. Further, we have uncovered many instances in which EPA officials have used non-EPA accounts to conduct business, in violation of EPA policy, as previously referenced. The second instance involves the legal implications of EPA Region 8 Administrator James B. Martin's use of an Apple me.com account to conduct agency business, as delineated in our January 29, 2013 letter.[6] Last week, Regional Administrator Martin shared with our offices his intention to resign. The third instance of concern is the use of a personal G-mail account by Deputy General Counsel Tseming Yang in the EPA's Office of General Counsel for official business purposes.[7] Finally, the Committee has recently become aware that you used a non-official e-mail account, bob@perciasepe.org, to conduct government business in at least one instance.[8]

As we move forward with our oversight efforts, we would appreciate your full support and cooperation. We ask for a formal commitment from you in your capacity as Acting Administrator to fulfill outstanding document requests from the Senate Committee on Environment and Public Works. Please direct your attention toward aiding in the production of responsive documents to the Committee.

Thank you for your prompt attention to this matter. If you have any questions, please contact Kristina Moore with the Senate Committee on Environment and Public Works at (202) 224-6176.

Sincerely,

David Vitter
Ranking Member
Environment and Public Works

Jim Inhofe
United States Senator
Environment and Public Works

[6] Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to James B. Martin, Adm'r, U.S. Envtl. Prot. Agency Region 8 (Jan. 29, 1013).
[7] *See* http://www.epa.gov/epafoia1/docs/Second-Release-Part-P.pdf (last accessed Feb. 21, 2013).
[8] *See* http://www.epa.gov/epafoia1/docs/Second-Release-Part-O.pdf (last accessed Feb. 21, 2013).

United States Senate

WASHINGTON, DC 20510

March 12, 2013

The Honorable Gina McCarthy
Assistant Administrator
Office of Air and Radiation
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Assistant Administrator McCarthy:

As you are aware, the Senate Environment and Public Works Committee has been investigating the highly questionable tactics employed by former Environmental Protection Agency (EPA) Region 6 Administrator, Dr. Al Armendariz. Dr. Armendariz resigned his position in April 2012, soon after the public learned of his controversial statement that the "general philosophy" of EPA's enforcement policy should be to "crucify" oil and natural-gas companies.[1] At the time, the White House and EPA distanced themselves from Dr. Armendariz stating that "[Armendariz's] comments are inaccurate as a representation or characterization of the way the EPA has operated under President Obama."[2] Moreover, the President ran on a pledge to support an "all of the above" energy strategy – which deploys our abundant oil, gas, and coal resources.[3] However, the Committee has recently obtained documents that demonstrate Dr. Armendariz was not a rogue actor, out of step with EPA leadership. Rather, evidence has emerged that indicates Dr. Armendariz's controversial tactics were, in fact, part of a broader effort at EPA to coerce the States and to constrain the domestic fossil fuel industry with layers of bureaucratic red tape and intimidation tactics.

The Committee has learned that prior to his resignation, Dr. Armendariz emailed senior-level EPA officials and outlined numerous EPA efforts during his tenure that were designed to restrain domestic fossil fuel production, as proof that his mission at EPA had been accomplished. Dr. Armendariz expressly highlights your new air regulations, as the "icing on the cake." The email stated the following:

> Thanks Bob. But don't worry about me personally. Because of our collective work (rules, enforcement, science, *soft power*) we have dozens of states (including Texas) with brand new disclosure requirements for fracking fluid chemicals, new state rules specific to hydrofracking regulation, new state well

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[1] Amy Harder, *Sierra Club Hires EPA Official Felled by 'Crucify' Comments*, NATIONAL JOURNAL, Jun. 29, 2012, http://www.nationaljournal.com/domesticpolicy/sierra-club-hires-epa-official-felled-by-crucify-comments-20120629.

[2] Lesa Jansen & Todd Sperry, *EPA Official Resigns over 'Crucify' Remarks*, CNN, Apr. 30, 2012, http://www.cnn.com/2012/04/30/us/epa-crucify.

[3] WhiteHouseOnline, *Obama on US Energy*, YOUTUBE, Mar. 9, 2012, http://www.youtube.com/watch?v=hfKwJuayplM *at* 05:30 min.

> cement/casing requirements, and more state resources to conduct air emission inspections. Add to that tighter federal rules for gulf-off shore NPDES discharges, GHG reporting for fugitive methane and engaging USGS and state geo surveys to take seismic activity seriously.
>
> None of this would [have] happened had the 2008 election gone the other way. None.
>
> We have set things in motion, including empowering and shaming the states, to clean up the oil/gas sector. Further progress is inevitable. I am extremely proud of the work that we have done collectively. Gina's new air rules will soon be the icing on the cake, on an issue I worked on years before my current job. (emphasis added).[4]

This email is alarming for a number of different reasons. In the first instance, it appears that there is a collective strategy at the EPA aimed at reining in domestic natural gas production. This strategy includes not just EPA's foiled attempts to punish natural gas producers[5] but also includes an effort towards "shaming the states."[6] EPA's actions against Range Resources have been highlighted as an example of Armendariz's overly zealous persecution of the oil and gas industry. The EPA issued an emergency order in 2010 accusing Range Resources of contaminating an aquifer west of Fort Worth and giving it 48 hours to provide clean drinking water to residents. At the time, Armendariz circumvented state regulators actively investigating the situation citing in the emergency order that EPA had "determined" that State and local authorities had not taken sufficient action. The order later was withdrawn after a state court ruled evidence that hydraulic fracturing had caused the contamination had been falsified.[7] We now know that far from being Armendariz's pet project – the highest levels of EPA were aware of and endorsed his actions. In one email recently obtained by the Committee, Assistant Administrator Cynthia Giles sent the following email to her colleagues:

> Just wanted to say how impressed I am at the terrific work the Region did on the Range order…and thanks to the HQ folks for supporting the region on this and getting this done as one EPA. Great job all![8]

After EPA withdrew the order, both Giles and Bob Sussman, Senior Policy Counsel to the Administrator, sent Armendariz personal emails expressing their disappointment that EPA withdrew the order.[9]

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[4] Email from Al Armendariz, to Bob Sussman & Cynthia Giles (Mar. 30, 2012, 06:34 PM).
[5] *U.S. v. Range Production Co.*, No. 3:11-CV-00116-F (N. D. Tex. Mar. 30, 2012).
[6] *Supra* note 4.
[7] Dina Cappiello, *Al Armendariz, EPA Official, Resigns Over 'Crucify' Comment*, THE HUFFINGTON POST, Apr. 30, 2012, http://www.huffingtonpost.com/2012/04/30/al-armendariz-epa-official-resigns_n_1464919.html.
[8] Email from Cynthia Giles, to John Blevins, Suzanne Murray & David Gray (Dec. 8, 2010, 07:41 AM).
[9] Email from Bob Sussman, to Al Armendariz, et al. (Mar. 30, 2012, 03:46 PM).

Moreover, it appears that "Gina's new air rules," presumably the New Source Performance Standards for Electric Generating Units proposed on March 27, 2012, are part of a deliberate strategy to shut down new electricity generation.[10] Dr. Armendariz proudly declared that the NSPS rules are "icing on the cake" and achieved a goal he had "worked on years before my current job."[11] While it is not clear from the email, it appears that Dr. Armendariz was boasting about EPA's decision to list petroleum coke (pet coke) in the definition of coal so pet coke-fired power plants would also be captured under the proposed NSPS rule. In addition to our concerns over the credibility of EPA's decision to regulate pet-coke as coal in the proposal without substantial evidence or appropriate findings in the administrative record, the proposed NSPS rule, which was prompted by a 2011 settlement agreement[12] between several environmental groups – including the Sierra Club – and the EPA, effectively outlawed the construction of the Las Brisas Energy Center (LBEC) in Corpus Christi, Texas. Dr. Armendariz had previously worked for the Sierra Club in preparation for the public hearings against the LBEC. Thus, Dr. Armendariz's reference to an "issue I worked on years before my current job" seemingly refers to his work for the Sierra Club on LBEC. Despite this obvious conflict-of-interest, documents obtained by the Committee reveal that you in fact exchanged emails with Dr. Armendariz on January 12, 2011, about the LBEC.[13]

We are also concerned that as Region 6 Administrator, Dr. Armendariz brought on two attorneys, Leyla Mansuri and Chrissy Mann, who previously litigated against the construction of electric generating units – specifically the LBEC.[14] Prior to her appointment, Ms. Mansuri was an attorney with the Environmental Integrity Project, and represented the Sierra Club in its litigation against LBEC.[15] Ms. Mann was also engaged in litigation against the LBEC in her role at the Office of Public Interest at TCEQ.[16] It appears as if Dr. Armendariz commandeered the resources of the EPA to accomplish his goals of killing the LBEC, all with the consent and knowledge of EPA leadership.

As the President's nominee to be Administrator, we require your immediate attention to the questions that have been raised by these documents. Failure to respond in a prompt and fully transparent fashion will leave a cloud of doubt over whether you intend to break with your predecessor and truly lead a transparent agency. Accordingly, I request that the EPA provide any and all records, electronic or otherwise, of meetings, conversations, e-mails, letters, or other communications or documents referring or relating to the LBEC, including, but not limited to, all communications between you, Dr. Armendariz or any other EPA officials concerning the LBEC.

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[10] *See* Standards for Performance For Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, 77 Fed. Reg. 22,392 (Apr. 13, 2012).
[11] *Supra* note 4.
[12] *See* U.S. ENVTL. PROT. AGENCY, *Settlement Agreements to Address Greenhouse Gas Emissions from Electric Generating Units and Refineries –Fact Sheet*, http://epa.gov/carbonpollutionstandard/pdfs/settlementfactsheet.pdf (last accessed March 8, 2013).
[13] Email from Gina McCarthy, to Al Armendariz & Janet McCabe (July 12, 2011, 09:11 PM).
[14] APPLICATION OF LAS BRISAS ENERGY CENTER, LLC FOR STATE AIR QUALITY PERMIT, SOAH No. 582-09-2005 (Mar. 29, 2010) *available at* http://www.soah.state.tx.us/pfdsearch/pfds/582%5C09%5C582-09-2005-pfd1.pdf.
[15] *Id.*
[16] APPLICATION OF LAS BRISAS ENERGY CENTER, LLC FOR STATE AIR QUALITY PERMIT, SOAH No. 582-09-2005 *at* 4 (Dec. 1, 2010) *available at* http://web.caller.com/2010/pdf/1201lasbrisas.pdf.

Please provide the requested documents and responses to the following questions no later than March 22, 2013.

1. As you are aware, Dr. Armendariz previously served as an expert witness for the Sierra Club in a proceeding against the LBEC.[17] While this presents a clear conflict-of-interest, he was permitted to work on EPA's permitting decisions related to LBEC and actively engaged EPA leadership on this issue.
    a. Please explain why he was allowed, at any time during his tenure, to work on matters relating to the LBEC.
    b. Please list all entities in which Dr. Armendariz had an identified conflict-of-interest.
    c. What are EPA's criteria for identifying a conflict-of-interest?
    d. After a conflict-of-interest was identified, how was Dr. Armendariz screened from working on covered projects?

2. While Dr. Armendariz has resigned his position from EPA, Leyla Mansuri and Chrissy Mann are still employed by Region 6. Both of these individuals represented entities opposed to the construction and permitting of the LBEC.
    a. Has EPA identified conflict-of-interest for either Ms. Mansuri or Ms. Mann? Please list all topics in which EPA has identified a conflict-of-interest.
    b. Has either Ms. Mansuri or Ms. Mann worked on any matter related to the LBEC?
    c. Has either Ms. Mansuri or Ms. Mann worked on the development of the NSPS rule for greenhouse gases for new power plants Electric Generating Units?

3. On July 12, 2011, Dr. Armendariz sent you and your Deputy Administrator, Janet McCabe, an email stating the following: "*I am looking forward to seeing Janet tomorrow to talk about a couple of air issues. On last Friday last week I received guidance from OGC ethics office that I have been in the agency long enough that my "cooling off period" has lapsed on working on matters that I had previously worked on before joining the agency.*"[18] The next ten paragraphs are redacted. Your response to this email – sent at 9:11pm on the same date is also redacted.
    a. Please provide the Committee with an unredacted version of both emails.
    b. Did you or Janet McCabe ever discuss the LBEC with Dr. Armendariz, Ms. Mansuri, or Ms. Mann? If so, characterize the nature of the conversation and provide the Committee with all such communications.
    c. Did you or Janet McCabe ever discuss the NSPS for Electric Generating Units rule with Dr. Armendariz, Ms. Mansuri, or Ms. Mann? Please provide the Committee with all such communications referring or relating to these conversations.

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[17] Denise Malan, *EPA Appointment Could Affect Las Brisas Hearing*, CALLER.COM, Nov. 5, 2009, http://www.caller.com/news/2009/nov/05/epa-appointment-could-affect-las-brisas-hearing/?print=1.
[18] Email from Al Armendariz, to Gina McCarthy & Janet McCabe (July 12, 2011, 07:22 PM).

4. What is your interpretation of Dr. Armendariz's comment that your "air rules" were "icing on the cake"?

Thank you for your prompt attention to this matter. If you have any questions, please contact Kristina Moore with the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,

David Vitter
Ranking Member
Committee on Environment and Public Works

James Inhofe
United States Senator

Roger Wicker
United States Senate

Jeff Sessions
United States Senator

John Boozman
United States Senator

JOHN CORNYN
United States Senate

Congress of the United States
Washington, DC 20515

April 10, 2013

The Honorable Gina McCarthy
Assistant Administrator, Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Ms. McCarthy:

The House Committee on Oversight and Government Reform and the Senate Committee on Environment and Public Works have been conducting oversight of the Environmental Protection Agency's (EPA) compliance with federal records laws[1] and responses to Congressional inquiries. To date, the agency has fallen woefully short of enforcing these federal records laws and responding to our inquiries. Notably, our investigation revealed that EPA employees, including you, have operated in a manner that disregards internal protocols and inhibits the public's right to information[2] in a potential effort to evade transparency.

When President Obama first took office he declared that his Administration would create "an unprecedented level of openness in Government."[3] Such openness to the public and Congress is manifested in statute through the Freedom of Information Act[4] (FOIA). The President has emphasized that "[t]he FOIA – which provides the public with a statutory right to request and receive information from their government – is a key way in which government transparency is realized."[5] In addition, Congress is entitled to government information pursuant to its inherent constitutional authority to conduct oversight and investigate the executive branch as a crucial part of our system of checks and balances.[6] Despite this mandate, we have uncovered several EPA practices ranging from the use of non-official email accounts to conduct official government business, to excessive redactions within disclosures; that have operated as a means for the EPA to purposely hide information from Congress and the public. As the

[1] *See e.g.* 5 U.S.C. § 552.
[2] *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 763 (1989); *see also* U.S. Dep't of Justice, *The Freedom of Information Act (FOIA): About*, http://www.justice.gov/open/foia.html (last accessed Apr. 8, 2013).
[3] Memorandum from President Barack Obama, *Transparency and Open Government* (January 21, 2009) *available at* http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment.
[4] *See* 5 U.S.C. § 552.
[5] *See* The White House Blog, Sunshine Week: In Celebration of Open Government (Mar. 11, 2013) *available at* http://www.whitehouse.gov/blog/2013/03/11/sunshine-week-celebration-open-government.
[6] *See, e.g., Watkins v. United States*, 354 U.S. 178, 200 (1957); *McGrain v. Daugherty*, 273 U.S. 135 (1927). The Supreme Court has recognized Congress' investigative power, which requires access to government information to conduct proper oversight.

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President's nominee for the position of EPA Administrator, it is incumbent on you to take steps to correct these institutional flaws.

As you are aware, Congress' investigation of EPA's email practices intensified with concerns over former EPA Administrator Lisa Jackson's use of a secondary, alias email account. While the EPA argued that Jackson was merely continuing the practice of her predecessors, the facts demonstrate otherwise. For example, EPA's 2008 memo to the National Archives and Records Administration[7] specifies that the Administrators' secondary email account is only used for infrequent communication with select high level staff; however, we have uncovered documents that suggest Jackson used her alias Richard Windsor account as her primary email account. She used the alias account to subscribe to news publications, to make appointments and even to communicate with individuals outside of the EPA.[8] The scope of records implicated is much greater than that of previous Administrators. As such, Jackson's use of an alias email account is unprecedented at EPA. Of utmost concern, the Committees are unsure whether – prior to the public exposure of the alias account in November 2012[9] – EPA searched the alias account in response to FOIA and Congressional requests. No one at EPA has taken responsibility for the veil of secrecy covering Jackson's alias account as EPA has failed to provide Congress a clear response to questions regarding who at EPA had knowledge of the alias email account. Also, it is not clear whether the EPA FOIA officers or the EPA Office of General Counsel knew to search the Richard Windsor alias email account in response to an information request. In fact, during a February 25, 2013, briefing with the House Committee on Oversight and Government Reform regarding the Richard Windsor alias email account and EPA email practices, EPA officials from the Office of General Counsel and the Office of Information Collection, reported that they did not know, or would not confirm knowledge, of the alias account prior to it becoming public and could not confirm whether the EPA's FOIA office had knowledge of the account.[10] Moreover, none of the officials could report to Congress on whether Jackson's alias emails were archived for federal recordkeeping purposes as required by the Federal Records Act (FRA).[11]

In addition, EPA officials did not know whether records liaison officers in each EPA office were trained in FOIA and the application of FOIA's exceptions.[12] Moreover, while EPA officials asserted that there are "reams of material" available on EPA's internal intranet system about federal recordkeeping rules and guidelines, EPA does not keep track of which EPA employees, if any, actually view any of the material, nor does EPA keep track of which EPA employees receive training on federal recordkeeping rules.[13]

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[7] *See* Memorandum from John B. Ellis, Agency Records Officer, Envtl. Prot. Agency, to Paul Wester, Dir., Modern Records Program, Nat'l Archives & Records Admin. (Apr. 11, 2008).
[8] [On file with Authors].
[9] Letter from Hon. Ralph Hall, Chairman, H. Comm. on Science, Space & Tech., to Arthur Elkins, Inspector Gen. U.S. Envtl. Prot. Agency (Nov. 15, 2012).
[10] Briefing for staff of H. Comm. on Oversight & Gov't Reform by EPA officials including Kevin Miller, Asst. Gen. Counsel, Geoff Cooper, Asst. Gen. Counsel, Jeff Wills, Acting Dir., Office of Information Collection, and Tom Dickerson, Office of Legislative Affairs (Feb.25, 2013).
[11] *See* 44 U.S.C. § 31.
[12] *See* note 10, *supra*.
[13] *Id.*

Further, a troubling pattern of EPA personnel using non-official email accounts to conduct official business has come to light. As you should be aware, EPA policy explicitly prohibits the use of non-EPA email accounts and failure to follow this policy heightens the possibility that EPA and its employees violate the FRA[14] and the Presidential Records Act.[15] In 2008, the Government Accountability Office (GAO) cautioned EPA about the use of non-official email accounts for agency business and recommended that EPA revise its agency records management policies to ensure adequate training and preservation of these emails.[16] However, EPA has yet to adopt GAO's recommendation and implement a revised policy.[17] Instead, EPA affirmed its strict prohibition on the use of non-official emails in an agency-wide notification in October 2012. Specifically, the October notice stated: "This is a reminder to all EPA Employees that *EPA prohibits the use of non-EPA E-Mail Systems when conducting agency business*. This guidance is stated in Agency Records Training, New Employee Orientations and Briefings for Senior Agency Officials."[18] (emphasis added). Despite this clear prohibition, we understand that several high ranking EPA officials – including you[19] – have used a non-official email account for official purposes. As you are aware, shortly after we questioned Region 8 Administrator James Martin's use of a non-official me.com account, he had to amend his court filings and quickly announce his resignation – affirming our concerns. When confronted with evidence demonstrating rampant violations of EPA's clear policy, EPA declared that, "There's nothing wrong with this."[20] Such blatant disregard for internal protocols meant to ensure compliance with federal transparency and record keeping laws is unacceptable.

In addition to EPA's troubling email practices, the Committees are concerned that EPA has failed to appropriately process FOIA requests. The President's memorandum on FOIA was clear – "The [FOIA] should be administered with a clear presumption: In the face of doubt, openness prevails."[21] More specifically, the Attorney General instructed:

> Agencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information. Even if some parts of a record must be withheld, other parts either may not be covered by a statutory exemption, or may be covered only in a technical sense unrelated to the actual impact of a disclosure.[22]

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[14] *Id.*
[15] *See* 44 U.S.C. § 2201.
[16] GOV'T ACCOUNTABILITY OFFICE, GAO-008-742, FEDERAL RECORDS: NATIONAL ARCHIVES AND SELECTED AGENCIES NEED TO STRENGTHEN E-MAIL MANAGEMENT 61 (June 2008), http://www.gao.gov/products/GAO-08-742.
[17] *See Id.*
[18] *NRMP Alert: Do Not Use Outside Email Systems to Conduct Agency Business* [On file with Authors].
[19] Statement of Hon. Gina McCarthy, Asst. Adm'r, Office of Air & Radiation, Envtl. Prot. Agency, to Hon. David Vitter, U.S. Senate (Mar. 20, 2013).
[20] *See* CJ Ciaramella, *Windsor Knot Tightens Another EPA official using private email*, THE WASHINGTON FREE BEACON (Feb. 26, 2013), http://freebeacon.com/windsor-knot-tightens/.
[21] Memorandum from President Barack Obama, *Transparency and Open Government* (January 21, 2009) *available at* http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment.
[22] Memorandum from Attorney Gen. Eric Holder, *The Freedom of Information Act (FOIA) Memorandum for Heads of Executive Departments and Agencies* (Mar. 19, 2009) *available at* http://www.justice.gov/ag/foia-memo-march2009.pdf.

Despite the Attorney General's guidance, the Committees have observed a fairly zealous application of FOIA exemptions to redact information that should be open to the public. For example, the EPA has repeatedly invoked exemption 5, an exemption meant to safeguard the government's deliberative policymaking process,[23] to redact employees' reaction to news articles – information that is clearly inconsequential to an agency's deliberative process.[24] In other email exchanges, the EPA has redacted the entire email message, including the subject, the text and signature block by claiming deliberate process under exemption 5.[25] While the EPA may have some valid claims of privilege, it is obvious that EPA's practice of redacting numerous pages of emails conflicts with the purpose of exemption 5, as well as the Attorney General's guidance to segregate exempt and nonexempt information in its FOIA disclosures.[26] We previously requested that the EPA Office of Inspector General (OIG) expand its audit of EPA's electronic records management practices to determine whether EPA is invoking FOIA exemptions properly.[27]

Moreover, the EPA has relied on its FOIA responses that include FOIA exemptions in response to Congressional inquiries, or ignored Congressional requests for information altogether – in direct conflict with the law.[28] Congress is not included within the scope of FOIA and agencies cannot use FOIA exemptions to withhold information from Congress.[29] The Supreme Court has declared that "[w]hen a committee seeks information from the executive, it may do so by means of an informal request from committee staff, a letter signed by a committee chair, or by exercise of the subpoena authority, which is vested in standing committees by both

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[23] U.S. Dep't of Justice, *Guide to the Freedom of Information Act: Exemption 5*, http://www.justice.gov/oip/foia_guide09/exemption5.pdf (last accessed Apr. 8, 2013).

[24] [On file with Authors].

[25] *See* Part A, Release 2 – HQ- FOI-01268-12, Email from Allyn Brooks-LaSure to Richard Windsor (Apr. 15, 2009, 01268-EPA-97); Email from Seth Oster to Richard Windsor (June 24, 2009, 01268-EPA-207); Email from Scott Fulton to Richard Windsor (Aug. 15, 2009, 01268-EPA-261), http://www.epa.gov/foia/docs/Part-A-HQ-FOI-01268-12-ReleaseRedact-NoAttachments-Production-2.pdf (last accessed Apr. 8, 2013); *see also* Part C, Release 2 – HQ-FOI-01268-12, Email from Seth Oster to Richard Windsor (Jan. 20, 2010, 01268-EPA-527); Email from Seth Oster to Richard Windsor (Jan. 8, 2010, 01268-EPA-518); Email from Arvin Ganesan to Richard Windsor (Feb. 24, 2010, 01268-EPA-548), http://www.epa.gov/foia/docs/Part-C-HQ-FOI-01268-12-ReleaseRedact-NoAttachments-Production-2.pdf (last accessed Apr. 8, 2013).

[26] Memorandum from Attorney Gen. Eric Holder, *The Freedom of Information Act (FOIA) Memorandum for Heads of Executive Departments and Agencies* (Mar. 19, 2009) *available at* http://www.justice.gov/ag/foia-memo-march2009.pdf.

[27] *See* Letter from Hon. David Vitter et al., to Hon. Arthur Elkins, Inspector Gen., Envtl. Prot. Agency (Feb. 7, 2013).

[28] *See* Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Hon. Lisa Jackson, Adm'r, Envtl. Prot. Agency (Jan. 15, 2013); *see also* Letter from Arvin Ganesan, Assoc. Adm'r, Envtl. Prot. Agency, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Feb. 1, 2013). Chairman Issa requested all electronic mail communications with the name "Richard Windsor" and any other alias email accounts used by Lisa Jackson to conduct official government business. In response, EPA failed to provide any documents responsive to Chairman Issa's request, thus, Chairman Issa's access to responsive documents is limited to EPA's FOIA response to FOIA Request HQ-FOI-01268-12, which includes FOIA exemptions such as those delineated in footnote 21. Moreover, Senator Vitter's August 23, 2012, FOIA request to EPA remains outstanding. *See* Letter from Sen. Vitter, to Larry Gottesman, Freedom of Info. Officer, Envtl. Prot. Agency (Aug. 23, 2012).

[29] *See* 55 U.S.C. § 552(d).

bodies."[30] As such, "when a congressional committee of jurisdiction is seeking information from an agency for legislative or oversight purposes, it acts not pursuant to FOIA, but rather pursuant to Congress's constitutionally-based right of access to information from the executive branch."[31] This right has been reaffirmed throughout American jurisprudence by virtue of the fact that "[a] legislative body cannot legislate wisely or effectively in the absence of information ... and where the legislative body does not possess the requisite information – which not infrequently is true – recourse must be had to others who do possess it."[32] Taken as a whole, we are deeply troubled by EPA's inadequate response to valid Congressional inquiries.

Finally, we are concerned about the implications of EPA's recent transition to a new email operating system. It is our understanding that the agency has recently transitioned from Lotus Notes to Microsoft Office 365 in late February of this year. The EPA used Lotus Notes for the last fifteen years and while we understand the need to transition to an updated system, the Committees want to ensure that the EPA has upheld the electronic safeguards needed to preserve agency records. In particular, we are concerned that the scope of responsive agency records under FOIA may be limited after the transition. According to a memorandum on the transition to all EPA employees, Malcolm Jackson, the EPA Chief FOIA Officer, instructed:

> When you get your new email box as part of Microsoft Office 365 on February 19th, it will come with the last 30 days of emails transferred from Lotus Notes. All email older than 30 days will remain in Lotus Notes, which will be available in a limited capacity on employees' computers.[33]

Based on this memorandum and the ambiguity of "limited capacity," it appears that in the future, EPA employees will no longer be able to provide complete responses for documents that predate January 20, 2013. As such, the Committees are concerned that EPA may not be able to fully comply with FOIA or Congressional requests, as well as requests for documents subject to litigation.

These practices are troubling as they demonstrate a real impediment to federal transparency. It is imperative that the Committees understand EPA's internal processes and policies that comply with the agency's transparency obligations. Therefore, as a testament to your good faith in reconciling our concerns, we respectfully ask that you fulfill the following requests, in unredacted form, as soon as possible but no later than noon on April 24, 2013:

1. Provide all email correspondence between or among you and Lisa Jackson's alias Richard Windsor email account.

2. Provide all emails sent to, copied to, or received from your personal email account or any other non-official email account referring or relating to your official responsibilities at the EPA.

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[30] CONG. RESEARCH SERV., *Cong. Oversight Manual*, RL-30240 (Jan. 2, 2013).
[31] *Id.* at 58.
[32] *McGrain v. Daugherty*, 273 U.S. 135, 174-75 (1927).
[33] Memorandum from Malcolm D. Jackson, Asst. Adm'r and CIO to All EPA Employees [On file with Authors].

3. Provide all documents requested in the following Congressional letters to EPA:
    a. Letter from Sen. Vitter and Sen. Wicker to Bob Perciasepe sent February 20, 2013, regarding Pebble Mine Project. Please note EPA's response was due March 20, 2013.
    b. Letter from Sen. Vitter, Sen. Inhofe, Sen. Wicker, Sen. Sessions, Sen. Boozman, and Sen. Cornyn to you, sent March 12, 2013, regarding the "Gina's new air rules" email. Please note your response was due March 22, 2013.
    c. Letter from Sen. Vitter to Bob Perciasepe, sent February 22, 2013, regarding FOIA "rule of three" and the Range Resources, Inc. FOIA response.
    d. Letter from Chmn. Issa and Chmn. Jordan to Lisa Jackson sent May 10, 2012, regarding Pebble Mine Project, and as refined by negotiations with House Oversight and Government Reform Committee staff. Please note EPA's response was due May 24, 2012.
    e. Letter from Chmn. Issa and Chmn. Jordan to Lisa Jackson sent September 24, 2012, regarding the peer review panel of the Bristol Bay Watershed Assessment. Please note EPA's response was due October 8, 2012.

4. Provide the specified documents listed in the attached addendum from the following EPA FOIA responses:
    a. FOIA Request No. EPA-R6-2013-000910.
    b. FOIA Request No. 06-00361-12.
    c. FOIA Request HQ-FOI-01268-12.

Thank you for your prompt attention to this matter. If you have any questions, please contact Tyler Grimm with the House Committee on Oversight and Government Reform at (202) 225-5074 or Kristina Moore with the Senate Committee on Environment and Public Works at (202) 224-8832.

Sincerely,

Darrell Issa
Chairman
House Committee on Oversight
and Government Reform

David Vitter
Ranking Member
Senate Committee on Environment
and Public Works

cc: The Honorable Elijah Cummings, Ranking Minority Member
House Committee on Oversight and Government Reform

The Honorable Barbara Boxer, Chairman
Senate Committee on Environment and Public Works

ADDENDUM TO REQUEST 4

FOIA Request/Release Number	Email Number	Sender	Recipient	Date	Time	Subject
Release 2 – HQ-FOI-01268-12	01268-EPA-141	Arvin Ganesan	Richard Windsor	5/11/2009	3:53 PM	response to inhofe letter
Release 2 – HQ-FOI-01268-12	01268-EPA-858	Brendan Gilfillan	David McIntosh	10/26/2010	3:27 PM	Re: Fw: Politico: EPA: Enviro regs won't affect grid
Release 2 – HQ-FOI-01268-12	01268-EPA-1496	Joel Beauvais	Gina McCarthy	12/13/2011	9:17 PM	RE: Internal FERC emails show rift with EPA over utility MACT
Release 2 – HQ-FOI-01268-12	01268-EPA-539	Andora Andy	Richard Windsor	2/2/2010	3:27 PM	Re: CNNMoney.com: Obama's climate change police
Release 2 – HQ-FOI-01268-12	01268-EPA-836	Seth Oster	Richard Windsor, Diane Thompson	10/5/2010	12:28 PM	Ffw: Boxer story
Release 2 – HQ-FOI-01268-12	01268-EPA-894	seanmo(b) (6) Privacy	Richard Windsor	12/2/2010	4:06 PM	Re: Npr
Release 2 – HQ-FOI-01268-12	01268-EPA-959	Scott Fulton	Richard Windsor	1/26/2011	8:23 AM	Fw: Corpus christi--Fw: controversial PSD permitting action in Texas
Release 2 – HQ-FOI-01268-12	01268-EPA-960	Sott Fulton	David McIntosh, Gina McCarthy, Richard Windsor, "Bob Sussman"	1/26/2011	5:45 PM	OIRA Issa Exchange
Release 2 – HQ-FOI-01268-12	01268-EPA-978	Ryan Robison	N/A	2/3/2011	7:34 PM	Meeting with John Rowe, CEO of Exelon
Release 3 – HQ-FOI-01268-12	01268-EPA-1864	Richard Windsor	Bob Sussman	8/2/2010	9:34 PM	Re: proposed rule to omb
Release 3 – HQ-FOI-01268-12	01268-EPA-1715	Daniel Gerasimowicz	Ray Spears, Sarah Dale, Georgia Bednar, Carla Veney, Scott Fulton, Bob Sussman, Allyn Brooks-Lasure, Richard Windsor, Eric Wachter, (b) (6) privacy, Robert Goulding, Lisa Heinzerling, David McIntosh	3/3/2009	5:53 PM	Wednesday, March 4, 2009 Schedule for Lisa P. Jackson
Release 3 – HQ-FOI-01268-12	01268-EPA-1751	Richard Windsor	"Seth Oster"	2/17/2010	10:22 PM	Re: Greenwire Story Citing April CAIR Rule
Release 3 – HQ-FOI-01268-12	01268-EPA-1753	Lisa Garcia	Cynthia Giles-AA	2/18/2010	11:38 AM	Re: Fw: Blog Round-up - February 17, 2010
Release 3 – HQ-FOI-01268-12	01268-EPA-1762	Richard Windsor	David McIntosh	2/19/2010	9:15 PM	Re: Begisch Presses EPA for Explanation of Endangerment Finding, Next Steps
Release 3 – HQ-FOI-01268-12	01268-EPA-1777	David McIntosh	Richard Windsor	2/23/2010	3:38 AM	(b) (5) Deliberative

FOIA Request/Release Number	Email Number	Sender	Recipient	Date	Time	Subject
Release 3 – HQ-FOI-01268-12	01268-EPA-1820	Bob Sussman	Gina McCarthy, Mathy Stanislaus	4/15/2010	12:26 PM	Re: Path Forward on Secondary materials
Release 3 – HQ-FOI-01268-12	01268-EPA-1827	Paul Anastas	Bob Sussman	4/16/2010	7:36 AM	Re: HCl health Threshold
Release 3 – HQ-FOI-01268-12	01268-EPA-1859	Bob Perciasepe	Bob Sussman, Richard Windsor	7/14/2010	9:43 AM	Re: GHG BACT
Release 3 – HQ-FOI-01268-12	01268-EPA-1882	Lisa Heinzerling	Gina McCarthy	9/2/2010	1:41 PM	Re: E15 labeling
Release 3 – HQ-FOI-01268-12	01268-EPA-1888	Richard Windsor	Bob Perciasepe, Bob Sussman	9/10/2010	10:39 PM	Re: NSPS Schedule
Release 3 – HQ-FOI-01268-12	01268-EPA-1928	Bob.Sussman(b) (6) Personal Privacy	Richard Windsor, davidgreggmcintoshdc, Lisa Heinzerling, (b) (6) privacy Mabl (b) (6) privacy	2/3/2009	11:33 AM	EPA Unions Lobby Hill
Release 3 – HQ-FOI-01268-12	01268-EPA-1932	Bob.Sussman(b) (6) Personal Privacy	Richard Windsor, (b) (6) privacy	2/5/2009	2:01 PM	Greenwire Article
Release 3 – HQ-FOI-01268-12	01268-EPA-1933	Richard Windsor	Ray Spears, Eric Wachter	2/5/2009	2:13 PM	Fw: Greenwire Article
Release 3 – HQ-FOI-01268-12	01268-EPA-1854	Richard Windsor	Seth Oster	6/23/2010	5:53 PM	Re: Charleston Gazette (6-23) Blog: WVDEP's Randy Huffman on minin permits: "If what EPA is doing is illegal, they will pay the price."
Release 3 – HQ-FOI-01268-12	01268-EPA-879	David McIntosh	Bob Sussman, Gina McCarthy, Joseph Goffman			
Release 3 – HQ-FOI-01268-12	01268-EPA-4199	David McIntosh	Richard Windsor, Diane Thompson, Bob Perciaspepe, Lisa Heinzerling, Lawrence Elworth, Arvin Gaanesan	9/15/2010	6:20 PM	Fw: Boiler MACT- now it's for real
Release 3 – HQ-FOI-01268-12	01268-EPA-4127	Bob Sussman	Gina McCarthy	8/31/2010	7:40 PM	GHG BACT Guidance

ADDENDUM TO REQUEST 4

FOIA Request/Release Number	Email Number	Sender	Recipient	Date	Time	Subject
Release 3 – HQ-FOI-01268-12	01268-EPA-4023	Al Armendariz	"Barbara Bennett, Bob Perciasepe, Diane Thompson, Richard Windsor, Gina McCarthy, Peter Silva, Mathy Stanislaus, Cynthia Giles-AA, Michelle Depass, Scott Fulton, Paul Anastas, Bob Sussman, Craig Hooks, Seth Oster, David Mcintosh, Curt Spalding, Judith Enck, Steve Owens, SHawn Garvin, Stan Meiburg, Susan Hedman, Lawrence Starfield, Karl Brooks, James B Martin, Jared Blumenfeld, Dennis McLerran	7/18/2010	10:58 PM	The R6 Universe
Release 3 – HQ-FOI-01268-12	01268-EPA-4032	Richard Windsor	David Mcintosh	7/21/2010	9:55 AM	Fw: GHG BACT
Release 3 – HQ-FOI-01268-12	01268-EPA-3947	Gina McCarthy	Richard Windsor	6/18/2010	3:13 PM	M2M
Release 3 – HQ-FOI-01268-12	01268-EPA-3898	(b) (6) Personal Privacy	Richard Windsor	5/27/2010	7:44 AM	Fw: French dispersant report, etc.
Release 3 – HQ-FOI-01268-12	01268-EPA-3838	Richard Windsor	Dana Tulis	5/5/2010	8:16 PM	Re: Materials for Deputy Trip to Louisiana
Release 3 – HQ-FOI-01268-12	01268-EPA-3696	Richard Windsor	Mathy Stanislaus	3/23/2010	9:59 AM	Re: financial/economic development coordinator
Release 3 – HQ-FOI-01268-12	01268-EPA-3298	Marygrace Galston	Diane Thompson, Richard Windsor	1/11/2010	11:23 AM	Al Armendariz
Release 3 – HQ-FOI-01268-12	01268-EPA-3287	Lisa Heinzerling	Richard Windsor	1/7/2010	5:14 PM	EJ characterization document
Release 3 – HQ-FOI-01268-12	01268-EPA-2934	David McIntosh	Andora Andy	10/6/2009	6:28 PM	Re: EPW RELEASE: EPA ENDANGERMENT FINDING

ADDENDUM TO REQUEST 4

FOIA Request/Release Number	Email Number	Sender	Recipient	Date	Time	Subject
Release 3 – HQ-FOI-01268-12	01268-EPA-2399	Bob Sussman	Richard Windsor, Diane Thompson, David McIntosh, Arvin Ganesan, Scott Fulton, Lisa Heinzerling, Allyn Brooks-LaSure, Eric Wachter, Robert Goulding	5/3/2009	12:11 PM	LPJ Memo on scientific integrity and related announcements
Release 3 – HQ-FOI-01268-12	01268-EPA-4340	David McIntosh	Richard Windsor, Gina McCarthy, Margo Oge, Arvin Ganesan, Diane Thompson, Bob Perciasepe, Bob Sussman	1/11/2011	8:02 PM	Fw: Alliance Letter to Chairman Issa
Release 3 – HQ-FOI-01268-12	N/A	Richard Windsor	Lisa Heinzerling, David McIntosh, Bob Sussman	3/17/2009	10:14 AM	Fw: A washingtonpost.com article from: (b) (6) Personal Privacy
Release 3 – HQ-FOI-01268-12	N/A	Richard Windsor	Lisa Jackson b(6) Privacy	3/25/2010	10:10 AM	Fw: Link to Analysis
Release 3 – HQ-FOI-01268-12	N/A	Richard Windsor	Withheld	4/17/2009	12:17 PM	Fw: EPA Made History Today
Release 3 – HQ-FOI-01268-12	N/A	Maggie Moran	Richard Windsor	4/15/2009	3:58 PM	Fw: Nice Hit from PSEG speech
Release 3 – HQ-FOI-01268-12	N/A	Withheld	Richard Windsor	12/10/2009	11:38 AM	Fw: Google Alerts-EPA Lisa Jackson
Release 3 – HQ-FOI-01268-12	N/A	David Cohen	Richard Windsor	9/27/2010	3:41 AM	just fyi: Politico of Browner, (you and epa mentioned)
Release 3 – HQ-FOI-01268-12	N/A	Brendan Gilfillan	Richard Windsor, Bob Perciasepe, Diane Thompson	3/26/2012	8:13 PM	FYI-WaPo Story
Release 3 – HQ-FOI-01268-12	N/A	Bob Perciasepe	Richard Windsor, Seth Oster, Gina McCarthy, David McIntosh	5/4/2010	9:27 PM	LA Times-Oil Spill, Climate Bill
EPA-R6-2013-000910	N/A	Al Armendariz	Bob Sussman, Cynthia Giles	3/30/2012	6:34 PM	Re: Statement by Texas Railroad Commissioner David Porter on EPA's Withdrawal of Order Against Range Resources
EPA-R6-2013-000910	N/A	Suzanne Murray	Al Armendariz, Suzanne Murray, John Blevins	1/8/2011	2:56 PM	Re: Range
EPA-R6-2013-000910	N/A	David Gray	Al Armendariz	12/6/2010	9:16 PM	Re: Fw: Revised Range Q&A

ADDENDUM TO REQUEST 4

FOIA Request/Release Number	Email Number	Sender	Recipient	Date	Time	Subject
EPA-R6-2013-000910	N/A	Suzanne Murray	Al Armendariz	12/22/2010	9:38 PM	Fw: Fw: Range and Attempt to Secure Testimony from the Regional Administrator under a State Subpoena…Recommendation from DOJ and AUSA – work product
EPA-R6-2013-000910	N/A	Carl Edlund	Suzanne Murray, Jerry Saunders, John Blevins	1/27/2011	8:16 PM	Re: Dallas Bar Feedback on Ranger
EPA-R6-2013-000910	N/A	Scott McDonald	Al Armendariz	2/8/2012	9:54 AM	Fw: Statements on faulting under the Lipsky home area by the expert witness
EPA-R6-2013-000910	N/A	Al Armendariz	David Gray	2/16/2011	9:30 PM	Re: DELIBERATIVE - DRAFT RESPONSE
EPA-R6-2013-000910	N/A	Al Armendariz	John Blevins, David Gray, Larry Starfield	12/7/2010	6:39 AM	Fw: Range
EPA-R6-2013-000910	N/A	Michael Overbay	Al Armendariz	1/12/2011	10:37 AM	Re: Update on Hydrofrac Study from the Bob Sussman briefing today
No. 06-00361-12	N/A	Lawrence Starfield	Al Armendariz	12/4/2010	4:42 PM	Re: Couple of things
No. 06-00361-12	N/A	Jeffrey Robinson	Carl Edlund	12/14/2011	10:30 AM	Re: Fw: Louisiana Emission Fee Petition
No. 06-00361-12	N/A	AL Armendariz	Dr. Al Armendariz	7/16/2010	6:54 PM	The 1a 1b process
No. 06-00361-12	N/A	Richard Windsor	Al Armendariz	11/1/2011	1:16 PM	Re: Fluor to Provide Construction Services for Luminat's Environmental Retrofit Program Nov 1 2011 Nachricht finazen.net
No. 06-00361-12	N/A	Suzanne Murray	Al Armendariz	11/4/2010	6:37 PM	Re: IMPORTANT-new Complaint for infrastructure SIPs for 1997 8-hour ozone NAAQS- information needed for CD negotiation
No. 06-00361-12	N/A	David Gray	Al Armendariz	3/1/2011	1:12 PM	Note from Arvin
No. 06-00361-12	N/A	Guy Donaldson	Al Aremendariz	8/22/2010	8:44 PM	Re: New Mexico Transport SIP (interfere with mainteance and Interfere with PSD).
No. 06-00361-12	N/A	Layla Mansuri	Al Armendariz, Chrissy Mann	2/13/2011	4:18 PM	Fw: Fw: Earthjustice conflict question follow up
No. 06-00361-12	N/A	David Gray	Al Armendariz, Lawrence Starfield	8/20/2010	5:04 PM	ECOS Hot Issues
No. 06-00361-12	N/A	Al Armendariz	Chrissy Mann, Layla Mansuri	2/21/2011	5:41 PM	Fw: regional haze
No. 06-00361-12	N/A	Al Armendariz	Rob Lawrence	3/11/2010	7:02 AM	Re: Hydraulic Fracking
No. 06-00361-12	N/A	Raj Rao	Phil Lorang	7/11/2011	4:29 PM	Briefing materials for Las Brisas GHG GF Gina briefing (yet to be scheduled)

ADDENDUM TO REQUEST 4

FOIA Request/Release Number	Email Number	Sender	Recipient	Date	Time	Subject
No. 06-00361-12	N/A	Al Armendariz	Gina McCarthy	7/12/2011	10:34 PM	Re: PSD permitting
No. 06-00361-12	N/A	David Gray	Lawrence Starfield, Al Armendariz	4/6/2010	11:01 AM	Fw: Draft Hot Issues for LPJ visit to NOLA
No. 06-00361-12	N/A	Al Armendariz	Lawrence Starfield, Suzanne Murray	11/19/2010	4:15 PM	Fw: San Juan Generating Station Title V Petition
No. 06-00361-12	N/A	Guy Donaldson	Al Armendariz	11/3/2010	1:04 PM	New Mexico and Oklahoma transport SIP final federal registers
No. 06-00361-12	N/A	David Gray	Al Armendariz, Layla Mansuri	7/18/2011	12:54 PM	Udall
No. 06-00361-12	N/A	Carl Edlund	Al Armendariz, Lawrence Starfield	6/29/2011	2:59 PM	Fw: San Juan and NM RH SIP
No. 06-00361-12	N/A	Lawrence Starfield	Janet McCabe	6/27/2011	9:04 AM	Re: NM Regional Haze FIP
No. 06-00361-12	N/A	Janet McCabe	Al Armendariz	6/15/2011	4:11 PM	Re: Fw: Oklahoma FIP
No. 06-00361-12	N/A	David Gray	Al Armendariz	2/9/2010	3:05 PM	Fw: Oklahoma Regional Haze Material-Background for meeting with Governor
No. 06-00361-12	N/A	Lawrence Starfield	Thomas Diggs	2/8/2010	5:43 PM	Re: Oklahoma Regional Haze Material-Background for meeting with Governor
No. 06-00361-12	N/A	Lawrence Starfield	Al Armendariz	2/6/2010	5:07 PM	Re: Issues with changes in the ODEQ regional haze SIP
No. 06-00361-12	N/A	Al Armendariz	Carl Edlund	12/21/2010	3:26 PM	Re: PNM is upset with part of the: press release
No. 06-00361-12	N/A	Guy Donaldson	Lawrence Starfield	4/25/2011	7:41 AM	Re: Regional haze-Oklahoma CONFIDENTIAL
No. 06-00361-12	N/A	Suzanne Murray	Rich Ossias	11/23/2010	3:58 PM	Time Sensitive
No. 06-00361-12	N/A	Gina McCarthy	Al Armendariz	12/15/2010	11:35 PM	Re: New Mexico Visibility Federal Register Notice
No. 06-00361-12	N/A	Janet McCabe	Al Armendariz	8/4/2011	7:16 AM	Re: New Mexico
No. 06-00361-12	N/A	Al Armendariz	Carl Edlund, Thomas Diggs	1/30/2010	10:41 AM	Re: Fw: Oklahoma Reg'l Haze SIP-URGENT
No. 06-00361-12	N/A	Thomas Diggs	Al Armendariz	7/12/2010	2:09 PM	Fw: Final 309 points for Al
No. 06-00361-12	N/A	Janet McCabe	David Gray, Andrea Drinkard, Al Armendariz	8/3/2011	10:39 PM	Re: *Confidental: Re: Confidential- Predecision Information
No. 06-00361-12	N/A	Al Armendariz	Guy Donaldson	1/12/2011	11:19 PM	Re: Questions about Oklahoma's PM2.5 110 SIP
No. 06-00361-12	N/A	Carl Edlund	Al Armendariz	7/2/2010	11:52 AM	Call with Ron Curry re:haze
No. 06-00361-12	N/A	Al Armendariz	Janet McCabe	7/4/2011	5:06 PM	Re: PNM/San Juan Generating Station BART Determination-Delegation Letter

ADDENDUM TO REQUEST 4

FOIA Request/Release Number	Email Number	Sender	Recipient	Date	Time	Subject
No. 06-00361-12	N/A	Al Armendariz	Guy Donaldson, Joe Kordzi, Larry Starfield	9/9/2010	5:31 AM	Fw: Discussions with Secretary Curry tomorrow
No. 06-00361-12	N/A	Lawrence Starfield	Steve Mouck	9/8/2011	10:53 PM	Fw: Fw: Region 6 Input for Agency Annual Performance Report
No. 06-00361-12	N/A	Carl Edlund	Suzanne Murray,Suzanne Smith, Al Armendariz, John Blevins	1/8/2012	12:00 PM	FW: Update on Regional Haze developments and upcoming actions as of 1/6/2012
No. 06-00361-12	N/A	Lawrence Starfield	Al Armendariz	7/12/2011	4:45 PM	Fw: letters on San Juan
No. 06-00361-12	N/A	Al Armendariz	Joe Kordzi, Carl Edlund, Thomas Diggs, Guy Donaldson	3/11/2011	9:05 AM	Re: A really alternative plan for the SJGS
No. 06-00361-12	N/A	Janet McCabe	Al Armendariz	7/18/2011	6:57 PM	Re: San Juan
No. 06-00361-12	N/A	Carl Edlund	Al Armendariz	3/16/2011	9:19 PM	Re: Request for Conference Call Monday
No. 06-00361-12	N/A	Lawrence Starfield	Al Armendariz	7/18/2011	11:57 AM	Fw: legislative letters on San Juan
No. 06-00361-12	N/A	Carl Edlund	Suzanne Murray, Al Armendariz, Lawrence Starfield, David Gray, Thomas Diggs, Suzanne Smith, Suzanne Murray, Layla Mansuri, Chrissy Mann, Ben Harrison	7/22/2011	6:22 PM	Re: San Juan- follow up
No. 06-00361-12	N/A	Al Armendariz	Guy Donaldson, Thomas Diggs, Carl Edlund, Erick Snyder, Larry Starfield, David Gray	8/4/2011	10:03 AM	Fw: Fw: Responses to your request for San Juan EGU PM2.5 benefits
No. 06-00361-12	N/A	Suzanne Smith	Al Armendariz, Joe Kordzi	7/21/2011	6:52 AM	Re: Fw: PNM's San Juan Generating Station
No. 06-00361-12	N/A	Carl Edlund	Jeffrey Robinson, Al Armendariz, Layla Mansuri, Thomas Diggs, Ms. Barbara Nann	1/22/2012	10:16 PM	Re: San Juan Generating Title V Petition Decision Briefing
No. 06-00361-12	N/A	Lawrence Starfield	Suzanne Smith, Al Armendariz, Joe Korzi	7/21/2011	7:41 AM	Re: Fw: PNM's San Juan Generating Station
No. 06-00361-12	N/A	Sara Schneeberg	Suzanne Smith, Al Armendariz, Joe Korzi	9/9/2011	4:05 PM	Re: For final review; language for TX infr SIP PSD single source ozone-all comments incorprated

FOIA Request/Release Number	Email Number	Sender	Recipient	Date	Time	Subject
No. 06-00361-12	N/A	Suzanne Murray	Al Armendariz, Chrissy Mann, Lawrence Starfield, Layla Mansuri	9/12/2011	6:57 AM	Confidential
No. 06-00361-12	N/A	Al Armendariz	Chrissy Mann, Layla Mansuri	12/15/2011	10:58 PM	Fw: Fw: Front office's edits to consultation RTC
No. 06-00361-12	N/A	Suzzane Smith	Al Armendariz, Chrissy Mann, Layla Mansuri	12/13/2011	3:46 PM	TX I-SIP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 08 2013

OFFICE OF THE
ADMINISTRATOR

The Honorable David Vitter
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Vitter:

Thank you for your letter of February 27, 2013 in which you express your interest in working together to increase transparency and accountability in government.

I agree with you that the Agency should strive for excellence with respect to transparency and accountability. In July 2010, I convened an agency-wide workgroup and charged it to conduct a review of the Environmental Protection Agency's Freedom of Information Act policies and practices. In June 2011, the workgroup delivered its report listing several recommendations to ensure the Agency meets our goal of excellence. I have attached the final workgroup report which details actions taken by the agency to improve our compliance with information laws and recommendations for further improvements.

Regarding FOIA, I have charged our Assistant Administrator for the Office of Environmental Information with, among other things: (1) providing for mandatory in-depth training of FOIA coordinators, officers, employees and managers who make decisions on the release of documents, by December 31, 2013, with a focus on exemptions, redactions and discretionary release, and (2) providing FOIA training for all EPA staff in FY 2014 focusing on what is a FOIA request, roles and responsibilities in responding to FOIA requests, timeliness of response, and exemptions and discretionary release. FOIA training also will become a mandatory part of new employee orientation.

Regarding recordkeeping, as you may be aware, in December of last year, the EPA's Office of Inspector General began an audit of certain EPA electronic records management practices to determine whether the EPA follows applicable laws and regulations. We continue to assist the Inspector General with this audit, and look forward to working with him on any recommendations the audit may make to improve EPA's electronic records management practices. In the meantime, I have directed the appropriate offices to incorporate records management training into the orientation process for all new employees and begin annual mandatory all employee records management training starting this calendar year.

EPA currently makes a significant amount of guidance available to all employees regarding their important role in information management. Nonetheless, on occasion the use of private, non-official e-mail by EPA employees while conducting work-related activities has occurred. Whether each such communication constituted the conduct of official business is a fact specific determination. We recognize that email used to conduct Agency business should be captured in the official EPA email system, subject to potential production under the Freedom of Information Act and preservation as appropriate under the Federal Records Act. EPA's guidance to employees is to not use personal email for official business,

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except in emergencies. We are engaged in a review of our policies and procedures to determine how they can be clarified and strengthened on this activity. Our policies and procedures must recognize that those in agency management operate in a 24/7 environment where the need arises and the technology options exist to conduct agency business from anywhere at any time.

The conduct of official agency business should first and foremost be done on official EPA information systems. When, due to circumstances, that does not occur, there must be requirements to ensure that any use of a non-governmental email does not affect the preservation of Federal records for Federal Records Act purposes or the ability to search and process those emails if requested under the Freedom of Information Act.

Additionally, I commit to you that, upon completion of the audit, the Agency will clarify and update our policies and procedures that govern EPA's standards and procedures for records management.

Thank you again for your letter. The Agency has, as noted by some, made progress on these issues and will continue to take steps to bolster our programs. If you have any questions, please feel free to contact me or your staff may contact Arvin Ganesan, our Associate Administrator for Congressional and Intergovernmental Relations at (202) 564-4741.

Sincerely,

Bob Perciasepe

Bob Perciasepe
Acting Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 09 2013

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable David Vitter
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Vitter:

Thank you for the recent meeting where you suggested that the Agency take several steps to increase transparency by increasing access to information. The EPA appreciates suggestions for how transparency can be improved, and regularly considers specific requests for making certain types of information available publicly on an ongoing basis, in addition to providing documents to requesters through the standard Freedom of Information Act (FOIA) process.

You suggested that the Agency should provide, on a public website, all notices of intent to sue. The EPA is committed to doing just that. The Agency has recently begun providing notices of intent to sue the agency on the EPA's publicly available website and while the website is currently under construction, we expect to provide copies of all notices of intent to sue EPA received by EPA's Office of General Counsel (OGC) on or after January 1, 2013 by the end of April 2013. Going forward, newly received notices will be added on an ongoing basis each month. These notices will be available for viewing here: http://epa.gov/ogc/noi.html.

EPA also makes many proposed settlement agreements and consent decrees available to the public before any such agreement or decree is finalized. For example, the vast majority of environmental cases brought against the EPA arise under the Clean Air Act. Under that statute, specifically Section 113(g), EPA is required to – and does – provide a public comment opportunity on every proposed settlement agreement and consent decree, and the Agency fully considers any comments submitted in determining whether or not to finalize an agreement. Importantly, if the Agency does not agree to any final substantive outcome of Agency action through settlement, interested parties have an opportunity to provide input on the action itself through routine channels such as notice and comment.

Finally, the EPA is also considering requests to make petitions for rulemaking available in a publicly accessible location.

Thank you for the inquiry, and we look forward to continuing to work with you on issues relating to transparency.

Sincerely,

Arvin Ganesan
Associate Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 10 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable David Vitter
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Vitter:

Thank you for your March 4, 2013, letter to the U.S. Environmental Protection Agency. Your letter raises concerns about access to data used by research institutions to conduct certain epidemiological studies that examine the health risks associated with exposure to fine particles and ozone pollution and requests that the EPA provide you with these data. Your letter also raises concerns regarding the Integrated Science Assessment for Ozone, which was finalized in February 2013. The enclosure provides detailed information in response to your inquiry, which I summarize below.

The EPA is committed to compliance with the requirements of the Shelby Amendment (Public Law 105-277) and to transparency with regard to the scientific bases of agency decision making, and to increasing access to federally-sponsored scientific research as outlined in the recent memorandum[1] from the Office of Science and Technology Policy (OSTP) in the Executive Office of the President. Both the Shelby Amendment and the OSTP memorandum recognize that increasing access to federally funded scientific data must be balanced with requirements to protect the research subject's privacy.

The EPA is transparent with regard to the scientific bases of agency decision making and disagrees with your assertion that the agency relies on "secret" data in regulatory actions and assessments of health benefits. In setting the National Ambient Air Quality Standards (NAAQS) and in assessing health benefits anticipated from air pollution regulations, the EPA relies on the scientific studies that are published in the peer-reviewed literature. The EPA provides the information used in regulatory decisions, including the epidemiological studies, in the publicly available docket accompanying each rulemaking.

Your March 4 letter requests underlying data used by researchers to conduct peer-reviewed studies of two epidemiological cohorts: the Harvard Six Cities cohort (datasets housed at

[1] Holdren, John P. *Memorandum for the Heads of Executive Departments and Agencies: Increasing Access to the Results of Federally Funded Scientific Research.* Office of Science and Technology Policy. Executive Office of the President. February 22, 2013.
http://www.whitehouse.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf

Harvard University) and the American Cancer Society cohort (datasets housed at New York University). It is important to understand that the underlying data you are requesting for each epidemiological study consist of three distinct datasets, which the researchers link together in order to estimate the relative risks of exposure to air pollution: (1) air quality data; (2) health event data, which in these studies are data from the National Death Index; and (3) individual health data that are gathered through questionnaires completed for each study participant in the cohort. The questionnaires for these studies requested very detailed personal information, including questions on residential location, age, race, educational attainment, body mass index, alcohol consumption, smoking history, occupational exposure to pollution, and medical history. The complete, linked set of data underlying these studies is held by the scientific researchers that conducted the relevant research, not the EPA. As explained in greater detail in the enclosure, the availability of some of these datasets is subject to certain protections against disclosure of medical or similar information that could be used to identify a particular person in a research study.

As your March 4 letter notes, the EPA has previously received and responded to a similar Congressional request related to these epidemiological studies. In response to a September 2011 letter from Representative Harris, the EPA sent letters to Harvard University and New York University asking them to provide the "research data" that was funded with EPA grant dollars. As explained in the enclosure, under governing law and regulations, "research data" that the researchers are required to provide, and that the EPA is authorized to receive and disclose, excludes certain information that could be used to identify a particular person in a research study. The relevant studies are large, epidemiological research projects that received funding from a number of different sources, including the EPA, other federal agencies, and non-federal sources. Harvard University and New York University both responded to EPA's request by providing the research data that was funded with EPA grant dollars. Harvard University provided air quality data and health event data from the National Death Index. New York University provided air quality data. In June 2012, EPA sent all of the data provided by Harvard University and New York University to Representative Harris. For your reference, I have enclosed the June 7, 2012, letter from the EPA to Representative Harris, along with the data from Harvard University and New York University that has been provided.

The EPA recognizes that the data provided in response to the request from Representative Harris are not sufficient in themselves to replicate the analyses in the epidemiological studies for two reasons. First, these cohort analyses on premature mortality relied on linking private medical and demographic information with air quality data. The combination of these data could identify specific individuals and thus could not be released in its original format without consent of the study participants. Second, as noted above, it appears that some of the underlying data used in the studies that are the subject of this letter were originally collected using funds awarded to other government entities. For these reasons, composing a data set sufficient to even generally replicate the published analyses to which you refer is a complicated undertaking requiring the input of several funding agencies, awardees, and the resources of federal (or other) non-disclosure boards to ensure that the data cannot be used to identify an individual in a research study. We would welcome an opportunity to meet with your staff to discuss these matters in greater detail if you wish.

In your March 4 letter, you also requested data for several newer studies on fine particles and ozone, which are also held by research institutions and include private medical information. As outlined in the enclosure, the EPA is willing to submit a new request to the research institutions for the research data corresponding to the additional years of follow-up in the newer studies cited in your letter of March 4, 2013. We note that, because of the limitations discussed above, related to both private information and funding, the information that could be disclosed for both the older and the newer epidemiological studies would be insufficient to replicate the analyses in those studies. In addition, the enclosure describes a potential alternative approach, which has been used in the past, through which independent researchers have contacted the original researchers, entered confidentiality agreements and gained access to raw data from these epidemiological studies for purposes of undertaking reanalysis.

Finally, your letter expresses concerns regarding certain studies and causality determinations in the Integrated Science Assessment for Ozone (ISA). The ISA, which is part of the periodic review of the NAAQS that is required by the Clean Air Act, relies on a framework that has been reviewed by the public and endorsed by the Clean Air Scientific Advisory Committee. These concerns are addressed in the enclosure, which provides further information about the studies you cite, the way in which they have been evaluated under the relevant framework, and the basis for the ISA determinations.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Cheryl Mackay in my office at (202) 564-2023.

Sincerely,



Arvin Ganesan
Associate Administrator

Enclosure

Request for Data from Epidemiological Studies by Independent Research Institutions

Your letter of March 4, 2013 requested access to data analyzed in several studies of long-term exposure to $PM_{2.5}$ based on the American Cancer Society (ACS) cohort and the Harvard Six Cities cohort, as well as a study of long-term exposure to ozone based on the ACS cohort. As you note in your letter, the EPA has received and responded to previous requests to provide research data from these epidemiological studies that were partially funded by EPA grant funds. We provide more information regarding these datasets, the legal framework, and the EPA's responses below.

The EPA is committed to compliance with the requirements of the Shelby Amendment (Public Law 105-277) and to transparency with regard to the scientific bases of agency decision making, and to increasing access to federally-sponsored scientific research as outlined in the recent memorandum[1] from the Office of Science and Technology Policy (OSTP) in the Executive Office of the President. Both the Shelby Amendment and the OSTP memorandum recognize that increasing access to federally funded, scientific data must be balanced with requirements to protect the research subject's privacy.

The underlying data you are requesting for each epidemiological study consist of three distinct datasets, which the researchers link together in order to estimate the relative risks of exposure to air pollution: (1) air quality data; (2) health event data, which in these studies are data from the National Death Index (NDI); and (3) individual health data that are gathered through detailed questionnaires[2] completed for each study participant in the cohort. The complete, linked set of data underlying these studies is held by the scientific researchers that conducted the relevant research, not the EPA. Further, the availability of some of these datasets is subject to certain non-disclosure protections, which we describe below.

These studies are large epidemiological research projects that received funding for different components of data collection and analysis from a number of different sources, including the EPA, other federal agencies, and non-federal sources. The Shelby Amendment directs the Office of Management and Budget (OMB) "to require Federal awarding agencies to ensure that all data produced under an award [of federal funds] will be made available to the public through the procedures established under the Freedom of Information Act."[3] The OMB implemented the Shelby Amendment by amending the government-wide regulations applicable to grant awards

[1] Holdren, John P. *Memorandum for the Heads of Executive Departments and Agencies: Increasing Access to the Results of Federally Funded Scientific Research.* Office of Science and Technology Policy. Executive Office of the President. February 22, 2013.
http://www.whitehouse.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf

[2] The questionnaires for these studies requested very detailed personal information, including questions on residential location, age, race, educational attainment, body mass index, alcohol consumption, smoking history, occupational exposure to pollution, and medical history.

[3] "Provided further, that the Director of OMB amends Section __.36 of OMB Circular A-110 to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act." (Public Law 105-277).

for research grants.[4] The EPA has adopted this provision into the Agency's grant regulations.[5] These regulations require the EPA to request, and award recipients to provide, "research data" produced with the support of federal funding. Under the regulations, "research data" does not include "medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study".[6] The exclusion of this type of information from disclosure is consistent with the personal privacy exemption contained in the Freedom of Information Act (FOIA).[7]

In addition to non-disclosure protections under the Shelby Amendment and the FOIA, the health event data from NDI[8] are also governed by the Public Health Service Act (PHSA), which prohibits the release of information that may identify the person or institution supplying the information. Specifically, the PHSA provides that data collected by the National Center for Health Statistics – which includes the individual-level health event data from the NDI used in the relevant epidemiological studies – may not be used for any purpose other than the purpose for which it was supplied and not be released if the information could be personally identifying.[9] Furthermore, the PHSA does not allow release of such information unless such establishment or individual has consented in its publication or release in other form. To obtain data in the NDI, researchers sign a confidentiality agreement promising not to publish or release the data in any form to any party if a particular individual (or establishment) is identifiable.[10]

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[4] OMB Circular A-110, which is codified at 2 CFR 215.36: These regulations provide that "in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA."

[5] 40 CFR 30.36

[6] 2 CFR 215.36(d)(2)(i) and 40 CFR 30.36(d)(2)(i)(B).

[7] The FOIA requires the EPA to release such information upon request unless the information is protected from disclosure under its FOIA exemptions. 5 U.S.C. § 552(b). Exemption 6 of FOIA protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6).

[8] The NDI is part of the National Center for Health Statistics at the Centers for Disease Control and Prevention. The NDI is a central computerized index of death record information that was established as a resource for epidemiologists and other health and medical investigators.

[9] Public Health Service Act (42 U.S.C. § 242m(d)): "No information, if an establishment or person supplying the information or described in it is identifiable, obtained in the course of activities undertaken or supported under section 242b, 242k, or 242l of this title may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose; and in the case of information obtained in the course of health statistical or epidemiological activities under section 242b or 242k of this title, such information may not be published or released in other form if the particular establishment or person supplying the information or described in it is identifiable unless such establishment or person has consented (as determined under regulations of the Secretary) to its publication or release in other form."

[10] To use the NDI data, researchers agree to a Data Use Agreement stating that they will not link these data with individually identifiable records from any other National Center for Health Statistics (NCHS) or non-NCHS data set. http://www.cdc.gov/nchs/data_access/restrictions.htm

In response to a letter from Representative Harris on September 22, 2011, the EPA requested the "research data" (as defined by applicable EPA regulations described above) funded by EPA grant funds from Harvard University and New York University related to two epidemiological studies.[11,12] Both institutions provided the air quality data in response to this request. Harvard University also provided health event data from the NDI. Neither institution provided the individual health questionnaire data to EPA. Prior to disseminating the NDI data provided by Harvard University, the EPA coordinated with the Centers for Disease Control and Prevention to ensure that the data did not identify the particular establishment or individual supplying the information. In June 2012, the EPA provided to Representative Harris all of the data received from Harvard University and New York University.

The EPA recognizes that the data provided in response to the request from Representative Harris are not sufficient in themselves to replicate the analyses in the epidemiological studies for two reasons. First, these cohort analyses on premature mortality relied on linking medical and demographic information with air quality data. The combination of these data could identify specific individuals and thus could not be released in its original format without consent of the study participants. Second, as noted above, it appears that some of the underlying data collection may have been funded by other government entities. For these reasons, composing a data set sufficient to even generally replicate the published analyses to which you refer is a complicated undertaking requiring the input of several funding agencies, awardees, and the resources of federal (or other) non-disclosure boards to ensure that the data are not identifiable.

In the past, the Health Effects Institute (HEI) entered confidentiality agreements with the researchers to have access to the data in order to conduct a full reanalysis of two studies of these cohorts,[13] which HEI completed in 2000.[14] In order to access the private medical information from the original investigators, HEI guaranteed that confidentiality that had been provided to

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[11] 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.

[12] 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.

[13] HEI Statement, 2000, p. i: "Both of these studies came under intense scrutiny in 1997 when the EPA used the results to support new National Ambient Air Quality Standards for fine particles and to maintain the standards for particles less than 10 μm in median aerodynamic diameter (PM_{10}) already in effect. Members of Congress and industry, the scientific community and others interested in regulation of air quality scrutinized the studies' methods and their results. Some insisted that any data generated using federal funding should be made public. Others argued that these data had been gathered with assurances of confidentiality for the individuals who had agreed to participate and that the concept of public access to federally funded data did not take into account the intellectual property rights of the investigators and their supporting institutions. To address the public controversy, Harvard University and the ACS requested that the Health Effects Institute organize an independent reanalysis of the data from these studies. Both institutions agreed to provide access to their data to a team of analysts to be selected by HEI through a competitive process." http://pubs.healtheffects.org/getfile.php?u=271

[14] Krewski, D., R.T. Burnett, M.S. Goldbert, K. Hoover, J. Siemiatycki, M. Jerrett, M. Abrahamowicz, and W.H. White. 2000. "Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality." Special Report to the Health Effects Institute. Cambridge MA. July. http://pubs.healtheffects.org/getfile.php?u=274

study participants by the original investigators would be fully respected by the reanalysis team.[15] It may be possible for other researchers to contact the original researchers and gain access to the data by entering into similar confidentiality agreements.

We note that in setting the National Ambient Air Quality Standards (NAAQS) and in assessing health benefits anticipated from air pollution regulations, the EPA relies on the scientific studies that were published in the peer-reviewed literature rather than the underlying data that consist of private medical information.[16] The EPA provides the information used in regulatory decisions, including the epidemiological studies, in the publicly available docket accompanying each rulemaking.

Your letter of March 4, 2013, requested access to the data analyzed in the $PM_{2.5}$ studies based on the ACS cohort and the Six Cities cohort cited in the final PM NAAQS rule including newer studies documenting extended analyses of these two cohorts that included additional years of follow-up.[17,18] and the underlying data from the long-term ozone study based on the ACS cohort.[19] In response to the request from Representative Harris noted above, the EPA has already provided all of the information funded by EPA grant funds for the earlier studies that the researchers provided to the EPA. We are enclosing these data in this response. In addition, the EPA is willing to submit a new request to the research institutions for the research data corresponding to the additional years of follow-up in the newer studies cited in your letter of March 4, 2013. We note that, because of the limitations on disclosure of personal private information, the information that could be disclosed for both the older and the newer epidemiological studies would be insufficient to replicate the analyses in those studies. Again, we would be pleased to meet with your staff to discuss these matters in greater detail. Additionally, as noted above, there remains the possibility that other independent researchers

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[15] HEI preface, 2000, p.2: "Both conducting the work and reporting the results would be as open and public as possible. The guarantees of confidentiality that had been provided to study participants by the Six Cities Study and the ACS Study Original Investigators would be fully respected by the Reanalysis Team. Beyond this, any methods used, analyses undertaken, and results produced would be completely and publicly described." http://pubs.healtheffects.org/getfile.php?u=273

[16] See, for example the 1997 PM NAAQS, 62 Fed. Reg. at 38691/1: "EPA did not rely upon the raw health data supporting the Dockery and Pope studies; it relied instead upon the studies themselves. These studies may properly be considered 'data' The EPA has never had the raw data in its possession; thus EPA has neither reviewed it nor had an opportunity to place it in the docket. The EPA did rely on the studies and these studies are included in the docket and are available for public review. Because EPA neither reviewed nor relied upon the raw data, there is no obligation to obtain it or to make it available."

[17] Lepeule J, Laden F, Dockery D, Schwartz J 2012. "Chronic Exposure to Fine Particles and Mortality: An Extended Follow-Up of the Harvard Six Cities Study from 1974 to 2009." *Environ Health Perspect.* Jul;120(7):965-70.

[18] Krewski D, Jerrett M, Burnett RT, Ma R, Hughes E, Shi, Y, et al. 2009. "Extended follow-up and spatial analysis of the American Cancer Society study linking particulate air pollution and mortality." *HEI Research Report, 140,* Health Effects Institute, Boston, MA.

Lepeule J, Laden F, Dockery D, Schwartz J 2012. "Chronic Exposure to Fine Particles and Mortality: An Extended Follow-Up of the Harvard Six Cities Study from 1974 to 2009." *Environ Health Perspect.* Jul;120(7):965-70.

[19] Jerrett, M; Burnett, RT; Pope, CA, III; Ito, K; Thurston, G; Krewski, D; Shi, Y; Calle, E; Thun, M. (2009). "Long-term ozone exposure and mortality." *N Engl J Med* 360: 1085-1095.

could contact the original researchers and gain access to the data by entering into confidentiality agreements similar to those that permitted the HEI reanalysis.

Questions on Ozone Integrated Science Assessment

Your letter also questioned the EPA's interpretation of specific epidemiological studies and causality determinations discussed in the Integrated Science Assessment (ISA) for Ozone, which was finalized in February 2013.[20] In developing an ISA, the EPA uses a formal causal framework that provides a consistent and transparent basis for integration of scientific evidence and evaluation of the causal nature of air pollution-related health effects. This approach has been reviewed and endorsed by the Clean Air Scientific Advisory Committee (CASAC).[21] This framework employs a five-level hierarchy that classifies the overall weight of evidence and causality using the following categorizations: causal relationship; likely to be a causal relationship; suggestive of a causal relationship; inadequate to infer a causal relationship; and not likely to be a causal relationship. Pursuant to this framework, in order to reach a determination that the weight of scientific evidence is suggestive of a causal relationship, the evidence should include "at least one high-quality epidemiologic study show[ing] an association with a given health outcome."[22]

The previous scientific assessment for ozone[23] in 2006 concluded that an insufficient amount of evidence existed to suggest a causal relationship between chronic ozone exposure and increased risk of mortality in humans. However, two recent studies[24,25] provided new evidence for the 2013 assessment. This new evidence is consistent and coherent with the evidence from epidemiological, controlled human exposure, and animal toxicological studies for the effects of short- and long-term exposure to ozone on respiratory effects. The current body of evidence, including these two high-quality, peer-reviewed studies that observed associations between long-term exposure to ozone and mortality, is suggestive of a causal relationship between long-term exposure to ozone and total mortality.

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[20] U.S. EPA (U.S. Environmental Protection Agency). 2013. *Integrated Science Assessment of Ozone and Related Photochemical Oxidants (Final Report).* U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-10/076F. http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=247492

[21] CASAC review (Samet, 2009). Letter to Administrator Jackson in response to review of Integrated Science Assessment for Particulate Matter (Second External review Draft, July 2009): "As mentioned in its comments on the charge questions, CASAC also commends EPA for the continued evolution of the process for evidence evaluation. The five-level classification of strength of evidence for causal inference has been systematically applied; this approach has provided transparency and a clear statement of the level of confidence with regard to causation, and we recommend its continued use in future ISAs."
http://yosemite.epa.gov/sab/sabproduct.nsf/264cb1227d55e02c85257402007446a4/151B1F83B023145585257678006836B9/$File/EPA-CASAC-10-001-unsigned.pdf

[22] Ozone ISA (p. lxvii).

[23] U.S. EPA (U.S. Environmental Protection Agency). 2006. *Air quality criteria for ozone and related photochemical oxidants [EPA Report].* (EPA/600/R-05/004AF). Research Triangle Park, NC. http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=149923

[24] Jerrett et al. (2009).

[25] Zanobetti, A; Schwartz, J. 2011. "Ozone and survival in four cohorts with potentially predisposing diseases." *Am J Respir Crit Care Med* 184: 836-841.

Your letter stated that 11 earlier studies did not find statistically significant associations between long-term exposure to ozone and mortality and that the EPA selectively relied on the one positive study to support the causality determination of "suggestive." A key explanation for the lack of associations found in most of these earlier studies is that they did not specifically assess respiratory mortality.[26] However, unlike the earlier studies, Jerrett et al. (2009) did specifically evaluate respiratory mortality and found a statistically significant association. This finding is consistent with other studies finding associations with respiratory effects (e.g., morbidity and mortality). Because of the strength of the evidence between ozone exposure and respiratory effects, it is reasonable to find associations between long-term exposure to ozone and respiratory mortality but not other sources of mortality (e.g., all-cause, cardiovascular, and cardiopulmonary). Consequently, EPA concluded that there is sufficient evidence "suggestive of a causal relationship" between long-term exposure to ozone and respiratory mortality consistent with the formal causal framework, which has been reviewed and endorsed by the CASAC.

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[26] Abbey et al. (1999) is the only one of the cited studies other than Jerrett et al. (2009) that assesses respiratory mortality, finding no association. In addition, your letter does not identify several additional studies that found associations between long-term exposure to ozone and all-cause mortality that were identified in the ozone ISA (Lipfert et al., 2000, 2006; Smith et al., 2009).

Abbey et al. 1999. "Long-term inhalable particles and other air pollutants related to mortality in nonsmokers." *Am. J. Rep. Crit. Care Med* 159: 373-382.

Lipfert, FW; Perry, HM, Jr; Miller, JP; Baty, JD; Wyzga, RE; Carmody, SE. 2000. The Washington University-EPRI veterans' cohort mortality study: Preliminary results. *Inhal Toxicol* 4: 41-73.

Lipfert, FW; Perry, HM, Jr; Miller, JP; Baty, JD; Wyzga, RE; Carmody, SE. 2003. Air pollution, blood pressure, and their long-term associations with mortality. *Inhal Toxicol* 15: 493-512.

Smith, KR; Jerrett, M; Anderson, HR; Burnett, RT; Stone, V; Derwent, R; Atkinson, RW; Cohen, A; Shonkoff, SB; Krewski, D; Pope, CA, III; Thun, MJ; Thurston, G. 2009. "Public health benefits of strategies to reduce greenhouse-gas emissions: Health implications of short-lived greenhouse pollutants." *Lancet* 374: 2091-2103.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 1 0 2013

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable David Vitter
United States Senate
Washington, D.C. 20510

Dear Senator Vitter:

Thank you for your interest in the EPA's economic modeling. We share an interest in continuing to ensure that robust, rigorous and impartial economic analysis remains a staple in the EPA's regulatory process.

The Agency takes very seriously the various Executive Orders relating to economic analysis of our programs, especially E.O. 12866 and E.O. 13563. In following these Executive Orders, EPA consistently applies EPA's own peer-reviewed *Guidelines for Preparing Economic Analyses* (USEPA 2010). The EPA's Guidelines establish a sound scientific framework for performing economic analyses of environmental regulations, actions and policies. Recently revised and updated to reflect advances in the field of environmental economics, the Agency received high praise from its independent Science Advisory Board on the document:

> "By providing thorough and consistent technical advice regarding the application of benefit cost analysis to environmental problems, the Guidelines significantly elevate the quality and transparency of the information upon which environmental decisions are made. We again applaud EPA for developing these Guidelines and the Agency's commitment to continually revise and improve them. Indeed, we believe these Guidelines could serve as a successful model for all state and federal agencies who undertake benefit-cost analysis in support of environmental decision making." (USEPA 2009, p. iii)."

Using these peer-reviewed guidelines, the EPA performs detailed regulatory impact analyses for each major rule at the proposal stage, including benefit-cost analysis, various types of economic impacts analysis, and analysis of any significant small business impacts. Each draft regulatory impact analysis then goes through public notice and comment, and the resulting input from stakeholders and the public are taken into account in developing the final economic analysis.

The EPA believes strongly in providing the public with information about the impacts of its regulations through its regulatory impact analyses and that it should use a range of tools to do so. During these challenging economic times, the EPA has worked hard to characterize our economic impacts carefully and work with industry and other stakeholders to find ways to

minimize those impacts, in a manner consistent with the statute, while still achieving environmental protection. Whole economy models are part of the range of tools in an economists' toolkit to examine public policy interventions and we have used them at the EPA in selected instances. For example, the EPA's March 2011 peer-reviewed study of the benefits and costs of the 1990 Clean Air Act Amendments[1] found when just two of the benefit-side economic whole-economy effects of the Clean Air Act Amendments were included (increased worker productivity from reduced "work loss days" and avoided medical expenditures), the model projected higher GDP by 2020 with the 1990 Clean Air Act Amendment programs than without. In addition, the economic welfare of households was higher with these clean air programs than without them.

The application of any individual tool, such as whole economy modeling, depends upon the scope of effect and details of the particular policy as well as available data, resources, and appropriate model platforms. In all cases, the EPA strives to apply the right mix of economic tools to characterize impacts within a regulated sector as well as any significant and discernible impacts in other sectors.

The EPA can commit to continue to work to improve the EPA's analyses of regulations and to direct our economists to look for ways in which whole economy models can be improved and continue to be constructively employed to better understand the overall impacts of environmental policies on the economy.

Thank you again for your interest in the EPA's economic modeling. If you have any questions please contact me at (202) 564-4741.

Sincerely,

Arvin Ganesan
Associate Administrator

[1] http://www.epa.gov/air/sect812/prospective2.html

Senator BOXER. But also, ask you if you intend to make those letters public?

Ms. MCCARTHY. Yes.

Senator BOXER. OK.

Now, I guess because this is such an important position, and nobody could possibly reflect every point of view on this panel, I think we need to rise above our own particular ideology and look at the human being and why you are willing to do this. So I have a question, it is very open-ended and it is not particularly scientific. But what was it that kind of inspired you to get into this line of work so many years ago and stick with it?

Ms. MCCARTHY. That is a good question, Chairman. Let me take a bit of a shot at it. When I went to graduate school at Tufts, my intent was to go into the field of public health. I began actually in Providence, Rhode Island, as my first job out of graduate school, working in community health centers. I was really interested in the delivery of health care at that time, particularly to underserved and poor populations.

And my mother got ill and I went home to take care of her, wanted a job nearer home. Ended up finding a job in my own hometown in Canton, and I found myself as the health agent there. All of a sudden, there was a big controversy about some PCB barrels that had been found in the woods. And I found out that neighbors that I had lived near for all my life were very concerned about whether those barrels and that spill was causing them to have cancer in their community. I got embroiled in a controversy that I was totally unprepared for but worked my way through. And I began to realize that a career in public health could very much be related to protecting the environment.

I realized very quickly how important it was to people in the community to feel like somebody was protecting them from those challenges. It was in the 1980s, it was when things were unfolding. Great Federal laws were being implemented and I just got swept into that. And it has been a great experience ever since.

Senator BOXER. I want to thank you for that.

Senator Crapo and I have been working to pass legislation that, it is interesting, it is very much along these lines, where if there is a cancer hot spot, that the EPA and other agencies could go in and help them figure out what is causing this. So these concerns continue in the U.S. Senate today.

There is this whole thing about emails. It was raised again by Senator Boozman. Senator Boozman, in my opening statement, I explained that this idea of having a secondary email was started by Christine Todd Whitman and was continued by all the Republicans and Democrats following. One Republican had as a moniker tofu@epa.gov. So they all have used it, because they get a million emails to the primary email. And in order to figure out what they need to answer, they have all done this.

So I don't think it is anything nefarious. But I would like to ask you for the record, I understand the EPA Inspector General is looking into the agency's email management practices. Are you aware of this effort and you could describe to us what you know as of this date, how that is going?

Ms. MCCARTHY. Yes. The Inspector General is actually doing an audit in which we all participating. I certainly feel, and I believe the agency does as well, that it is a great opportunity for us to have their independent view of what we are doing well and what we can improve on. I know that Acting Administrator Perciasepe is working closely with them and we are going to be taking their recommendations to heart and doing everything we can to improve the system at EPA, as we always would.

Senator BOXER. OK. I am going to yield my time to Senator Vitter. Before I do, I just have to ask you, as Chairman of the Committee, if confirmed, will you focus on ensuring the agency complies with all laws, including the Federal Records Act and the Freedom of Information Act?

Ms. MCCARTHY. I will, Chairman.

Senator BOXER. Thank you very much.

Senator Vitter.

Senator VITTER. Thank you, Madam Chair. And thank you, Ms. McCarthy, for your service and for being here. I appreciate it.

First, just in reaction to some of the Chair's comment about some of these aliases, let me just go on record as saying Richard Windsor, that sounds pretty monarchist. Now, a lot of folks would say that is appropriate for EPA, but I personally vote for tofu. I think that is even more on the mark.

Ms. MCCARTHY. I am a meat-eater, myself.

[Laughter.]

Senator VITTER. As was said, this whole side of the aisle has focused on a lot of transparency concerns. And that has really been my sole focus in terms of defining those five requests that I gave you when we first met. And again, just to make clear, because I think Barbara was a little mistaken about it, that didn't come up yesterday. We talked about that the first opportunity we had to meet.

Ms. MCCARTHY. Yes.

Senator VITTER. And then we repeated it in writing yesterday in a letter from all of us. But I gave you that in writing and substance when we first met many weeks ago.

So I want to focus in that area, because I think it is so important. Again, I am, quite frankly, disappointed. The responses we have gotten that are now in the record in my opinion address about one and one-quarter of the five areas. And so three and three quarters I think have not been responded to in a meaningful way. That is what I want to explore.

So let's start, the Chair has brought up the alias email accounts, which I think is largely a straw man. I want to start with the real man, which is personal email accounts. As you know, there has been a pattern of abuse using personal email accounts at EPA, led directly to one regional administrator resigning. In my opinion, it is clear that this practice in many cases was used to hide information from the public. So my question comes from that, and it is No. 2 in what we have discussed in the letter. Did you ever use private email accounts to conduct official EPA business?

Ms. MCCARTHY. Ranking Member, can I just start by sharing a concern for transparency and accountability? I want you to know

that I care as much about this as you do and other members who have mentioned this to me in our private meetings.

Throughout my career, I have done everything I can to focus on complying with the laws relative to transparency and accountability. I am certainly not new to public service, and I know these obligations. I do not conduct business through personal email. As we discussed before, when we met in person, there are times when I have gone home to Boston and I have used my personal email to send documents from EPA.gov, from my office at home for printing and review purposes to facilitate those. But those have never left the Government email system. Those have always been sent back and are discoverable and they would comply with FOIA and the Federal Records Act.

Senator VITTER. OK. Now, when we talked, you gave me basically the same response, "to the best of your recollection."

Ms. MCCARTHY. Yes.

Senator VITTER. Are you completely confident that that recollection is perfect?

Ms. MCCARTHY. Senator, you asked me that, and I want to be very honest with you. I have thought about this a lot. I also responded to your question as to whether or not my recollection was right. And I did go back and I searched my emails. I went back to my personal accounts, I took a look at those so that I could see whether the work practice that I believed I developed I actually carried out faithfully. And I did not find any circumstance in which I transferred documents from EPA to anything other than back to an EPA website. And they have been maintained and are discoverable. There was one exception, and it wasn't a document. I did find when I went back and searched that in my husband's email there was an unsolicited incoming email that was sent for me. As soon as I saw it, I shipped it into the EPA site.

Senator VITTER. So from what I am understanding of your answer, that certainly includes not using your personal account to correspond with anyone else about EPA official business?

Ms. MCCARTHY. That is correct.

Senator VITTER. I have the same question regarding something that has come up in EPA and that the Acting Administrator has expressed concern about, which is EPA instant messaging accounts. The concern is that there is no clear record of that. Have you ever used instant messaging accounts to conduct EPA business?

Ms. MCCARTHY. One good thing about being 58 is I don't even know how to use them.

[Laughter.]

Ms. MCCARTHY. I have never used an IM, I don't know how. Sorry. You got to admit it.

Senator BOXER. OK, moving to Senator Sanders.

Senator SANDERS. Thank you, Senator Boxer. Ms. McCarthy, in my State, we take environmental issues quite seriously. We are proud of our record. Last month we had a town meeting on global warming, we had 600 people coming out, including a whole lot of young people.

So let me begin by asking you, do you believe that global warming is real?

Ms. MCCARTHY. I believe that the science is overwhelming, yes.

Senator SANDERS. Do you believe that global warming is significantly caused by man-made activities?

Ms. MCCARTHY. I do think man-made emissions contribute to global warming, yes.

Senator SANDERS. Senator Boxer and I have heard from scientists who have told us that they worry very much, no one can predict weather in the future, that is for sure. But Senator Boxer and I have heard from scientists who tell us that they fear that the temperature of this planet can warm by as much as 8 degrees Fahrenheit by the end of this century. Is that something that you have heard and see as plausible?

Ms. MCCARTHY. I have heard a number of ranges of warming, yes.

Senator SANDERS. Can you give us some idea as to what role you think the Government, and in particular the EPA, should play to address what I believe, if that happened, would be a monumental and catastrophic crisis for this Country and for the planet?

Ms. MCCARTHY. Well, President Obama has indicated that he would look forward to congressional action on climate. But in the meantime, he has asked each of the agencies, including EPA, to look at our administrative authorities and what reasonable, common-sense steps can we begin to take that more effectively tackles the challenge associated with carbon pollution. Carbon pollution, greenhouse gases, are a pollutant under the Clean Air Act. That has been made very clear to EPA. We are regulating greenhouse gases as pollutants. But again, we are doing it in common sense steps so that we can make sure that the economy continues to grow. But we believe that we have opportunities for mitigating carbon pollution moving forward, and we are looking at our tools and the availability of them.

Senator SANDERS. Let me ask you a two-part question. Many of my Republican friends have appropriately enough and correctly enough talked about the economy. We are all concerned about the economy. I would like to reverse that question a little bit and ask you, if we do not get a handle on climate change, if we continue to see more extreme weather disturbances, we don't know, most of us voted for $60 billion just to deal with the aftermath of Hurricane Sandy.

What are the economic consequences in terms of drought, fires, floods, more extreme weather disturbances if we do not get a handle and reverse climate change?

Ms. MCCARTHY. Senator, the economic exposure associated with climate change is quite large, not just domestically, but as a national security issue. I would also caution that the climate change that we already see and is happening is requiring us to look at adaptation plans for how our cities and towns can be more resilient. That in and of itself is a significant investment in infrastructure that we really need to begin to plan for.

Senator SANDERS. Let me ask you, the second part of the question is, do you see economic opportunities as this Nation moves forward aggressively in dealing with greenhouse gas emissions?

Ms. MCCARTHY. Senator I think in my opening remarks, I gave the best example on the ground that I can give, which is the clean car program that the President has moved forward with. That is

going to improve our national security, reduce carbon pollution significantly and give people cars they want to drive that are much more efficient. There are many ways in which we can hopefully turn this climate challenge into an opportunity for a clean energy economy.

Senator SANDERS. Would you agree, and in Vermont, we are developing some strong energy efficiency programs. Clearly the fastest, most cost-effective way of dealing with pollution or greenhouse gas emissions is to have less of them through energy efficiency. Would you be sympathetic to an aggressive effort toward weatherization and energy efficiency in this Country?

Ms. MCCARTHY. Very much so. This Administration has put considerable funds into those efforts. I think they are right on target in terms of some of the best things we can do for the American public while at the same time reducing carbon pollution.

Senator SANDERS. What about supporting sustainable energy, like wind, solar, geothermal, biomass?

Ms. MCCARTHY. That must be part of the all of the above strategy as we move forward. Yes.

Senator SANDERS. I thank you very much, Madam Chair.

Senator BOXER. Thank you.

Apparently I made a mistake. There was an agreement that each one would get 7 minutes for questions. I took 5. Senator Vitter took 5. So we are going to do 5. And if people want to stay they can get their next 2 minutes for a second round. Because it is, we have been going since 10:30. And we are going to proceed now, and the next person is Senator Barrasso.

Senator BARRASSO. Madam Chairman, I think Senator Inhofe is next.

Senator BOXER. Forgive me, I just got the new rules. Senator Inhofe.

Senator INHOFE. Thank you, Senator Barrasso.

Since it was 5 minutes, we are going to have to make this real quick. I have three questions and three answers. I am going to be quick and I will ask you to be, too.

I am concerned that the EPA has been circumventing the appropriate administrative process for developing its rules and settling scores of lawsuits brought by environmental groups instead of actually litigating them. Even though the States are significantly affected by these, they have left out the process.

Now, Scott Pruitt, who is the attorney general for my State of Oklahoma, and several other AGs from other States, filed FOIA requests asking the EPA to release information about these settlements. But the EPA has denied its request for a fee waiver. We understand what that is.

My question to you is, if I make that request to you, would you supply me with that information?

Ms. MCCARTHY. Senator, that isn't an area in which I have had authority. So I will certainly go back and take that back to the agency and respond as quickly as I can to your request.

Senator INHOFE. All right, I appreciate that very much.

The EPA overturned Oklahoma's regional haze plan after the consent decree, citing the plan's cost estimate as inaccurate. Oklahoma's plan was a low-cost plan, $100 million, as opposed to $1.8

billion which would have been for the EPA's. It is that much more costly.

Now, are you familiar with this? These are the two plans, the outcome of the plans that no one has actually refuted. Can you tell me whether or not you would take our plan, our State of Oklahoma plan, and save the taxpayers $1.7 billion?

Ms. MCCARTHY. Senator, again, this is an area that I oversee. I am not exactly familiar with the plan that you are talking about. I am more than happy to respond to that in writing.

Senator INHOFE. You are not familiar with the two plans?

Ms. MCCARTHY. I actually have gotten very engaged in Oklahoma in particular, one of the plans, because we did propose a regional haze strategy for that plan. We actually worked with the region and we worked with the Governor's office. We worked with the company and we developed a plan that was more suitable for them, which they are now proposing back to us for public comment. So the one that I am familiar with we worked very well with the State on and I think they should be happy with.

Senator INHOFE. Thank you very much.

I have become real troubled by the EPA's actions. When the agency uses discretion, it has to further a climate change agenda. This has been especially problematic for the new source performance standard for greenhouse gases in the utility sector, wherein the EPA has forced all power plants to meet the emission standards of natural gas plans.

Now, what we are getting to here is the category, of changing the category from, as it has been historically always a category of oil, gas and coal. In fact, the gas broken down into segments. So my question would be, would you commit to repropose a rule of the EPA's as the President has been in the past, as opposed to accepting this one what I would call the sub-categorized approach that they are taking?

Ms. MCCARTHY. Senator, first, let me say that I really appreciate the comment. We have heard similar comments in the comment period. We have received 2.7 million comments on that proposal, which tells me that there is great interest in what we do. I will assure you that we are going to take that comment into consideration as we look at finalizing a rule. I don't want to tell you now at this point.

Senator INHOFE. You can't tell me now in terms of the sub-categorizing you have been doing that you would be willing to go back to the precedent that has worked for quite a number of years and that I would prefer?

Ms. MCCARTHY. I am more than willing to take that comment into consideration and work it through in the public process, Senator.

Senator INHOFE. During your confirmation hearing back in 2009, I recall that you said that coal is a vital resource. In light of this new standard, have you changed your mind on that?

Ms. MCCARTHY. Not at all, Senator, no.

Senator INHOFE. Can you explain why you used your discretion at the Air Office to abandon the longstanding Clean Air Act precedent? Why did we change the categorization issue in the first place?

Ms. MCCARTHY. We actually took a look at the two categories and we made a policy decision that it was a most appropriate way to look at energy generation, was to combine those categories. But we believe that the proposal we put out created a pathway not just for natural gas facilities, new ones, but also for new coal.

Senator INHOFE. Well, is that policy one that can be reversed? Well, it can be reversed, would you assist in reversing that policy back to as the President has set in the past?

Ms. MCCARTHY. I believe that that is part of the comments that we received, and we will be giving that consideration, Senator.

Senator INHOFE. I have a third question that I have a feeling I am not going to be able to get through here.

Senator BOXER. Senator, we have so many waiting. Senator Barrasso.

Senator BARRASSO. Thank you, Madam Chair.

I want to first respond to something that the Chairman said about the dual email accounts, saying everybody does it. There is an April 11th, 2008 EPA memo from the agency's own agency records officer that states "This dual account structure was first implemented during the former administrator, Carol Browner's, tenure." It goes on to say, though, "The secondary email accounts are configured so the account holder's name appears to be in the sent by field," so people actually know who it is sent by. So the email alias Richard Windsor does not comply with the rules.

So I would ask you, if confirmed, will you please comply with the EPA rules with regard to the secondary email accounts that have been outlined in this document? And Madam Chairman, I ask that this EPA document, letter be included in the record.

Senator BOXER. Without objection.

[The referenced information follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 1 1 2008

OFFICE OF
ENVIRONMENTAL INFORMATION

Mr. Paul Wester
Director, Modern Records Program
National Archives and Records Administration
8601 Adelphi Road
College Park, Maryland 20740-6001

Dear Mr. Wester:

I am writing to inform you of a possible unauthorized destruction of computer files maintained by the U.S. Environmental Protection Agency (EPA or Agency) that may have contained e-mail records that had not yet been captured in a recordkeeping system in accordance with EPA and National Archives and Records Administration requirements. Specifically, the Agency did not adequately maintain limited-access e-mail accounts used by former Administrators, and it cannot be determined with certainty that all record material had been printed and filed prior to the destruction of the electronic data. The Agency has also discovered an instance of improper use of a non-EPA e-mail account for official business by a former Acting Administrator. This notification is being made in accordance with 36 CFR, Subpart G, Section 1228.104.

Background – Administrators' E-Mail Accounts

The Agency has always welcomed public comment via any mechanism, including electronic mail, and it has not restricted access by requiring the use of html forms or similar comment-gathering mechanisms as have some federal agencies. This open comment policy, however, has one practical drawback: most members of the public address their e-mails to the Administrator, which means the Administrator receives hundreds of thousands of incoming e-mails to his or her account each year. Clearly, it would be impossible for the Administrator to use such a high-volume account for regular communication with staff or, as permitted under the Agency's de minimis use policy, occasional communication with family or friends.

In recognition of this problem, in the 1990's, the Agency's Office of Environmental Information (OEI) (and its predecessor organization) assigned Administrators and Acting Administrators two e-mail accounts. The primary account uses the Agency's standard naming convention (***lastname.firstname@epa.gov***). The address for the secondary account generally uses a standard prefix (the word "to") with a name or word supplied by the Administrator or Acting Administrator. Each Administrator or Acting Administrator has been assigned his or her

own secondary account, and the accounts are not associated with each other. The secondary e-mail accounts are configured so the account holder's name appears in the "sent by" field.

OEI is responsible for creating the primary and secondary accounts and for maintaining the Agency's e-mail servers and other infrastructure. Information technology (IT) staff members (i.e., Agency contractors) in the Office of the Administrator are responsible for setting up the accounts on users' computers (i.e., installing the .id files and linking to the e-mail server).

This dual-account structure was first implemented during former Administrator Carol Browner's tenure (January 22, 1993 - January 19, 2001), and it has been used by every Administrator or long-term Acting Administrator since that time.

Account Management and Access

Access to the secondary e-mail accounts is extremely limited. Ordinarily, only the Administrator or Acting Administrator, one executive assistant, and the OEI Lotus Notes server administrator(s) are granted permission to access the accounts. Few EPA staff members, usually only high-level senior staff, even know that these accounts exist. Therefore, responsibility for identifying, printing, and submitting records for filing in accordance with EPA records schedules falls to the Administrator or Acting Administrator, and, if directed by the Administrator or Acting Administrator, to the executive assistant. Each incoming Administrator is briefed on his or her records management responsibilities by the EPA Records Officer and a representative from the Office of General Counsel.

Discovery of the Unauthorized Data Destruction

In early August 2007, Administrator Johnson's executive assistant was searching his secondary e-mail account for records responsive to a Congressional request for information. The assistant discovered that e-mail messages older than 90 days were no longer present in the account (all of which had already been reviewed and, if determined to be record material, had been printed and filed). The assistant alerted the appropriate IT staff immediately.

The IT staff determined that a system setting had been inadvertently activated that automatically deletes e-mails that have not been modified during the previous 90 days. Staff was unable to determine the cause of the setting change, but neither the Administrator nor his assistant made the change. The auto-delete setting was immediately deactivated to comply with the Chief Information Officer's March 2006 requirement to suspend automatic e-mail deletion indefinitely. On September 15, 2007, OEI ran an Agency-wide compliance check to determine if other users had been affected. Since that time, OEI has run monthly compliance checks and follows up with any offices where users have turned the feature on or where a computer error has resulted in the feature being activated.

The review of Administrator Johnson's secondary e-mail account prompted an inquiry into the status of accounts that had not been in recent use, i.e., the secondary accounts of former Administrators. An investigation was begun by the Administrator's Office (AO) staff in cooperation with OEI staff. AO and OEI staff discovered that the secondary accounts for former

Administrators Carol Browner (January 22, 1993 - January 19, 2001), Christine Todd Whitman (January 31, 2001 - June 27, 2003), and Michael O. Leavitt (November 6, 2003 - January 25, 2005), are no longer being maintained, but the secondary account for former Acting Administrator Marianne Horinko (July 12, 2003 - November 5, 2003) is still being maintained.

Agency Response and Recovery Efforts

The Agency has taken steps to reconstruct the secondary e-mail accounts of former Administrators and Acting Administrators. The Agency's recovery efforts began with a thorough search of archive servers to determine if copies of the Administrators' accounts had been saved. No such copies were found.

EPA's Office of Executive Services oversaw a search of every electronic mailbox and archive database on every server throughout the Agency for any extant copies of e-mails sent to or from the secondary e-mail accounts. The search covered 82 servers, over 35,000 databases, and more than 255 million e-mail messages. It was conducted with the assistance of server administrators in headquarters, the regions, and EPA laboratories. A total of 6,647 individual e-mail messages were sent from or to the secondary accounts Administrator Johnson (5,974) and former Administrator Leavitt (673). Of these, 433 were sent from Administrator Johnson's secondary account and 66 were sent from former Administrator Leavitt's secondary account.

Of the 433 recovered sent messages, five were determined by the Office of the Executive Secretariat to be records from former Administrator Leavitt's secondary account. In an abundance of caution, four additional e-mails from Administrator Johnson's secondary e-mail account were printed and filed.

Assessment of Potential Loss

Precise assessment of the completeness of the Agency's records with regard to the secondary e-mail accounts is impossible, given the loss of data, limited account access, and turnover of personnel. Compounding the assessment problem is a lack of information on former Administrators' use of their secondary accounts.

One certain aspect is that the recovery protocol could not capture two categories of e-mails: (1) e-mails from a non-EPA account addressed to the secondary e-mail accounts (and without a cc or bcc to another EPA employee); and e-mails sent from any of the secondary accounts to a non-EPA e-mail account (and without a cc or bcc to another EPA employee).

The following represents the Agency's best approximation of the extent and impact of the loss of e-mails from the secondary accounts, if any, for each Administrator and Acting Administrator:

- Carol Browner – *No Loss* – Former Administrator Browner reportedly did not use her secondary e-mail account, therefore there was no loss of e-mail records.

- Christine Todd Whitman – *No Loss* – Former Administrator Whitman never used her secondary account to conduct Agency business, therefore there was no loss of e-mail records.
- Marianne Horinko – *No Loss* – Former Acting Administrator Horinko's secondary account exists and is complete. Therefore, there was no loss of e-mail records.
- Michael O. Leavitt – *Minimal Loss (Possible)* – It is unclear the extent to which former Administrator used his secondary EPA e-mail account. However, the retrieval efforts identified 56 e-mail messages sent from the secondary account; of those, five have been identified as records and printed and filed.
- Stephen L. Johnson – *No Loss* – Administrator Johnson's secondary e-mail account has been consistently reviewed for record material, and records have been printed and filed in accordance with applicable schedules.

Safeguards Against Future Losses

The Agency recognizes the seriousness of this issue and is committed to ensuring that it does not occur again. The Office of Environmental Information's monthly review of e-mail account settings mitigates the risk of further losses due to Lotus Notes auto-delete functionality. Continuing records management briefings and training ensure that each Administrator and their staff are aware of their records management responsibilities. The current Administrator's practices serve as a model for future Administrators and their staff. And, finally, implementation of new technology, like the Enterprise Content Management System, helps streamline records capture, which should ensure greater future compliance.

Improper Use of Non-EPA E-Mail Account

During its review of former Administrators' secondary e-mail accounts, EPA staff discovered one instance of the improper use of a non-EPA e-mail account for what seems to be official business. Former Acting Administrator Marianne Horinko, on July 20, 2003, responded to an e-mail from a contractor in which he states that he "need[s] to fill [Acting Administrator Horinko] in more" about issues relating to the World Trade Center. The Acting Administrator replied, from her secondary e-mail account, to "remember home email (sic) address...All of this email (sic) is official."

I should note that this is the sole example of such an infraction among thousands of secondary account e-mails (including more than 1,300 from Acting Administrator Horinko) that were reviewed. The fact that only one example was found, however, in no way excuses the infraction, particularly since it was the Acting Agency head who gave the instruction to use the non-EPA account.

In accordance with recommendations in the Government Accountability Office's report on federal e-mail records management practices, EPA will soon issue an explicit policy statement that clearly prohibits the use of non-EPA e-mail accounts and non-EPA instant messaging applications in the conduct of official business unless extenuating circumstances warrant such use (e.g., failure of EPA e-mail servers). The policy statement will be clear that if non-EPA e-mail resources are used, the Agency's records management requirements still apply.

This information will be incorporated in mandatory Agency record management trainings and in briefings to EPA senior officials and their staffs. The Agency is confident that clear policies, training and continuing education and attention to these and other records management matters are our most effective strategies.

If you have any questions about this notice or require additional information, please contact me at (202) 566-1643 or at ***ellis.john@epa.gov***.

Sincerely,

Sara Hisel McCoy for

John B. Ellis
Agency Records Officer

cc: Laurence Brewer, Director, NARA Lifecycle Management Division
Byron Brown, EPA Office of General Counsel

Senator BARRASSO. Thank you, Madam Chairman.

Ms. MCCARTHY. Senator, I am not familiar with the document, but I will certainly take it back to Acting Administrator Perciasepe and we can respond to that.

Senator BARRASSO. Well, it is the rules of the EPA from April 2008, and it says that the address of the secondary account has to be configured so the account holder's name appears in the sent by file. And yet, I have a whole pile of emails from Richard Windsor to you and from you to Richard Windsor. Your name appears appropriately, but Richard Windsor's does not, anywhere.

So I would say that this is a practice, I wonder if anybody at the EPA objected or if you personally objected to EPA Administrator Lisa Jackson using an alias that was absolutely against the policy of the EPA? And your emails back to her, as Richard, go back to 2009.

Ms. MCCARTHY. Senator, I am just not familiar with the policy you are reading from, but I will certainly be happy to familiarize myself with it.

Senator BARRASSO. I think it is important for all of us to know if the EPA and this Administration are going to be transparent or are intentionally deciding to try to deceive the American people.

Senator BOXER. Without losing any time, could you stop the clock? Would you, since we are asking Gina McCarthy, could we ask all those Republicans also?

Senator BARRASSO. This is a 2008 document, April 2008. So I am not asking Carol Browner, who wasn't there at the time, although she started it, and the people during the Bush administration. That is fine.

Senator BOXER. Yes, but I just think it would be interesting to ask them as well. So I am going to do that. I am going to ask them as well. Go ahead.

Senator BARRASSO. Thank you, Madam Chairman.

The President said during his State of the Union address that if Congress won't act soon to protect future generations that he would direct the Cabinet to come up with executive actions he said we can take in terms of pollution and prepare our communities for the consequences of climate change. This Administration has attempted to pass highly controversial legislation regarding climate change in terms of expanding the definition of even Federal waters among others. Clearly, Congress, in a bipartisan way, rejected these efforts by the President in terms of climate change, rejected the issues of Federal waters. The people in the House and the Senate who introduced the Federal waters legislation, they both lost the re-election bids.

So the EPA doesn't seem to care about any of the thoughts of the American people. They have moved forward, regardless, to attempt to enact these proposals despite the will of the American people, bipartisan. This includes climate change rules, it includes clean water jurisdiction.

So I ask of you, you are looking to replace Lisa Jackson, do you disagree with any of the actions that the EPA Administrator Jackson has taken with regard to Clean Water Act jurisdictional guidance or climate change rules?

Ms. MCCARTHY. Senator, I respectfully ask if I could just stick with the Air program. I understand that there are many issues that folks are concerned about on the water side. I just can't speak to those directly. But I know the rules that we have put forth that regulate carbon pollution are rules that we believe that the Clean Air Act requires us to regulate or is appropriate given the law and the science.

Senator BARRASSO. Thank you. In January of this year there was a proposed new coal-fired power plant that was canceled in Corpus Christi, Texas, a $3 billion plant that would have employed 3,900 folks. The CEO of the company that was to build the plant stated that the plant, he said, is a victim of the EPA's concerted effort to stifle solid fuel energy facilities in the United States, including the EPA's carbon permitting requirements and the EPA's new source performance standards for new power plants. The same month, Georgia Power announced the EPA emissions standards are being blamed for the closure of 15 coal-fired power plants and the loss of nearly 480 jobs in Georgia.

Since you have taken office, 10 percent of coal-fired generated power in the United States has been taken offline. Thousands upon thousands of people are now out of work. More get laid off with each plant closure and each proposed project that gets killed. Do you see the EPA having any responsibility for the thousands of folks who are out of work for these plant closures?

Ms. MCCARTHY. Senator, I believe that coal has been and will continue to be a significant source of energy in the United States. I take my job seriously when I am developing standards for protecting public health, to take a look at the economic consequences of those and do my best to provide flexibility in the rules.

Senator BARRASSO. Thank you, Madam Chairman.

Senator INHOFE. Madam Chairman, I meant to ask one question for the record, would you allow me to do that.

Senator BOXER. We will put it in the record for you.

Senator INHOFE. But I think it is important that I ask the question.

Senator BOXER. Senator, please, then, you need to wait. We are going to have another 2-minute round. Senator Cardin.

Senator CARDIN. Thank you, Madam Chair. I am willing to give 30 seconds to my friend, if he would like to use it.

Senator BOXER. That is fine, thanks for yielding.

Senator INHOFE. Thank you very much, Senator Cardin, and I appreciate that so much from my old classmate from 1986.

Senator BOXER. Your 30 seconds are up.

[Laughter.]

Senator INHOFE. The question I was going to ask was, the decision that the Sixth Circuit Court of Appeals came against the EPA, and they are only applying that to the Sixth Circuit, so the question is going to be, will you be willing to commit to apply the Sixth Circuit court decision to the rest of the Country? You may want to say yes right now.

Ms. MCCARTHY. Senator, I am more than willing to go back and talk to our attorneys and see what the implications of that are and get back to you as soon as I can.

Senator INHOFE. Thank you, Senator Cardin.

Senator CARDIN. Well, you are quite welcome.

First, let me again point out, we are all concerned about the impact that the work that you do will have on our economy. Jobs are critically important. We want the work to be done in a very transparent, open way. You have already indicated that is how you do business, and your record at EPA has confirmed that.

Let me just put on the record, and I would appreciate any response that you want to make to it, when a Maryland family, when their child is not able to go to school because of asthma, and a parent who would be working now has to take a day off from work, that affects that family's income. So if we don't enforce the Clean Air standards the way we should enforce the Clean Air standards, there are going to be parents who are going to miss work days as a result of their children missing school days. I have had Maryland families tell me that they paid good money for a summer camp for their children only to find that because of the warnings, they can't send their children out on that day because of air health risks. That also affects what the parent does that day in taking care of their child that they assumed would be in camp that can't be in camp.

My point to you is, there is a reason why we want cost-benefit analysis, there is a reason why we want to be able to understand the impact. And there has been voluminous material made available to this Committee as to the premature deaths, the amount of hospitalizations, the amount of extra hospital care, et cetera, as a result of the dirty air or dirty water or not enforcing at the level that we can. I just really want you once again just to assure this Committee that in implementing the laws that Congress has passed, we passed the laws, we passed the Clean Water Act, we passed the Clean Air Act, we did that because we thought we had a responsibility for public health and our future environment, that you will be guided by the best science, by the cost-benefit analysis that you do, that you are doing currently, but that it will be balanced, including looking after the responsibilities Congress entrusted upon you as a result of the passage of these laws.

Ms. MCCARTHY. It would be an honor for me, as you indicate, to let the law, the science, transparency, accountability and cost-benefit guide my judgments.

Senator CARDIN. I thank you for that. Let me say, Ms. McCarthy, you have a reputation, and I know some of my colleagues on both sides of the aisle have said this, of being true to your word, of being open, of being transparent. That is the type of Administrator that we need at the Environmental Protection Agency. We had it from our current Administrator. Lisa Jackson, to me, did a great public service to this Country. She was always very straight with this Committee and very clear about the responsibilities and the manner she was going to continue to conduct her public life.

We just want to make sure, and your record indicates that, but that is the type of Administrator we need. Look, we are going to have our differences. You can see that today. There are more differences, I think, among the members of this Committee than there is with the witness before us. And that is our job. Your job is to carry out the law and do it the best that you can in an open, transparent way, letting best science judge your work. I thank you for

being willing to commit to do that, and your record gives us great confidence in fact you will carry out those responsibilities in that regard.

Senator BOXER. Thank you, Senator Cardin. Senator Fischer.

Senator FISCHER. Thank you, Madam Chair, and thank you, Ms. McCarthy, for being here again today. I do appreciate you offering yourself for extended public service.

In Nebraska, we are very serious about our environmental stewardship and our conservation management. But I get calls and I get letters every day from Nebraska farmers who are concerned about the compliance challenges associated with EPA's spill prevention control and countermeasure rule for the on-farm storage, fuel storage.

Allow me to share a portion of one such constituent email that I recently received: "We just became aware of this regulation yesterday through an email from Farm Bureau. Since we have a large quantity of on-farm storage capacity, we are not able to self-certify and must hire a professional engineer to create a plan. In order to find a qualified engineer, I first called the EPA, who then told me to call the Region 7 office out of Kansas City, who then told me to call the Nebraska Board of Engineers who then told me to call the Nebraska Society of Professional Engineers. But the number on their website is no longer in service. So when I asked the gentleman from the Nebraska Board of Engineers how much it would cost, he said anywhere from $1,500 to $4,800, depending on the complexity and the engineer's ability to charge more due to this now high demand, due to the approaching deadline. When I asked the gentleman from the EPA Region 7 office why we hadn't heard about it before now, he said the ruling was in place for a long time, but they hadn't done a good job of getting the word out."

As you are aware, bipartisan legislation has been introduced that would raise the exemption levels for the fuel storage capacity. I think that better reflects the spill risk and the financial resources of farms. Would you support this common-sense solution that would help to ease these regulatory burdens?

Ms. MCCARTHY. Senator, thank you for raising the question. I believe this is an issue that Congress has dealt with, at least to give some temporary leeway to take a look at this question. I am more than happy to go back and take a look at it. I think as we have talked when we were together, I think the agency has bridges to build with the agriculture community. I would look forward to tackling that with you and others. Because I know just how hard the farming community protects their resources. And I want to make sure that we have an opportunity to change the relationship between that community and EPA.

Senator FISCHER. I appreciate that.

Do you know if agriculture has any history whatsoever of any large oil or fuel spills?

Ms. MCCARTHY. I am not aware of any directly, but we certainly can get back to you, Senator.

Senator FISCHER. Thank you. Another question I have, again, we had the opportunity to visit earlier this week about that deteriorating relationship between agriculture and the EPA. And farmers and ranchers have become increasingly frustrated with the bu-

reaucracy that doesn't seem to understand the nature of our business or appreciate the pride that we take in our stewardship.

So I would like to ask you about one recent example of EPA action that I think illustrates this problem that we have. And that was the release by EPA of the animal feeding operators personal information to environmental activist groups. Then the EPA is now asking for the information back. There is the perception out there that there is collusion between EPA and some of these activists. The Department of Homeland Security, they expressed explicit concern to the EPA about the creation of a national database about our animal feeding operations, because of the risk that it would impose on our food supply as a Nation.

Would you commit to not developing, contracting for or implementing such a data base during your tenure, if you are confirmed?

Ms. MCCARTHY. Senator, what I will commit to, because I am not familiar with this database, is to continue, I think, the path forward that Acting Administrator Perciasepe has taken, which is to get that information back and to follow up with Ranking Member Vitter and others who are concerned that we really improve the system at EPA. I know that there is great concern that that information went out. I understand that concern. And I would do everything I could to make sure that those errors are not repeated.

Senator FISCHER. Thank you. Because I do view this as a national security concern as does Homeland Security. So thank you very much.

Senator BOXER. Thank you very much.

We will turn to Senator Merkley and then Senator Sessions.

Senator MERKLEY. Thank you very much, Madam Chair.

And thank you, Ms. McCarthy, for being here. I wanted to address biomass. I come from a part of the Country that has a lot of biomass. And thus I recall once in a meeting someone said to me, wouldn't it be great if we just had something that would take carbon dioxide out of the air? And I was able to respond and say, well, you will be glad to know we grow millions of those in Oregon.

[Laughter.]

Senator MERKLEY. I really do appreciate an important decision that was made under your direction for a 3-year deferral on biogenic greenhouse gas emissions. This was related to the tailoring rule and the goal is to understand the difference between fossil fuels and biomass and to create a framework for analyzing that. That framework, my understanding is that has been completed and is being submitted to an independent scientific advisory board. And that the preliminary findings are that biogenic or biomass does have some carbon emissions related to transportation, et cetera. But because it takes carbon from the atmosphere and returns it to the atmosphere, the overall life cycle impacts are much, much lower. That is a very important thing to learn in terms of a scientific framework.

The expiration of the deferral is fast approaching. We have 1 year left on it. My goal is that we bring this scientific information to bear so we don't put very different types of products into the same basket, if you will. Will you just share a comment?

Ms. MCCARTHY. Senator, just to thank you for your leadership on this issue. I know it was a big concern of your State and others in

that area, as well as folks in the Northeast and down South that we recognize the difference of biogenic emissions and that we properly study that and take a look at how we would account for that in any process moving forward.

We got great advice from the Science Advisory Board, as we always do when we put our studies out for peer review. We are looking forward to resolving this issue in a way that I think people will agree is thoughtful and appropriate. We need to do that quickly because we have a July 2014 time line that is right in front of our heads, Senator, and we will work with you on it moving forward.

Senator MERKLEY. Thank you.

Second, I want to turn to the Portland Harbor superfund. This is a section of the Willamette River where a lot of industrial activity took place, including a lot of shipbuilding during World War II. We are anxious to get through the planning and into the actual efforts to clean up the river. Complex combination of capping sediments or removing sediments. So far, it has been years and years and years, decade plus counting of studies. I would like, I am hoping that you will bring the philosophy of at some point you have to actually get in there and do the work, not just keep spending money on more and more studies.

Any thoughts on your part?

Ms. MCCARTHY. Well, Senator, having worked at the State level for a long time, I know these issues are very difficult. I also know they are incredibly important. I have worked on issues related to the clean up of the Boston Harbor, the clean up of the New Bedford Harbor, clean ups in Long Island Sound, clean ups in the Housatonic. I understand the need to study, but I also understand the need to take action. People value these resources, and we need to make sure that we move from study to action. To the extent that we can work together on the Portland Harbor, I would really appreciate that and hopefully we can make some efforts moving forward, if I have the honor of being confirmed.

Senator MERKLEY. We have a group of potentially responsible parties that have stepped forward to form a working group to work in close cooperation with EPA to try to get through the appropriate studies and get to the action. This minimizes costs and maximizes clean water. I hope the EPA will work very hard to utilize that close partnership.

Ms. MCCARTHY. Thank you, Senator.

Senator MERKLEY. Fuel economy standards, thank you for your work on tailpipe pollution and increasing the mileage standards. I was struck by the numbers, that it will result in $8,000 in fuel savings per vehicle, saving families $1.7 trillion at the pump. That is a lot of money spent in other places, a benefit to our American families.

This work then is one of those places where a higher quality of life for families, more money to spend elsewhere, cleaner air, the money spent elsewhere stimulates the economy. Seems like a win on all fronts.

Ms. MCCARTHY. Well, and some of the best things, the best outcome is that the automobile industry is thriving again.

Senator MERKLEY. Thank you. My time is expired.

Senator BOXER. Thank you very much.

Senator Sessions.

Senator SESSIONS. Thank you. Well, as I indicated, Ms. McCarthy, the Environmental Protection Agency has extraordinary powers over virtually every American. They have the power to impact our lives in ways that I don't think Congress contemplated when they authorized this agency or contemplated when they passed the Clean Air Act. It is a serious problem that I hear all the time. I had a group of shopping center people in yesterday, that was one of their three or four top issues, EPA issues they felt was wrongly decided. It is across the board.

So your nomination is important. I am going to submitting to you some 30 some questions for the record that deal with a lot of important issues, how you think and how you will administer this agency. And I would expect that you will give us a candid reply. Will you do that?

Ms. MCCARTHY. I absolutely will. And Senator, thank you for spending more than an hour with me yesterday. I know it was an incredibly busy day and we had a great conversation.

Senator SESSIONS. It was a valuable exchange. We talked about a number of things.

I would like for you to tell me, and tell this Committee and the American people, that you understand the seriousness of the regulatory responsibilities that you have and that you will say no to anyone in the Administration, to political interests or the President himself if he is asking you to shortcut or to conduct regulatory procedures and processes that you believe are not consistent with the highest standards of the EPA Administrator.

Ms. MCCARTHY. Senator, I will abide by the highest standard that the law and the science asks me to do. We will be having good conversations to make sure that you hold me to that.

Senator SESSIONS. That is good. I mentioned the brick company making those items that make Americans' homes better and better. In 2005, Henry Brick spent $1.5 million on scrubbers, dry lime, absorbers that would remove pollutants. And I am told they removed 90 percent of the pollutants there. Other brick companies spent $100 million so far. But then an event occurred. Sierra Club filed a lawsuit, as many environmental groups do, challenging the EPA's rule. In 2007, after the industry had come into compliance with EPA's rule, a court invalidated that.

Ms. MCCARTHY. That is correct.

Senator SESSIONS. The EPA's Air Office, under your leadership, entered a settlement agreement with Sierra Club establishing a much more ambitious schedule for finalizing new and more stringent Brick MACT rules. So under the proposed consent decree, EPA must propose a new Brick MACT rule by August of this year, and finalize it by July 2014. Is that correct?

Ms. MCCARTHY. That is the current settlement schedule, I believe, Senator. But I can get back to you. My memory may not be exact on that.

Senator SESSIONS. So this could be a much more costly rule. It could add up to $8 million to Henry Brick, they say, hopefully not. So I will submit for the record letters from a series of brick companies in my State that expressed real concern about that.

Ms. MCCARTHY. Senator, the only thing I can add is, I do know that this particular sector has a number of small businesses. In fact, I think most are small businesses. And we are going to have to be incredibly sensitive to the impact of any proposed rule, never mind the final, and go through the appropriate process to make sure we understand the implications on small business.

Senator SESSIONS. It should, because you don't want to just consolidate every small business who can no longer compete. And then it clears the field for the megabusiness.

Ms. MCCARTHY. Yes.

Senator SESSIONS. Ms. McCarthy, in November President Obama stated "The temperature around the globe is increasing faster than was predicted even 10 years ago." I thought that was curious, because I had seen some data that indicated that that was not true, in fact, that it had been fairly flat. And certainly, so I wrote Administrator Jackson and asked her simply this, to provide the data supporting the President's assertion along with "a chart of the actual global average temperature increases since 1979 versus the latest IPCC predictions." And you responded to that. But it didn't respond to my question.

You basically said, in February of this year, "There are multiple lines of evidence that clearly demonstrate that average global temperatures are rising." So you didn't provide any specific data relating to the question I asked to the President's statement.

Ms. MCCARTHY. Senator, would you like me to take another shot at that?

Senator SESSIONS. Would you?

Senator BOXER. And if I could just say, Senator, I am adding 2 minutes to your time, so you will get your 7. And if Senator Boozman wants his 7, he will get that as well. Go ahead.

Senator SESSIONS. Thank you, Madam Chair.

Ms. MCCARTHY. I am more than happy to take a look at that, Senator, and get back to you.

Senator SESSIONS. Very good. I noticed a March 30th this year article in The Economist, a publication that supports anthropogenic climate change, stated: "Over the past 15 years, air temperatures at the Earth's surface have been flat, while greenhouse gas emissions have continued to soar." Do you dispute that?

Ms. MCCARTHY. Actually I don't know the study, Senator. But I also want to make sure that you don't look at me as a climate scientist. I do rely on those that are. And I am more than happy to work with them in order to take a look at the study and get back to you, if that would be of interest, Senator.

Senator SESSIONS. All I am saying, it makes sense to me, it always has created some common-sensical idea that a blanket effect of CO_2 and other greenhouse gases might increase the temperature. And we have seen some temperature increase over the years, over the century maybe. But it hasn't been following the models. Much below the recent model, may we have a quick chart? The red line represents what the IPCC average of their models show. And the other lines show that it is not reaching that level. I hope the President will be accurate in his statements.

Senator BOXER. Thank you. Senator Boozman, you get 7. And then Senator Vitter gets 5 and I get 5. And then you are done.

OK, go ahead.

Senator BOOZMAN. Thank you for being with us, Ms. McCarthy, so long. We do appreciate that.

Ms. MCCARTHY. My honor, Senator.

Senator BOOZMAN. Don't feel bad, in regard to instant messaging. To the embarrassment of my three daughters, I don't have a clue either as to how to do that.

Let me just ask you a few things that I think are real important. According to EPA and GAO, replacing a water infrastructure funding shortfall of over $500 billion over the next two decades, which amounts to about $25 billion annually. Amazingly this doesn't even take into account the hundreds of billions of compliance costs that are going through, that municipalities are facing, due to EPA's expansion of the Clean Water Act requirements, which sometimes are certainly right. Sometimes I think they are overly aggressive.

But in our communities, the compliance costs are falling on ratepayers that have very little discretionary income. The communities are in trouble themselves. The increased cost disproportionately hit low income families and economically distressed communities. In response to this, a growing number of cities, groups like the U.S. Conference of Mayors, the National League of Cities, the National Association of Clean Water Agencies, have been seeking increases in flexibility to prioritize Clean Water Act requirements and to develop longer compliance schedules to meet the increasingly complex requirements.

I guess what I would ask is, so far the EPA is actually working to partner in these efforts to some extent. I guess my questions are, will you continue to support EPA's integrated planning and permitting framework which is designed to maximize public utility flexibility in meeting the costly requirements of the Clean Water Act?

Ms. MCCARTHY. Senator, I think you will find you have a very big friend in me. I worked for States and local communities, I understand the stress that they are under and the need for us to be flexible, as well as support these efforts.

Senator BOOZMAN. And along with that, do you have plans to make perhaps the integrated planning even a more useful tool to utilities across the Country?

Ms. MCCARTHY. If there is a way in which we can do that, I think that is the smartest thing available to us.

Senator BOOZMAN. The other thing that has come up is what we would like to do, through congressional action or whatever, is to extend longer Clean Water Act permits. One of the things that we have got going on right now that really is impacting the economy in so many ways is you just don't know what the future holds. So would you be willing to look at longer permit processing so we can have a longer period that the communities can plan?

Ms. MCCARTHY. I wish I could tell you I knew enough about that issue to answer that firmly. But because I haven't worked in this area, why don't I go back and I will take a look at what flexibilities there are. If I am confirmed, I am more than happy to work with you on it, Senator. That would be great.

Senator BOOZMAN. Good. Thank you.

One of the things that occurs, the EPA frequently issue proposed rule that really are complex and lengthy, often taking years with

the studies, gathering the information, large volumes and sometimes thousands of facilities to be regulated. Frequently the EPA provides only 60 days for comments in regard to some of these proposed rules. That to me is a little bit on the short side.

So I guess again, my question is, would you be willing to look at a longer period of time or to have somebody actually, I am suggesting 90 to 100 days, but I don't really base that on anything. Sixty days to me is too long, 60 days just to read the stuff is probably adequate.

But really to look into the underlying stuff. Would you be willing to look at that?

Ms. MCCARTHY. I am more than happy to look at that issue.

Senator BOOZMAN. Good. Thank you very much.

The other thing is that, I am an optometrist by training. So I am familiar with the scientific world. The idea that we have taxpayer financed databases that we can use to conduct cost-benefit analysis by EPA or really by any other agency or really any other entity that is making these really difficult decisions that have tremendous impact, I don't understand why all of that information isn't being made public. I was at the White House yesterday, in the evening, and visited with the President with a group. I walked through the security without any problems, they don't look at me because I am a United States Senator. But the idea that I can't get the information that I need to see that the studies that you are doing, and again, I have a trust in the agency. We have oversight of the agency. I just don't understand that.

Ms. MCCARTHY. Senator, the information that we have not been able to gather and share is information that is confidential. It relates to medical records and information that can trace back to specific people. We are required to protect that as are the scientists.

Having said that, if there is anything that we can do to build a more trusting relationship on these issues, I want you to feel more confident as time goes by that we are doing sciences we are supposed to do, that we are basing our decisions on the best science.

Senator BOOZMAN. But that can be redacted, as far as the people and that sort of thing. And again, you dumped out a bunch of information that you shouldn't have dumped out that you acknowledge that you shouldn't have dumped out with people's names and all this kind of stuff. So again, we talk about transparency and this and that. I don't know that there is any, in any other area of research, those things are taken care of, where you redact, you do this and that, names, things like that. But the basic science can be given. There is just no excuse for that.

Ms. MCCARTHY. Senator, I am more than happy to work with you. If you think there are things that we are not doing, I know that the Administration is fully committed to transparency and I am personally. So we should sit down and if there is something we are doing to not get you data that you think should be available to you, we will take those steps.

Senator BOOZMAN. Good. Thank you very much.

Senator BOXER. Thank you. Senator Vitter.

Senator VITTER. Thank you, Madam Chair. Just to follow up on my colleague's question, because as you know, that was one of our central points of these five, we have been very specific about what

we think you are not doing. I think John is exactly right. You can give us all of this data once it has been scrubbed of personal, identifying information. That is exactly what we are asking for. That is absolutely possible. That has been asked for for years with regard to the key studies underlying your decisions. It has not been provided. So I just remake that request. I think we have been extremely specific.

On another point, there has been a lot of discussion about cost-benefit analysis. All of us think that is being done in an inadequate way under the law. Specifically, Section 321(a) of the Clean Air Act requires the EPA to conduct continuing evaluations of potential lost or shift of employment economy-wide. You have been the leader on some huge air regs in the last three and a half years. Has a Section 321(a) analysis ever been done?

Ms. MCCARTHY. It has been done by the agency, yes, not on those particular rules.

Senator VITTER. On those huge rules, I mean, what I am talking about that you have led on, Utility MACT, et cetera, ongoing, biggest impacts in history. Has a 321(a) analysis been done on that?

Ms. MCCARTHY. Senator, I should be clear, the whole economy analysis wasn't done on a Clean Air Act rule. It was done on a larger analysis that the agency undertook. So let me answer your question. When we did those particular rules, we did, we followed the directives that we are allowed to follow. We used modeling available to us, the most appropriate we had available. We used all of the data available to us, we believe we did it in a robust way and made that transparent. It went through a public comment process.

To the extent that we could define the economic consequences of those rules using the best modeling available, we believe we did that, Senator. But if there are other things that we are not doing that you think we should be doing, I am more than willing to explore that.

Senator VITTER. So 321(a) analysis was not done in those cases?

Ms. MCCARTHY. That is correct.

Senator VITTER. I think that is required and appropriate.

The analysis that was done, for instance, did it take account of the negative impact of increased energy costs economy-wide?

Ms. MCCARTHY. It looked at energy, expected energy costs, it looked at expected job, either growth or loss.

Senator VITTER. So it specifically quantified expected energy cost increases and measured those impacts economy-wide?

Ms. MCCARTHY. Senator, I am probably not well positioned to answer these questions. But I am more than happy to do that following the meeting, and we can walk through those issues.

Senator VITTER. This is a huge body of your work. It is a pretty fundamental question. We have these big regs. Are we measuring spikes in energy costs? That would be a big factor. My understanding is, that was not done on an economy-wide basis. That seems to me it is a glaring omission.

Let me move on to another big concern of ours, which is No. 5 in our list, which is the sue and settle practice. We all have the concern that in some cases, EPA is sued by outside left-wing environmental groups. The group and the EPA are the only two parties in the lawsuit. You come up with a settlement and the truly im-

pacted parties never have a seat at the table. Never get input, never say boo.

We asked you to change that practice and so far you haven't agreed to that full request. Shouldn't an affected group like the States, for instance, on the regional haze issue, shouldn't they have a seat at the table? Shouldn't they know any proposed settlement? Shouldn't they have input into that?

Ms. MCCARTHY. Senator, what I can speak to is how we practice it under the Clean Air Act. The Clean Air Act actually does require public comment on settlement agreements. It does offer an opportunity for that comment. There are many additional opportunities beyond that.

Senator VITTER. Is that before or after the agreement has been made.

Ms. MCCARTHY. It is before the agreement is finalized. And States and others can comment and do comment on that. And we do that take that into consideration.

Senator VITTER. So the agreement has been agreed to by the EPA, not finalized.

Ms. MCCARTHY. Actually the agreement is reached with the EPA and the Department of Justice. And we put that draft agreement out, our proposed agreement out for public comment.

Senator VITTER. Have you ever changed agreements based on comment?

Ms. MCCARTHY. I can't answer that question, Senator. I don't know the full history of the agency.

Senator VITTER. Was regional haze changed in every way when the States say, time out, we are supposed to be the primary player on the regional haze issue under the statute?

Ms. MCCARTHY. We worked very closely with States on regional haze issues, and we worked hard to make it a State implementation plan to the extent that we can.

Senator VITTER. Have you responded to their FOIA requests on regional haze?

Ms. MCCARTHY. I am not sure what specific one you are talking about, but I can certainly get back to you, Senator, and find out.

Senator VITTER. OK. I would like that for the record. Thank you.

Ms. MCCARTHY. Thank you.

Senator BOXER. Assistant Administrator McCarthy, does the EPA use peer-reviewed science when crafting Clean Air rules? And does the agency analyze the impacts of these rules, including on affected industries using widely accepted economic models?

Ms. MCCARTHY. That is how we do our business, Senator, yes.

Senator BOXER. Does the Office of Management and Budget also review the agency's analysis to ensure it meets legal requirement and official guidelines?

Ms. MCCARTHY. We do.

Senator BOXER. And does the public, including regulated industry, also get to review and comment on these rule and point out anything that they perceive as a problem?

Ms. MCCARTHY. Yes, they do, Chairman.

Senator BOXER. And I want to place in the record this letter that was waved around by one of our Senators, Barrasso, and he said, oh, you were told of the EPA to use your name, don't use a false

name. First of all, here it is. Guess what. It is a letter, it is going in the record, without objection.

[The referenced information follows:]

From: NRMP
To:
Date: 10/17/2012 10:27 AM
Subject: NRMP Alert: Do not use outside email systems to conduct agency business
Sent by: Katherine Rutsala



The Tip of the Month and NRMP Alerts are archived at: intranet.epa.gov/records/
More information on EPA's records management program can be found at: epa.gov/records/

NRMP Alert: Do not use outside email systems to conduct agency business

This is a reminder to all EPA Employees that EPA prohibits the use of non-EPA E-Mail Systems when conducting Agency business.

This guidance is stated in Agency Records Training, New Employee Orientations and Briefings for Senior Agency Officials. In addition, this guidance is available on the Agency intranet and internet Web sites under Frequently Asked Questions about E-Mail and Records.

The answer to the specific question, "Can I use a non-EPA account to send or receive EPA e-mail?" states the following:

> No, do not use any outside e-mail system to conduct official Agency business. If, during an emergency, you use a non-EPA e-mail system, you are responsible for ensuring that any e-mail records and attachments are saved in your office's recordkeeping system.

Visit the EPA Records Website for a full list of Frequently Asked Questions at:
http://www.epa.gov/records/faqs/

Thank you.

Sent on behalf of John B. Ellis, Agency Records Officer

U.S. EPA National Records Management Program
Help Desk: 202-566-1494
records@epa.gov
www.epa.gov/records
intranet.epa.gov/records (EPA only)

Senator BOXER.The reason the letter was written, and it is an internal EPA letter, is because under Stephen Johnson, there was destruction of hundreds on hundreds of emails. So it started an investigation into what the heck happened to these emails. And as they went through them and they were destroyed automatically every 90 days, and the Johnson people said, well, we printed up anything we thought was important and destroyed the rest.

That is the genesis of this whole darned thing. So if this is where my Republican friends want to go, bless their hearts, we are ready. Because this whole issue is a non-issue in terms of this EPA now. So let's get that clear.

Gina, I want to say to you how much I admire you, how much I thank you on behalf of my children and my grandchildren for your years of bipartisan service to our Nation. The work you have done already is a legacy. I just hope and pray that my colleague will give you this opportunity to continue to serve. I think you have proven here today that you are in this for the right reasons.

I also, since I am thanking you, I want to thank your husband and I want to thank your kids. It is a sacrifice. It is a balance. And I want to thank them so much, because I know they are very proud of the work you do.

So in conclusion, I would hope that we can move this nomination swiftly. I certainly will work with Senator Vitter and all my colleagues to try and mark this up as soon as possible. I can't announce that we have an agreed-upon date, but I am very hopeful we will have one soon. And I would ask if you would agree to take the oath in this case. If you would raise your right hand.

Do you agree, if confirmed, to appear before this Committee or designated members of this Committee and other appropriate committees of the Congress and provide information, subject to appropriate and necessary security protection, with respect to your responsibilities?

Ms. MCCARTHY. I do, Chairman.

Senator BOXER. And do you agree to ensure that testimony, briefings, documents and electronic and other forms of communication are provided to this Committee and its staff and other appropriate committees in a timely manner?

Ms. MCCARTHY. I do.

Senator BOXER. And Assistant Administrator McCarthy, do you know of any matters which you may or may not have disclosed that might place you in any conflict of interest if you are confirmed?

Ms. MCCARTHY. I do not, Chairman.

Senator BOXER. With those answers, we thank you for your service. We thank you for being with us today. We thank your staff, we thank your family. In advance, I thank my colleagues for working with me to make sure this goes smoothly. We stand adjourned.

[Whereupon, at 1:34 p.m., the Committee was adjourned.]

[Additional statements submitted for the record follow:]

STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM THE STATE OF NEW JERSEY

Madam Chairman, our Nation faces significant environmental and public health challenges, and to meet them, we need a strong leader at the EPA who will make protecting public health a top priority. We need a leader who will not rest until

every community is free of poisons that threaten our families or until every child has clean air to breathe and clean water to drink.

In Gina McCarthy, the President has made a great choice for EPA Administrator. He has nominated a strong, well-qualified candidate, and her nomination represents an opportunity to make great progress on crucial environmental issues. She brings immense experience at both the Federal and State levels, under both Democratic and Republican administrations, and the Senate should confirm her without delay.

During her time at the EPA, she has led the Office of Air and Radiation as the Assistant Administrator and done incredible work to protect our families and children from air pollution. Among her accomplishments in that leadership role are: historic clean air standards for power plants, landmark auto pollution standards, and many other actions to protect public health and keep pollution out of the air we breathe. Together, these standards will prevent asthma attacks, heart attacks, respiratory diseases, and even premature deaths.

As Assistant Administrator, Ms. McCarthy not only fulfilled EPA's mission to protect public health and the environment, she also listened to concerns from industry, States, and numerous other stakeholders to ensure that EPA's decisions were fair, science-based, and transparent. I am confident that the same approach will guide her as Administrator.

As we move forward, it is important to address the crucial challenges the EPA—and its new Administrator—must move decisively to meet, such as reforming the Toxic Substances Control Act (TSCA), tackling climate change, ensuring clean air and clean water, and cleaning up toxic sites across the country.

One of my top priorities is reforming America's broken toxic chemical laws. These laws have not been significantly updated since their original passage in 1976. That's more than 35 years ago. As a result, EPA has limited authority to test and ban toxic chemicals to protect the public and ensure that dangerous chemicals—some of which can cause cancer—aren't in the everyday products found in our homes.

Yesterday, I introduced the "Safe Chemicals Act" along with Senator Gillibrand and 27 other cosponsors. This bill would reform TSCA and ensure that the EPA has the tools it needs to protect families from toxic chemicals. And as we work for its passage this Congress, we need a strong EPA Administrator to help move the fight forward.

The next EPA Administrator will also play an important role in our battle against climate change. We have a real opportunity to slow climate change, but it will only be possible if the EPA exercises its authority to set global warming pollution standards. Our next EPA Administrator must take this role and responsibility seriously, which Gina McCarthy does. In New Jersey, Superstorm Sandy served as a painful reminder that climate change is a force that directly threatens the well-being of our residents and communities.

Acting to rid our atmosphere of global warming pollutants can also work hand in hand with ensuring that all Americans have clean air to breathe and clean water to drink. The EPA's recent standards for smog, auto pollution, and mercury—which is brain poison—will be critical to cleaning up our environment, but we must remain vigilant as we continue to improve the quality of our water and air.

Last, our next EPA Administrator must be dedicated to cleaning up our toxic legacy. I'm proud to have authored the "Toxic Community Right-to-Know Act," which created the Toxic Release Inventory and gives families the right to know when they are at risk of toxic pollution in their neighborhood. But we must do more. Right now, in too many communities children grow up exposed to chemicals and other pollutants that will permanently stunt their growth, diminishing their futures before they've even entered a classroom.

On all of these issues, former EPA Administrator Lisa Jackson has been a great ally and a strong leader. And I know that there is no one better than Gina McCarthy to carry on our important shared work.

I look forward to supporting Gina McCarthy's nomination to be the next Administrator of the Environmental Protection Agency, and I strongly urge my colleagues to do the same.

STATEMENT OF HON. MIKE CRAPO, U.S. SENATOR FROM THE STATE OF IDAHO

Thank you, Gina McCarthy, for being here with us today to discuss your nomination and for your willingness to serve. There is no doubt that the agency faces considerable challenges.

Having served as Assistant Administrator since 2009, no one on this committee needs to explain to you the unique challenges that come with running the EPA.

In fact, in a letter Republicans on this committee recently sent to you on your nomination, we outline several critical issues we have with the agency in relation to transparency in rulemakings and scientific review. We all look forward to your prompt response to that letter as we continue to review your nomination.

To be sure, there is not an agency that I hear more about from Idahoans in a negative way than the EPA. I continue to receive the input of Idahoans about the impacts of EPA's regulations on family farms, ranches and businesses.

The EPA has become synonymous with overly burdensome regulation, bureaucratic paralysis and economic decline. In fact, the EPA leads other Federal agencies with the most regulatory actions currently under review.

Business owners know to plan for change. In our evolving, global economy, they understand that there will be ups and downs due to market and policy changes. They understand that operating a business, whether it is a ranch, farm or retail store, involves risks. However, they should be able to expect that our Government will not pursue Federal policies when the benefits do not outweigh the costs.

Unfortunately, there are too many examples of Federal regulations that make it harder to do business and maintain jobs while providing little benefit to their intended purposes. And that is just on the business side of the spectrum.

To individuals, the EPA is often associated with loss of property rights, constraint of Federal freedoms and an ever-increasing financial burden to comply with rules promulgated by faraway officials on local communities.

As a lawmaker, parent and active community member, I have had the great opportunity to see the Federal Government and local stakeholders work together to find solutions based on collaboration, trust and ultimately compromise for the greater good of the group.

Despite my nearly two decades of efforts at collaborative problem-solving, I find myself confounded by the morass and multitude of problems confronting the EPA.

As we survey the most contentious debates in the West over resource and land management, we see States, counties, local governments and concerned citizens coming together to find solutions. It is difficult for me to understand why such achievements are so absent with the EPA.

Should you be confirmed, I will look to you to begin a new chapter with the EPA—one that sees the agency as part of a community, looking for solutions, working with community and property owners—not focusing on enforcement actions and heavy-handed penalties.

I am interested in an EPA that builds trust and does not break down morale, an agency looking for solutions, not a behemoth extracting payments, and an agency ready for reform, to join the Federal family of agencies working with and not against its citizens.

To provide an example, the EPA's Brownfields Program is a step in the right direction, as it enables working with property owners and communities to clean contaminated sites to enable business and job growth. I recently co-sponsored bi-partisan legislation with colleagues on this committee to reauthorize the program.

As you have often said, Ms. McCarthy, you are passionate about supporting the disenfranchised, the middle and working classes. I could not agree more. However, I will carefully evaluate your answers today to see how that commitment can usher in to a new EPA.

Not an agency competing with the IRS for most feared Federal agencies. One that works with communities and citizens to provide environmental benefit, not at the expense, but at the collective benefit of the citizens it serves.

I expect you to work closer with communities and local governments.

It is my hope that the new EPA leadership will not seek to administratively expand its regulatory umbrella, but rather carry out its responsibilities within the confines of congressional intent.

While I support ensuring that science, research and other tools are available to leave our air, water and soil better than we found them for future generations, layering on more regulations, burying American businesses in more paperwork and imposing overwhelming penalties are not the best means to achieve this goal. Rather, working with property owners and communities to help implement needed changes is far more productive.

Again, thank you for the opportunity to discuss your nomination and the direction of the agency.

[Additional material submitted for the record follows:]

Office of the Attorney General

Washington, D.C. 20530

March 19, 2009

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: THE ATTORNEY GENERAL

SUBJECT: The Freedom of Information Act (FOIA)

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, reflects our nation's fundamental commitment to open government. This memorandum is meant to underscore that commitment and to ensure that it is realized in practice.

A Presumption of Openness

As President Obama instructed in his January 21 FOIA Memorandum, "The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails." This presumption has two important implications.

First, an agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.

Second, whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure. Agencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information. Even if some parts of a record must be withheld, other parts either may not be covered by a statutory exemption, or may be covered only in a technical sense unrelated to the actual impact of disclosure.

At the same time, the disclosure obligation under the FOIA is not absolute. The Act provides exemptions to protect, for example, national security, personal privacy, privileged records, and law enforcement interests. But as the President stated in his memorandum, "The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

Pursuant to the President's directive that I issue new FOIA guidelines, I hereby rescind the Attorney General's FOIA Memorandum of October 12, 2001, which stated that the Department of Justice would defend decisions to withhold records "unless they lack a sound

legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records."

Instead, the Department of Justice will defend a denial of a FOIA request only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law. With regard to litigation pending on the date of the issuance of this memorandum, this guidance should be taken into account and applied if practicable when, in the judgment of the Department of Justice lawyers handling the matter and the relevant agency defendants, there is a substantial likelihood that application of the guidance would result in a material disclosure of additional information.

FOIA Is Everyone's Responsibility

Application of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure but also an effective system for responding to FOIA requests. Each agency must be fully accountable for its administration of the FOIA.

I would like to emphasize that responsibility for effective FOIA administration belongs to all of us—it is not merely a task assigned to an agency's FOIA staff. We all must do our part to ensure open government. In recent reports to the Attorney General, agencies have noted that competing agency priorities and insufficient technological support have hindered their ability to implement fully the FOIA Improvement Plans that they prepared pursuant to Executive Order 13392 of December 14, 2005. To improve FOIA performance, agencies must address the key roles played by a broad spectrum of agency personnel who work with agency FOIA professionals in responding to requests.

Improving FOIA performance requires the active participation of agency Chief FOIA Officers. Each agency is required by law to designate a senior official at the Assistant Secretary level or its equivalent who has direct responsibility for ensuring that the agency efficiently and appropriately complies with the FOIA. That official must recommend adjustments to agency practices, personnel, and funding as may be necessary.

Equally important, of course, are the FOIA professionals in the agency who directly interact with FOIA requesters and are responsible for the day-to-day implementation of the Act. I ask that you transmit this memorandum to all such personnel. Those professionals deserve the full support of the agency's Chief FOIA Officer to ensure that they have the tools they need to respond promptly and efficiently to FOIA requests. FOIA professionals should be mindful of their obligation to work "in a spirit of cooperation" with FOIA requesters, as President Obama has directed. Unnecessary bureaucratic hurdles have no place in the "new era of open Government" that the President has proclaimed.

Working Proactively and Promptly

Open government requires agencies to work proactively and respond to requests promptly. The President's memorandum instructs agencies to "use modern technology to inform citizens what is known and done by their Government." Accordingly, agencies should readily and systematically post information online in advance of any public request. Providing more information online reduces the need for individualized requests and may help reduce existing backlogs. When information not previously disclosed is requested, agencies should make it a priority to respond in a timely manner. Timely disclosure of information is an essential component of transparency. Long delays should not be viewed as an inevitable and insurmountable consequence of high demand.

In that regard, I would like to remind you of a new requirement that went into effect on December 31, 2008, pursuant to Section 7 of the OPEN Government Act of 2007, Pub. L. No. 110-175. For all requests filed on or after that date, agencies must assign an individualized tracking number to requests that will take longer than ten days to process, and provide that tracking number to the requester. In addition, agencies must establish a telephone line or Internet service that requesters can use to inquire about the status of their requests using the request's assigned tracking number, including the date on which the agency received the request and an estimated date on which the agency will complete action on the request. Further information on these requirements is available on the Department of Justice's website at www.usdoj.gov/oip/foiapost/2008foiapost30.htm.

*****

Agency Chief FOIA Officers should review all aspects of their agencies' FOIA administration, with particular focus on the concerns highlighted in this memorandum, and report to the Department of Justice each year on the steps that have been taken to improve FOIA operations and facilitate information disclosure at their agencies. The Department of Justice's Office of Information Policy (OIP) will offer specific guidance on the content and timing of such reports.

I encourage agencies to take advantage of Department of Justice FOIA resources. OIP will provide training and additional guidance on implementing these guidelines. In addition, agencies should feel free to consult with OIP when making difficult FOIA decisions. With regard to specific FOIA litigation, agencies should consult with the relevant Civil Division, Tax Division, or U.S. Attorney's Office lawyer assigned to the case.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees, agents, or any other person.

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Freedom of Information Act

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Freedom of Information Act

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

I direct the Attorney General to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency, and to publish such guidelines in the *Federal Register*. In doing so, the Attorney General should review FOIA reports produced by the agencies under Executive Order 13392 of December 14, 2005. I also direct the Director of the Office of Management and Budget to update guidance to the agencies to increase and improve information dissemination to the public, including through the use of new technologies, and to publish such guidance in the *Federal Register*.

This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA

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Transparency and Open Government

Memorandum for the Heads of Executive Departments and Agencies
SUBJECT: Transparency and Open Government

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

Government should be transparent. Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public. Executive departments and agencies should also solicit public feedback to identify information of greatest use to the public.

Government should be participatory. Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge. Executive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information. Executive departments and agencies should also solicit public input on how we can increase and improve opportunities for public participation in Government.

Government should be collaborative. Collaboration actively engages Americans in the work of their Government. Executive departments and agencies should use innovative tools, methods, and systems to cooperate among themselves, across all levels of Government, and with nonprofit organizations, businesses, and individuals in the private sector. Executive departments and agencies should solicit public feedback to assess and improve their level of collaboration and to identify new opportunities for cooperation.

I direct the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and the Administrator of General Services, to coordinate the development by appropriate executive departments and agencies, within 120 days, of recommendations for an Open Government Directive, to be issued by the Director of OMB, that instructs executive departments and agencies to take specific actions implementing the principles set forth in this memorandum. The independent agencies should comply with the Open Government Directive.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

This memorandum shall be published in the Federal Register.

BARACK OBAMA

From: Message from the Administrator

To: All EPA Employees

Date: 04/23/2009 01:48 PM

Subject: Transparency in EPA's Operations

Visit the Agency's Intranet for More Information

All Hands Email-Archive

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This message is being sent to all EPA Employees.
Please do not reply to this mass mailing.
****

MEMORANDUM

SUBJECT: Transparency in EPA's Operations

FROM: Lisa P. Jackson
Administrator

TO: All EPA Employees

In my testimony before the Senate Committee on Environment and Public Works and in my January 23, 2009, memorandum to all employees, I expressed my commitment to uphold the values of transparency and openness in conducting EPA operations. President Obama recently said in a memorandum to agency heads: "Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset." I am asking each one of you to help me ensure EPA operates in full compliance with this principle.

The success of our environmental efforts depends on earning and maintaining the trust of the public we serve. The American people will not trust us to protect their health or their environment if they do not trust us to be transparent and inclusive in our decision-making. To earn this trust, we must conduct business with the public openly and fairly.

In 1983, then-Administrator William Ruckelshaus promised that under his leadership, EPA would operate "in a fishbowl." I wish to reaffirm this commitment and take the opportunity to provide guidelines about how we will ensure transparency in our interactions with all members

of the public. These guidelines are intended to maintain the fairness and openness of our operations and thus strengthen public confidence in our decisions. I am relying on EPA employees to use their good judgment to conduct themselves with the openness and integrity that alone can guarantee public trust in EPA.

General Principles

In all its programs, EPA will provide for the fullest possible public participation in decision-making. This requires not only that EPA remain open and accessible to those representing all points of view, but also that EPA offices responsible for decisions take affirmative steps to solicit the views of those who will be affected by these decisions. This includes communities of color, Native Americans, people disproportionately impacted by pollution, small businesses, cities and towns working to meet their environmental responsibilities, and others who have been historically underrepresented in EPA decision-making. EPA will not accord privileged status to any special interest, nor will it accept any recommendation or proposal without careful, critical, and independent examination.

Appointment Calendars

To keep the public fully informed of my contacts with interested persons, I have directed that a working copy of my appointment calendar, showing meetings with members of the public, be provided to the EPA Office of Public Affairs, where it will be available to the public each day on the EPA Web site. I also direct other senior Agency officials, including the Deputy Administrator, the Assistant Administrators, and the Regional Administrators, to make their working appointment calendars available to the public in a similar fashion.

Freedom of Information Act Policy

As President Obama has stated, the Freedom of Information Act should be administered with a clear presumption that openness prevails. All Agency personnel should ensure that this principle of openness is applied to the extent possible when responding to a FOIA request. Managers should give their staffs and the Agency's FOIA professionals the support needed to satisfy FOIA's transparency requirement in as timely and efficient a manner as possible. In accordance with guidance issued by Attorney General Holder on March 19, 2009, EPA offices should exercise their discretion in favor of disclosing documents whenever possible under the FOIA. Offices should assert an exemption to disclosure only where the Agency reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law. Offices should also take steps to make information public on the Agency's Web site without waiting for a request from the public to do so. More detailed FOIA implementation procedures will be provided in the near future to assist you in carrying out this important government responsibility.

Because EPA is a public regulatory agency and employer to about 18,000 employees, EPA staff may come into possession of certain information that may need to be protected from disclosure under FOIA, including certain contract or business data, trade secrets, or personal privacy information. Although the Agency's business is to be conducted in an open and accountable manner, we must also ensure that information entitled to special protection is

handled with the utmost care and in full compliance with all applicable laws and regulations. Questions about whether special protections apply to certain information should be directed to the Office of General Counsel's General Law Office.

Rulemaking Proceedings

Much of EPA's business is conducted through rulemaking. It is crucial that we apply the principles of transparency and openness to the rulemaking process. This can only occur if EPA clearly explains the basis for its decisions and the information considered by the Agency appears in the rulemaking record. Therefore, each EPA employee should ensure that all written comments regarding a proposed rule received from members of the public, including regulated entities and interested parties, are entered into the rulemaking docket.

Robust dialogue with the public enhances the quality of our decisions. EPA offices conducting rulemaking are therefore encouraged to reach out as broadly as possible for the views of interested parties. However, while EPA may and often should meet with groups and individuals, we should attempt, to the maximum extent practicable, to provide all interested persons with equal access to EPA. In addition, it is essential to ensure that the public receives timely notice, as far as practicable, of information or views that have influenced EPA's decisions. This means that EPA employees must summarize in writing and place in the rulemaking docket any oral communication during a meeting or telephone discussion with a member of the public or an interested group that contains significant new factual information regarding a proposed rule.

Questions about how to handle comments and other communications regarding a proposed rule should be directed to the appropriate program office personnel, attorneys in the Office of General Counsel, or regional staff working on the specific rulemaking.

I am committed to fulfilling President Obama's direction to agency heads to make use of tools and technology to increase outreach and interaction with the public. Public participation in Agency rulemaking proceedings may take a variety of forms, including public hearings and meetings, workshops, forums, focus groups, surveys, roundtables, Federal Register notice-and-comment procedures, advisory committee meetings, informal meetings with interested parties, internet-based dialogues, and other opportunities for informal dialogue, consistent with applicable legal requirements. I encourage our staff to be creative and innovative in the tools we use to engage the public in our decision-making.

Litigation and Formal Adjudication

EPA is engaged in a wide range of litigation. The conduct of litigation by the Agency should reflect the principles of fairness and openness that apply to other EPA activities. However, we must also protect privileged litigation and enforcement-sensitive information from unauthorized disclosure. Communication with parties involved in litigation with EPA about that litigation should be through an attorney representing EPA in the case. Program personnel who receive inquiries about pending litigation from persons who are not parties to the litigation should consult with an attorney representing EPA in the case before responding. If you do not know which attorneys are representing EPA in a specific case, contact knowledgeable EPA lawyers,

including the Office of General Counsel, the Office of Enforcement and Compliance Assurance, or an Office of Regional Counsel, as appropriate.

Formal adjudications (including certain administrative penalty proceedings and pesticide cancellation proceedings) are also governed by specific requirements that limit communications between EPA staff and interested parties. These limitations appear in the various EPA rules governing those proceedings. Information about these rules is available from the Office of General Counsel and on the EPA Intranet.

Contacts with Congress and the Press

EPA often receives requests for records or information from Congress, i.e. the Speaker of the House, the President of the Senate, the Chair of a Committee or Subcommittee with jurisdiction over EPA. It also receives informal requests from individual members of Congress and their staffs. I recognize the importance of Congressional oversight and encourage our programs to provide Congress with the information necessary to satisfy its oversight and legislative interests to the extent possible and consistent with our Constitutional and statutory obligations. Information requests from Congress should be handled in consultation with managers of the affected EPA programs and our legislative affairs staff in the Office of Congressional and Intergovernmental Relations.

EPA also should be accessible to the press, which performs a vital role in informing the public about EPA's actions. As we respond to press inquiries, the EPA staff should respect our internal deliberative processes and strive for accuracy and integrity in our communications. This will ultimately enhance public trust in the Agency. When interacting with the press in the performance of your official duties, please coordinate with the managers of your program and media relations experts in the Office of Public Affairs.

Nothing contained in this memorandum interferes with your right to petition or to furnish information to Congress or a Member of Congress, as provided under applicable law, or to engage in protected whistleblowing activities.

Communications Generally

The Office of Public Affairs plays a central role in shaping the Agency's communications with the public. OPA will be providing further guidance on how our programs and regions should coordinate with it on the preparation of messaging materials and interactions with the press.

Conclusion

I have the utmost confidence in the ability of EPA's workforce to promote full public involvement and openness in all EPA affairs. I believe this will enhance the credibility of the Agency, boost public trust in our actions and improve the quality of our decisions. In short, we will let more sunlight into our Agency. I look forward to hearing any additional ideas you may have on how we can achieve this goal.

As I continue to work with all of you, I plan to provide further thoughts on how we can

strengthen EPA's public role in serving the needs of the public and advancing our environmental protection mission.

FROM: Malcolm D. Jackson
Assistant Administrator and Chief Information Officer

TO: All EPA Employees

As we begin this New Year, I'd like to take a moment to provide you with an important update regarding My Workplace. Over the last several months we have received a tremendous amount of input on the migration process. That input, coupled with the time needed by everyone to complete important preparation and maintenance of their existing Lotus Notes email, has helped us work toward an easier transition strategy.

We will now move all employees to My Workplace on the same day, at the same time. This will occur over the President's Day weekend and on **Tuesday, February 19, 2013**, when you log in to your computer; you will have access to most of the tools in the Microsoft Office 365 suite (including Outlook, Lync, Web Apps, and My Sites) with SharePoint available as soon as the governance system is in place. That should follow soon after the full migration in February.

In order to successfully move our Agency to this new tool, we have developed a revised process to streamline the migration of email boxes that will have less of an impact on our employees:

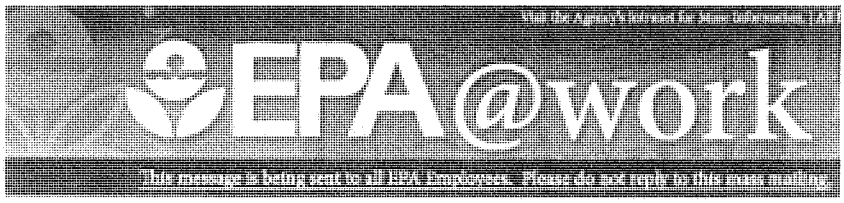
- When you get your new email box as part of Microsoft Office 365 on February 19th, it will come with the last 30 days of emails transferred from Lotus Notes. All email older than 30 days will remain in Lotus Notes, which will be available in a limited capacity on employees' computers. You will still have the ability to read, copy, paste, print, and search all email in Lotus Notes, but you will no longer be able to send any messages using Lotus Notes. Access to archived email and databases in Lotus Notes will support requests for litigation holds and Freedom of Information Act (FOIA), as well as allow you to capture records.

- Please continue to use this transition to manage your email box and remove unwanted mail.

- To successfully migrate, you will no longer need to unencrypt any encrypted email messages, nor save and delete any attachments that are over 23 MB from the past 30 days. Please review this Quick Reference Guide for more information on properly preserving your email records.

We would also like to thank everyone for their input and feedback on My Workplace; your comments were meaningfully considered as part of this change. We have heard concerns from organizations and individuals about not being prepared to successfully move their mailboxes, and we hope that this plan will alleviate any concerns. More information on these changes will be provided in the coming weeks, including on the variety of different training methods that will be available for every employee prior to migration. We are on the threshold of improved tools for our work and it is exciting. However, we must remember, the tools themselves will not improve our work processes; it will be all of us using the tools in new and innovative ways to improve our overall collaboration efforts.

If you have additional questions or comments, please visit the My Workplace project page and thank you for your continued support of My Workplace.



Dear Colleagues,

EPA's firm commitment to transparency and openness in conducting the public's business has been steadfast since the first days of the Administration. We have attained several important milestones since then and others are on the path ahead. I am writing to reaffirm our commitment to transparency, to update you on accomplishments and tasks still outstanding, and to ask each of you to play your critical role in this effort.

Accomplishments

President Obama's January 21, 2009 "Transparency and Open Government" memorandum directed Federal agencies to "disclose information rapidly… [and] harness new technologies." Former Administrator Lisa P. Jackson affirmed our Agency's commitment to that directive in her April 23, 2009 email to all EPA employees. We have since developed powerful new tools to enable disclosure and give us opportunities to greatly advance the efficiency, effectiveness, and ease of meeting our transparency obligations.

The email, calendaring, and contacts features of My Workplace in *Microsoft Office 365* include a much more robust email search function than we previously had available to us. This new tool set will enhance our management of our Freedom of Information Act (FOIA) responsibilities as will *FOIA online*. This multi-agency FOIA request processing system and integrated online FOIA repository went live in October 2012 and coupled with e-discovery tools like "Encase" is making a difference. In the area of rulemaking process, EPA has developed and currently manages for the Federal government the *regulations.gov* platform, an open government landmark that assists public notice and comment and access to the docket for proposed and final rules, as well as being the shared services platform for FOIA online.

Tasks Ahead

While information management tools are an important response to the President's directive, we need robust and responsive policies to use these tools effectively and reach the desired goals of openness and transparency. For FOIA specifically, key recommendations of the cross-Agency workgroup on FOIA established in June 2010 call on EPA to develop updated policies and procedures, training, and accountability steps along with needed tools. While we have focused on enhancing technology which was a key recommendation, I am now tasking the Office of Environmental Information, with assistance as needed from other offices, to begin reporting quarterly to me on the implementation of the rest of the workgroup's FOIA recommendations.

The Agency has employees whose work responsibilities include managing, coordinating and responding to FOIA requests but we all have the responsibility to know and be aware of our FOIA obligations so that

we can respond appropriately and fully when requested. Therefore, OEI will be developing a mandatory FOIA training module for all EPA employees during FY 2014.

Complementing FOIA, and essential to its success, is records management which is a daily responsibility of every EPA employee. Maintaining records consistent with our statutory and regulatory obligations is a central tenet for doing the public's business in an open and transparent manner. To meet this obligation, we will revise our Agency-wide records training to recognize the new features available with My Workplace, and will in 2013 re-establish the requirement for all EPA employees to take this training.

Finally, the Inspector General currently is conducting an audit of the agency's records management practices and procedures. We have suggested they place focus on electronic records including email and instant messaging. While we have made progress in these areas, we are committed to addressing any concerns or weaknesses that are identified in this audit and to working collaboratively to strengthen our records management system and policies.

Each of these steps will take us further down the path to which we are committed: performing our work in an open and transparent manner that is in keeping with the trust the American public has put in us.

Sincerely,

Bob Perciasepe
Acting Administrator

Records and ECMS Briefing

EPA

Incoming Political Appointees

2009



Legal Considerations

- Do not use any outside e-mail account to conduct official Agency business
- Records you create or receive during your tenure belong to EPA exclusively
- Departing officials and employees may not remove extra copies of records or other work material without prior approval
- There may be criminal penalties for unauthorized removal or destruction of records
- Documents you create or receive may also need to be maintained pursuant to the Freedom of Information Act (FOIA), litigation or other legal requirements

ECMS
Managing Our Information Assets

From: POLITICO Pro Whiteboard [mailto:politicoemail@politicopro.com]
Sent: Tuesday, March 19, 2013 12:17 PM
To:
Subject: EPA on Vitter, Issa email probe: This is how email works

3/19/13 12:13 PM EDT

The EPA doesn't seem impressed with Sen. David Vitter's and Rep. Darrell Issa's recent request to Region 9 Administrator Jared Blumenfeld over his use of personal email for official business.

"This is how your share an online news article with colleagues in the 21st century. There is nothing wrong with it," said EPA spokeswoman Alisha Johnson.

The lawmakers are pressing Blumenfeld regarding an email (page 125) sent to then-EPA Adminstrator Lisa Jackson on Nov. 19, 2011, with a link and text of an article in the San Francisco Chronicle about Carl Pope's decision to step down as leader of the Sierra Club.

The agency will release another batch of emails from Jackson's "Richard Windsor" account later today in response to a Freedom of Information Act request from the Competitive Enterprise Institute.

— *Erica Martinson*

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David Mcintosh/DC/USEPA/US
10/06/2010 08:34 AM

To Richard Windsor
cc
bcc
Subject Re: Fw: POLITICO: EPA's Jackson swings back at critics

I think this came out well.

Richard Windsor ----- Original Message ----- From:... 10/06/2010 08:31:45 AM

From: Richard Windsor/DC/USEPA/US
To: "David McIntosh" <mcintosh.david@epa.gov>, "Gina (Sheila) McCarthy" <mccarthy.gina@epa.gov>
Date: 10/06/2010 08:31 AM
Subject: Fw: POLITICO: EPA's Jackson swings back at critics

Adora Andy

----- Original Message -----
From: Adora Andy
Sent: 10/06/2010 08:18 AM EDT
To: "Richard Windsor" <windsor.richard@epa.gov>; Bob Perciasepe; Diane Thompson; "Bob Sussman" <sussman.bob@epa.gov>; David McIntosh; "Seth Oster" <oster.seth@epa.gov>; "Arvin Ganesan" <ganesan.arvin@epa.gov>; Stephanie Owens; Sarah Pallone; Dru Ealons
Subject: POLITICO: EPA's Jackson swings back at critics

EPA's Jackson swings back at critics
By: Darren Samuelsohn
October 6, 2010 04:35 AM EDT

Lisa Jackson is sticking to her guns.

The Environmental Protection Agency finds itself constantly under attack from industry groups and Republicans who say the agency is overreaching on everything from climate change to microscopic soot. And with the failure of the White House and Congress to pass a climate bill, combined with a potential GOP takeover, now could be seen as the right time for the agency's head to dial back the rhetoric.

But at an event last month celebrating the Clean Air Act's 40th anniversary, Jackson swung hard at industry groups, offending some officials in the room and potentially adding fuel to claims the Obama administration is anti-business.

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"It's definitely anti-lobbyist rhetoric," Jackson said. "It's definitely meant to reflect the fact that, when I go around the country, people want clean air. They are as passionate about clean air and clean water as any of a number of issues; they want protection for their families and their children."

"I meet with individual businesses all the time, and industry has a huge role to play," Jackson added. "But I do very much believe that it's time for us to get past this tired dance, where folks inside this Beltway get paid a lot of money to say things that aren't true about public health initiatives that this agency is charged by law with undertaking."

Jackson said EPA is taking a "series of modest steps" in writing climate-themed rules under the Clean Air Act, despite bipartisan efforts in Congress to block them and about 90 different lawsuits in federal court.

01268-EPA-267

Seth Oster/DC/USEPA/US
08/21/2009 10:57 AM

To Richard Windsor
cc Bob Sussman, Diane Thompson, Gina McCarthy, Lisa Heinzerling, Allyn Brooks-LeSure
bcc
Subject Re: BNA: EPA Said to Be Nearing Proposal to Limit Stationary Sources' Carbon Dioxide Emissions

Ex. 5 - Deliberative

Seth

Seth Oster
Associate Administrator
Office of Public Affairs
Environmental Protection Agency
(202) 564-1918
oster.seth@epa.gov

Richard Windsor There is little new here. Given all the b... 08/21/2009 10:03:15 AM

From: Richard Windsor/DC/USEPA/US
To: Gina McCarthy/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA
Cc: Seth Oster/DC/USEPA/US@EPA, Lisa Heinzerling/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA
Date: 08/21/2009 10:03 AM
Subject: Re: BNA: EPA Said to Be Nearing Proposal to Limit Stationary Sources' Carbon Dioxide Emissions

Ex. 5 - Deliberative

Gina McCarthy

----- Original Message -----
From: Gina McCarthy
Sent: [redacted]/2009 09:32 AM EDT
To: Richard Windsor; Diane Thompson
Cc: Seth Oster; Lisa Heinzerling; Bob Sussman
Subject: Fw: BNA: EPA Said to Be Nearing Proposal to Limit Stationary Sources' Carbon Dioxide Emissions

FYI [redacted] Ex. 5 - Deliberative

[redacted]

---- Forwarded by Gina McCarthy/DC/USEPA/US on 08/21/2009 09:24 AM -----

From:	John Millett/DC/USEPA/US
To:	Gina McCarthy/DC/USEPA/US@EPA, Don Zinger/DC/USEPA/US@EPA, Beth Craig/DC/USEPA/US@EPA, Jeffrey Clark/RTP/USEPA/US@EPA, rob brenner@EPA, Seth Oster/DC/USEPA/US@EPA, Adora Andy/DC/USEPA/US@EPA
Cc:	Andrea Drinkard/DC/USEPA/US@EPA, Erika Wilson/DC/USEPA/US@EPA, Cathy Milbourn/DC/USEPA/US@EPA, Dave Ryan/DC/USEPA/US@EPA
Date:	08/21/2009 08:55 AM
Subject:	BNA: EPA Said to Be Nearing Proposal to Limit Stationary Sources' Carbon Dioxide Emissions

http://news.bna.com/deln/DELNWB/split_display.adp?fedfid=14768018&vname=dennotallissues&fn=14768018&jd=a0b9n9c3u8&split=0

Climate Change
EPA Said to Be Nearing Proposal to Limit Stationary Sources' Carbon Dioxide Emissions

The Environmental Protection Agency is close to approving a proposal to limit carbon dioxide emissions from stationary sources, according to environmental and industry sources. David Bookbinder, chief climate counsel for the Sierra Club, told BNA Aug. 19 that EPA plans to propose in September a rule that would apply limits to sources that emit more than 25,000 tons per year of carbon dioxide.

A 25,000-ton emissions threshold would be designed to prevent the application of strict carbon dioxide emissions limits and permitting requirements on a vast number of currently unregulated small emissions sources.

Richard Alonso, an attorney for Bracewell & Giuliani LLP, told BNA Aug. 20 that EPA could issue a rulemaking or a guidance.

The proposal would govern the application of prevention-of-significant-deterioration provisions of the Clean Air Act to carbon dioxide. Like new source review, PSD requires new and modified major pollution sources to have modern pollution controls. The program is intended to prevent large emissions increases from facilities in areas that meet air quality standards.
The proposal would not impose specific emissions limits for facilities. But by applying PSD to

carbon dioxide, it would require companies to have best available control technology to curb emissions of the most prominent greenhouse gas.

EPA did not immediately respond to a request for comment.

Agency Position Reconsidered

Currently, the official EPA position is codified in a memorandum issued Dec. 18, by former EPA Administrator Stephen Johnson. That memo said carbon dioxide is not a regulated pollutant under the Clean Air Act, and that PSD does not apply to it. Under the law, PSD applies only to pollutants regulated under other Clean Air Act programs.

Environmental groups maintain that carbon dioxide is a regulated pollutant and is subject to PSD requirements, but EPA under Johnson disagreed.

EPA Administrator Lisa Jackson informed Bookbinder Feb. 17 that the agency will reconsider the Johnson memo in response to a petition filed by the Sierra Club. Bookbinder said the forthcoming proposal would follow up on that reconsideration (30 DEN A-5, 2/18/09).

In addition, President Obama in May directed EPA to propose, in concert with the Department of Transportation, limits on emissions of carbon dioxide and other greenhouse gases from cars and light trucks for model years 2012 through 2016. To meet this goal, EPA will have to finalize regulations by April 2010 (95 DEN A-10, 5/20/09).

Vehicle Emissions Rule to Affect PSD

Once EPA finalizes these vehicle emissions limits, carbon dioxide will become a regulated pollutant, subject to PSD.

Bookbinder said a rule on applying PSD to carbon dioxide must be finalized by then to implement a 25,000-ton emissions threshold and to prevent a lower threshold from taking effect. Under the Clean Air Act, PSD applies to major sources, which are defined as those that emit more than 250 tons per year of a regulated pollutant. For certain specified sources, the threshold is 100 tons per year. Unless EPA takes action, this would mean that PSD would apply to sources with these levels of emissions.

According to the U.S. Chamber of Commerce and other industry groups, this would apply PSD requirements to hundreds of thousands of new sources, including schools, hospitals, and small businesses, not just power plants, refineries, and other large sources. This is because carbon dioxide is emitted in far greater amounts than other air pollutants (119 DEN A-2, 6/24/09).

The Chamber of Commerce has released figures saying that applying PSD to carbon dioxide would expand the number of facilities subject to PSD from around 30,000 to 1.2 million.

A 25,000-ton emissions threshold for PSD would address this problem, but Alonso said EPA cannot just say it will not regulate emissions below 25,000 tons per year, when the Clean Air Act applies the requirements to emissions above 250 or 100 tons per year.

Alonso said EPA would have to get that interpretation past the U.S. Court of Appeals for the District of Columbia Circuit, which in recent rulings has overturned EPA interpretations of the Clean Air Act that it said were not justified by the text of the act.

EPA in 2008 suggested that it could raise the threshold for "significant" emissions under PSD to

25,000 tons per year, but Alonso said this would be a novel interpretation not supported by the Clean Air Act.

A 25,000-ton threshold "is the only sane thing they can do," Bookbinder said.

Bookbinder has said previously that no environmental group would sue to challenge a 25,000 ton emissions threshold for PSD.
But Alonso said other parties could challenge the threshold as a means of stopping projects that they oppose for other reasons. Alonso used a hypothetical example of a labor union using PSD to challenge a construction project using non-union labor.

'They Will be Sued.'
"If someone thinks EPA is not going to get sued over this, they're not living in the environmental world of the last 10 years," Alonso said. "They will be sued."
EPA in 2008 also suggested that it could address the 250-ton threshold by issuing general permits, under which small sources would not have to go through the often-arduous PSD permitting process.

Alonso said stormwater permits under the Clean Water Act are often issued after an entity sends in a postcard saying it is in compliance with generic requirements issued by EPA.
Similar requirements could apply to small sources under a general PSD permit, Alonso said, with more stringent requirements applying to sources above 25,000 tons. A general permit could impose "broad-based" requirements, such as energy-efficient appliances, he said.
Some have suggested that once EPA applies PSD to greenhouse gases, the program will be so stringent and costly that industry will prefer an emissions cap-and-trade system, such as the system that would be imposed under H.R. 2454, which passed the House June 26 (122 DEN A-10, 6/29/09).

Alonso said, however, that technology to reduce carbon dioxide emissions significantly, other than to improve energy efficiency, does not exist, so EPA would not be able to impose costly requirements under PSD for at least 10 years. In the short term, he said, industry may prefer PSD to a cap-and-trade system.
By Steven D. Cook

- - - - - - - - - - - - - - - - - -

John Millett
Office of Air and Radiation Communications
U.S. Environmental Protection Agency
5411 Ariel Rios Building North
Washington, DC 20460
Phone: 202/564-2903
Cell: 202/510-1822

David McIntosh/DC/USEPA/US
10/06/2010 08:34 AM

To Richard Windsor
cc
bcc
Subject Re: Fw: POLITICO: EPA's Jackson swings back at critics

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From: Richard Windsor/DC/USEPA/US
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Date: 10/06/2010 08:31 AM
Subject: Fw: POLITICO: EPA's Jackson swings back at critics

Adora Andy

----- Original Message -----
From: Adora Andy
Sent: 10/06/2010 08:18 AM EDT
To: "Richard Windsor" <windsor.richard@epa.gov>; Bob Perciasepe; Diane Thompson; "Bob Sussman" <sussman.bob@epa.gov>; David McIntosh; "Seth Oster" <oster.seth@epa.gov>; "Arvin Ganesan" <ganesan.arvin@epa.gov>; Stephanie Owens; Sarah Pallone; Dru Ealons
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Richard
Windsor/DC/USEPA/US
03/13/2010 11:14 AM

To Adora Andy, Gina McCarthy, Lisa Heinzerling, "Lisa Jackson", Bob Perciasepe, Diane Thompson, "Bob Sussman", David McIntosh, "Seth Oster", "Allyn Brooks-Lasure", "Arvin Ganesan", Stephanie Owens
cc "Betsaida Alcantara", "Brendan Gilfillan", Michael Moats, Alisha Johnson
bcc

Subject Re: NYT: Worse Than Inaction on Climate Change

Very cool too.
Adora Andy

----- Original Message -----
From: Adora Andy
Sent: 03/13/2010 10:55 AM EST
To: Gina McCarthy; Lisa Heinzerling; "Richard Windsor" <windsor.richard@epa.gov>; Bob Perciasepe; Diane Thompson; "Bob Sussman" <sussman.bob@epa.gov>; David McIntosh; "Seth Oster" <oster.seth@epa.gov>; "Allyn Brooks-LaSure" <brooks-lasure.allyn@epa.gov>; "Arvin Ganesan" <ganesan.arvin@epa.gov>; Stephanie Owens
Cc: "Betsaida Alcantara" <alcantara.betsaida@epa.gov>; "Brendan Gilfillan" <gilfillan.brendan@epa.gov>; Michael Moats; Alisha Johnson
Subject: NYT: Worse Than Inaction on Climate Change

EDITORIAL

Worse Than Inaction on Climate Change

Published: March 13, 2010

The Obama administration has always had a backup plan in case Congress failed to pass a broad climate change bill. The Environmental Protection Agency would use its Clean Air Act authority to regulate greenhouse gases. Regulation, or the threat of it, would goad Congress to act or provide a backstop if it did not.

The House passed a bill last year seeking an economywide cap on emissions, but there has been no progress in the Senate. Now some senators seem determined to undercut the E.P.A.'s regulatory authority. These include not only Republicans who panic at any regulation, but also Democrats who say they worry about climate change but insist that the executive branch stand aside until Congress gets around to dealing with it.

The most destructive idea is a "resolution of disapproval" concocted by Lisa Murkowski, a Republican from Alaska. It would reject the E.P.A.'s recent scientific finding that greenhouse gases are a danger to public health and welfare, effectively repudiating the agency's authority - granted to it by the Supreme Court - to regulate these gases. As a practical matter, it would also stop last year's widely applauded agreement to limit greenhouse gas emissions from cars and trucks.

Ms. Murkowski has temporarily set aside her amendment while the Senate mulls a seemingly more benign bill from Jay Rockefeller, a West Virginia Democrat. His bill does not tamper with the new rules on vehicle emissions or deny the E.P.A.'s legal authority to regulate greenhouse gases. But it would severely narrow the agency's reach by blocking it from proposing, or even doing much work on, regulations on emissions from stationary sources like power plants, for two years while Congress worked on broader legislation.

Industrial emissions account for a third of this country's greenhouses gases, and freezing the government's ability to regulate them makes no sense. There is no guarantee that Congress will produce

Richard
Windsor/DC/USEPA/US
12/30/2010 10:19 PM

To Brendan Gilfillan, Bob Perciasepe, Diane Thompson, Seth Oster, Bob Sussman, "David McIntosh", "Gina (Sheila) McCarthy", Joseph Goffman, Janet McCabe, Stephanie Owens, "ealons dru", Betsaida Alcantara, Daniel Kanninen

cc

bcc

Subject Re: NY Times: E.P.A. Limit on Gases to Pose Risk to Obama and Congress

Txt
Brendan Gilfillan

----- Original Message -----
From: Brendan Gilfillan
Sent: 12/30/2010 10:15 PM EST
To: Richard Windsor; Bob Perciasepe; Diane Thompson; Seth Oster; Bob Sussman; mcintosh.david@epa.gov; mccarthy.gina@epa.gov; Joseph Goffman; Janet McCabe; Stephanie Owens; ealons.dru@epa.gov; Betsaida Alcantara; Daniel Kanninen
Subject: NY Times: E.P.A. Limit on Gases to Pose Risk to Obama and Congress

E.P.A. Limit on Gases to Pose Risk to Obama and Congress

With the federal government set to regulate climate-altering gases from factories and power plants for the first time, the Obama administration and the new Congress are headed for a clash that carries substantial risks for both sides.

While only the first phase of regulation takes effect on Sunday, the administration is on notice that if it moves too far and too fast in trying to curtail the ubiquitous gases that are heating the planet it risks a Congressional backlash that could set back the effort for years.

But the newly muscular Republicans in Congress could also stumble by moving too aggressively to handcuff the Environmental Protection Agency, provoking a popular outcry that they are endangering public health in the service of their well-heeled patrons in industry.

"These are hand grenades, and the pins have been pulled," said William K. Reilly, administrator of the environmental agency under the first President George Bush.

He said that the agency was wedged between a hostile Congress and the mandates of the law, with little room to maneuver. But he also said that anti-E.P.A. zealots in Congress should realize that the agency was acting on laws that Congress itself passed, many of them by overwhelming bipartisan margins.

President Obama vowed as a candidate that he would put the United States on a path to addressing climate change by reducing emissions of carbon dioxide and other greenhouse gas pollutants. He offered Congress wide latitude to pass climate change legislation, but held in reserve the threat of E.P.A. regulation if it failed to act. The deeply polarized Senate's refusal to enact climate change legislation essentially called his bluff.

With Mr. Obama's hand forced by the mandates of the Clean Air Act and a 2007 Supreme Court decision, his E.P.A. will impose the first regulation of major stationary sources of greenhouse gases starting Jan. 2.

For now, administration officials are treading lightly, fearful of inflaming an already charged atmosphere on the issue and mindful that its stated priorities are job creation and economic recovery. Officials are not seeking a major confrontation over carbon regulation, which offers formidable challenges even in a less stressed economic and political climate.

Richard
Windsor/DC/USEPA/US
10/29/2010 10:07 AM

To Brendan Gilfillan, Bob Perciasepe, Diane Thompson, "Seth Oster", Bob Sussman, Lisa Heinzerling, Gina McCarthy, Janet McCabe, Joseph Goffman, David McIntosh, Arvin Ganesan, Stephanie Owens, Dru Ealons, Daniel Kanninen
cc
bcc
Subject Re: AP: Companies Fight to Keep Global Warming Data Secret

Good job.
Brendan Gilfillan

----- Original Message -----
From: Brendan Gilfillan
Sent: 10/29/2010 10:01 AM EDT
To: Richard Windsor; Bob Perciasepe; Diane Thompson; Seth Oster <oster.seth@epa.gov>; Bob Sussman; Lisa Heinzerling; Gina McCarthy; Janet McCabe; Joseph Goffman; David McIntosh; Arvin Ganesan; Stephanie Owens; Dru Ealons; Daniel Kanninen
Subject: AP: Companies Fight to Keep Global Warming Data Secret

Companies Fight to Keep Global Warming Data Secret

AP

Some of the country's largest emitters of heat-trapping gases, including businesses that publicly support efforts to curb global warming, don't want the public knowing exactly how much they pollute.

Oil producers and refiners, along with manufacturers of steel, aluminum and even home appliances, are fighting a proposal by the Environmental Protection Agency that would make the amount of greenhouse gas emissions that companies release — and the underlying data businesses use to calculate the amounts — available online.

While gross estimates exist for such emissions from transportation and electricity production and manufacturing as a whole, the EPA is requiring companies for the first time to submit information for each individual facility.

The companies say that disclosing details beyond a facility's total emissions to the public would reveal company secrets by letting competitors know what happens inside their factories. More importantly, they argue, when it comes to understanding global warming, the public doesn't need to know anything more than what goes into the air. "There is no need for the public to have information beyond what is entering the atmosphere," Steven H. Bernhardt, global director for regulatory affairs for Honeywell International Inc., said in comments filed with the agency earlier this year. The Morristown, N.J.-based company is a leading manufacturer of hydrofluorocarbons, a potent greenhouse gas used in a variety of consumer products. Honeywell wants the EPA to reconsider its proposal, which the company said would damage its business.

Other companies are pressing the agency to require a third party to verify the data, so they don't

Richard Windsor/DC/USEPA/US
05/07/2010 12:57 PM

To David McIntosh, Gina McCarthy, Bob Perciasepe, Arvin Ganesan
cc
bcc
Subject Fw: AP: Graham says 'impossible' to pass climate bill now

----- Forwarded by Richard Windsor/DC/USEPA/US on 05/07/2010 12:56 PM -----

From: Seth Oster/DC/USEPA/US
To: "Lisa Jackson" <windsor.richard@epa.gov>
Date: 05/07/2010 12:31 PM
Subject: Fw: AP: Graham says 'impossible' to pass climate bill now

Betsaida Alcantara

----- Original Message -----
From: Betsaida Alcantara
Sent: 05/07/2010 12:29 PM EDT
To: Seth Oster; Allyn Brooks-LaSure; Adora Andy; Brendan Gilfillan; Alisha Johnson; Michael Moats; Vicki Ekstrom
Subject: AP: Graham says 'impossible' to pass climate bill now

Graham says 'impossible' to pass climate bill now

FREDERIC J. FROMMER | May 7, 2010 12:20 PM EST |

WASHINGTON — A key Republican senator negotiating with Democrats on a climate change bill said Friday it's "become impossible" to pass the legislation now because of disagreements over offshore drilling and immigration reform.

Sen. Lindsey Graham of South Carolina said that Congress needs to move forward in a political climate that gives proponents the best chance for success.

"Regrettably, in my view, this has become impossible in the current environment," he said in a statement. "I believe there could be more than 60 votes for this bipartisan concept in the future. But there are not nearly 60 votes today and I do not see them materializing until we deal with the uncertainty of the immigration debate and the consequences of the oil spill."

Sixty votes are required in the Senate to overcome filibusters.

Last month, Graham threatened to withhold his support for the climate and energy legislation because he was angry that Democrats said they would take up a rewrite of immigration policy. That forced his partners, Sen. John Kerry, D-Mass., and Joe Lieberman, I-Conn., to postpone the long-awaited unveiling of the legislation, which aims to cut emissions of carbon dioxide and other greenhouse gases 17 percent below 2005 levels by 2020.

To win over Republicans, the bill calls for expansion of offshore drilling, which some Democrats have said they now oppose because of the Gulf spill.

Release 3 - HQ-FOI-01268-12 All emails sent by "Richard Windsor" were sent by EPA Administrator Lisa Jackson

Richard
Windsor/DC/USEPA/US
06/29/2010 03:05 PM

To Gina McCarthy
cc
bcc
Subject Fw: Readout of the President's Meeting with a Bipartisan Group of Senators to Discuss Passing Comprehensive Energy and Climate Legislation

THE WHITE HOUSE
Office of the Press Secretary

FOR IMMEDIATE RELEASE
June 29, 2010

Readout of the President's Meeting with a Bipartisan Group of Senators to Discuss Passing Comprehensive Energy and Climate Legislation

The meeting the President hosted with a bipartisan group of Senators was a constructive exchange about the need to pass energy and climate legislation this year that lasted more than an hour-and-a-half. The President made clear his view that a full transition to clean energy will require more than just the government action we've taken so far. It will require a national effort from all of us to change the way we produce and use energy.

The President told the Senators that he still believes the best way for us to transition to a clean energy economy is with a bill that makes clean energy the profitable kind of energy for America's businesses by putting a price on pollution – because when companies pollute, they should be responsible for the costs to the environment and their contribution to climate change. Not all of the Senators agreed with this approach, and the President welcomed other approaches and ideas that would take real steps to reduce our dependence on oil, create jobs, strengthen our national security and reduce the pollution in our atmosphere.

The President said that there was a strong foundation and consensus on some key policies and the President urged the Senators to come together based on that foundation. There was agreement on the sense of urgency required to move forward with legislation and the President is confident that we will be able to get something done this year.

###

Richard Windsor/DC/USEPA/US
03/25/2010 10:09 AM

To Gina McCarthy
cc
bcc
Subject Re: Fw: Link to analysis

tx

Gina McCarthy I sent the links to Seth and john Millete... 03/25/2010 09:44:07 AM

From: Gina McCarthy/DC/USEPA/US
To: "Richard Windsor" <Windsor.Richard@epamail.epa.gov>
Date: 03/25/2010 09:44 AM
Subject: Fw: Link to analysis

I sent the links to Seth and john Millete so we could address any on-going press confusion.
Sarah Dunham

----- Original Message -----
From: Sarah Dunham
Sent: 03/25/2010 09:17 AM EDT
To: Margo Oge; David McIntosh; Gina McCarthy
Cc: Karen Orehowsky; Sarah Froman
Subject: Link to analysis

We'll check on what it says in the testimony but the analysis is still available and accessable at the following links:

The longer, direct link is www.epa.gov/otaq/climate/GHGtransportation-analysis03-18-2010.pdf

Shorter link is www.epa.gov/otaq/climate/publications.htm, then go down about half the page for the document.

Release 3 - HQ-FOI-01268-12 All emails sent by "Richard Windsor" were sent by EPA Administrator Lisa Jackson

Richard Windsor/DC/USEPA/US
06/21/2010 08:26 PM

To Seth Oster, David McIntosh, Gina McCarthy
cc
bcc
Subject FYI

http://green.blogs.nytimes.com/2010/06/20/climate-scientist-gets-a-media-apology/

Richard Windsor/DC/USEPA/US
06/30/2009 05:29 AM

To "Bob Sussman", "Gina McCarthy", "David McIntosh"
cc
bcc
Subject Fw: Remarks by the President on Energy

Allyn Brooks-LaSure

----- Original Message -----
From: Allyn Brooks-LaSure
Sent: 06/29/2009 02:08 PM EDT
To: Richard Windsor; Diane Thompson
Cc: David McIntosh; Seth Oster; Adora Andy
Subject: Fw: Remarks by the President on Energy

And this...

----- Forwarded by Allyn Brooks-LaSure/DC/USEPA/US on 06/29/2009 02:07 PM -----

From: "White House Press Office" <whitehouse-lists-noreply@list.whitehouse.gov>
To: Allyn Brooks-LaSure/DC/USEPA/US@EPA
Date: 06/29/2009 02:06 PM
Subject: Remarks by the President on Energy

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release June 29, 2009

REMARKS BY THE PRESIDENT
ON ENERGY

Grand Foyer

1:12 P.M. EDT

THE PRESIDENT: Good afternoon, everybody. Since taking -- excuse me -- since taking office, my administration has mounted a sustained response to a historic economic crisis. But even as we take decisive action to repair the damage to our economy, we're also working to build a new foundation for sustained and lasting economic growth.

And we know this won't be easy, but this is a moment where we've been called upon to cast off the old ways of doing business, and act boldly to reclaim America's future. Nowhere is this more important than in building a

Richard
Windsor/DC/USEPA/US
10/06/2010 08:31 AM

To "David McIntosh", "Gina (Sheila) McCarthy"
cc
bcc
Subject Fw: POLITICO: EPA's Jackson swings back at critics

Adora Andy

----- Original Message -----
From: Adora Andy
Sent: 10/06/2010 08:18 AM EDT
To: "Richard Windsor" <windsor.richard@epa.gov>; Bob Perciasepe; Diane Thompson; "Bob Sussman" <sussman.bob@epa.gov>; David McIntosh; "Seth Oster" <oster.seth@epa.gov>; "Arvin Ganesan" <ganesan.arvin@epa.gov>; Stephanie Owens; Sarah Pallone; Dru Ealons
Subject: POLITICO: EPA's Jackson swings back at critics

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By: Darren Samuelsohn
October 6, 2010 04:35 AM EDT

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The Environmental Protection Agency finds itself constantly under attack from industry groups and Republicans who say the agency is overreaching on everything from climate change to microscopic soot. And with the failure of the White House and Congress to pass a climate bill, combined with a potential GOP takeover, now could be seen as the right time for the agency's head to dial back the rhetoric.

But at an event last month celebrating the Clean Air Act's 40th anniversary, Jackson swung hard at industry groups, offending some officials in the room and potentially adding fuel to claims the Obama administration is anti-business.

In an interview this week with POLITICO, Jackson showed no indication of backing down.

"It's definitely anti-lobbyist rhetoric," Jackson said. "It's definitely meant to reflect the fact that, when I go around the country, people want clean air. They are as passionate about clean air and clean water as any of a number of issues; they want protection for their families and their children."

"I meet with individual businesses all the time, and industry has a huge role to play," Jackson added. "But I do very much believe that it's time for us to get past this tired dance, where folks inside this Beltway get paid a lot of money to say things that aren't true about public health initiatives that this agency is charged by law with undertaking."

Jackson said EPA is taking a "series of modest steps" in writing climate-themed rules under the Clean Air Act, despite bipartisan efforts in Congress to block them and about 90 different lawsuits in federal court.

"The Clean Air Act is a tool. It's not the optimal tool. But it can be used," she said. "And, in fact, I'm legally obligated now to use it. And so we've laid a lot of groundwork on that and we'll continue."

Jackson's shop is now the main battleground in the federal push to fight global warming, as many experts predict Congress will show little appetite to try a comprehensive climate bill again in the near future.

"A window has slammed shut in Washington, and it may be a few more years before we can pry it open again," said Eric Pooley, author of "The Climate War," a recently published book that chronicles the past three years of debate on global warming.

Richard Windsor/DC/USEPA/US
02/22/2010 08:54 PM

To "David McIntosh", "Gina (Sheila) McCarthy", "Bob Perciasepe", "Bob Sussman", "Lisa Heinzerling", "Diane Thompson", "Seth Oster"
cc
bcc
Subject Fw: NYTimes.com: Obama Mounts a Last-Ditch Attempt to Pass a 'Hybrid' Climate and Energy Bill

From: Lisa Jackson b(6) Privacy
Sent: 02/22/2010 08:53 PM EST
To: Richard Windsor
Subject: NYTimes.com: Obama Mounts a Last-Ditch Attempt to Pass a 'Hybrid' Climate and Energy Bill

This page was sent to you by: (b) (6) Personal Privacy

BUSINESS / ENERGY & ENVIRONMENT | February 22, 2010

Obama Mounts a Last-Ditch Attempt to Pass a 'Hybrid' Climate and Energy Bill

By JOEL KIRKLAND of ClimateWire

The White House is mounting a last-ditch effort to piece together an energy and climate change bill that has enough incentive...

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Release 3 - HQ-FOI-01268-12 All emails sent by "Richard Windsor" were sent by EPA Administrator Lisa Jackson

Richard
Windsor/DC/USEPA/US
03/25/2010 07:00 AM

To "Gina (Sheila) McCarthy"
cc
bcc
Subject Fw: A washingtonpost.com link from: windsor.richard@epa.gov

See last few paragraphs.

----- Original Message -----
From: Richard Windsor
Sent: 03/25/2010 06:57 AM AST
To: Richard Windsor
Subject: A washingtonpost.com link from: windsor.richard@epa.gov

You have been sent this link from windsor.richard@epa.gov as a courtesy of washingtonpost.com

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http://views.washingtonpost.com/climate-change/post-carbon/2010/03/more_climate_huddling.html?referrer=emaillink

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Richard Windsor/DC/USEPA/US
07/22/2010 02:55 PM

To "Gina (Sheila) McCarthy", "Janet McCabe", "Bob Perciasepe"
cc
bcc
Subject Fw: Reid to Senate Dems: Climate change bill will wait until fall

David McIntosh

----- Original Message -----
From: David McIntosh
Sent: 07/22/2010 02:53 PM EDT
To: Richard Windsor
Subject: Reid to Senate Dems: Climate change bill will wait until fall

They are also jettisoning the renewable electricity standard. So it'll just be oil spill response and a handful of relatively minor clean energy provisions

Reid to Senate Dems: Climate change bill will wait until fall

By Darren Goode - 07/22/10 02:32 PM ET

Senate Majority Leader Harry Reid (D-Nev.) will bring a limited package of oil spill response and energy measures to the floor next week, delaying action until at least this fall on a broader proposal that would impose greenhouse gas limits on power plants, senior Senate Democratic aides said.

Aides insisted Reid's decision is a nod to the packed floor schedule the Senate faces before it leaves in two weeks for the August recess, and that he has not abandoned plans to try and bring up a broader climate and energy plan later in the year.

But other legislative priorities and election-year politics might scuttle the wider climate and energy plan altogether.

Reid discussed his plans with Senate Democrats at a Thursday meeting.

Sen. Jeanne Shaheen (D-N.H.) described Reid as having delayed efforts to advance climate change legislation until after the August break.

"What he suggested is that we move forward on several bills to address energy and the oil spill and then continue to work on the climate piece when we get back," she said after the meeting in the Capitol.

For now, the limited package expected on the floor this month will likely allow Democrats to push through a response to the Gulf of Mexico oil spill — such as tougher rig-safety requirements — and perhaps some energy provisions that members of both parties could support.

The bill will not include a renewable electricity production mandate boosting power sources such as solar and geothermal that are key industries in Reid's home state of Nevada.

Richard Windsor/DC/USEPA/US
01/22/2010 06:40 PM

To "Heidi Ellis", "Gina (Sheila) McCarthy"
cc
bcc
Subject Fw: Washington Post: 3 Senators Met with WH this Afternoon to Climate Bill

Allyn Brooks-LaSure

----- Original Message -----
From: Allyn Brooks-LaSure
Sent: 01/22/2010 06:34 PM EST
To: "Jackson, Lisa P." <windsor.richard@epa.gov>
Cc: "Oster, Seth" <Oster.Seth@epa.gov>; David McIntosh; Adora Andy
Subject: Fw: Washington Post: 3 Senators Met with WH this Afternoon to Climate Bill

MABL.

M. Allyn Brooks-LaSure
Office of the Administrator
U.S. Environmental Protection Agency
Cell: 202-631-0415

Suzanne Ackerman

----- Original Message -----
From: Suzanne Ackerman
Sent: 01/22/2010 06:26 PM EST
To: Seth Oster; Allyn Brooks-LaSure; Adora Andy; Roxanne Smith; Michael Thiem; Jeffrey Levy; Lina Younes; Amy Dewey; Brendan Gilfillan; Dave Ryan; Cathy Milbourn; Deb Berlin
Subject: Washington Post: 3 Senators Met with WH this Afternoon to Climate Bill

Rahm's climate meeting
By Juliet Eilperin
Jan 22, 2010 6:14 pm
Some people might think climate legislation in the Senate is on life support, but don't tell that to Sens. John Kerry (D-Mass. Lieberman (I-Conn).

The three lawmakers met with White House chief of staff Rahm Emanuel Thursday afternoon for "a strategy session and to State of the Union," in the words of one Senate aide familiar with the meeting. Graham also delivered his assessment of wh prospect of a bill.
What President Obama says next week at the State of the Union will provide the clearest signal yet of whether he will push climate bill.

But wait, as they say in the Ginsu knife ad, that's not all.
The troika met this week with officials from the U.S. Chamber of Commerce, one of the most outspoken opponents to the E Chamber refused to comment.
And the three senators agreed to set aside four hours a week--which could translate into as many as eight separate meetin in the climate debate, and to recruit new Senate supporters. Next week the three will meet with Environmental Protection A

FEDERAL RECORDS

National Archives and Selected Agencies Need to Strengthen E-Mail Management

GAO-08-742, Jun 13, 2008

Linda D. Koontz

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Federal agencies are increasingly using electronic mail (e-mail) for essential communication. In doing so, they are potentially creating messages that have the status of federal records, which must be managed and preserved in accordance with the Federal Records Act. Under the act, both the National Archives and Records Administration (NARA) and federal agencies have responsibilities for managing federal records, including e-mail records. In view of the importance that e-mail plays in documenting government activities, GAO was asked, among other things, to review the extent to which NARA provides oversight of federal records management, describe selected agencies' processes for managing e-mail records, and assess these agencies' e-mail policies and key practices. To do so, GAO examined NARA guidance, regulations, and oversight activities, as well as e-mail policies at four agencies (of contrasting sizes and structures) and the practices of selected officials.

Although NARA has responsibilities for oversight of agencies' records and records management programs and practices, including conducting inspections or surveys, performing studies, and reporting results to the Congress and the Office of Management and Budget (OMB), in recent years NARA's oversight activities have been primarily limited to performing studies. NARA has conducted no inspections of agency records management programs since 2000, because it uses inspections only to address cases of the highest risk, and no recent cases have met its criteria. In addition, NARA has not consistently reported details on records management problems or recommended practices that were discovered as a result of its studies. Without more comprehensive evaluations of agency records management, NARA has limited assurance that agencies are appropriately managing the records in their custody and that important records are not lost. The four agencies reviewed generally managed e-mail records through paper-based processes, rather than using electronic recordkeeping. A transition to electronic recordkeeping was under way at one of the four agencies, and two had long-term plans to use electronic recordkeeping. (The fourth agency had no current plans to make such a transition.) Each of the business units that GAO reviewed (one at each agency) maintained "case" files to fulfill its mission and used these for recordkeeping. The practice at the units was to include e-mail printouts in the case files if the e-mail contained information necessary to document the case--that is, record material. These printouts included transmission data and distribution lists, as required. All four agencies had e-mail records management policies that addressed, with a few exceptions, the requirements in NARA's regulations. However, the practices of senior officials at those agencies did not always conform to requirements. Of the 15 senior officials whose practices were reviewed, the e-mail records for 7 (including all 4 at one agency) were managed in compliance with requirements. (One additional official was selected for review but did not use e-mail.) The other 8 officials generally kept e-mail messages, record or nonrecord, in e-mail systems that were not recordkeeping systems. (Among other things, recordkeeping systems allow related records to be categorized according to their business purposes.) If e-mail records are not kept in recordkeeping systems, they may be harder to find and use, as well as being at increased risk of loss from inadvertent or automatic deletion. Factors contributing to noncompliance included insufficient training and oversight as well as the difficulties of managing large volumes of e-mail. Without periodic evaluations of recordkeeping practices or other controls to ensure that staff are trained and carry out their responsibilities, agencies have little assurance that e-mail records are properly identified, stored, and preserved.

Recommendations for Executive Action

Recommendation: The Secretary of Housing and Urban Development should revise the department's policies to ensure that they appropriately reflect NARA's requirements to ensure that staff is capable of identifying federal records and to state that e-mail systems must not be used to store recordkeeping copies of e-mail records (other than those exceptions provided in the regulation) and that e-mail system backup tapes should not be used for recordkeeping purposes.

Agency Affected: Department of Housing and Urban Development

Status: Closed - Implemented

Comments: Housing and Urban Development (HUD) met this recommendation by posting guidance on email record retention. A HUD official provided a copy of this guidance to us in 2012. The guidance described how staff using e-mail systems should determine whether e-mail is a record, and if so, how to retain that e-mail as a record. Retention steps included creating and properly labeling and storing a hard copy of the e-mail. E-mail system back up tapes were not described as a record retention option.

Recommendation: The Secretary of Homeland Security should develop and apply oversight practices, such as reviews and monitoring of records management training and practices, that are adequate to ensure that policies are effective and that staff are adequately trained and are implementing policies appropriately.

Agency Affected: Department of Homeland Security

Status: Closed - Not Implemented

Comments: In response to this recommendation the DHS Under Secretary for Management issued a memo in September, 2012, requiring all DHS employees to complete records management training, as well as the tracking and reporting of training completion. However this policy does not address how DHS is ensuring that records management policies are effective or properly implemented In addition, the records management policy that is one of the sources for the policy has not been finalized and DHS has not provided evidence that it address the electronic records weaknesses identified in our report.

Recommendation: The Secretary of Homeland Security should revise the department's policies to ensure that they appropriately reflect NARA's requirement to state that draft documents circulated on e-mail systems are potential federal records.

Agency Affected: Department of Homeland Security

Status: Closed - Not Implemented

Comments: In response to our recommendation, a DHS official stated that DHS was addressing this recommendation by updating a policy (Directive 141-01, Records Management) on employee and contractor responsibilities to include preserving and protecting records regardless of format or media. Subsequently, a DHS official advised of updates to the Directive/instructions to identify e-mail records. However, as of the September 2012, this guidance was still in draft. Therefore this recommendation is closed as not implemented.

Recommendation: The Chairman of the Federal Trade Commission should revise the commission's policies to ensure that they appropriately reflect NARA's requirement to instruct staff on the management and preservation of e-mail messages sent or received from nongovernmental e-mail systems.

Agency Affected: Federal Trade Commission

Status: Closed - Implemented

Comments: In response to the draft report, the FTC sent a notice to FTC staff about the internal policies and procedures that apply to the management and disposition of electronic mail messages, dated May 28, 2008. According to the notice, non-FTC e-mail accounts are not to be used to conduct FTC business due to privacy, security, and records management reasons. Further, the notice states that in the event that staff send or receive work-related e-mail records from nongovernmental systems, staff must forward such e-mails, including any attachments, to their FTC account and handle the records in accordance with FTC?s e-mail policies and procedures. By taking this action, FTC met this recommendation.

Recommendation: The Administrator of the Environmental Protection Agency should develop and apply oversight practices, such as reviews and monitoring of records management training and practices, that are adequate to ensure that policies are effective and that staff are adequately trained and are implementing policies appropriately.

Agency Affected: Environmental Protection Agency

Status: Closed - Implemented

Comments: EPA addressed this recommendation in two ways by: 1) issuing on-line agency wide training on basic records management requirements and e-mail record capture in 2009 and 2) issuing a baseline Records Management Survey in 2010 to assess EPA's records policy, to be used by records officers to assess their records programs. This survey included questions on the nature of records management training which can be used to assess training adequacy. As a result of issuing the agency-wide on-line records management training and the survey, EPA better assured that e-mail records are appropriately identified, stored, and preserved.

Recommendation: The Administrator of the Environmental Protection Agency should revise the agency's policies to ensure that they appropriately reflect NARA's requirement on instructing staff on the management and preservation of e-mail messages sent or received from nongovernmental e-mail systems.

Agency Affected: Environmental Protection Agency

Status: Closed - Not Implemented

Comments: We recommended in June 2008 that the Administrator of the Environmental Protection Agency (EPA) revise agency policies to ensure that they appropriately reflect NARA requirements on instructing staff on the management and preservation of e-mail messages sent or received from nongovernmental e-mail systems. In response, EPA officials advised that they had revised their records management policy regarding e-mail but that the policy was not officially approved. We asked for evidence of this approval in 2011 and in early and late August, 2012. As of September 2012, EPA had not provided evidence of this approval. Therefore this recommendation is closed as not implemented.

Recommendation: To better ensure that federal records, including those that originated as e-mail messages, are appropriately identified, retained, and archived, the Archivist of the United States should develop and implement an approach to oversight of agency records management programs that provides adequate assurance that agencies are following NARA guidance, including: (1) developing various types of inspections, surveys, and other means to evaluate the state of agency records and records management programs; (2) developing criteria for using these means of assessment that ensure that they are regularly performed; and (3) regularly report to the Congress and OMB on the findings, recommendations, and agency responses to its oversight activities, as required by law.

Agency Affected: General Services Administration: National Archives and Records Administration

Status: Closed - Implemented

Comments: In June 2008, we reported that federal agencies were increasingly using electronic mail (e-mail) for essential communication, and in doing so, they were potentially creating messages that have the status of federal records which must be managed and preserved in accordance with the Federal Records Act. Under the act, both the National Archives and Records Administration (NARA) and federal agencies have responsibilities for managing federal records, including e-mail records. Further, according to NARA's regulation on e-mail policy and guidance, it requires agencies to instruct their staff on the management and preservation of e-mail records sent or received from nongovernmental e-mail systems. We found among other things that: 1) NARA no longer performs inspections of agency records management plans; 2) NARA has conducted six records management studies, however issues existed due to limitations in scope; and 3) NARA has not reported on its oversight activities as required by the Federal Records Act. As a result, we recommended that NARA develop and implement an approach to oversight of agency records management programs that provides adequate assurance that agencies are following NARA guidance, including: 1) developing various types of inspections, surveys, and other means to evaluate the state of agency records and records management programs; 2) developing criteria for using these means of assessment that ensure that they are regularly performed; and 3) regularly report to the Congress and OMB on the findings, recommendations, and agency responses to its oversight activities, as required by law. In response to our recommendation, NARA has taken the following actions: 1) approved a plan which includes a methodology for conducting annual records management program self-assessments and agency inspections; 2) included guidance for NARA to conduct annual records management program self-assessments and inspections of all federal agencies beginning in fiscal year 2010; and 3) NARA began reporting to the Congress and the Office of Management and Budget (OMB) on its records management activities in the annual Performance and Accountability Report (PAR) as well as issuing memoranda to notify agencies of expanded agency reporting requirements included in the PAR reported to the Congress and OMB. As a result, NARA has increased assurance that records are adequately managed and that important records are not being lost.

Recommendation: The Secretary of Housing and Urban Development should develop and apply oversight practices, such as reviews and monitoring of records management training and practices, that are adequate to ensure that policies are effective and that staff are adequately trained and are implementing policies appropriately.

Agency Affected: Department of Housing and Urban Development

Status: Closed - Implemented

Comments: HUD met this requirement as follows. In July 2009, HUD advised that it had met this requirement by requiring Records staff to train program staff every quarter, as specified in HUD?s Employee Performance Planning and Evaluation System. HUD provided a document from the system stating this requirement, and a document showing that monthly records management training has been conducted with a set of named staff.

United States Government Accountability Office

GAO

Report to Congressional Requesters

June 2008

FEDERAL RECORDS

National Archives and Selected Agencies Need to Strengthen E-Mail Management

This report was revised July 28, 2008, to correct figure 1, page 13. This figure initially and inadvertently contained incorrect or repetitious information and was replaced.



GAO-08-742

June 2008

GAO
Accountability · Integrity · Reliability
Highlights

Highlights of GAO-08-742, a report to congressional requesters

FEDERAL RECORDS

National Archives and Selected Agencies Need to Strengthen E-Mail Management

Why GAO Did This Study

Federal agencies are increasingly using electronic mail (e-mail) for essential communication. In doing so, they are potentially creating messages that have the status of federal records, which must be managed and preserved in accordance with the Federal Records Act. Under the act, both the National Archives and Records Administration (NARA) and federal agencies have responsibilities for managing federal records, including e-mail records.

In view of the importance that e-mail plays in documenting government activities, GAO was asked, among other things, to review the extent to which NARA provides oversight of federal records management, describe selected agencies' processes for managing e-mail records, and assess these agencies' e-mail policies and key practices. To do so, GAO examined NARA guidance, regulations, and oversight activities, as well as e-mail policies at four agencies (of contrasting sizes and structures) and the practices of selected officials.

What GAO Recommends

GAO is recommending that NARA develop and implement a comprehensive oversight mechanism and that the four agencies address weaknesses in records management oversight, policies, and practices. Officials from the five agencies indicated, in comments on a draft of this report, that they were implementing or intended to implement GAO's recommendations.

To view the full product, including the scope and methodology, click on GAO-08-742.
For more information, contact Linda Koontz at (202) 512-6240 or koontzl@gao.gov.

What GAO Found

Although NARA has responsibilities for oversight of agencies' records and records management programs and practices, including conducting inspections or surveys, performing studies, and reporting results to the Congress and the Office of Management and Budget (OMB), in recent years NARA's oversight activities have been primarily limited to performing studies. NARA has conducted no inspections of agency records management programs since 2000, because it uses inspections only to address cases of the highest risk, and no recent cases have met its criteria. In addition, NARA has not consistently reported details on records management problems or recommended practices that were discovered as a result of its studies. Without more comprehensive evaluations of agency records management, NARA has limited assurance that agencies are appropriately managing the records in their custody and that important records are not lost.

The four agencies reviewed generally managed e-mail records through paper-based processes, rather than using electronic recordkeeping. A transition to electronic recordkeeping was under way at one of the four agencies, and two had long-term plans to use electronic recordkeeping. (The fourth agency had no current plans to make such a transition.) Each of the business units that GAO reviewed (one at each agency) maintained "case" files to fulfill its mission and used these for recordkeeping. The practice at the units was to include e-mail printouts in the case files if the e-mail contained information necessary to document the case—that is, record material. These printouts included transmission data and distribution lists, as required.

All four agencies had e-mail records management policies that addressed, with a few exceptions, the requirements in NARA's regulations. However, the practices of senior officials at those agencies did not always conform to requirements. Of the 15 senior officials whose practices were reviewed, the e-mail records for 7 (including all 4 at one agency) were managed in compliance with requirements. (One additional official was selected for review but did not use e-mail.) The other 8 officials generally kept e-mail messages, record or nonrecord, in e-mail systems that were not recordkeeping systems. (Among other things, recordkeeping systems allow related records to be categorized according to their business purposes.) If e-mail records are not kept in recordkeeping systems, they may be harder to find and use, as well as being at increased risk of loss from inadvertent or automatic deletion. Factors contributing to noncompliance included insufficient training and oversight as well as the difficulties of managing large volumes of e-mail. Without periodic evaluations of recordkeeping practices or other controls to ensure that staff are trained and carry out their responsibilities, agencies have little assurance that e-mail records are properly identified, stored, and preserved.

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Figure

Figure 1: Example Decision Tree for Determining Whether an E-Mail Message Is a Record 13

Abbreviations

CIO	Chief Information Officer
DHS	Department of Homeland Security
ECMS	Enterprise Content Management System
e-mail	electronic mail
EPA	Environmental Protection Agency
FTC	Federal Trade Commission
HERS	HUD Electronic Record System
HUD	Department of Housing and Urban Development
NARA	National Archives and Records Administration
OMB	Office of Management and Budget
R&D	research and development

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United States Government Accountability Office
Washington, DC 20548

June 13, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
House of Representatives

The Honorable William Lacy Clay
Chairman
Subcommittee on Information Policy, Census, and National Archives
Committee on Oversight and Government Reform
House of Representatives

Federal agencies are increasingly using electronic mail (e-mail) for essential communication, and in doing so, they are potentially creating messages that have the status of federal records. According to the Federal Records Act,[1] federal records are materials in whatever form that document government functions, activities, decisions, and other important transactions, and such records must be managed and preserved in accordance with the act.[2] As the volume of federal e-mail grows, so does the challenge of managing electronic records.

Under the act, the National Archives and Records Administration (NARA or the Archives) has responsibilities for oversight and guidance of federal records management, including management of e-mail records. Agencies also have records management responsibilities, including the responsibility to develop e-mail management policies and practices that include specific requirements, such as defining staff responsibilities for determining whether an e-mail (including any associated attachments) is a federal record and, further, requiring preservation of record e-mail.

In view of the importance that e-mail plays in documenting government activities, you asked that we review federal e-mail records management. Specifically, our objectives were to

[1]The relevant provisions of the Federal Records Act of 1950 and subsequent records management statutes are largely codified in Chapters 21, 29, 31, and 33 of Title 44 of the U.S. Code.

[2]The definition of a record is given at 44 U.S.C. 3301.

- assess to what extent NARA provides oversight of federal records management programs and practices, particularly with regard to e-mail;
- describe processes followed by selected federal agencies to manage e-mail records;
- assess to what extent the selected agencies' e-mail records management policies comply with federal requirements; and
- assess compliance of selected senior officials with key e-mail recordkeeping requirements.

To determine the extent to which NARA provided oversight of federal agencies' programs for managing and preserving federal e-mail records, we analyzed applicable laws, regulations, and guidance; reviewed NARA's oversight activities from 2003 to 2007, including its 2003 to 2007 reports to the Office of Management and Budget (OMB) and the Congress on records management activities; analyzed NARA reports and documents; and interviewed NARA officials.

To describe e-mail recordkeeping processes at selected federal agencies, we selected four federal agencies (the Environmental Protection Agency, the Federal Trade Commission, and the Departments of Homeland Security and of Housing and Urban Development), based on contrasting sizes and structures and on the significance of their records to protecting rights and documenting accountability. We reviewed agency documents, analyzed agency responses to a series of data collection instruments, interviewed agency officials, reviewed the e-mail management practices at one business unit at each agency, and inspected a limited number of sample e-mail records identified by the agencies to corroborate their statements.

To determine the extent to which the four agencies' policies comply with requirements, we analyzed applicable laws, regulations, and guidance to identify e-mail records management requirements, and we assessed the agencies' e-mail management policies against these requirements.

To assess compliance of selected senior officials with key recordkeeping requirements at each agency, we reviewed the e-mail management practices of four senior officials (including the agency head at each selected agency), based on agency responses to our data collection instruments, interviews with agency officials, and inspection of a limited number of sample e-mail records identified by the agencies to corroborate their statements. We did not attempt to assess the extent to which the agencies' staff correctly identified e-mail as federal records or the extent to which the agencies' records appropriately included e-mail. Additional

detail on the objectives, scope, and methodology of this audit can be found in appendix I.

We conducted this performance audit from April 2007 to May 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

To fulfill its responsibility under the Federal Records Act for oversight of agency records management programs, NARA planned to conduct activities including inspections, studies, and reporting. However, despite its plans, in recent years its oversight activities have been primarily limited to performing studies. Although it has performed or sponsored six records management studies since 2003, it has not conducted any inspections since 2000. In addition, although NARA's reporting to the Congress and OMB has generally described progress in improving records management at individual agencies and provided an overview of some of its major records management activities, it has not consistently provided evaluations of responses by federal agencies to its recommendations, as required, or details on records management problems or recommended practices that were discovered as a result of inspections, studies, or targeted assistance projects. Without a consistent oversight program that provides it with a governmentwide perspective, NARA has limited assurance that agencies are appropriately managing the records in their custody, increasing the risk that important records will be lost.

The four agencies reviewed generally managed e-mail records through paper-based processes, rather than using electronic recordkeeping. A transition to electronic recordkeeping was under way at one of the four agencies, and two had long-term plans to use electronic recordkeeping. (The fourth agency had no current plans to make such a transition.) Each of the business units that we reviewed (one at each agency) maintained "case" files to fulfill its mission and used these for recordkeeping. The practice at the units was to include e-mail printouts in the case files if the e-mails contained information necessary to document the case—that is, record material. These printouts included transmission data and distribution lists, as required.

Three of the four agencies we reviewed had policies in place that generally complied with key aspects of NARA's regulations on e-mail records management. At these agencies, the policies were each missing one of nine key elements. For example, one agency's policy did not specify, as required, that draft documents circulated via e-mail may be federal records; agency officials indicated that they planned to address the omission in updated guidance. At the fourth agency, the policy was missing three of eight applicable requirements.[3] One element of the policy was inconsistent with regulations, requiring only the sender of an e-mail message to determine record status; the regulation states that both sent and received messages could be e-mail records. According to agency officials, the policy was incomplete because the department's stated practice is not to use e-mail to create official records. However, this practice does not remove the requirement for employees to assess e-mail received for its record status, because the agency cannot know that employees will not receive e-mail with record status; the determination of record status depends on content, not medium. The agency's policy and guidance were silent on two other requirements. Agency officials stated that these were included in the policy by a reference to the NARA regulations in which they appear. However, this reference was too general to make the requirements clear.

For the senior officials whose practices we reviewed, recordkeeping requirements for e-mail were not always met. Of 15 senior officials,[4] the e-mail for 7 (including all 4 at the Federal Trade Commission) was managed in compliance with requirements.[5] The remaining 8 officials (at three agencies), did not consistently conform to key requirements in NARA's regulations for e-mail records, such as filing them in appropriate record-keeping systems. Instead, e-mail for these officials, whether record or nonrecord, was generally being retained in e-mail systems that lacked recordkeeping capabilities. (Among other things, a recordkeeping system allows related records to be grouped into classifications according to their business purposes.) If e-mail records are not kept in recordkeeping systems, they may be harder to find and use, as well as being at increased

[3]One requirement was not applicable because of the configuration of the agency's network.

[4]One senior official did not use e-mail, according to agency staff.

[5]In addition, one official was using the e-mail system to store records in anticipation of a transition to an electronic recordkeeping system; when the ongoing transition is complete, the new system should allow this official's recordkeeping practices to be brought into compliance with requirements.

risk of loss from inadvertent or automatic deletion. Factors contributing to this noncompliance included inadequate training and oversight, as well as the difficulties of managing large volumes of e-mail. Without periodic evaluations or other controls to ensure that staff receive training and are carrying out their responsibilities, agencies have little assurance that e-mail records are appropriately identified, stored, and preserved.

To address weaknesses in records management policies and practices, we are making recommendations to the Archivist that address improvements to oversight of governmentwide records management and to the agencies that address improvements to e-mail records management policies, training, and oversight.

In comments on a draft of our report, officials from NARA, the Environmental Protection Agency, the Federal Trade Commission, and the Departments of Homeland Security and of Housing and Urban Development indicated that they were implementing or intended to implement our recommendations. NARA, the Environmental Protection Agency, and the Department of Housing and Urban Development provided written comments (which are reproduced in apps. II to IV), and the Federal Trade Commission and the Department of Homeland Security provided comments via e-mail. We also received technical comments from NARA and the Federal Trade Commission, which we incorporated into our report as appropriate.

Although the Department of Housing and Urban Development agreed to implement our recommendations, it disagreed with certain details of our draft, particularly our conclusion regarding the department's compliance with the requirements we reviewed. According to the department's comments, its e-mail records policies should be considered to comply because they incorporate NARA's regulations by reference. Our draft recognized the reference to NARA regulations in HUD's policy, but we concluded that such a reference was not adequate to comply with NARA regulations. As we stated, the reference in HUD's policy is too general to make clear to HUD staff which practices are prohibited. In addition, HUD did not establish procedures to implement the requirements in question, as the regulations require.

Background

Advances in information technology and the explosion in computer interconnectivity have had far-reaching effects, including the transformation from a paper-based to an electronic business environment and the capability for rapid communication through e-mail. Although these

developments have led to improvements in speed and productivity, they also pose challenges, including the need to manage those e-mail messages that may be federal records.

NARA and Federal Agencies Have Responsibilities for Federal Records Management

Under the Federal Records Act, NARA is given general oversight responsibilities for records management as well as general responsibilities for archiving. This includes the preservation in the National Archives of the United States of permanent records documenting the activities of the government. NARA thus oversees agency management of temporary and permanent records used in everyday operations and ultimately takes control of permanent agency records judged to be of historic value.[6] (Of the total number of federal records, less than 3 percent are designated permanent.)

In particular, NARA is responsible for issuing records management guidance; working with agencies to implement effective controls over the creation, maintenance, and use of records in the conduct of agency business; providing oversight of agencies' records management programs; approving the disposition (destruction or preservation) of records, and providing storage facilities for agency records. The act also gives NARA the responsibility for conducting inspections or surveys of agency records and records management programs.

The act[7] requires each federal agency to make and preserve records that (1) document the organization, functions, policies, decisions, procedures, and essential transactions of the agency and (2) provide the information necessary to protect the legal and financial rights of the government and of persons directly affected by the agency's activities. These records, which include e-mail records, must be effectively managed.

Records Management Includes a Range of Activities

To understand the requirements for managing e-mail records, it is useful to consider the broader context of government records management. First, the term record, as mentioned earlier, has a specific meaning in this context (not just the everyday sense of anything written down or

[6]Relevant NARA regulations implementing the Federal Records Act are found at 36 C.F.R. 1220–1238.

[7]As relevant here, 44 U.S.C. chapters 21, 29, 31, and 33.

otherwise fixed in some medium). The Federal Records Act includes an extensive definition of a record:[5]

> As used in this chapter, "records" includes all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included.

As the definition shows, although government documentary materials (including e-mails) may be "records" in this sense, many are not. For example, not all e-mails document government "organization, functions, policies, decisions, procedures, operations, or other activities" or contain data of informational value.

According to NARA, the activities of an agency records management program include, briefly, the following

- identifying records and sources of records;
- developing a file plan for organizing records, including identifying the classes of records that the agency produces;
- developing records schedules—tbat is, proposing for each type of content where and how long records need to be retained and their final disposition (destruction or preservation) based on time, or event, or a combination of time and event; and
- providing records management guidance to agency staff, including agency-specific recordkeeping practices that establish what records need to be created in order to conduct agency business.
-

Developing record schedules is a cornerstone of the records management process. Scheduling involves not individual documents or file folders, but rather broad categories of records. Traditionally, these were record series: that is, "records arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular

[5]44 U.S.C. 3301.

physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access and use." More recently, NARA introduced *flexible scheduling*, which allows so-called "big bucket" or large aggregation schedules for temporary and permanent records.[9] Under this approach, the schedule applies not necessarily to records series, but to all records relating to a work process, group of work processes, or a broad program area to which the same retention time would be applied.

To develop records schedules, agencies identify and inventory records, and NARA's appraisal archivists work with agencies to appraise their value (which includes informational, evidential, and historical value), determine whether they are temporary or permanent, and determine how long the temporary records should be kept. NARA then approves the necessary records schedules. No record may be destroyed unless it has been scheduled, and for temporary records the schedule is of critical importance because it provides the authority to dispose of the record after a specified time period.

Records schedules may be of two kinds: an agency-specific schedule or a general records schedule, which covers records common to several or all agencies. According to NARA, general records schedules cover about a third of all federal records.[10] For the other two-thirds, NARA and the agencies must agree upon specific records schedules. Once a schedule has been approved, the agency is to issue it as a management directive, train employees in its use, apply its provisions to temporary and permanent records, and ensure proper implementation.

Records Management Must Address Electronic Records, Including E-Mail

The Federal Records Act covers documentary material regardless of physical form or media, but until the advent of computers, records management and archiving had been largely focused on handling paper documents. As information is increasingly created and stored electronically, records management has had to take into account the

[9]National Archives and Records Administration, *Guidance for Flexible Scheduling*, Bulletin 2005-05 (Apr. 20, 2005), www.archives.gov/records-mgmt/bulletins/2005/2005-05.html.

[10]General records schedules are posted at NARA's Web site: www.archives.gov/records-mgmt/ardor/records-schedules.html.

creation of records in varieties of electronic formats, including e-mail messages.

NARA has promulgated regulations at 36 C.F.R. Part 1234 that provide guidance to agencies about the management of electronic records. This guidance is supplemented by the issuance of periodic NARA bulletins and other forms of guidance to agencies. To ensure that the management of agency electronic records is consistent with the Federal Records Act, NARA requires each agency to maintain an inventory of all agency information systems that identifies basic facts about each system and the information it contains, and it requires that agencies schedule the electronic records in its systems. Like other records, electronic records must be scheduled either under agency-specific schedules or pursuant to a general records schedule.

According to the regulation,[11] agencies are required to establish policies and procedures that provide for appropriate retention and disposition of electronic records. In addition to including general provisions on electronic records,[12] agency procedures must specifically address e-mail records: that is, the creation, maintenance and use, and disposition of federal records created by individuals using electronic mail systems.[13]

The regulation defines an electronic mail message as

"a document created or received on an electronic mail system including brief notes, more formal or substantive narrative documents, and any attachments, such as word processing and other electronic documents, which may be transmitted with the message."

The regulation requires e-mail records to be managed as are other potential federal records with regard to adequacy of documentation, recordkeeping requirements, agency records management responsibilities, and records disposition. This entails, in particular, ensuring that staff are

[11]36 C.F.R. Part 1234.

[12]For example, the regulation states that all information in electronic systems (including those operated by contractors) is to be scheduled (either through general or agency-specific records schedules) and that such scheduling shall take place no later than 1 year after the implementation of the system.

[13]36 C.F.R. §1234.24.

aware that e-mails are potential records and training them in identifying which e-mails are records.[14]

Specific requirements for e-mail records include, for example, that for each e-mail record, agencies must preserve transmission data, including names of sender and addressees and message date, because these provide context that may be needed for the message to be understood. Further, except for a limited category of "transitory" e-mail records,[15] agencies are not permitted to store the recordkeeping copy of e-mail records in the e-mail system, unless that system has all the features of a recordkeeping system; table 1 lists these required features.

Table 1: Required Features of Electronic Recordkeeping Systems That Include E-Mail Records

Features
Allow related records to be grouped into classifications according to the business purposes they serve
Permit easy and timely retrieval of both individual records and groupings of related records
Retain records in a usable format for their required retention period as specified by a NARA-approved records schedule
Be accessible by individuals who have a business need for information in the system
Preserve the transmission and receipt data specified in agency instructions
Permit transfer of permanent records to NARA

Source: 36 C.F.R. § 1234.24(b)(1).

If agency e-mail systems do not have the required recordkeeping features, either agencies must copy e-mail records to a separate electronic recordkeeping system, or they must print e-mail messages (including associated transmission information that is needed for purposes of context) and file the copies in traditional paper recordkeeping files.

[14]The requirements for informing and training staff on identifying records are given in 36 C.F.R. § 1222.20.

[15]These are e-mail records with very short-term (180 days or less) NARA-approved retention periods (under the authority of General Record Schedule 23, Item 7, or a NARA-approved agency records schedule). Agencies may elect to manage such records on the e-mail system itself, without the need to copy the record to a recordkeeping system, provided that (1) users do not delete the messages before the expiration of the NARA-approved retention period, and (2) the system's automatic deletion rules ensure preservation of the records until the expiration of the NARA-approved retention period.

NARA's guidance allows agencies to use either paper or electronic recordkeeping systems for record copies of e-mail messages, depending on the agencies' business needs.

Each of the required features listed in table 1 is important because it helps ensure that e-mail records remain both accessible and usable during their useful lives. For example, it is essential to be able to classify records according to their business purpose so that they can be retrieved in case of mission need. Further, if records cannot be retrieved easily and quickly, or they are not retained in a usable format, they do not serve the mission or historical purpose that led to their being preserved. In many cases, e-mail systems do not have the features in the table. If e-mail records are retained in such systems and not in recordkeeping systems, they may be harder to find and use, as well as being at increased risk of loss from inadvertent or automatic deletion.

Agencies must also have procedures that specifically address the destruction of e-mail records. In particular, e-mail records may not be deleted or otherwise disposed of without prior authority from NARA.[16] (Recall that not all e-mail is record material. Agencies may destroy nonrecord e-mail.)

Agencies can dispose of e-mail records in three situations: First, agencies are authorized to dispose of e-mail records with very short-term (transitory) value that are stored in e-mail systems at the end of their retention periods (as mentioned earlier). Second, for other records in e-mail systems, NARA authorizes agencies to delete the version in the e-mail system after the record has been preserved in a recordkeeping system along with all appropriate transmission data. Finally, agencies are authorized to dispose of e-mail records in the recordkeeping system in accordance with the appropriate records schedule. If the records in the recordkeeping system are not scheduled, the agency must schedule them before they can be disposed of.

Management of E-Mail Records Poses Challenges

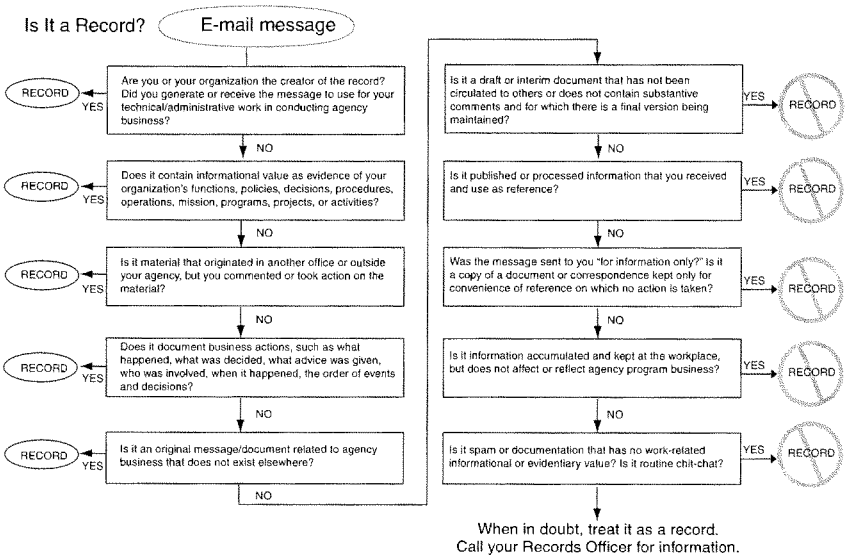
Because of its nature, e-mail can present particular challenges to records management. First, the information contained in e-mail records is not uniform. This is in contrast to many information systems, particularly those in computer centers engaged in large-scale data processing, which

[16] 44 U.S.C. § 3303a.

contain structured data that generally can be categorized into a relatively limited set of logical groupings. The information in e-mail systems, on the other hand, is not structured in this way: it may concern any subject or function and document various types of transactions. As a result, in many cases, decisions on which e-mail messages are records must be made individually.

The kinds of considerations that may go into determining the record status of an e-mail message are illustrated in figure 1. As shown by the decision tree in the figure (developed at Sandia National Laboratories), agency staff have to be aware of the defining features of a record in order to make these decisions.

Figure 1: Example Decision Tree for Determining Whether an E-Mail Message Is a Record



Source: NARA Toolkit for Managing Electronic Records, Adapted from Anna W. Nusbaum, Sandia National Laboratories.

Second, the transmission data associated with an e-mail record—including information about the senders and receivers of messages, the date the message was sent, and any attachments to the messages—provide context that may be crucial to understanding the message. Thus, as NARA's e-mail regulations and guidance reflect, transmission data must be retained, and attachments are defined as part of the e-mail record.

Third, a given message may be part of an exchange of messages between two or more people within or outside an agency, or even of a string (sometimes branching) of many messages sent and received on a given

topic. In such cases, agency staff need to decide which message or messages should be considered records and who is responsible for storing them in a recordkeeping system.

Finally, the large number of federal e-mail users and high volume of e-mails increase the management challenge. According to NARA, the use of e-mail results in more records being created than in the past, as it often replaces phone conversations and face-to-face meetings that might not have been otherwise recorded. E-mail may also replace other types of written communications, such as letters and memorandums.

Whether agencies use paper-based or electronic recordkeeping systems, individual users generally make decisions (based on considerations such as those in the figure) on what messages they judge to be records. In paper-based systems, users then print and file e-mail records—with appropriate transmission data—in the appropriate file structure (generally corresponding to record series or schedule). In electronic systems, the particular steps to file the record would vary depending on the particular type of system and its degree of integration with the agency's other information systems.[17] Although details vary, an electronic recordkeeping system, like a paper-based system, requires that a filing structure has been established by which records can be associated with the appropriate series.

The advantages of using a paper-based system for record copies of e-mails are that this approach takes advantage of the recordkeeping system already in place for the agency's paper files and requires little or no technological investment. The disadvantages are that a paper-based approach depends on manual processes and requires electronic material to be converted to paper, potentially losing some features of the electronic original; these processes may be especially burdensome if the volume of e-mail records is large.

The advantage of using an electronic recordkeeping system, besides avoiding the need to manage paper, is that it can be designed to capture certain required data (such as e-mail transmission data) automatically.

[17]For example, the recordkeeping system might be a stand-alone system, it might be integrated into an e-mail application, it might be a component of a more general electronic document management system, or it might be a function of an enterprisewide electronic information management system. NARA, *What is Electronic Recordkeeping?* www.archives.gov/records-mgmt/policy/prod1b.html.

Electronic recordkeeping systems also make searches for records on particular topics much more efficient. In addition, electronic systems that are integrated with other applications may have features that make it easier for the user to identify records and that potentially could provide automatic or partially automatic classification functions.[18] However, as with other information technology investments, acquiring an electronic recordkeeping system requires careful planning and analysis of agency requirements and business processes; in addition, electronic recordkeeping raises the issue of maintaining electronic information in an accessible form throughout its useful life.[19] Finally, like paper-based systems, electronic recordkeeping systems must be used properly by employees to be effective.

These challenges have been recognized by NARA and the records management community in numerous studies and articles.[20] A 2001 survey of federal recordkeeping practices conducted by a contractor—SRA International—for NARA concluded, among other things, that managing e-mail was a major records management problem and that the quality of recordkeeping varied considerably across agencies.[21] The authors also commented on features of agency missions that lead to strong recordkeeping practices: "When agencies have a strong business need for good recordkeeping, such as the threat of litigation or an agency mission

[18]According to Gartner Research, "What enterprises really need (and want), is a mechanism that automatically classifies messages by records management type ... without user intervention." However, such technology is "in its infancy," as of August 2007, although Gartner expected it to mature rapidly because of high demand. Gartner Research, *Best Practices in Records Management: FAQs*, G00149526 (Aug. 17, 2007).

[19]That is, if the hardware, software, or media required to access the information become obsolete or deteriorate, the information must be migrated to hardware, software, or media that continue to be accessible.

[20]For example, Robert F. Williams and Lori J. Ashley, Cohasset Associates Inc., *2005 Electronic Records Management Survey—A Renewed Call to Action*, Cohasset/ARMA/AIIM White Paper (2005); Giovanna Patterson and J. Timothy Sprehe, "Principal Challenges Facing Electronic Records Management in Federal Agencies Today," *Government Information Quarterly*, Vol. 19 (2002), pp 307–315; available at www.sciencedirect.com; The Sedona Conference® Working Group on Best Practices for Electronic Document Retention & Production, *The Sedona Guidelines: Best Practice Guidelines & Commentary for Managing Information & Records in the Electronic Age* (2005), www.thesedonaconference.org/content/miscFiles/TSG9_05.pdf.

[21]SRA International, Inc., *Report on Current Recordkeeping Practices with the Federal Government*, a report sponsored by NARA (Dec. 10, 2001) www.archives.gov/records-mgmt/pdf/report-on-recordkeeping-practices.pdf.

that revolves around maintaining 'case' files, then recordkeeping practices tend to be relatively strong with regard to the records involved." In addition, the study concluded that for many federal employees, the concept of a "record" and what should be scheduled and preserved was not clear.

A 2005 survey of federal agencies' policy and practices for electronic records management, funded in part by NARA, concluded that procedures for managing e-mail were underdeveloped.[22] The study found that most of the surveyed offices had not developed electronic recordkeeping systems, but were instead maintaining recordkeeping copies of e-mail and other electronic documents in paper format. However, all of the offices also maintained electronic records (frequently electronic duplicates of paper records). According to the study team, agencies did not establish electronic recordkeeping systems partly because of a lack of support and resources, and the complexity of implementing such systems increased with the size of the agency. As a result, organizations were maintaining unsynchronized parallel paper and electronic systems, resulting in extra work, confusion regarding which is the recordkeeping copy, and retention of many records beyond their disposition date. The study team also concluded that disposition of electronic records was too cumbersome and uncertain. According to the report, employees delete electronic records, such as e-mails, one at a time, a cumbersome process which may result in retention of too many records for too long or premature disposition that is inconsistent with approved retention schedules. (This is in contrast to records disposition in a recordkeeping system, in which categories of temporary records may be disposed of at the end of their retention periods.) The report also discussed NARA's role in promoting agencies' adoption of electronic recordkeeping systems.

Commenting on these points, NARA expressed the view that for agencies that maintain paper as the record copy, the early destruction of electronic copies was not a significant problem because such copies generally have very short term retentions, and no information is lost.[23] It considered that

[22]Center for Information Policy/College of Information Studies/University of Maryland, *Best Practices in Electronic Records Management: A Survey and Report on Federal Government Agency's Recordkeeping Policies and Practices*, a report sponsored by NARA (Dec. 19, 2005) www.archives.gov/records-mgmt/initiatives/umd-survey.html.

[23]NARA, *NARA Review of UMD CIP Report "Best Practices in Electronic Records Management,"* www.archives.gov/records-mgmt/initiatives/umd-survey-nara-review.pdf.

the overly long retention of electronic copies did raise concerns regarding legal discovery and compliance with requests under the Freedom of Information Act or the Privacy Act. In these circumstances, agencies are required to search for all information, not just information in recordkeeping systems; thus, maintaining large volumes of nonrecord material increases this burden.

Most recently, a NARA study team examined in 2007 the experiences of five federal agencies (including itself) with electronic records management applications, with a particular emphasis on how these organizations used these applications to manage e-mail.[24] The purpose of the study was to gather information on the strategies that organizations are using that may be useful to others. Among the major conclusions from the survey was that implementing an electronic records management application requires considerable effort in planning, testing, and implementation, and that although the functionality of the software product itself is important, other factors are also crucial, such as agency culture and the quality of the records management system in place. With regard to e-mail in particular, the survey concluded that for some agencies, the volume of e-mail messages created and received may be too overwhelming to be managed at the desktop by thousands of employees across many sites using a records management application alone, and that e-mail messages can constitute the most voluminous type of record that is filed into these applications. Finally, further study was recommended of technologies that are being used to manage e-mail and what federal agencies are doing with their record e-mail messages.

NARA is planning to perform such a study in 2008. According to NARA, the study will take a close look at how selected agencies are implementing electronic recordkeeping for their program records, including those e-mail messages that need to be retained and managed as federal records. The study will look at electronic recordkeeping projects that have a records management application in place as well as other solutions that provide recordkeeping functionality. In both cases, NARA plans to explore how e-mail messages in particular are identified and managed as records. According to NARA officials, they have begun planning for the study and identifying agencies to be included; they expect to have the report completed by the end of September 2008.

[24] NARA, *A Survey of Federal Agency Records Management Applications 2007* (Jan. 22, 2008).

Such a study could provide useful information to help NARA develop additional guidance to agencies looking for electronic solutions for records management of e-mail and other electronic records. As the earlier studies suggest, implementing such solutions is not a simple or easy process. Although NARA has referred to the decision to move to electronic recordkeeping as inevitable, it emphasizes that the timing of the decision depends on an agency's specific mission and circumstances.[25]

NARA Has Taken Action to Address Management of Electronic Records, Including E-Mail

For the last several years, NARA's records management program has increasingly reflected the importance of electronic records and recordkeeping. For example, NARA has undertaken a redesign of its records management activities,[26] including (among other things) the following three activities, which are significant for management of electronic records, including e-mail:

- NARA established flexible scheduling (the so-called "big bucket" approach described earlier), under which agencies can schedule records at any level of aggregation that meets their business needs. By simplifying disposition instructions, "big bucket" schedules have advantages for electronic records management; filing e-mail records under a "big bucket" system, for example, is simplified because users can be presented with fewer filing categories.[27]

- NARA developed e-mail regulations that eliminated the previous requirement to file transitory e-mail dealing with routine matters in a formal agency recordkeeping system. According to NARA, this change would allow agencies to focus their resources on managing e-mail that is important for long-term documentation of agency business.[28] The change

[25]NARA, "*Why Federal Agencies Need to Move Towards Electronic Recordkeeping*," www.archives.gov/records-mgmt/policy/prod1afn.html.

[26]The Archives' redesign framework is presented in *NARA's Strategic Directions for Federal Records Management* (July 31, 2003), www.archives.gov/records-mgmt/initiatives/strategic-directions.html (accessed Feb. 7, 2008).

[27]Other advantages are that big bucket schedules simplify managing agency records by synchronizing retentions and dispositions of records in the context of their work processes or business functions rather than by individual records series or electronic systems, and they may reduce the need to resubmit schedules for new and unscheduled records as long as these are included in a previously scheduled business process.

[28]NARA, *NARA's Strategic Directions for Federal Records Management: Status Report* (Sept. 20, 2004) www.archives.gov/records-mgmt/initiatives/strategic-directions-status-sept2004.html.

was reflected in a revision to General Records Schedule 23 that explicitly included very short-term temporary e-mail messages.[29] The final rule became effective on March 23, 2006.

- NARA developed regulations and guidance to make retention schedules media neutral. According to NARA, its objective was to eliminate routine rescheduling work[30] so that agencies and NARA could focus their resources on high records management priorities. Under its revised regulations, in effect as of December 2007, new records schedules would be media neutral unless otherwise specified. At the same time, NARA revised General Records Schedule 20 (which provides disposition authorities for electronic records) to expand agencies' authority to apply previously approved schedules to electronic records and to dispose of hard copy records that have been converted to an electronic format, among other things.[31]

Our Prior Work Has Addressed Electronic Records Management

In July 1999, we reported that NARA and federal agencies were facing the substantial challenge of managing and preserving electronic records in an era of rapidly changing technology.[32] In that report, we stated that in addition to handling the burgeoning volume of electronic records, NARA and the agencies would have to address several hardware and software issues to ensure that electronic records were properly created, maintained, secured, and retrievable in the future. We also noted that NARA did not have governmentwide data on the records management capabilities and programs of all federal agencies. As a result, we recommended that NARA conduct a governmentwide survey of agencies' electronic records management programs and use the information as input to its efforts to reengineer its business processes.

[29]NARA, *GRS Transmittal No. 15* (Sept. 14, 2005) www.archives.gov/records-mgmt/ardor/grs-trs15.html.

[30]For example, when switching from a paper recordkeeping system to an electronic system, it had generally been necessary to reschedule records; under media neutrality, this requirement would be reduced. Instead, NARA would specify when it would be necessary for agencies to reschedule records when switching from a paper recordkeeping system to an electronic system.

[31]NARA, *GRS Transmittal No. 18* (Dec. 14, 2007) www.archives.gov/records-mgmt/ardor/grs-trs18.html.

[32]GAO, *National Archives: Preserving Electronic Records in an Era of Rapidly Changing Technology*, GGD-99-94 (Washington, D.C.: July 19, 1999).

NARA subsequently undertook efforts to assess governmentwide records management practices and study the redesign of its business processes. As mentioned earlier, in 2001 NARA completed an assessment of governmentwide records management practices, as we had recommended. NARA's assessment of the federal recordkeeping environment concluded that although agencies were creating and maintaining records appropriately, most electronic records remained unscheduled, and records of historical value were not being identified and provided to NARA for archiving.

In 2002, we reported that factors contributing to the problems of managing and preserving electronic records included records management guidance that was inadequate in the current technological environment, the low priority often given to records management programs, and the lack of technology tools to manage electronic records.[33] In addition, NARA did not perform systematic inspections of agency records management, so that it did not have comprehensive information on implementation issues and areas where guidance needed strengthening. Although NARA had plans to improve its guidance and address technology issues, these did not address the low priority generally given to records management programs nor the inspection issue.

With regard to inspections, we noted that in 2000, NARA had replaced agency evaluations (inspections) with a new approach—targeted assistance—because it considered that its previous approach to evaluations had been flawed: it reached only a few agencies, it was often perceived negatively, and it resulted in a list of records management problems that agencies then had to resolve on their own. Under targeted assistance, NARA entered into partnerships with federal agencies to provide them with guidance, assistance, or training in any area of records management.[34] Despite the possible benefits of such assistance to the targeted agencies, however, we concluded that it was not a substitute for systematic inspections. Only agencies requesting assistance were evaluated, and the scope and focus of the assistance were determined not by NARA but by the requesting agency. Thus, it did not provide systematic and comprehensive information for assessing progress over time.

[33]GAO, *Information Management: Challenges in Managing and Preserving Electronic Records*, GAO-02-586 (Washington, D.C.: June 17, 2002).

[34]Services offered include expedited review of critical schedules, tailored training, and help in records disposition and transfer.

To address the low priority generally given to records management programs, we recommended that NARA develop a strategy for raising agency senior management awareness of and commitment to records management. To address the inspection issue, we recommended that NARA develop a strategy for conducting systematic inspections of agency records management programs to (1) periodically assess agency progress in improving records management programs and (2) evaluate the efficacy of NARA's governmentwide guidance.

In response to our recommendations, NARA devised a strategy for raising awareness among senior agency management of the importance of good federal records management, as well as a comprehensive approach to improving agency records management that included inspections and identification of risks and priorities. NARA also took steps to improve federal records management programs by updating its guidance to reflect new types of electronic records. In 2003, we testified that the plan for improving agency records management did not include provisions for using inspections to evaluate the efficacy of its governmentwide guidance, and an implementation plan for the approach had not yet been established.[35] NARA later addressed these shortcomings by developing an implementation plan that included using agency inspections to evaluate the efficacy of its guidance, with such inspections to be undertaken based on a risk-based model, government studies, or media reports.[36] Such an approach, if appropriately implemented, had the potential to help avoid the weaknesses in records management programs that led to the scheduling and disposition problems that we and NARA had described in earlier work.

NARA's Oversight Activities Have Been Limited

To fulfill its responsibility under the Federal Records Act for oversight of agency records management programs, NARA planned to conduct activities including inspections, studies, and reporting. However, despite NARA's plans, in recent years its oversight activities have been primarily limited to performing studies. Although it has performed or sponsored six records management studies since 2003, it has not conducted any

[35]GAO, *Electronic Records: Management and Preservation Pose Challenges*, GAO-03-936T (Washington, D.C.: July 8, 2003).

[36]GAO, *Electronic Records Archives: The National Archives and Records Administration's Fiscal Year 2006 Expenditure Plan*, GAO-06-906 (Washington, D.C.: Aug. 18, 2006).

inspections since 2000. In addition, although NARA's reporting to the Congress and OMB has generally described progress in improving records management at individual agencies and provided an overview of some of its major records management activities, it has not consistently provided evaluations of responses by federal agencies to its recommendations, as required, or details on records management problems or recommended practices that were discovered as a result of inspections, studies, or targeted assistance projects. Without a consistent oversight program that provides it with a governmentwide perspective, NARA has limited assurance that agencies are appropriately managing the records in their custody, thus increasing the risk that important records will be lost.

NARA Has Oversight Responsibilities Regarding Federal Records Management

Oversight is a key activity in governance that addresses whether organizations are carrying out their responsibilities and serves to detect other shortcomings. Our reports emphasize the importance of effective oversight of government operations by individual agency management, by agencies having governmentwide oversight responsibilities, and by the Congress. Various functions and activities may be part of oversight, including monitoring, evaluating, and reporting on the performance of organizations and their management and holding them accountable for results.

The Federal Records Act gave NARA responsibility for oversight of agency records management programs by, among other functions, making it responsible for conducting inspections or surveys of agencies' records and records management programs and practices; conducting records management studies; and reporting the results of these activities to the Congress and OMB. In particular, the reports are to include evaluations of responses by agencies to any recommendations resulting from inspections or studies that NARA conducts and, to the extent practicable, estimates of costs to the government if agencies do not implement such recommendations.

According to NARA, it planned to carry out its oversight responsibilities using inspections, studies, and reporting. Specifically, in 2003,[37] NARA stated that it would

[37] NARA, *NARA's Strategic Directions for Federal Records Management* (July 31, 2003).

- perform inspections of agency records and records management programs;
- conduct studies that focus on cross-government issues, analyze and identify best practices, and use the results to develop governmentwide recommendations and guidance; and
- report to the Congress and OMB on problems and recommended practices discovered as part of inspections, studies, and targeted assistance projects.

NARA No Longer Performs Inspections of Agency Records Management Programs

Although inspections were included in NARA's oversight plans in 2003, NARA has not conducted any since 2000.[38] NARA laid out a strategy for performing inspections and studies in 2003 as part of its records management redesign efforts.[39] According to this strategy, NARA anticipated undertaking inspections only under what it termed exceptional circumstances: that is, if (1) agencies have high-level records management problems that put at risk federal records that protect rights, assure accountability, or document the national experience, and (2) agencies refuse targeted assistance from NARA and fail to mitigate or otherwise effectively deal with such risks. In other words, NARA considered inspections its tool of last resort: to be used when the risk to records was deemed high and other tools (such as targeted assistance and training) failed to mitigate the risk to records.

Under this strategy, NARA planned to determine when to undertake inspections based on its risk-based resource allocation model (or when it learned through other means of a clear and egregious records management problem in an agency or line of business). Using this model, developed in 2003, NARA's Resource Allocation Project performed a governmentwide assessment in 2004 of high-priority federal records and records programs. After reviewing program areas and work processes of

[38]One inspection, initiated in 1995, remains officially open. An evaluation report on this inspection, which examined the Central Intelligence Agency's records management program, was completed in March 2000. However, not all recommendations from the evaluation have been closed. According to NARA, the agency has addressed all the policy and guidance recommendations, and the open recommendations mainly concern the transfer of the agency's records to NARA. NARA told us that it is working with the agency to close these recommendations.

[39]NARA, *Strategic Directions: Inspections and Studies of Records Management in Federal Agencies* (October 2003).

the government (as opposed to organizational units),[40] the project identified the business processes, subfunctions, and agency activities that were likely to generate the majority of high-priority records. Based on input and assessments from NARA staff with expertise in the subfunctions and associated agencies, the project then rated the subfunctions according to three criteria for establishing resource priorities:

- the risk to records (based on such factors as whether the subfunctions or associated agencies had experienced major scheduling issues or known problems, such as allegations of unauthorized destruction of records[41]),
- the level of significance of the records to rights and accountability, and
- the likelihood that the subfunction would generate permanent records (and if so, their volume and significance).

According to the final report on the project,[42] this assessment showed that the risks to records were being addressed and managed by the Archives' own records management activities and those of the ageucies. As a result, the Resource Allocation Project did not lead to the identification of records management risks that met the new inspection criteria.[43] Instead, NARA applied its resources to other activities that it considered more effective and less resource-intensive than the inspections it undertook in the past. These include regular contacts between appraisal archivists and agencies, updated guidance information, and training.

However, the Resource Allocation Project was primarily based on NARA's in-house information sources and expertise. Although this information and expertise may be considerable and collecting and assessing it potentially

[40]NARA used as a starting point the Business Reference Model of governmental activity developed by OMB as part of the Federal Enterprise Architecture. The Federal Enterprise Architecture is a comprehensive business-driven blueprint of the entire federal government. It consists of a set of interrelated "reference models" designed to facilitate cross-agency analysis and the identification of duplicative investments, gaps, and opportunities for collaboration within and across agencies.

[41]Under 44 U.S.C. Part 3106, federal agencies are required to notify the Archivist of any alleged unauthorized disposition of records. NARA establishes a case to track each allegation and communicates with the agency until the issue is resolved.

[42]NARA, *Federal Government-wide Resource Allocation Project Core Team Final Project Report* (Sept. 17, 2004).

[43]According to NARA, the results of the Resource Allocation Project have been used for planning where to focus its scheduling efforts and other records management activities.

valuable, it is not a substitute for examinations of agency programs, surveys of practices, agency self-assessments, or other external sources of information. Further, although the final report on the 2004 project included important lessons learned for improving future assessments, NARA did not set up a process for continuing the effort and applying the lessons learned to updating the assessment or validating its results.

Officials had also stated that targeted assistance was a tool that NARA would use in preference to inspections to solve urgent records management problems and that the results of the Resource Allocation Project were also to be used in determining where to use this tool. However, NARA's use of targeted assistance has declined significantly over the past 5 years. (NARA reported that in 2002, 77 projects were opened and 76 completed;[44] in contrast, 4 were opened and none completed in 2007.) Officials ascribed the reduced emphasis on targeted assistance projects to various factors, including competing demands (such as work on the development of its advanced electronic records archive[45] and on helping agencies to schedule electronic records[46]), the difficulty of getting agencies to devote resources to the projects, and the removal of numerical targets for targeted assistance projects, which occurred when NARA revised performance metrics to emphasize results rather than

[44]NARA, *Ready Access to Essential Evidence, 2004 Performance and Accountability Report* (2004).

[45]We have issued several reports on ERA and its development since 2002: GAO, *Information Management: Challenges in Managing and Preserving Electronic Records*, GAO-02-586 (Washington, D.C.: June 17, 2002); *Records Management: National Archives and Records Administration's Acquisition of Major System Faces Risks*, GAO-03-880 (Washington, D.C.: Aug. 22, 2003); *Records Management: Planning for the Electronic Records Archives Has Improved*, GAO-04-927 (Washington, D.C.: September 23, 2004); *Information Management: Acquisition of the Electronic Records Archives Is Progressing*, GAO-05-802 (Washington, D.C.; July15, 2005); *Electronic Records Archives: The National Archives and Records Administration's Fiscal Year 2006 Expenditure Plan*, GAO-06-906 (Washington, D.C.: Aug. 18, 2006); *Information Management: The National Archives and Records Administration's Fiscal Year 2007 Expenditure Plan*, GAO-07-987 (Washington, D.C.: July 27, 2007).

[46]NARA Bulletin 2006-02 set deadlines, as required by the E-Government Act of 2002, for agencies to schedule electronic records. Specifically, by September 30, 2009, agencies must have NARA-approved records schedules for all records in existing information systems, and they must ensure that records management and archival functionality are incorporated into the design, development, and implementation of new electronic systems.

quantity.[47] According to NARA, it also works with agencies to address critical records management issues outside formal targeted assistance arrangements. In addition, it identifies and investigates allegations of unauthorized destruction of federal records.

Thus, neither inspections nor targeted assistance have made significant contributions to NARA's oversight of agency records management. Without a more comprehensive method of evaluating agency records management programs, NARA lacks assurance that agencies are effectively managing records throughout their life cycle.

NARA Has Performed Several Records Management Studies

NARA has performed records management studies in accordance with its 2003 plan. According to the plan, it was to conduct records management studies to focus on cross-government issues, to identify and analyze best practices, and to develop governmentwide recommendations and guidance.[48] In addition, NARA planned to undertake records management studies when it believed an agency or agencies in a specific line of business were using records management practices that could benefit the rest of a specific line of business or the federal government as a whole.[49]

Since developing its 2003 plan, NARA has conducted or sponsored six records management studies (see table 2).[50]

[47]An additional factor, according to officials, was the challenge of developing memorandums of understanding with agencies (on each project's requirements and the resources that the agency and NARA would undertake to apply to it), because NARA generally worked with agency records officers, who often did not have the authority to sign such agreements. According to NARA, in 2006, it eased this requirement so that instead of a signed memorandum of understanding, it would suffice that a project have some form of documentation (such as an e-mail) indicating that both sides agreed to the project goals, requirements, and resources.

[48]NARA, *NARA's Strategic Directions for Federal Records Management* (July 31, 2003).

[49]NARA, *Strategic Directions: Inspections and Studies of Records Management in Federal Agencies* (October 2003).

[50]The table does not include the 2001 SRA study described earlier, which was conducted before NARA developed its 2003 plan. NARA did not perform records management studies in 2002 and 2003.

Table 2: NARA Studies Performed in the Last 5 Years

Title	Date	Comments
Research and Development Records: Maintenance, Use and Disposition in Federal Agencies	September 30, 2004	Report prepared to assist in developing and incorporating guidance on the appraisal of research and development (R&D) records
Records Maintenance and Disposition in Headquarters Air Force Offices	January 2005	Study focused on Air Force Headquarters recordkeeping practices; included recommendations to the agency
Environmental Health and Safety Records: Maintenance, Use, and Disposition in Federal Agencies	November 4, 2005	Report prepared to provide the basis for updating and expanding the existing guidance on the appraisal of environmental health and safety records
Best Practices in Electronic Records Management: A Survey and Report on Federal Government Agencies' Recordkeeping Policy and Practices	December 19, 2005	Results of survey data collected from federal and state agencies and one private sector organization regarding their individual policies and practices for electronic records management (study conducted by the University of Maryland Center for Information Policy)
NARA Review of the Department of Energy R&D Schedule and Its Implementation by DOE Laboratories	August 2006	Examination of Energy laboratories' implementation of R&D records schedule, particularly in regard to project records, and to suggest any needed improvements in the schedule; included recommendations to the agency
A Survey of Federal Agency Records Management Applications 2007	January 22, 2008	Results of a survey of five federal agencies that were implementing records management application (software) products to manage their electronic records, with particular attention on e-mail

Source: GAO analysis of NARA information.

Most of these studies were focused on records management issues with wide application.[51] For example, two were related to helping NARA improve its guidance on particular types of records—health and safety records, and research and development (R&D) records. Another two were limited in scope to components of a single agency, but they addressed issues with potentially broad application and included conclusions

[51]Although two were limited in scope to components of a single agency, they addressed issues with potentially broad application and included conclusions regarding factors that needed to be considered in the appraisal of given types of records.

regarding factors that needed to be considered in the appraisal of given types of records.

NARA Has Not Reported on Its Oversight Activities as Required

Under the Federal Records Act, NARA is responsible for reporting the results of its records management activities to the Congress and OMB, including evaluations of responses by agencies to any recommendations resulting from its inspections or studies and (where practicable) estimates of costs if its recommendations are not implemented. Further, NARA's plan for carrying out its oversight responsibilities states that it will report to the Congress and OMB on problems and recommended practices discovered as part of inspections, studies, and targeted assistance projects.[52] According to NARA, it fulfills its statutory reporting requirement through annual Performance and Accountability Reports,[53] which include sections on "Federal Records Management Evaluations."

However, although NARA has issued reports on its records management studies, the Federal Records Management Evaluations sections of the Performance and Accountability Reports have not included the studies' results or evaluations of responses by agencies to its recommendations. Instead, the reports have generally provided an overview of NARA's major records management activities, as well as describing noteworthy records management progress at individual agencies. For example, the report for fiscal year 2007 provided statistics on the appraisal and scheduling of electronic records systems and listed agencies that had scheduled electronic records or transferred permanent electronic records to NARA during the fiscal year.

Elsewhere in the reports, NARA mentioned four of the six records management studies as part of its reporting on records management goals. However, it included few details on the results of these studies regarding the records management problems or recommended practices that they uncovered. For example, in the fiscal year 2005 Performance and Accountability Report, NARA reported that it had completed a January 2005 study on Air Force Headquarters offices (see table 2), but NARA did not discuss the results, and later reports did not discuss actions taken in

[52]NARA, *NARA's Strategic Directions for Federal Records Management* (July 31, 2003).

[53]Since fiscal year 2004, NARA has prepared annual Performance and Accountability Reports. In fiscal year 2003 and earlier, it produced separate Performance Reports and Annual Reports.

response to its recommendations. Similarly, the fiscal year 2007 Performance and Accountability Report did not describe any actions that the Department of Energy had taken in response to an August 2006 study.[54]

Also, in 2007, NARA stopped reporting on its targeted assistance projects. In prior years, its Performance and Accountability Reports generally provided statistics on targeted assistance projects and described their general goals, although the reports did not generally discuss problems or recommended practices resulting from them. In the fiscal year 2007 report, NARA stated that the strategies described in its Strategic Directions, including targeted assistance, had become part of its standard business practices and would no longer be highlighted individually. However, as mentioned earlier, the number of targeted assistance projects had declined significantly by that time.

The Director and senior officials from NARA's Modern Records Program agreed that the annual reports did not specify the problems and recommended practices discovered as part of inspections, studies, and targeted assistance projects. According to these officials, the annual Performance and Accountability Reports have been focused on positive news, and NARA has struggled with developing an objective way to report negative news about agencies' records management. The officials attributed this difficulty to the agency's conservatism in this regard.

NARA's limited use of oversight tools and incomplete reporting on the specific results of its oversight activities can be attributed to an organizational preference for using persuasion and cooperation when working with agencies. This preferred approach is consistent with NARA's reasons (as we noted in 2003) for replacing agency evaluations (inspections) with targeted assistance: among these reasons was that inspections were perceived negatively by agencies. NARA officials have said that they prefer to use "carrots, rather than sticks." NARA officials added that full-scale inspections were resource intensive and took several years to complete, and that agencies took years to address NARA's recommendations.

Although, as described earlier, NARA regularly works with agencies on scheduling and disposition of records (activities related to the end of the

[54]NARA, *Preserving the Past to Protect the Future: 2007 Performance and Accountability Report (2007).*

records life cycle), officials agreed that these activities provide limited insight into records management at earlier stages—that is, creation, maintenance, and use. The officials also agreed that their work with agencies on scheduling records does not fulfill the Archivist's responsibility under the Federal Records Act to conduct inspections or surveys of agency records and records management programs and practices. Further, by giving the Archivist the responsibility to report to the Congress and OMB on records management issues, the Federal Records Act provides NARA with a tool for holding agencies accountable, a key aspect of oversight. However, NARA has been reluctant to use this tool, limiting its ability to determine whether federal agencies are carrying out their records management responsibilities. Without more specific and comprehensive information about how agencies are managing their records and without the means to hold agencies accountable for shortcomings, NARA's ability to identify and address common records management problems is impaired. As a result, there is reduced assurance that records are adequately managed and that important records are not being lost.

Agencies Reviewed Generally Used Paper Processes for E-Mail Records Management, but Three Are Moving Toward Electronic Recordkeeping

The four agencies reviewed—the Department of Homeland Security (DHS); the Environmental Protection Agency (EPA); the Federal Trade Commission (FTC); and the Department of Housing and Urban Development (HUD)—generally preserved e-mail records through paper-based processes, although one agency—EPA—is in the process of deploying an electronic content management system that is to be used for managing e-mail messages that are agency records;[55] two others have long-term plans to develop electronic recordkeeping. Three of the four agencies also used electronic systems to manage documents, correspondence, and so on,[56] but these systems generally did not have recordkeeping features. Each of the business units that we reviewed (one at each agency) maintained "case" files to fulfill its mission that were used for recordkeeping. The practice at the units was to include e-mail printouts in

[55]At the time of our review, use of the electronic system was voluntary and not yet widespread.

[56]Various types of nonrecordkeeping electronic systems offer computerized management of electronic and paper-based documents. For example, electronic document management systems may be used to track and store electronic documents and/or images of paper documents. Such systems may include a system to convert paper documents to electronic form, a mechanism to capture documents from authoring tools, a database to organize storage, and a search mechanism to locate the documents.

the case files if they contained information necessary to document the case—that is, record material. These printouts included transmission data and distribution lists, as required.

DHS: DHS primarily uses "print and file" recordkeeping for all records. None of the department's e-mail systems is a recordkeeping system; accordingly, they may be used to store only transitory e-mail records. Officials from the Office of the DHS Chief Information Officer (CIO) told us that DHS e-mail systems house transitory e-mails and retain them for at least 90 days. In addition, according to the CIO office, although employees can currently access Web-based and Internet-accessible private e-mail systems, the department is taking steps to restrict or remove this access.

Although its current recordkeeping is generally paper-based, DHS has begun planning for an enterprisewide Electronic Records Management System. According to the business case submitted by DHS to OMB to justify the proposed investment, the proposed system is to allow electronic storage and retrieval of records by authorized staff throughout DHS and permit the elimination of paper file copies. According to the department's senior records officer, DHS's current records schedules are now media neutral. DHS's records management handbook also provides instructions for both electronic and paper e-mail recordkeeping.

In addition, DHS CIO officials told us that the department has implemented several electronic knowledge and document management systems, at least two of which have recordkeeping features but are not used for e-mail recordkeeping.

E-mail records were maintained in paper at the DHS business unit reviewed, the Washington Regional Office of Detention and Removal Operations under Immigration and Customs Enforcement (ICE). The primary responsibility of the Office of Detention and Removal Operations is to identify, apprehend, and remove illegal aliens from the United States. To fulfill its mission, the business unit maintained paper-based case files, and these files were used for recordkeeping.

To store deportation case information, the unit uses the so-called "alien files" or "A-files." These files are created by DHS's Citizenship and Immigration Services for certain noncitizens, such as immigrants, to serve as the one central file for all of the noncitizen's immigration-related

applications and related documents that pertain to that person's activities.[57] The A-files are managed by Citizenship and Immigration Services and shared among DHS components as necessary. Because A-files are paper-based, they require physical transfer from one location to another. To track these files, DHS uses the National File Tracking System, an automated file-tracking system developed to enable all DHS staff at numerous DHS locations around the country to locate, request, receive, and transfer A-files. Each A-file has a National File Tracking System number.[58]

According to business unit officials, e-mails would not usually be found in the A-files because the primary use of e-mail was to share information within the business unit, and so it would rarely rise to the level of a record. The A-files mainly contain other kinds of information, including forms from agency information systems, investigation results, charging documents, conviction documents, photos, fingerprints, and memos. A deportation officer provided 10 active open case files for inspection (each officer is usually responsible for 40 to 60 active open immigration cases). The 10 case files contained a total of 18 e-mail records, which included transmittal data and distribution lists.

EPA: EPA's current recordkeeping is largely print and file, but the agency is undergoing a transition to electronic recordkeeping, beginning with e-mail records. According to EPA officials, the commitment to establish its Enterprise Content Management System (ECMS), which has recordkeeping features, was a result of an agency decision to develop a long-term solution to manage hurricane records electronically in the wake of Hurricanes Katrina and Rita. According to a memorandum sent to all EPA employees, the goal was to ensure that these records be placed in a recordkeeping system that met both EPA and NARA requirements, while allowing easy access to the records when needed. At the same time, the

[57]Over 55 million A-files are managed by Citizenship and Immigration Services, which relies on an alien's historical A-file to determine eligibility for immigration benefits. Other DHS components, including Immigration and Customs Enforcement, use A-files during criminal investigations and to determine, for example, whether an alien should be removed from or allowed to stay in the United States. Information and documents from A-files may also be shared with other law enforcement agencies, such as the Federal Bureau of Investigation, to investigate individuals suspected of being involved in terrorist activities.

[58]We have previously reported on difficulties finding A-files: GAO, *Immigration Benefits Additional Efforts Needed to Help Ensure Alien Files Are Located when Needed*, GAO-07-85 (Washington, D.C.: Oct. 27, 2006).

agency ordered that the automatic delete function in the agency's e-mail system be deactivated so that no hurricane records could be deleted accidentally.

According to agency officials, the e-mail capability of ECMS was available in fiscal year 2007, and the agency expects that by the end of fiscal year 2009, 50 percent of EPA staff and contractors will be using the system. The ECMS repository is an electronic recordkeeping system that uses commercial software that complies with a standard endorsed by NARA. According to officials, as part of its preparations for the transition, EPA recently updated its record schedules so that its treatment of records would be media neutral; this is to facilitate uploading records into ECMS.[50] It has also developed materials, such as a brochure and a user guide, to support its transition.

The agency's e-mail systems are not currently used as recordkeeping systems and will not be under ECMS. Accordingly, they can be used to store only transitory e-mail records. Officials also told us that employees could access Web-based e-mail systems for limited personal use, but that they were not permitted to use these for official business.

E-mail records were maintained in paper at the EPA business unit reviewed, the Assessment and Remediation Division of the Office of Superfund Remediation and Technology Innovation (part of EPA's Office of Solid Waste and Emergency Response). Among other things, this division processes claims related to Superfund cleanup settlements.

Officials from the Office of Superfund Remediation and Technology Innovation told us that recordkeeping for this office was print and file, but that employees were also directed to include all records (including e-mail records) into the office's electronic Superfund Document Management System. This was not a recordkeeping system, but the plan was to integrate it with ECMS for long-term stewardship of Superfund files. According to these officials, they expect to be able to capture Superfund e-mail records in ECMS by fall 2008.

[50]ECMS allows the user to access the recordkeeping system to save a record and associate it with the appropriate records schedule, as well as to search through records within the user's organization.

Officials of the Assessment and Remediation Division stated that few e-mail messages would be considered records, because most official business regarding claims was conducted through correspondence on letterhead with an original signature. Although copies of these might be sent as e-mail attachments, these officials said, they would not be the official recordkeeping copy. However, division officials stated that e-mail records were more likely to be included in case files regarding "mixed funding" claims related to Superfund cleanup settlements, because these involved communication between regional offices and parties involved in the claims. (Mixed funding refers to the government assuming some proportion of cleanup expenses, with other parties assuming the rest.)[9] According to officials, mixed funding documentation could include e-mail records documenting information to justify claims and facilitate payment. Officials provided a mixed funding case file for inspection, in which they had identified 10 e-mail records. All these records included transmission data and distribution lists, as required.

FTC: FTC recordkeeping for e-mail and other records is print and file. The commission's e-mail system is not a recordkeeping system, and the commission has not implemented the option allowed by NARA's guidance to use the e-mail system for storing transitory e-mail records. The agency has no current plans to institute electronic recordkeeping. According to FTC officials, the commission's processes are largely paper based. The commission's records management guidance states that few e-mails are expected to rise to the level of a record. For example, agency officials explained that official decisions of the commission are generally reached jointly by the commissioners and recorded in documents such as memorandums, letters, and meeting minutes. According to officials, FTC uses a case management system to track work products (such as depositions, filings, and briefs), but this is not a document management or recordkeeping system. According to officials, about 80 percent of all FTC files are case files.

The records manager said that the records schedules for FTC programs currently include instructions for e-mail disposition, but that the office is in the process of conducting a records inventory and reassessing records scheduling, with the next step being to do "big bucket" media-neutral scheduling. According to this official, this approach will provide flexibility

[9]Generally, the term refers to "pre-authorized" mixed funding, in which the settling parties agree to do the cleanup and EPA agrees to finance a portion of the costs.

in the event that FTC adopts electronic business processes in the future. According to FTC officials, the commission is currently assessing its needs for electronic document management tools, including an electronic recordkeeping system.

The CIO told us that agency staff cannot directly access external Web-based e-mail through the agency's Web browsers, and agency employees have been instructed not to use such systems for official FTC business. However, this official said that agency employees may use the commission's remote application delivery environment[61] to obtain limited access to external Web-based e-mail as a convenience.

The business unit reviewed at FTC was the Division of Marketing Practices within the Consumer Protection Bureau, which responds to problems of consumer fraud in the marketplace, such as deceptive marketing schemes that use false and misleading information. The division enforces federal consumer protection laws by, among other things, developing rules to protect consumers and filing actions in federal district court for immediate and permanent orders to stop scams and get compensation for scam victims.

The business unit follows the FTC's print and file approach to recordkeeping, saving e-mails and other communications if they are related to a case. At this unit, cases are investigations of Internet fraud and marketing practices, each of which is assigned to a lead attorney. Officials provided one closed case file for inspection, consisting of four boxes of records. The case file provided contained about 65 e-mails, all of which included transmittal data and distribution lists.

HUD: HUD currently uses a print and file approach to e-mail recordkeeping. The department's e-mail system is not a recordkeeping system, and according to officials, they have not implemented the option allowed by NARA's guidance to use the e-mail system for storing transitory e-mail records. However, as part of an overall modernization plan, HUD is undertaking an enterprise office system modernization project for its records and document management. According to the business case submitted by HUD to OMB to justify the modernization investment, the HUD Electronic Record System (HERS) will replace eight legacy systems and support the full life cycle of document management activities and

[61]FTC uses the Citrix remote application delivery environment.

correspondence management, including the creation and processing of records, record disposition, and retrieval of historical archived information. HUD plans to implement HERS by the fourth quarter of 2010. In the first phase of the plan, HUD is implementing modernized systems for tracking correspondence and Freedom of Information Act requests. Although the correspondence system is used for tracking e-mail correspondence, it is not a recordkeeping system for e-mail.

The business unit reviewed at HUD was the Office of Healthy Homes and Lead Hazard Control. Among other things, this office manages grants related to lead hazard and conducts investigations to determine compliance with HUD's Lead Disclosure Rule.[62] HUD records management officials stated that each program area has a file plan, and that the Office of Healthy Homes and Lead Hazard Control has its own records schedule.

According to officials from the office, most of their business is transacted via certified mail, so that relatively few e-mail messages would be record material. Two units provided active open files for inspection: nine grant files from six Government Technical Representatives in the Program Management and Assurance Division, and four lead hazard investigation case files from one inspector in the Compliance Assistance and Enforcement Division. The nine grant files included 120 e-mail messages, and the four investigation files included 5 e-mail messages, all in the same case file. All 125 of the e-mail records included transmittal data and distribution lists, as required.

E-mail Record Policies at Three of the Four Agencies Generally Addressed NARA Guidance

At three of the four agencies reviewed, the policies in place generally addressed the requirements for e-mail records management that we identified, but each was missing one of the nine requirements. At the fourth agency (HUD), the policies in place did not cover three of eight applicable requirements.[63]

According to NARA's regulations on records management, agencies are required to establish policies and procedures that provide for appropriate retention and disposition of electronic records. In addition to including

[62]24 C.F.R. 35, subpart A. This rule requires homeowners to disclose all known lead paint and lead paint hazards when selling or leasing a residential property built before 1978.

[63]One of the requirements was not applicable because of the configuration of HUD's network.

general provisions on electronic records, agency procedures must address specific requirements for e-mail records.[64] The regulations provide minimum requirements, which allow agencies flexibility to establish processes for managing e-mail records that are appropriate to their business, size, and resources.

According to the regulations, certain aspects of e-mail must be addressed in the instructions that agencies provide staff on identifying and preserving electronic mail messages, such as the need to preserve transmission data. Agencies are also required to address the use of external e-mail systems that are not controlled by the agency (such as private e-mail accounts on commercial systems such as Gmail, Hotmail, .Mac, etc.). Where agency staff have access to external systems, agencies must ensure that federal records sent or received on such systems are preserved in the appropriate recordkeeping system and that reasonable steps are taken to capture available transmission and receipt data needed by the agency for recordkeeping purposes. One of the four agencies (HUD) had its systems configured so that staff could not access external e-mail applications; thus, this requirement was not applicable for HUD.

In summary, we extracted nine key requirements from the regulation. Agency records management policy and guidance with regard to e-mail must address these requirements, which are shown in table 3.

Table 3: E-Mail Policy and Guidance Required by Regulation

Requirements
Agency policies and guidance must—
inform staff that e-mails are potential records
ensure that staff is capable of identifying federal records
require the preservation of e-mail transmission data and distribution lists
state that draft documents circulated on e-mail systems are potential federal records
require that e-mail records are stored in an appropriate recordkeeping system and instruct staff on how these records are maintained in that recordkeeping system regardless of format
provide instructions on how to copy e-mails identified as federal records from an e-mail system not identified as a recordkeeping system to a recordkeeping system
state that e-mail systems must not be used to store recordkeeping copies of e-mail messages identified as federal records[a]

[64]36 C.F.R. § 1234.24.

Requirements
prohibit the use of e-mail system backup tapes for recordkeeping purposes
instruct staff on the management and preservation of e-mail records sent or received from nongovernmental e-mail systems

Source: GAO analysis of NARA Regulations.

[a]Unless the e-mail system has the features of a recordkeeping system described in table 1. An exception to the prohibition against storage in the e-mail system may be made for transitory records with NARA-approved short term retention periods of 180 days or less.

The policies and guidance at three of the four agencies (DHS, FTC, and EPA) each omitted one applicable requirement.

- At DHS, the policies and guidance did not state that draft documents circulated on e-mail systems are potential federal records. Department officials told us that they recognized that their policies did not specifically address the need to assess the records status of draft documents, and said they planned to address the omission during an ongoing effort to revise the policies.

- At EPA and FTC, the e-mail management policy did not instruct staff on the management and preservation of e-mail messages sent or received from nongovernmental e-mail systems. According to officials at both agencies, such instructions were not included because agency employees were instructed not to use such accounts for agency business. However, whenever access to such external systems is available at an agency, the agency should provide these instructions.[65]

If agency records management policies and guidance are not complete, agency e-mail records may be at increased risk of loss. If agencies do not state that draft documents circulated on e-mail systems are potential records, agency officials may not preserve such record materials. If agencies do not instruct staff on the management and preservation of e-mail messages sent or received from nongovernmental e-mail systems, officials may create or receive e-mail records in external systems that may not be preserved in recordkeeping systems.

In the course of our review at EPA, officials told us that this situation may have arisen: they had discovered that certain e-mail messages for a

[65]In comments on a draft of this report, an FTC official indicated that on May 28, 2008, the commission's Records and Filing Office sent a notice to FTC staff reminding them of the existing policy on limited use of outside e-mail accounts and instructing them on how to handle e-mail records received through such accounts.

previous Administrator, possibly including records, had not been saved. According to these officials, they had discovered an e-mail message from a former Acting Administrator instructing a private consultant not to use the Administrator's EPA e-mail account to discuss a sensitive government issue (World Trade Center issues) but to use a personal e-mail account. EPA officials reported this incident to NARA on April 11, 2008, in a letter that also described the agency's response to the incident and planned safeguards to avoid such incidents in the future; these safeguards included the release of a policy statement prohibiting the use of non-EPA messaging systems for the conduct of agency business and a review of e-mail account auto-delete settings. NARA replied on April 30 that the safeguards EPA planned appeared appropriate.

Finally, HUD's policies and guidance did not include, or did not implement, three of eight applicable e-mail records management requirements. For one requirement, HUD's policy was inconsistent with NARA's regulations, and it was silent on two of the requirements.

HUD did not fully implement the requirement to ensure that staff are capable of identifying federal records because its e-mail policy states that only the sender is responsible for reviewing the record status of an e-mail. However, NARA's regulation defines e-mail messages as material either created or received on electronic mail systems.[66] HUD officials acknowledged that the department's policy omits the recipient's responsibility for determining the record status of e-mail messages and stated that the e-mail policy fell short of fully implementing NARA regulations in this regard because the department's practice is not to use e-mail for business matters in which official records would need to be created. However, this practice does not remove the requirement for agency employees to assess e-mail received for its record status, because the agency cannot know that employees will not receive e-mail with record status; the determination of record status depends on the content of the information, not its medium.

In addition, two other requirements were missing from HUD's policy: it did not state, as required, that recordkeeping copies of e-mail should not be

[66]HUD's Electronic Mail Policy also states that "Records created or received on electronic mail systems must be managed in accordance with the provision of 36 C.F.R. 1220, 1222 and 1228." Thus, HUD's guidance is contradictory on this point. (The statement appears in the policy under Electronic Mail Database Management, Record Retention Responsibilities.)

stored in e-mail systems or that backup tapes should not be used for recordkeeping purposes. HUD officials stated that they considered that these requirements were met by a reference in their policy to the NARA regulations in which these requirements appear. However, this reference is too general to make clear to staff that e-mail systems and backup tapes are not to be used for recordkeeping.

Table 4 summarizes the results for the four agencies.

Table 4: Agencies' Conformance to Required Policy and Guidance on Managing E-Mail Records

	Agency			
Requirement	**DHS**	**EPA**	**FTC**	**HUD**
Inform staff that e-mails are potential records	✓	✓	✓	✓
Ensure that staff is capable of identifying federal records	✓	✓	✓	×
Preserve e-mail transmission data and distribution lists	✓	✓	✓	✓
State that draft documents circulated on e-mail systems are potential federal records	×	✓	✓	✓
Require that e-mail records are stored in an appropriate recordkeeping system and instruct staff on how these records are maintained in that recordkeeping system regardless of format	✓	✓	✓	✓
Provide instructions on how to copy e-mails identified as federal records from e-mail system not identified as recordkeeping system to a recordkeeping system	✓	✓	✓	✓
State that e-mail systems must not be used to store recordkeeping copies of e-mail messages identified as federal records[a]	✓	✓	✓	×
State that e-mail system backup tapes should not be used for recordkeeping purposes	✓	✓	✓	×
Instruct staff on the management and preservation of e-mail messages sent or received from nongovernmental e-mail systems	✓	×	×	NA[b]

Source: GAO analysis.

Key:

✓ = policy covered requirement

× = policy omitted or was inconsistent with requirement

[a]Unless the system has the features described in table 1. An exception to the prohibition against storage in the e-mail system may be made for transitory records with NARA-approved short term retention periods of 180 days or less.

[b]One requirement was not applicable because of the configuration of the agency's network.

If requirements for e-mail management are not included in agency records management policies and guidance, agency e-mail records may be at increased risk of loss. The loss of records that are important for documenting government functions, activities, decisions, and other important transactions could potentially impair agencies' ability to carry out their missions.

E-Mail Records Management Practices of Senior Officials Did Not Fully Comply with Key Requirements

E-mail messages that qualified as records were not being appropriately identified and preserved for 8 of the 15 senior officials we reviewed. Senior officials at three agencies did not consistently conform to key requirements in NARA's regulations for e-mail records; only at FTC did the four senior officials fully follow these requirements. The other three agencies showed varying compliance: three officials at DHS, two officials at EPA, and three officials at HUD were not following required e-mail recordkeeping practices. Factors contributing to the inconsistent e-mail recordkeeping practices include inadequate training and oversight. Other factors included the difficulty of managing large volumes of e-mail in paper-based recordkeeping systems and the stated practice at one agency that e-mail would not be used for record material.

As described, the four agencies primarily used "print and file" recordkeeping systems, which require agency staff to print out e-mail messages for filing as the official recordkeeping copies in designated filing systems. Each agency's policy also required the preservation of e-mail transmission data, distribution lists, and acknowledgments.

DHS. At DHS, our review covered three senior officials because, according to DHS officials, the Secretary of Homeland Security did not use e-mail: these officials told us that the Secretary did not have a DHS e-mail account, and that he did not conduct any official communications using external nongovernmental e-mail systems.

For the remaining three officials, the e-mail management practices did not fully comply with the requirements. None of the e-mails of the senior officials were reviewed for their status as a record or filed in an appropriate recordkeeping system. Instead, the officials were using their e-mail accounts to store all e-mails.[67] Two of the three officials personally

[67]The inboxes of the three officials contained 583, 8,097, and 30,745 e-mail messages, respectively, and their sent folders contained 6,565, 5,236, and 4,498 e-mails.

managed their e-mail accounts; the third shared this responsibility with a member of his staff. The staff of one of the officials who managed his own e-mail had access to the official's e-mail account, but the staff reviewed or accessed these only if instructed to do so by the official. The department said that the third official's office administrator had access to calendar functions only.

According to one of these senior officials, storing e-mails on the computer is convenient for searching and retrieving. It was this official's opinion that this approach was safe from a legal standpoint because no e-mails were deleted. Nonetheless, using an e-mail system to retain all e-mails indefinitely increases the difficulty of performing searches based on categories of records; in contrast, such searches are facilitated by a true recordkeeping system. Further, if e-mail records are not stored in an appropriate recordkeeping system (paper or electronic), there is reduced assurance that they are useful and accessible to the agency as needed, or that they will be retained for the appropriate period.

EPA: At EPA, the e-mail records of two of the four senior officials were being managed in accordance with key requirements reviewed. For these two senior officials, one of whom was the agency head, e-mail records were stored in paper-based recordkeeping systems.

The EPA Administrator had two EPA e-mail accounts, one intended for messages from the public and one for communicating with select senior EPA officials (not intended for use by the public). In the paper-based recordkeeping system, of 25 e-mail records inspected, all included transmission data and distribution lists, as required. For the nonpublic account, staff provided eight e-mail records for inspection, all of which also included transmission data and distribution lists. According to EPA officials, the nonpublic account generated few records because the Administrator receives most of his information from other sources, including face-to-face briefings and meetings.

For the second senior official, administrative staff told us that the official reviewed e-mail personally and forwarded records to the staff for printing and filing in a paper-based recordkeeping system that followed the agency's records schedules. We selected 20 e-mails from the official's files for examination. These files were associated with four EPA records schedules. All of the e-mails included transmission data and distribution lists as required.

The e-mail records of two other senior officials were not being managed in compliance with requirements, because e-mail records were not being stored in appropriate recordkeeping systems, but rather in the e-mail system:

- One of these officials was in the process of migrating e-mail records from the e-mail system to ECMS. This official had been storing e-mail records in e-mail system folders since January 2006, in anticipation of the rollout of the ECMS, and had not been using a paper-based recordkeeping system in the interim. The e-mail system's folders were organized according to the agency's records schedules to facilitate the transfer, which was ongoing. Because this senior official did not store e-mail records in a paper-based recordkeeping system during this transition, the official's e-mail account was being used as a recordkeeping system, which is contrary to regulation. However, when the transition to the electronic recordkeeping system is complete, the new system should provide the opportunity for this official's recordkeeping practices to be brought into compliance with requirements.

- The second official was also saving all e-mail in the e-mail system. EPA officials stated that most of the senior official's e-mail was sent to an administrative assistant, who was responsible for identifying and maintaining the records received and filing them accordingly. However, the administrative assistant for this official stated that although she had been briefed on maintaining and preserving the senior official's calendar in a recordkeeping system, she had not received guidance or training in how to preserve or categorize the official's e-mail for recordkeeping purposes. In addition, the assistant stated that all e-mails remained stored in the e-mail system where they could be retrieved if necessary.

FTC: The four senior officials at FTC were managing e-mail in compliance with key requirements reviewed. These officials were the Chairman[68] and three Commissioners.[69] According to an FTC official, the Commissioners do not discuss substantive issues in e-mails to one another because of the possibility that such group e-mails could be construed as meetings subject to the Sunshine Act,[70] which must be open to the public. FTC staff told us

[68]The Chairman whose records were reviewed resigned effective March 28, 2008. A new Chairman was designated effective March 31, 2008. The new Chairman is one of the three Commissioners covered in this assessment.

[69]At the time there were five Commissioners in all, including the Chairman. Currently, there are four.

[70]5 U.S.C. § 552b.

that the then-Chairman and two Commissioners delegated part or all of the responsibility for e-mail management; the remaining Commissioner personally managed e-mails. E-mails with record status were to be printed and filed in the commission's paper-based recordkeeping systems. The FTC recordkeeping systems contained e-mail records of the four officials; of the 155 e-mail records inspected, all included the required distribution lists and transmission data.

HUD: One of the four senior officials at HUD was managing e-mail in compliance with key requirements, but for the other three officials, e-mail records were not stored in appropriate recordkeeping systems.

The e-mail records for the agency head were being managed in accordance with key requirements. According to HUD officials, management of e-mails for the agency head was delegated to staff: that is, the agency head's e-mails were forwarded by his administrative assistant to the Office of the Executive Secretariat, where they were reviewed for record status and preserved as necessary in paper files. Staff from the Office of the Executive Secretariat flagged 10 e-mail records using the department's correspondence tracking system, which were then retrieved from the paper-based recordkeeping system for inspection; all of these files included the required distribution lists and transmission data.

The practices of the three other senior officials varied, except that for all three, they or their staff stated that the officials retained e-mail messages in the e-mail system.[71] One senior official told us that he read his own e-mail and forwarded messages to staff to determine record status. Another official's staff stated that the staff was responsible for managing e-mail, but that the official would determine what should be printed and filed. The third official's staff stated that the official did not review e-mails for record status but forwarded all program-related e-mails to staff, who would decide which e-mails should be included in the program files as records. Neither the three senior officials nor several of their staff had received records management training.

HUD provided copies of e-mail messages from one senior official for review, but there was no evidence that the messages were stored in an

[71]According to CIO officials, e-mail more than 60 days old is automatically archived, with archives maintained for 3 years and sometimes longer; employees are not allowed to delete anything from the archive.

appropriate recordkeeping system, and HUD officials stated that the provided e-mails were not records. They offered to provide similar nonrecord messages for the two other officials, but we declined to review them because the messages would not have addressed the question of whether the officials were storing e-mail records in appropriate recordkeeping systems. Thus, for these three officials the department did not provide examples of printed e-mail records that had been stored in appropriate recordkeeping files.

According to department officials, this situation is explained by HUD's practice of not using e-mail for business matters that would produce records. According to department officials, official business is conducted through paper processes, some electronic processes (such as Web-based systems), but rarely through e-mail.

Nonetheless, although e-mail may rarely rise to the level of a record under paper-based processes, it does not follow that no e-mail records are ever created or received, as shown by the e-mail records maintained by the department's Executive Secretariat and the Office of Healthy Homes and Lead Hazard Control. The weakness in HUD's policy regarding responsibility for determining which e-mails are records, combined with the lack of training in e-mail records management, reduces the department's assurance that those e-mail messages that are records are being appropriately identified.

Factors contributing to the inconsistent practices at the three agencies include inadequate training and oversight, as well as the difficulties of managing large volumes of e-mail with the tools and resources available, which in most cases do not include electronic recordkeeping systems.

- The regulations require agencies to develop adequate training to ensure that staff implement agency policies. All four agencies have issued guidance and developed training materials, and all state that they performed records management training. For example, according to DHS officials, all three senior officials and staff had received records management training as new employees. However, DHS and HUD had no documentation to indicate that employees had received such training,[72] and our review of practices found instances in which staff did not

[72]EPA did track records management training, which agency officials stated was mandatory. However, not all employees had been trained.

understand their recordkeeping responsibilities for e-mail and stated that they had not been informed of them or received training. For example, three senior HUD officials had not received training on records management. Staff explained that formal briefings had last taken place at that time.

- Agencies must also periodically evaluate their records management programs, including periodic monitoring of staff determinations of the record status of materials. However, the three agencies have not fully developed and implemented oversight mechanisms, and do not determine the extent to which senior officials or other staff are following applicable requirements for e-mail records.[73] According to DHS, it has initiated oversight and review activities, but these are not yet at the pilot stage because of other demands on records management staff, such as completion of records scheduling. EPA has developed an oversight plan and has pilot-tested a records management survey tool, but it has not yet begun agencywide reviews. It plans to fully deploy this tool when ECMS is fully implemented. HUD had not initiated oversight and review activities, according to officials, because of its practice of not using e-mail for matters that would necessitate the creation of official records. These officials stated that when the department's modernized system for records and document management is in place, the department's e-mail policies will be updated and appropriate oversight and review activities put in place.

Unless agencies train staff adequately in records management and perform periodic evaluations or establish other controls to ensure that staff receive training and are carrying out their responsibilities, agencies have little assurance that e-mail records are appropriately identified, stored, and preserved. Further, keeping large numbers of record and nonrecord messages in e-mail systems potentially increases the time and effort needed to search for information in response to a business need or an outside inquiry, such as a Freedom of Information Act request.

The volume of e-mail is also described as contributing to e-mail records management shortcomings. Agency officials and staff referred to the

[73]FTC officials state that the commission's records management program is currently conducting an agencywide records inventory that includes assessing the adequacy of documentation of official actions (including e-mail records) through a review of file samples. According to these officials, they expect to implement more comprehensive oversight and review as this and other activities are completed, which would include questionnaires, interviews, and selected file reviews.

difficulty of managing large volumes of e-mail, suggesting that limited resources contributed to their inability to fully comply with records management and preservation policies. To help ensure that e-mail records are managed appropriately, it is helpful to incorporate recordkeeping into the process by which agency staff create and respond to mission-related e-mail. Because this process is electronic, the most straightforward approach is to perform e-mail recordkeeping electronically. All four agencies, however, still rely either entirely or primarily on paper for their recordkeeping systems, even for "born digital" records like e-mail.

Weaknesses in the processes in place at three of the four agencies reviewed raise questions about the appropriateness of paper recordkeeping processes for their e-mail records. Simply devoting more resources to paper records management may be neither efficient nor cost-effective, and the agencies have recognized that this is not a tenable long-term solution. EPA is beginning a transition to electronic recordkeeping, and HUD and DHS have plans focused on future enterprisewide transitions.

Managing electronic documents, including e-mail, in electronic recordkeeping systems would potentially provide the efficiencies of automation and avoid the expenditure of resources on duplicative manual processes and storage. It is important to recognize, however, that moving to electronic recordkeeping has proved not to be a simple or easy process and that projects at large agencies have presented the most significant challenges. For projects of all sizes, agencies must balance the potential benefits of electronic recordkeeping against the costs of redesigning business processes and investing in technology. NARA has called the decision to move to electronic recordkeeping inevitable.[74] Nonetheless, like other information technology investments, such a move requires careful planning in the context of the specific agency's circumstances, in addition to well-managed implementation.

Conclusions

NARA's limited performance of its oversight responsibilities leaves it with little assurance that agencies are effectively managing records, including e-mail records, throughout their life cycle. NARA has an organizational preference for partnering with and supporting agencies' records

[74]NARA, "Why Federal Agencies Need to Move Towards Electronic Recordkeeping," www.archives.gov/records-mgmt/policy/prod1afn.html.

management activities, which is appropriate for many of its guidance and assistance responsibilities. However, this preference has led NARA to avoid performing oversight activities that it judged to be perceived negatively—the full-scale inspections/evaluations that it performed in previous years. Although it has performed studies that provide it with insights into records management issues and it has taken action in response to the findings, it has not developed means to evaluate the state of federal records management programs and practices. As a result, NARA's oversight of federal records management programs, including management of e-mail, has been limited. Further, NARA's limited reporting on problems and solutions identified at individual agencies reduces its own ability to hold agencies accountable for addressing identified problems, as well as reducing the ability of agencies to learn from the experience of others.

At the four agencies reviewed, e-mail records management policies were generally compliant with NARA regulations, with some exceptions. If policies do not fully conform to regulatory requirements, it increases the likelihood that those requirements will not be met in practice.

Senior officials at three of the four agencies stored e-mail records in e-mail systems, rather than in recordkeeping systems, which is not in accordance with NARA's regulations. Factors contributing to this noncompliance generally included insufficient training and oversight regarding recordkeeping practices, as well as the onerousness of handling large volumes of e-mail. Providing adequate training and oversight is a prerequisite for improvement, but real improvements in e-mail recordkeeping may require replacing the paper-based recordkeeping processes currently in place. Properly implemented, the transition to electronic recordkeeping of e-mail has the potential not only to reduce the burden of e-mail management but also to provide positive benefits in improving the usefulness and accessibility of records.

Recommendations for Executive Action

To better ensure that federal records, including those that originated as e-mail messages, are appropriately identified, retained, and archived, we recommend that the Archivist of the United States

- develop and implement an approach to oversight of agency records management programs that provides adequate assurance that agencies are following NARA guidance, including

- developing various types of inspections, surveys, and other means to evaluate the state of agency records and records management programs;
- developing criteria for using these means of assessment that ensure that they are regularly performed; and
- regularly report to the Congress and OMB on the findings, recommendations, and agency responses to its oversight activities, as required by law.

In addition, we recommend that the Administrator of the Environmental Protection Agency

- revise the agency's policies to ensure that they appropriately reflect NARA's requirement on instructing staff on the management and preservation of e-mail messages sent or received from nongovernmental e-mail systems and
- develop and apply oversight practices, such as reviews and monitoring of records management training and practices, that are adequate to ensure that policies are effective and that staff are adequately trained and are implementing policies appropriately.

We further recommend that the Chairman of the Federal Trade Commission revise the commission's policies to ensure that they appropriately reflect NARA's requirement to instruct staff on the management and preservation of e-mail messages sent or received from nongovernmental e-mail systems.

We furtber recommend that the Secretary of Homeland Security

- revise the department's policies to ensure that they appropriately reflect NARA's requirement to state that draft documents circulated on e-mail systems are potential federal records and
- develop and apply oversight practices, such as reviews and monitoring of records management training and practices, that are adequate to ensure that policies are effective and that staff are adequately trained and are implementing policies appropriately.

Finally, we recommend that the Secretary of Housing and Urban Development

- revise the department's policies to ensure that they appropriately reflect NARA's requirements to ensure that staff is capable of identifying federal records and to state that e-mail systems must not be used to store recordkeeping copies of e-mail records (other than those

exceptions provided in the regulation) and that e-mail system backup tapes should not be used for recordkeeping purposes, and

- develop and apply oversight practices, such as reviews and monitoring of records management training and practices, that are adequate to ensure that policies are effective and that staff are adequately trained and are implementing policies appropriately.

Agency Comments and Our Evaluation

We provided a draft of this report to NARA, DHS, EPA, FTC, and HUD for review and comment. Three agencies provided written comments (which are reproduced in apps. II to IV), and two provided comments via e-mail. All five agencies indicated that they were implementing or intended to implement our recommendations. Three of the five agencies generally agreed with our findings and recommendations. One agency provided information about its use of outside e-mail accounts, and one agency agreed to implement our recommendations but questioned aspects of our report.

In written comments, the Archivist of the United States stated that NARA generally agreed with our draft report and would develop an action plan to implement our recommendation. The Archivist also provided technical comments, and we clarified our report to address each of them. (see app. II).

In e-mail comments, the Director, Records, Publications, and Mail Management at DHS, stated that the department agreed with our draft report and that it correctly represented the condition at the time of the review. The Director also said that future DHS records management policy documents would be revised to reflect our recommendations.

In written comments, the Chief Information Officer of EPA stated that the agency accepted our two recommendations. In addition, she provided additional information on the EPA records management program. Finally, this official provided technical comments, which we addressed as appropriate; our assessment of these comments is contained in appendix III.

In e-mail comments, an official from FTC's Office of the General Counsel stated that FTC had instructed staff not to use outside e-mail accounts for official business, but it was nonetheless taking action to implement our recommendation by issuing a notice to staff regarding policies and procedures for e-mail records, which included a statement that work-

related e-mails inadvertently sent or received from non-FTC accounts must be handled in accordance with the agency's records preservation policies and procedures. Our draft recognized FTC's instruction not to use outside accounts for official business, but also noted that that FTC did not totally prohibit access to such accounts. Because access to outside accounts was available, FTC was required by NARA regulations to provide staff with guidance on the proper handling of e-mail records sent or received through such accounts. FTC also provided technical comments, which we incorporated as appropriate.

In written comments, HUD's Acting Chief Information Officer stated that HUD planned to implement our recommendations, but also stated that our draft was inaccurate in three areas:

- The Acting CIO questioned the clarity of a figure we included to illustrate a decision process that could be used to decide if an e-mail message is a record. As noted in our draft, the illustration is provided as an example to illustrate the kinds of factors that may be considered when deciding whether an e-mail message is a record.

- The Acting CIO disagreed with our conclusions regarding HUD's compliance with the requirements we reviewed, stating that the department's records policies comply with all these requirements because they incorporate NARA's regulations by reference. While our draft recognized the reference to NARA regulations in HUD's policy, we concluded that such a reference was not adequate to comply with NARA regulations. As we stated in our draft, the reference in HUD's policy is too general to make clear to HUD staff which practices are prohibited. In addition, HUD did not establish procedures to implement the requirements in question, as the regulations require.

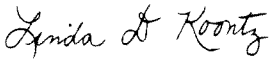
- The Acting CIO questioned the accuracy of a statement on the number of senior officials whose files were reviewed. Our evidence shows that our statement was accurate, but we revised it to include further clarifying detail.

We provide more detailed responses to these points in appendix IV.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this report. At that time, we will send copies of this report to the Archivist of the United States, the Administrator of the Environmental

Protection Agency, the Chairman of the Federal Trade Commission, the Secretary of Homeland Security, and the Secretary of Housing and Urban Development. Copies will be made available to others on request. In addition, this report will be available at no charge on our Web site at www.gao.gov.

If you have questions about this report, please contact me at (202) 512-6240 or koontzl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.



Linda D. Koontz
Director, Information Management Issues

Appendix I: Objectives, Scope, and Methodology

Our objectives were to

- assess to what extent the National Archives and Records Administration (NARA) provides oversight of federal records management programs and practices, particularly with regard to e-mail,
- describe processes followed by selected federal agencies to manage e-mail records,
- assess to what extent the selected agencies' e-mail records management policies comply with federal requirements, and
- assess compliance of selected senior officials with key e-mail recordkeeping requirements.

To determine the extent to which NARA provides oversight of federal agencies for managing and preserving federal e-mail records, we analyzed applicable laws, regulations, and guidance; reviewed NARA's oversight activities from 2003 to 2007, including its reports to OMB and the Congress on records management activities; reviewed recent NARA's records management reports; and interviewed NARA officials.

To address our other objectives, we judgmentally selected four agencies for review based upon several factors. First, we identified four general government functions from those functions that NARA identified in a 2004 resource allocation study as having records that had a direct and significant impact on the rights, welfare, and/or well-being of American citizens or foreign nationals: homeland security, health, economic development, and environmental management. (NARA classified these functions as high risk for rights/accountability.) Next, using NARA's analysis, we compiled a list of the federal agencies and their components that performed those high-risk functions. For each identified agency, we further classified it according to agency structure (a department with component bureaus or agencies, a department with an office structure, an independent agency, or an independent commission) and size (a large department over 150,000 employees, a small department less than 11,000 employees, a small independent agency less than 1,100 employees, or a large independent agency over 18,000 employees).

We then judgmentally selected four agencies from the high-risk list that presented various combinations of structure and size. These were as follows:

Department of Homeland Security (U.S. Immigration and Customs Enforcement)

- Rated by NARA as high on rights and accountability for records in the Homeland Security: Immigrant and Non-Citizen Services function
- Department with component agencies
- Over 162,000 employees

Department of Housing and Urban Development (Office of Healthy Homes and Lead Hazard Control)

- Rated by NARA as high on rights and accountability for records in the Health: Illness Prevention function
- Department with offices
- Less than 11,000 employees

Environmental Protection Agency

- Rated by NARA as high on rights and accountability for records in the Environmental Management: Environmental Remediation function
- Independent agency
- Over 18,000 employees

Federal Trade Commission

- Rated by NARA as high on rights and accountability for records in the Economic Development: Business, Trade, Trust, and Financial Oversight
- Independent commission
- Less than 1,100 employees

At each of the four selected agencies, we

- assessed e-mail records management policies of the agency;
- described processes followed by agencies to manage e-mail records, specifically reviewing e-mail records management practices of a business unit associated with the high-risk function; and
- assessed compliance of four senior officials with key e-mail recordkeeping requirements.

We selected a business unit from each organization that (1) performed the particular line of business we identified in our agency selection process and (2) had permanent records that NARA rated high on risk to

accountability and citizen rights. Table 5 identifies the business unit we selected at each agency.

Table 5: Assessed Business Units

Department	Component	Business unit
DHS	Immigration and Customs Enforcement	Detention and Removal Operation
EPA	Office of Solid Waste and Emergency Response, Office of Superfund Remediation and Technology Innovation	Assessment and Remediation Division
FTC	Bureau of Consumer Protection	Division of Marketing Practices
HUD	—	Office of Healthy Homes and Lead Hazard Control

Source: GAO analysis of agency data.

We also selected four senior officials at each agency. At DHS, EPA, and HUD, we selected the head of the agency, the head of the office responsible for policy, a randomly selected senior official, and the most senior agency official associated with the business unit we inspected. At FTC, we selected the Chairman and three Commissioners. The selected senior officials are listed in table 6.

Table 6: Assessed Senior Officials

Department	Title of official
DHS	Secretary
	Assistant Secretary for Policy
	Acting Assistant Secretary for Health Affairs & Chief Medical Officer
	Assistant Secretary for Immigration and Customs Enforcement
EPA	Administrator
	Assistant Administrator for Enforcement and Compliance Assurance
	Assistant Administrator for Environmental Information / Chief Information Officer
	Assistant Administrator for Solid Waste and Emergency Response
FTC	Chairman
	Commissioner
	Commissioner
	Commissioner
HUD	Secretary
	Assistant Secretary for Policy

Department	Title of official
	Assistant Secretary for Housing—Federal Housing Commissioner
	Director, Office of Healthy Homes and Lead Hazard Control

Source: GAO analysis.

To describe the agencies' e-mail records management practices, we analyzed documents, interviewed appropriate officials at the agency (including business unit officials and staff), and performed limited inspections of selected e-mail records.

To assess each agency's e-mail records management policies, we reviewed the agency's published policy documents, including formal policies and operational manuals, as well as agency-provided responses to a data collection instrument on e-mail management, and compared their contents to the e-mail related requirements in NARA's records management regulations.

To assess compliance of senior officials with key e-mail recordkeeping requirements, we analyzed documents, used data collection instruments to gather information from the senior officials, their staffs, or other appropriate officials, and inspected selected e-mail records. We asked each agency to provide examples of senior officials' e-mail messages stored as records to corroborate their responses. We then analyzed the information provided by the agencies and assessed it against the e-mail requirements in NARA's regulations on federal records.

We did not attempt to assess the extent to which the agencies' staff correctly identified e-mail records or the extent to which the agencies' records appropriately included e-mail.

The four data collection instruments we used are briefly described in table 7.

Table 7: Topics of E-Mail Records Management Data Collection Instruments and Their Associated Respondents

Topic	Respondents
E-mail records management	Agency's senior records manager
E-mail systems management	Representative from Office of the Chief Information Officer
E-mail management practices of agency business units	Staff familiar with the business process of the agency's program
E-mail management practices of agency senior officials	Four senior officials, their staff, or both; other agency officials

Source: GAO analysis.

We performed our work at agency offices in the Washington, D.C., metropolitan area.

We conducted this performance audit from April 2007 to May 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the National Archives and Records Administration

National Archives and Records Administration

8601 Adelphi Road
College Park, Maryland 20740-6001

MAY 27 2008

Ms. Linda Koontz
Director of Information Issues
Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Ms. Koontz:

We thank you for the opportunity to review and comment on the *draft report* entitled *National Archives and Selected Agencies Need to Strengthen E-Mail Management* before the report is issued in final form. NARA accepts the recommendation for action by the Archivist of the United States and will construct an action plan to satisfy that recommendation. We generally agree with the contents of the draft report and offer some suggestions below for your consideration.

The second full paragraph on page 8 is confusing. It could be stated more clearly by splitting it into two sentences. Please consider the following: "Under the Federal Records Act, NARA is given oversight responsibilities for records management as well as general responsibilities for archiving. This includes the preservation in the National Archives of the United States of permanent records documenting the activities of the government."

The following paragraph on page 8 lists several NARA responsibilities. As it is a major NARA responsibility, we suggest that "approval of the disposition for all Federal records" be included in this list.

The first full paragraph on page 17 describes many of the advantages of electronic recordkeeping (ERK). It is important to note that user adoption is critical to enjoying the benefits of ERK. If an employee inconsistently follows the "print and file" policy, he/she may also not follow the steps necessary to put the e-mail or other e-record in the ERK system. Also, auto-classification remains only a potential approach at this time.

The section on NARA's oversight activities beginning on page 24 focuses only on inspections. The report should note that NARA also conducts oversight when it identifies and investigates allegations of unauthorized disposition of Federal records. We discussed this activity and provided documentation to the GAO team during its site work.

Descriptions of our reluctance to engage in full-scale inspections and evaluations are incomplete. While our preference is to guide and support agencies' records management activities, as we discussed extensively with the GAO team, we also had another overarching reason for discontinuing the evaluation program. In practice, those full-scale inspections were extremely resource intensive and took several years to complete. Once a NARA evaluation report was issued, the need for

extensive resources shifted to the agency. Agencies often took years to satisfy recommendations made in NARA evaluations, and records management practices in the agencies did not necessarily improve.

Finally, the final paragraph on page 36 states that the (EPA) Enterprise Content Management System (ECMS) repository is approved by NARA. NARA does not approve electronic record keeping systems. The ECMS repository uses DoD 5015.2-certified software which NARA has endorsed.

Again, thank you for the opportunity to review and comment on this draft report. We look forward to continuing work with you as we strengthen e-mail management processes across the Federal government.

Sincerely,

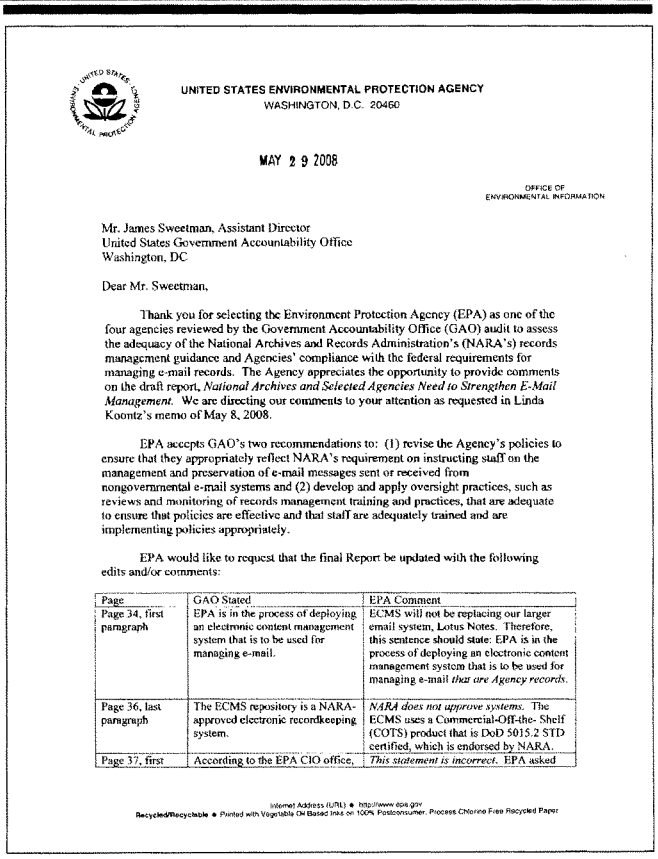
Michael J. Kurtz

for ALLEN WEINSTEIN
Archivist of the United States

NARA's web site is http://www.archives.gov

Appendix III: Comments from the Environmental Protection Agency

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 29 2008

OFFICE OF
ENVIRONMENTAL INFORMATION

Mr. James Sweetman, Assistant Director
United States Government Accountability Office
Washington, DC

Dear Mr. Sweetman,

Thank you for selecting the Environment Protection Agency (EPA) as one of the four agencies reviewed by the Government Accountability Office (GAO) audit to assess the adequacy of the National Archives and Records Administration's (NARA's) records management guidance and Agencies' compliance with the federal requirements for managing e-mail records. The Agency appreciates the opportunity to provide comments on the draft report, *National Archives and Selected Agencies Need to Strengthen E-Mail Management.* We are directing our comments to your attention as requested in Linda Koontz's memo of May 8, 2008.

EPA accepts GAO's two recommendations to: (1) revise the Agency's policies to ensure that they appropriately reflect NARA's requirement on instructing staff on the management and preservation of e-mail messages sent or received from nongovernmental e-mail systems and (2) develop and apply oversight practices, such as reviews and monitoring of records management training and practices, that are adequate to ensure that policies are effective and that staff are adequately trained and are implementing policies appropriately.

EPA would like to request that the final Report be updated with the following edits and/or comments:

Page	GAO Stated	EPA Comment
Page 34, first paragraph	EPA is in the process of deploying an electronic content management system that is to be used for managing e-mail.	ECMS will not be replacing our larger email system, Lotus Notes. Therefore, this sentence should state: EPA is in the process of deploying an electronic content management system that is to be used for managing e-mail *that are Agency records.*
Page 36, last paragraph	The ECMS repository is a NARA-approved electronic recordkeeping system.	*NARA does not approve systems.* The ECMS uses a Commercial-Off-the- Shelf (COTS) product that is DoD 5015.2 STD certified, which is endorsed by NARA.
Page 37, first	According to the EPA CIO office,	*This statement is incorrect.* EPA asked

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See comment 1.

See comment 2.

See comment 3.

See comment 4.

See comment 5.

See comment 6.

See comment 7.

See comment 8.

full paragraph	transitory e-mail is stored on e-mail systems for a maximum of 180 days.	that the statement be replaced with the language on page 36, second paragraph, which states that the Agency ordered that all automatic delete functions be deactivated (disabled).
Page 42, second bullet and Page 45 table	At EPA, the e-mail management policy did not instruct staff on the management and preservation of e-mail messages sent or received from nongovernmental e-mail systems.	EPA will develop an Agency-wide policy to instruct staff about the use of non-EPA e-mail systems and the management and preservation of e-mail messages sent or received from nongovernmental e-mail systems.
Page 42, second bullet	At EPA and FTC, the e-mail management policy did not instruct staff on the management and preservation of e-mail messages sent or received from nongovernmental e-mail systems. According to officials at both agencies, such instructions were not included because agency employees were instructed not to use such accounts for agency business.	EPA has not provided formal instructions to staff on the use of secondary accounts to conduct Agency business, rather, EPA has a clear and consistent policy framework against the use of nongovernmental e-mail systems for official EPA business.
Page 43, first full paragraph	NARA official stated that they would communicate with EPA to determine the sufficiency of the steps taken to respond to the incident and to prevent such incidents from recurring.	EPA received NARA's response dated April 30, 2008, enclosed. NARA agreed that the safeguards that EPA is implementing to mitigate the risk of any further loss of such e-mail, and the forthcoming policy statement prohibiting the use of non-EPA e-mail accounts to conduct agency business, are appropriate and adequate. NARA further states that they consider this case closed and no further reporting is needed.
Page 47 first full paragraph	The EPA Administrator had two EPA e-mail accounts, one public and one for communicating with select senior EPA officials.	The EPA Administrator has two email accounts, a primary one for communicating with the public and a secondary account for communicating with select EPA officials. EPA does not refer to theses accounts as public and non-public but rather primary and secondary email accounts.
Page 47, first full paragraph	According to EPA officials, the nonpublic account generated few records because the Administrator did not use e-mail to conduct agency business, receiving most of his information from other sources, including face-to-face	EPA did not say that the secondary email account was not used to conduct Agency business, but rather, it was not the primary tool the EPA Administrator used to exchange information. Therefore this sentence should read: According to EPA officials, the *secondary* account generated

See comment 9.

See comment 10.

	briefings and meetings.	few records because the Administrator receives most of his information from other sources, including face-to-face briefings and meetings.
Page 47, third full paragraph	The e-mail records of two other senior officials were not managed in compliance with requirements, because e-mail records were not being stored in appropriate recordkeeping systems, but rather in the e-mail system.	The Agency Records Officer will follow-up with these senior officials and their administrative staffs to ensure that e-mail records are properly identified and saved in an appropriate recordkeeping system.
Page 51, middle of first paragraph	EPA has developed an oversight plan and has pilot-tested a records management program review but not yet begun Agency-wide reviews.	EPA developed a comprehensive records management survey tool that will be used to serve the following three purposes: obtain an Agency-wide records management baseline, conduct self-assessments by each program office and region, and conduct program reviews by the National Records Management Program. The survey tool will be implemented after the full implementation of ECMS.

Efficient and effective document and records management has been a priority focus at EPA in recent years and we are proud of the proactive steps we are taking to ensure the Agency's records management program remains among the best in the federal government. Highlights of the steps that the Agency has recently taken include:

- Implementing phase one of an Agency-wide Enterprise Content Management System (ECMS) deployment;
- Commissioning a senior level Task Force to make recommendations for improving document and records management Agency-wide, and commissioning an Agency-wide workgroup to implement the Task Force's recommendations;
- Developing mandatory on-line records management training, taken by 18,000 employees and contractors;
- Resubmitting paper based records schedules to NARA for media neutral approval (approximately 270 schedules);
- Developing four on-line training modules for Agency records contacts, along with other training tools such a "Tip of the Week" and enhancing our award-winning records management Website;
- Developing a mandatory requirement for all Records Liaison Officers (RLOs) to received NARA's certification in federal records management;
- Requiring the inclusion of records management responsibilities in the Performance Appraisal and Recognition System (PARS) plans for all employees with specific records responsibilities; and
- Including a session on records management responsibilities in new employee orientations.

Again, the Agency appreciates the opportunity to obtain an independent perspective of our records management program and receive feedback on areas where improvements can be realized. Should you have any question regarding EPA's response, please contact John Ellis, EPA's Agency Records Officer at 202-566-1643 or ellis.john@epa.gov.

Sincerely,

Molly A. O'Neill
Assistant Administrator
and Chief Information Officer

Enclosure

The following are GAO's comments on the on the EPA's written response dated May 29, 2008, to our draft report.

GAO Comments

1. We clarified our discussion of this topic.
2. We clarified our discussion of this topic.
3. We removed the reference to the 180 day limit.
4. In our discussion of the exchange between EPA and NARA on the incident involving possible loss of e-mail records, we included information on EPA's plan to promulgate a policy on the use on non-EPA e-mail systems.
5. See comment 4. EPA plans to promulgate a policy prohibiting the use of non-EPA e-mail systems for EPA business.
6. We updated our discussion of this topic to reflect NARA's response.
7. We do not use EPA's terminology because we do not find "primary" and "secondary" to be useful descriptions. However, we revised our discussion to clarify the references.
8. See note 7.
9. If EPA implements the oversight mechanism we recommend, it will help ensure that e-mail records are properly identified and protected.
10. We updated our discussion to indicate when EPA plans to deploy its survey tool.

Appendix IV: Comments from the Department of Housing and Urban Development

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-3000

CHIEF INFORMATION OFFICER

May 28, 2008

Ms. Linda Koontz
Director, Information Management Issues
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms Koontz:

Thank you for the opportunity to comment on the Government Accountability Office (GAO) draft report entitled "National Archives and Selected Agencies Need to Strengthen E-Mail Management."

The focus of this audit was to determine whether e-mail documents that constitute federal records are preserved in accordance with the record preservation policies and requirements of the National Archives and Records Administration (NARA). The Department of Housing and Urban Development (HUD) agrees that effective e-mail records management policies need to be in place at HUD and all federal agencies, and that such policies must be diligently followed. The draft report recommends that HUD revise its e-mail record management policies to ensure such policies appropriately reflect NARA requirements and that HUD staff are capable of identifying federal records. The draft report also recommends that HUD develop and apply oversight practices, including reviews of records, and monitoring of records management training and practices. HUD is in agreement that its e-mail policies, training and oversight can be strengthened and HUD plans to take steps to strengthen these areas. While HUD agrees with these recommendations, HUD has identified statements in the draft report about HUD policies and practices that are inaccurate.

The following identifies areas in the draft report which HUD found to be inaccurate or ambiguous:

See comment 1.

Page 14 - HUD concurs with GAO's point that, in determining whether an e-mail message is a record, the Department should go through a process like that described in the example. Unfortunately, the arrangement and contents of the flowchart should be corrected if it is to be considered by "agency staff [who] have to be aware of the defining features of a record in order to make these decisions," other than as simply an example of a determination process, and not one that should be followed as shown.

See comment 2.

Page 15 - Figure 1, Example Decision Tree for Determining Whether an E-Mail Message Is a Record, includes circular logic, multiple questions improperly co-located within a single flow chart question block, and improperly late placement of question blocks identifying exceptions to the retention requirements. Most notably, the first question block circularly assumes that the e-mail is a

See comment 3.

"record" as part of the overall matter of "determining whether an e-mail message is a record," thereby pre-empting those portions of the rest of the flowchart that indicate that the e-mail may not be a record. The block also improperly asks two questions, and does not identify whether an overall "yes" answer is obtained when both questions are answered "yes," or when either question is answered "yes." Finally, the relationship between the two apparently unrelated questions (paraphrasing, did "you" create the e-mail? is it for business use?) is unclear. Similar problems arise in many other question blocks and in the arrangement of the blocks.

See comment 4.

Page 40 - The section header (on draft page 40) is incorrectly titled, "Three of the Four Agencies Comply with Most Policy Requirements for E-Mail Management" and begins with an incorrectly low number of agencies with generally conforming policies. "At three of the four agencies reviewed, the policies in place generally addressed the requirements for e-mail records management..."; in both cases, "three" should be "four," as described below, and the wording revised accordingly ("The Four Agencies Comply..." and "At the four agencies reviewed..."), as should the corresponding part of the Table of Contents on draft page 1 ("The Four Agencies Comply..."), the Results in Brief on draft page 6 ("Three agencies we reviewed..."), and the HUD column of table 4 on draft page 44 (the "X"s should be check marks.

Page 41 - states, incorrectly that, HUD's "policies in place did not cover three of eight applicable requirements." That sentence should be deleted for the reasons provided in the discussion of statements on page 44.

See comment 5.

Page 44 - correctly states that, "HUD officials stated that they considered that these requirements were met by a reference in their policy to the NARA regulations in which these requirements appear." In particular, HUD's Electronic Mail Policy (Handbook 2400.1, chapter 7, paragraph 7-4.b, Record Retention Responsibilities) says that, "Records created or received on electronic mail systems must be managed in accordance with the provision of 36 CFR 1220, 1222 and 1228," which are NARA regulations. (Note that this HUD policy text has been quoted by GAO in its draft footnote 66.) NARA has incorporated its Electronic Records Management regulation, 36 CFR 1234, as a whole into other NARA regulations. (See 36 CFR §§ 1222.50(b)(7), 1228.154(a), 1228.232(d), and 1228.270(a). Incorporation by reference is a widely used and well-accepted legal device. The text of the referenced document, once incorporated by reference, becomes fully and legally a part of the document into which it is incorporated. It is also sufficient to reference only incorporation of an entire document to incorporate its portions; that is, after incorporating a part of the Code of Federal Regulations (CFR), there is no need to reference each subpart, section, and paragraph. The subcomponents of the part are automatically incorporated as part of the incorporation of the entire CFR part.

Note: HUD and NARA are not unique in using regulatory incorporation by reference to CFR Parts as a whole; the Office of Management and Budget has also incorporated into its regulations entire CFR Parts issued by NARA and other agencies by reference. See, e.g., 2 CFR 215.5.)

See comment 6.

Page 44 states that, "However, this reference is too general to make clear to staff that e-mail systems and backup tapes are not to be used for recordkeeping." As described above, this is incorrect, and should be deleted.

See comment 7.

Page 49, the report incorrectly states that, "For these three officials the Department did not provide examples of printed e-mail records that had been stored in appropriate recordkeeping files." On the day GAO staff visited HUD to obtain these examples, the staff visited the office of only one of the three officials. The two other HUD offices for which GAO had made appointments that day were not visited. The sentence should be corrected to read, "The one official's office which was requested to provide examples of printed e-mail records that had been stored in appropriate recordkeeping files provided files of e-mails but the files did not reflect an accepted recordkeeping system."

See comment 8.

Page 54 and 55 – Recommendations to HUD: - The Department's policies already "appropriately reflect NARA's requirements" on these matters. As described in the discussion above, regarding statements made on pages 41 and 44, HUD has incorporated NARA's e-mail management requirements into its own policies by reference. However, as also noted earlier, HUD will enhance its policies and its implementation as recommended in order to increase their usability by all HUD officials and staff, including HUD's political leadership.

See comment 9.

In conclusion, HUD reiterates that its e-mail policy already incorporates the NARA regulations and requirements. Accordingly, HUD's policy does not require, revision but HUD acknowledges that implementation of this policy can be and will be enhanced. Additionally, it is not the case that every e-mail is an official record. HUD uses e-mail as a communication tool. HUD's practice is not to use e-mail for official record purposes.

However, as also noted earlier, HUD will enhance its policies and its implementation as recommended in order to increase their usability by all HUD officials and staff, including HUD's senior officials. More definitive information with timelines will be provided in HUD's action plan to be developed once the final report has been issued.

If you have any questions or require additional information, please contact Shelia Fitzgerald, Acting Director, Office of Investment, Strategy, Policy and Management at (202)-402-2432.

Sincerely,

For

Joseph M. Milazzo
Acting Chief Information Officer

The following are GAO's comments on the on the HUD's written response dated May 28, 2008, to our draft report.

GAO Comments

1. As noted in our report, the described decision process is an example of one that could be used to determine whether an e-mail message is a record. We did not state that the process is a requirement that must be followed by any particular agency.

2. See comment 1.

3. See comment 5.

4. See comment 5.

5. Our draft noted that HUD incorporated Parts 1220, 1222, and 1228 of NARA's regulations by reference. However, the policy requirements at issue are contained in Part 1234 of NARA's regulations. In its comments, HUD argues that the Parts it cites incorporate Part 1234 by reference. We do not agree with HUD that this type of indirect reference is a sufficient or effective way of informing HUD staff of their e-mail recordkeeping responsibilities as well as of prohibited practices. In addition, HUD did not fully implement the applicable e-mail management requirements because it did not establish procedures to implement appropriate procedures that protect e-mail records.

6. See comment 5.

7. The text suggested by HUD is incorrect in that we requested copies of e-mail records from all three selected officials. We revised our report to provide additional detail on this.

8. We agree that enhancing HUD's policies on e-mail records as we recommend could increase their usability by all HUD officials and staff; among other things, this could clarify for HUD staff which practices are prohibited.

9. We agree that not every e-mail is an official record, and we emphasized this point in our report. However, we also emphasized that the content of a communication, not its form, determines its record status.

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact	Linda Koontz, (202) 512-6240, koontzl@gao.gov
Staff Acknowledgments	In addition to the individual named above, Mirko Dolak and James R. Sweetman, Jr. (Assistant Directors); Monica Anatalio; Timothy Case; Barbara Collier; Pamlutricia Greenleaf; Jennifer Franks; Tarunkant N. Mithani; Sushmita Srikanth; and Jennifer Stavros-Turner made key contributions to this report.

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Congressional Relations	Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400 U.S. Government Accountability Office, 441 G Street NW, Room 7125 Washington, DC 20548
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***Admitted in DC**

Air & Radiation Docket and Information Center
U.S. Environmental Protection Agency
Mailcode 6102T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

March 22, 2010

By Electronic Transmission

Attn: Docket ID No. EPA–HQ–OAR–2005–0172; FRL–9102–1
Proposed Revisions to the National Ambient Air Quality Standards for Ozone, 79 FR 2938 (January 19, 2010)

Ladies & gentlemen:

These comments are submitted on behalf of Unions for Jobs and the Environment (UJAE), a §501(c)(4) organization of twelve national and international labor unions.[1]

UJAE's member unions represent more than 3.2 million workers in electric power, transportation, coal mining, construction and other industries. UJAE members' jobs and economic wellbeing will be affected by U.S. EPA's decisions on the proposed reconsideration and revisions of the

[1] Member unions of UJAE are: Brotherhood of Locomotive Engineers; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; International Brotherhood of Teamsters; Marine Engineers Beneficial Association; Sheet Metal Workers International Association; Transportation · Communications International Union; United Association of Journeymen and Apprentices in the Plumbing and Pipefitting Industry; United Food and Commercial Workers International Union; United Mine Workers of America; United Transportation Union; and Utility Workers of America. For further information about UJAE, *see* www.ujae.org.

NAAQS for ozone (79 FR 2938, January 19, 2010) and by related state and federal actions needed to implement any such revisions.

Background and Summary

On September 16, 2009, EPA Administrator Lisa P. Jackson announced that EPA would initiate a reconsideration of the ozone standards established in 2008.[2] EPA promulgated the current primary ozone standard in 2008 through the regular course of review and revision of the National Ambient Air Quality Standards (NAAQS), resulting in a reduction in the level of the standard from 0.084 ppm (rounded) to 0.075 ppm, with compliance measured to three significant digits.[3]

[2] "EPA Announces It Will Reconsider National Smog Standards," Press Release (September 16, 2009).

[3] 73 FR 16436 (March 27, 2008). The process that EPA employed to establish the revised primary standard is described in the notice for the current reconsideration: The EPA initiated the most recent periodic review of the air quality criteria and standards for O3 in September 2000 with a call for information (65 FR 57810; September 26, 2000) for the development of a revised Air Quality Criteria Document for O3 and Other Photochemical Oxidants (henceforth the''2006 Criteria Document''). A project work plan (EPA, 2002) for the preparation of the Criteria Document was released in November 2002 for CASAC and public review. The EPA held a series of workshops in mid-2003 on several draft chapters of the Criteria Document to obtain broad input from the relevant scientific communities. These workshops helped to inform the preparation of the first draft Criteria Document (EPA, 2005a), which was released for CASAC and public review on January 31, 2005; a CASAC meeting was held on May 4–5, 2005 to review the first draft Criteria Document. A second draft Criteria Document (EPA, 2005b) was released for CASAC and public review on August 31, 2005, and was discussed along with a first draft Staff Paper (EPA, 2005c) at a CASAC meeting held on December 6–8, 2005. In a February 16, 2006 letter to the Administrator, CASAC provided comments on the second draft Criteria Document (Henderson, 2006a), and the final 2006 Criteria Document (EPA, 2006a) was released on March 21, 2006. In a June 8, 2006 letter to the Administrator (Henderson, 2006b), CASAC provided additional advice to the Agency concerning chapter 8 of the final 2006 Criteria Document (Integrative Synthesis) to help inform the second draft Staff Paper.
A second draft Staff Paper (EPA, 2006b) was released on July 17, 2006 and reviewed by CASAC on August 24–25, 2006. In an October 24, 2006 letter to the Administrator, CASAC provided advice and recommendations to the Agency concerning the second draft Staff Paper (Henderson, 2006c). A final 2007 Staff Paper (EPA, 2007a) was released on January 31, 2007. In a March 26, 2007 letter (Henderson, 2007), CASAC offered additional advice to the Administrator with regard to recommendations and revisions to the primary and secondary O3 NAAQS. 79 FR 2938, 2942.

In this reconsideration, EPA is proposing to revise the primary 8-hour ozone standard from its current level of 0.075 ppm to a more stringent level within a recommended range of 0.060 to 0.070 ppm, and to add a new secondary standard to protect welfare values such as crops and vegetation.

UJAE filed comments with EPA in the 2008 ozone rulemaking supporting a revision of the 8-hour primary standard at the level ultimately adopted by the agency. Our comments emphasized the substantial scientific uncertainties associated with a primary standard set below a level of 0.075 ppm:

> "Based upon uncertainties in the available science, UJAE supports the agency's decision to recommend a revised standard within this range, but we recommend adoption of a revised primary standard at a level not lower than 0.075 ppm. We do not believe that the available science clearly supports setting a primary standard more stringent than 0.075 ppm. In the alternative, based upon the substantial scientific uncertainties identified in the record, UJAE would support a primary standard consistent with the upper end of the Staff Paper's recommendation for a revised standard 'somewhat below' a level of 0.080."[4]

The current reconsideration of the 2008 ozone standards relies upon the scientific evidence of record available to the agency in the previous rulemaking.[5] For the reasons stated below, UJAE does not support a revision to the 2008 ozone standards, and recommends retention of the primary (and secondary) standards at the level of 0.075 ppm.

We are particularly concerned that the proposed revision of the primary standard to a level of 0.060 to 0.070 ppm would lead to significant job losses across the country during a period of high unemployment, due to the significant increase in the number of counties classified as nonattainment and the inability of states to attain a revised standard within this range "as expeditiously as practicable." Increased unemployment is statistically associated with increased mortality.[6] EPA's Supplemental Regulatory Impact

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[4] Unions for Jobs & the Environment, Comments on Proposed Revisions to the National Ambient Air Quality Standards (October 9, 2007).

[5] 79 FR 2938, 2940.

[6] *See*, Lundin, *et al.*, "Unemployment and mortality—a longitudinal prospective study on selection and causation in 49321 Swedish middle-aged men," 64 *J. Epidemiol.*

Analysis for this rulemaking provides ample justification for our concerns about the potential adverse employment impacts of lowering the primary ozone standard within the range that EPA has proposed.

Scientific Bases of a Revised Primary Standard

The 2008 primary ozone standard was set at a level between the recommended ranges of EPA Staff and the Clean Air Science Advisory Committee (CASAC), and within the range recommended by Staff (<0.08 – 0.060). CASAC's recommendation for a primary standard between 0.060 and 0.070 ppm represented its best judgment about the appropriate level of the standard based upon its review of the scientific evidence on ozone health effects. Based upon its extensive review of the health effects evidence, including CASAC's recommendations, EPA Staff recommended a broader range from "somewhat below" the 0.08 standard to a level as low as 0.060. The Administrator exercised his discretion in making a policy judgment to set the standard at a level consistent with Staff's recommendation. CASAC's recommendations are advisory to, but are not binding upon the Administrator.[7] In our view, the record before the Administrator supported the agency's decision in 2008, as it does now.

Community Health 22-28 (2010); Brenner M.H., Mooney A., "Unemployment and health in the context of economic change" *Soc. Sci. & Medicine*, 17 (16) 1125-1138 (1983).

[7] These issues were addressed by the Court of Appeals for the D.C. Circuit in the recent remand of the 2006 PM standards. With regard to the level for the annual PM2.5 standard, the Court rejected EPA's response that its approach was consistent with CASAC's recommendation. The Court stated that "The EPA failed adequately to explain its reasons for not accepting CASAC's recommendation [to consider the short-term studies as a basis for a lower annual standard], instead stating only that it did not 'disagree with CASAC's factual statements regarding the findings of [the short-term studies].'" *American Farm Bureau Fed'n v. EPA*, 559 F.3d 512, 521 (D.C. Cir., 2009). The Court did not vacate the standard in part because "the EPA's failure adequately to explain itself is in principle a curable defect." *Id.* at 528. The finding of a "curable defect" implies that EPA could explain why it had not followed CASAC's advice on the level of the primary ozone standard.
Regarding the secondary PM standard, the Court observed that EPA rejected the recommendations of both CASAC and Agency staff. Because EPA had failed to identify any target level of visibility protection and therefore lacked a basis for reasoned decision making, the Court determined it "need not decide whether it was reasonable for the agency to reject the target recommended by the Staff Paper and the CASAC because it was based on uncertain subjective evidence." *Id.* at 530.

In the 2008 ozone standard rulemaking, the agency balanced a massive array of uncertain scientific data on the public health effects of ozone, as summarized by EPA's findings:

> In considering the available information, the Administrator also judges that a standard level below 0.070 ppm would not be appropriate. In reaching this judgment, the Administrator notes that there is only quite limited evidence from clinical studies at exposure levels below 0.080 ppm O3. Moreover, the Administrator recognizes that in the body of epidemiological evidence, many studies report positive and statistically significant associations, while others report positive results that are not statistically significant, and a few do not report any positive O3-related associations. In addition, the Administrator judges that evidence of a causal relationship between adverse health outcomes and O3 exposures becomes increasingly uncertain at lower levels of exposure. The Administrator also has considered the results of the exposure assessments in reaching his judgment that a standard level below 0.070 ppm would not be appropriate. ...
>
> In considering the results of the health risk assessment, as discussed in section II.B above, the Administrator notes that there are important uncertainties and assumptions inherent in the risk assessment and that this assessment is most appropriately used to simulate trends and patterns that can be expected as well as providing informed but still imprecise estimates of the potential magnitude of risks. The Administrator particularly notes that as lower standard levels are modeled, including a standard set at a level below 0.070 ppm, the risk assessment continues to assume a causal link between O3 exposures and the occurrence of the health effects examined, such that the assessment continues to indicate reductions in O3-related risks upon meeting a lower standard level. As discussed above, however, the Administrator recognizes that evidence of a causal relationship between adverse health effects and O3 exposures becomes increasingly uncertain at lower levels of exposure.
>
> Given all of the information available to him at this time, the Administrator judges that the increasing uncertainty of the existence and magnitude of additional public health protection that standards below 0.070 ppm might provide suggests that such lower standard levels would likely be below what is necessary to protect public health with an adequate margin of safety.
>
> In addition, the Administrator judges that a standard level higher than 0.075 ppm would also not be appropriate. This judgment takes into consideration the information discussed above in section II.B, and is based on the strong body of clinical evidence in healthy people at exposure levels of 0.080 ppm and above, the substantial body of clinical and epidemiological evidence indicating that people with asthma are likely to experience larger and more serious effects than healthy people, the body of epidemiological evidence indicating that associations are observed for a wide range of more serious health effects at levels below

> 0.080 ppm, and the estimates of exposure and risk remaining upon just meeting a standard set at 0.080 ppm. The much greater certainty of the existence and magnitude of additional public health protection that such levels would forego provides the basis for judging that levels above 0.075 ppm would be higher than what is requisite to protect public health, including the health of at-risk groups, with an adequate margin of safety. For the reasons discussed above, the Administrator proposes to revise the level of the primary O3 standard to within the range of 0.070 to 0.075 ppm.[8]

This summary of the available scientific evidence available to the agency in the 2008 rulemaking - and in this reconsideration - underscores the critical uncertainties associated with the health studies relied upon by EPA Staff and by the CASAC in reaching their respective recommendations in 2006-2007. The Staff Paper ably summarizes these in the context of needed research improvements:

> Following completion of the 1996 Ozone Staff Paper (U.S. EPA, 1996), the EPA held a research needs workshop and produced a draft document33 for review by the CASAC at a public meeting held November 16, 1998. Based on our review of scientific information contained in the 2006 CD, we have concluded that O_3 health research needs and priorities have not changed substantially since the above document was written. Key uncertainties and research needs that continue to be high priority for future reviews of the health-based primary standards are identified below:
>
> (1) An important aspect of risk characterization and decision making for air quality standard levels for the O_3 NAAQS is the characterization of the shape of exposure-response functions for O_3, including the identification of potential population threshold levels. Recent controlled human exposure studies conducted at levels below 0.08 ppm O_3 provide evidence that measurable lung function effects occur in some individuals for 6-8 hr exposures in the range of 0.08 to as low as 0.04 ppm. A major limitation of these data is that they were collected in one laboratory located in an area of the U.S. that typically experiences higher ambient air levels of O_3; therefore, prior attenuation of subject response may have been a factor in the responses observed. Considering the importance of estimating health risks in the range of 0.04 to 0.08 ppm O_3, additional research is needed to evaluate responses in healthy and asthmatic individuals in the range of 0.04 to 0.08 ppm for 6-8 hr exposures while engaged in moderate exertion.
> (2) Similarly, for health endpoints reported in epidemiological studies such as hospital admissions, ED visits, and premature mortality, an important aspect of characterizing risk is the shape of concentration-

[8] 72 FR 37880 (emphasis added.)

response functions for O_3, including identification of potential population threshold levels. Most of the recent studies and analyses continue to show no evidence for a clear threshold in the relationships between O_3 levels and these health endpoints or have suggested that any such thresholds must be at very low levels approaching policy relevant background levels. Whether or not exposure errors, misclassification of exposure, or potential impacts of other copollutants may be obscuring potential population thresholds is still unknown.

(3) The extent to which the broad mix of photochemical oxidants and more generally other copollutants in the ambient air (e.g., PM, NO_2, SO_2, etc.) may play a role in modifying or contributing to the observed associations between ambient O_3 and various morbidity effects and mortality continues to be an important research question. Ozone has long been known as an indicator of health effects of the entire photochemical oxidant mix in the ambient air and has served as a surrogate for control purposes. A better understanding of sources of the broader pollutant mix, of human exposures, and of how other pollutants may modify or contribute to the health effects of O_3 in the ambient air, and vice versa, is needed to better inform future NAAQS reviews.

(4) As epidemiological research has become a more important factor in assessing the public health impacts of O_3, methodological issues in epidemiological studies have received greater visibility and scrutiny. Investigations of questions on the use of generalized additive models in time-series epidemiological studies have raised model specification issues. There remains a need for further study on the selection of appropriate modeling strategies and appropriate methods to control for time-varying factors, such as temperature, and to better understand the role of copollutants in the ambient air.

(5) Limited controlled human exposure and epidemiology research has provided suggestive evidence of both direct and indirect effects of O_3 on the cardiovascular system, cardiovascular hospital admissions, and cardiovascular mortality. However, additional work will be needed to examine biologically plausible mechanisms of cardiovascular effects and to determine the extent to which O_3 is directly implicated or works together with other pollutants in causing adverse cardiovascular effects in sensitive individuals and in the general population.

(6) Most epidemiological studies of short-term exposure effects have been time-series studies in large populations. Time-series studies remain subject to uncertainty due to use of ambient fixed-site data serving as a surrogate for ambient exposures, to the difficulty of determining the impact of any single pollutant among the mix of pollutants in the ambient air, to limitations in existing statistical models, or to a combination of all of these factors. Independent variables for air pollution have generally been measurements made at stationary outdoor monitors, but the accuracy with which these measurements actually reflect subjects' exposure is not yet fully understood. Also, additional research is needed to improve the characterization of the degree to which discrepancy between stationary

monitor measurements and actual pollutant exposures introduces error into statistical estimates of pollutant effects in time-series studies.
(7) Improved understanding of human exposures to ambient O_3 and to related copollutants is an important research need. Population-based information on human exposure for healthy adults and children and susceptible or at-risk populations including asthmatics to ambient O_3 concentrations, including exposure information in various microenvironments, is needed to better evaluate current and future O_3 exposure models. Such information is needed for sufficient periods to facilitate evaluation of exposure models throughout the O_3 season.
(8) Information is needed to improve inputs to current and future population-based O_3 exposure and health risk assessment models. Collection of time-activity data over longer time periods is needed to reduce uncertainty in the modeled exposure distributions that form an important part of the basis for decisions regarding air quality standard for O_3 and other air pollutants. Research addressing energy expenditure and associated breathing rates in various population groups, particularly healthy and asthmatic children, in various locations, across the spectrum of physical activity, including sleep to vigorous physical exertion is needed.
(9) An important consideration in the O_3 NAAQS review is the characterization of policy relevant background levels. There still remain significant uncertainties in the characterization of 8-hr daily maximum O3 background concentrations. Further research to improve the evaluation of the GEOS-CHEM model which has been used to characterize estimates of policy relevant background levels would help reduce uncertainties in estimating health risks relevant for standard setting (i.e., those risks associated with exposure to O_3 in excess of policy relevant background levels) and would aid in the development of associated control programs.[9]

These shortcomings in the health and epidemiological evidence associated with short- and long-term exposure to ozone support our concerns about the inadequate bases for revising the primary ozone standard to a level below 0.075 ppm. Indeed, these considerations support EPA Staff's 2007 upper-end recommendation for a standard "somewhat below" 0.080.

EPA's Supplemental Regulatory Impact Analysis

UJAE has reviewed EPA's January 2010 Supplemental Regulatory Impact Analysis (SRIA) for the proposed revised ozone standards to assess the potential impacts of standards within the Administrator's recommended range on the electric utility, mining, transportation, and other industries

[9] U.S. EPA, Review of the National Ambient Air Quality Standards for Ozone: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper at 6-87-6-90, EPA-452/R-07-003, January 2007 (emphasis added, footnotes omitted.)

employing UJAE members. The agency's cost estimates suggest that many areas not attaining the primary standard would need to rely almost entirely on "unknown future controls," with "known controls" available to supply only a small fraction of the emission reductions needed to achieve the proposed primary standard within a range of 0.06 to 0.07 ppm. The overall costs of attaining a primary standard within this range may be more than an order of magnitude greater than the costs EPA estimated for attaining the 2008 standard.

EPA's 2007 RIA analyzed a limited array of "known" control options for meeting ozone standards ranging from 0.065 ppm to 0.079 ppm. The cost analysis was divided between engineering cost estimates for "known" controls applied mainly to industrial boilers and mobile sources, and much larger "extrapolated" costs based on additional estimated NOx reductions needed to achieve alternative standards, as summarized in the table below:

Table 5.8 Total Costs of Attainment in 2020 for Different Levels of the Ozone Standard (National Attainment in 2020)

	Level of Standard in 2020			
	0.065 ppm	0.070 ppm	0.075 ppm	0.079 ppm
Modeled Costs ($B)	$3.9	$3.9	$3.9	$3.9
Extrapolated Costs ($B)	$13 to $42	$5.9 to $18	$1.6 to $4.9	($0.95) to ($0.57)*
Total Costs ($B)	$17 to $46	$10 to $22	$5.5 to $8.8	$3 to $3.3

* The use of the 0.070 ppm control strategy as a starting point for extrapolating the 0.079 standard resulted in over attainment in some areas. For over attaining areas, cost savings were applied. For the 0.079 ppm standard the cost savings from over attaining areas was greater than the costs for areas still needing extrapolated tons (see Table 5.4).

Source: EPA RIA (July 2007).

The 2010 SRIA contains estimates of the total annualized costs for attaining different levels of the primary standard in 2020, based on modeled and extrapolated cost estimates. These estimates are shown below:

EPA Estimates of the Costs of Attaining Alternative Ozone Primary Standards in 2020 (Bil. 2006$ at 7% discount rate)

Standard (ppm)	Low Estimate	High Estimate
0.055	$78.0	$130.0
0.060	$52.0	$90.0
0.065	$32.0	$44.0
0.070	$19.0	$25.0
0.075	$7.6	$8.8

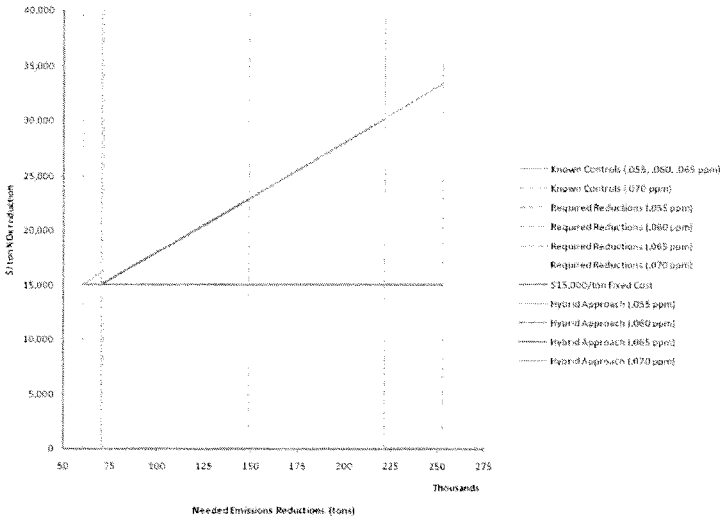
Source: EPA SRIA, Table S.1.1 (January 2010).

These estimates indicate that the costs of moving to a more stringent primary standard rise dramatically at standards below 0.075, with the upper-end cost estimate for a standard of 0.060 ppm ($90 billion) an order of magnitude greater than the costs of attaining the current standard ($8.8 billion).

We are particularly apprehensive about the extent to which these estimates depend upon the availability of "future unknown" control technologies, relative to the deployment of "known controls" such as selective catalytic reduction technologies.

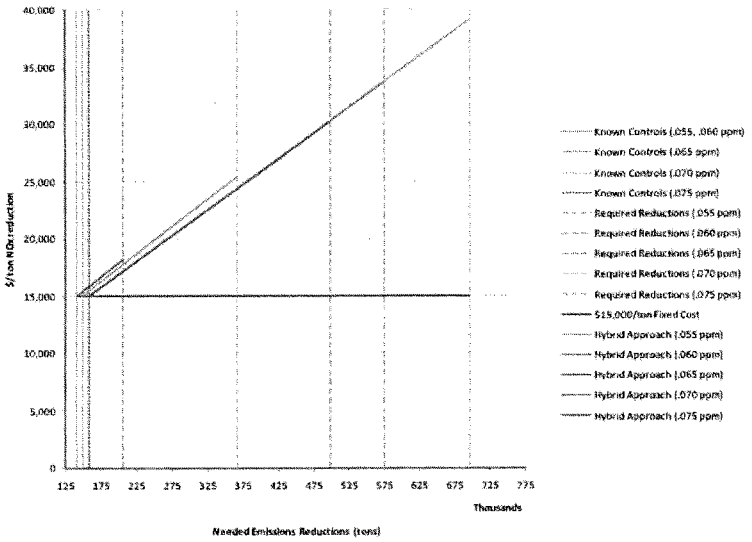
The two charts below illustrate the relative shares of "known" and "unknown" controls in meeting alternative levels of the primary standard. For both the Cleveland-Akron-Lorain and greater Northeast nonattainment areas, "known" controls (colored vertical lines on the left of each chart) are capable of achieving only a small fraction of the estimated emission reductions required to achieve the alternative standards. The bulk of the reductions must be achieved by technologies that do not yet exist, but which must be hypothetically developed and deployed within the next decade.

Figure SS.2: Marginal Extrapolated Cost Curves – Cleveland-Akron-Lorain, OH



Source: EPA SRIA, Appendix (January 2010).

Figure S5.5: Marginal Extrapolated Cost Curves – Northeast Corridor, CT-DE-MD-NJ-NY-PA



Source: EPA SRIA, Appendix (January 2010).

EPA described the "hybrid" cost estimation methodology underlying these projections in its 2008 RIA for the current standard, repeated in the January 2010 SRIA (at S5.1):

> The hybrid approach creates a marginal cost curve and an average cost curve representing the cost of unknown future controls needed for 2020 attainment. This approach explicitly estimates the average per-ton cost of unspecified emissions reductions assumed for each area, with a higher average cost-per-ton in areas needing a higher proportion of unknown controls relative to known modeled controls. This requires assumptions about the average cost of the least expensive unspecified future controls, and the rate at which the average cost of these controls rises as more extrapolated tons are needed for attainment (relative to the amount of reductions from known, modeled controls). These factors in turn depend on implicit assumptions about future technological progress and innovation in emission reduction strategies.

The relevant timeframe for states to prepare State Implementation Plans for attaining a revised primary ozone standard has not changed significantly under this reconsideration. For example, SIPs for states in the Northeast Ozone Transport Region are expected to be filed by December 2013. With a requirement for three years of "clean" data supporting

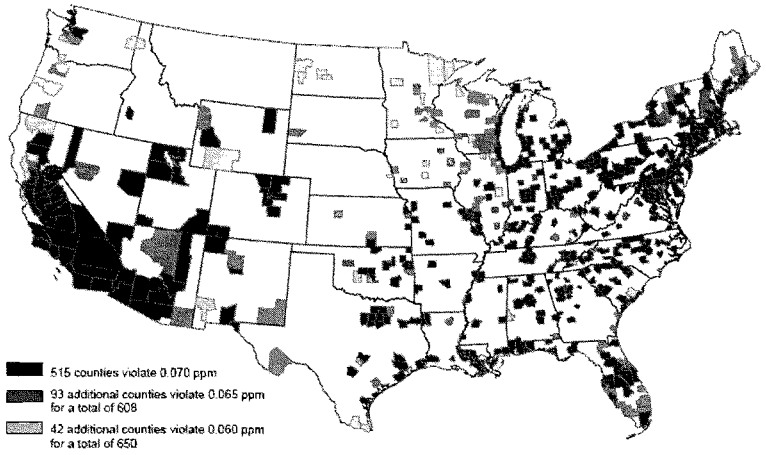
designation to attainment status (e.g., 2015-16), "unknown future" controls would need to be installed as early as 2014.

UJAE is frankly concerned that the extent of new nonattainment areas created by this reconsideration, coupled with the need for extensive reliance on "unknown future" control technologies to attain a revised standard at the levels proposed by EPA, and the very short timeframe available to states and to sources in most areas of the country, would lead to substantial job losses at electric power and manufacturing facilities within the numerous areas that would be classified as nonattainment.

Geographic Scope of Nonattainment

EPA's map of potential nonattaining counties is shown below, for alternative levels of the standard, based on existing monitor data for 2006-08. Between 515 and 650 counties violate the standard proposed by EPA, heavily concentrated in traditional manufacturing regions and states relying on coal for electric power generation.

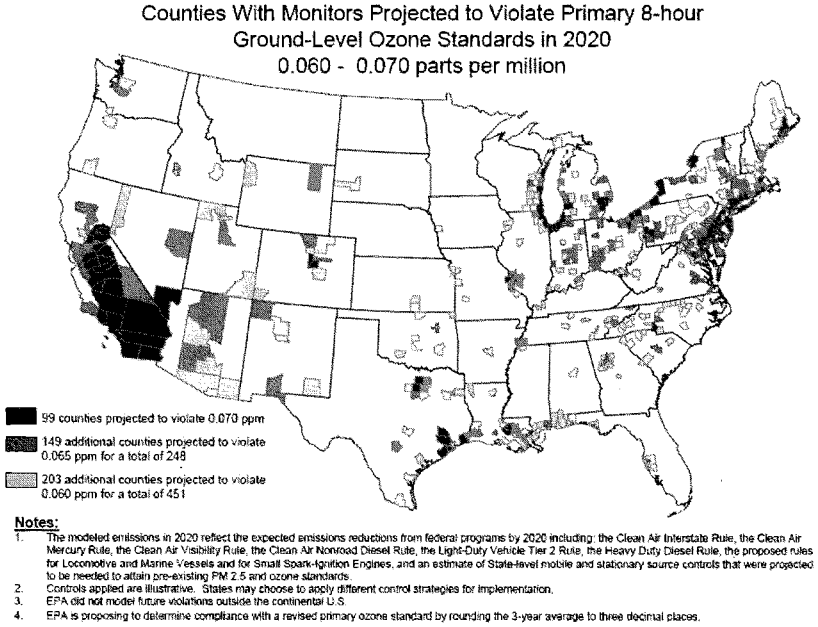
Counties With Monitors Violating Primary 8-hour Ground-level Ozone Standards
0.060 - 0.070 parts per million
(Based on 2006 – 2008 Air Quality Data)
EPA will not designate areas as nonattainment on these data, but likely on 2008 – 2010 data which are expected to show improved air quality.



Notes:
1. No monitored counties outside the continental U.S. violate.
2. EPA is proposing to determine compliance with a revised primary ozone standard by rounding the 3-year average to three decimal places.

Source: U.S. EPA (January 2010).

Equally concerning is EPA's projection of the extent of residual nonattainment in 2020 after implementation of all current Clean Air Act programs. As shown by the map below, between 99 and 451 counties would face the prospect of extended nonattainment status after 2020:



Source: U.S. EPA (January 2010).

Impacts on Energy and Manufacturing

As the agency recognizes, the burdens of nonattainment include emission offset requirements for new or modified facilities, application of Lowest Achievable Emission Rate standards to new or modified stationary sources, and Reasonably Available Control Technology requirements for existing stationary sources.

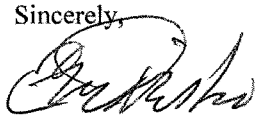
While many coal-based electric generating plants have installed SCRs and other controls in response to current Clean Air Act requirements, hundreds of older and smaller units rely upon low-NOx burners and similar low-cost controls. Implementing SCR requirements likely would cause many of these units to shutdown, with job losses at generating plants, mines,

railroads, and the communities that depend upon these plants for high-wage jobs and their contributions to local tax bases. Similarly, hundreds of boilers at traditional manufacturing and other industrial facilities may require extensive new controls, potentially jeopardizing their continued economic viability.

In sum, we do not view the proposed reconsideration of the ozone standards as necessary or appropriate under current economic conditions. EPA should reaffirm the existing ozone standards and defer their potential revision to the normal procedures for regular review and revision of National Ambient Air Quality Standards. Such a review can incorporate the "latest scientific knowledge" about the health effects of air pollutants, as required by the Clean Air Act[10], and not depend upon a stale record.

UJAE appreciates the opportunity to comment on these issues, and hopes that EPA will give due consideration to its recommendations.

Sincerely,



Eugene M. Trisko
General Counsel
Unions for Jobs and
the Environment

[10] CAA § 108(a)(2), 42 U.S.C. § 7408(a)(2).

YAHOO! NEWS

Coal decline hits fuel's Western stronghold

By MATTHEW BROWN | Associated Press – Fri, Jan 25, 2013

SHERIDAN, Wyo. (AP) — Hundreds of millions of tons of coal, packed into seams up to 60 feet thick, are still to be had beneath the rock-strewn hillsides speckled with snow that rise up along the remote Montana-Wyoming border.

Yet for Mike Cooley, the days of drilling explosives into the ground to blast the fuel from the earth are over, long before he ever expected. The 41-year-old thought his job as a "powderman" at the Decker strip mine would take him into retirement.

Now he's looking for new work, after he and 58 other miners were laid off from Decker in recent weeks to add to several hundred jobs reported lost in the past year from the nation's largest coal-producing region.

As a dispute over West Coast ports hobbles the industry's ability to reach booming markets in Asia, cheap natural gas is undercutting coal in the U.S. — and putting some of the small towns in coal country in economic peril.

Wringing his calloused, idle hands and staring into the winter sun through the kitchen window of his trailer house in Sheridan, not far from the mine, Cooley said he's reluctant to leave with the eldest of his three children poised to graduate high school this spring.

"But I don't want to go back to pounding nails either, not at $13 an hour," the former construction worker said as his youngest child, two-year-old Mason, hovered nearby sucking on a lollipop.

For decades, the 25,000-square-mile Powder River Basin that surrounds Sheridan has been the stronghold of the U.S. coal industry. Massive strip-mines, carved from a landscape dominated by sage brush and cattle ranches, churn out close to a half-million tons of the fuel annually, dwarfing production from mines in the Appalachians and Midwest.

Now the depressed domestic coal market is finally catching up to mines such as Decker. At least 300 jobs have been lost from mines in Montana and Wyoming since early 2012, according to preliminary data from the Mine Safety and Health Administration.

Paradoxically, out-of-work miners in Montana and Wyoming are scrambling for new employment even as global coal markets enjoy a heyday. Driven by Asian demand, experts say, coal is projected to challenge oil as the world's top energy source within the next four years. The sole exception will be in the U.S.

The Decker lay-offs cut the mine's workforce nearly in half — and came as a shock to Cooley and fellow miners who earned almost $30 an hour and for years sa[illegible]

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Just last year, Decker's co-owner, Ambre Energy of Australia, was promising to ramp up mining and start shipping millions of tons annually to countries such as South Korea — part of an industry-wide trend as companies battered by the domestic market looked to foreign buyers.

But Ambre's plans to build and expand West Coast ports to load the fuel onto ships have become entangled in political opposition and bureaucratic red tape, forcing the company to push back its timeline to begin operating. Mining industry heavyweights, including Arch Coal, Inc., and Peabody Energy face the same problems.

It's been several years since coal mining peaked in the Powder River Basin, which accounts for the bulk of production from Montana and Wyoming. Only in recent months has the number of workers started to drop.

Despite the logistical hurdles, some of the basin's coal is making it to overseas markets by squeezing through the limited West Coast port capacity already available. But analysts and industry observers say those routes have essentially maxed out.

"Unless you can send (coal) by Federal Express, the export market can't take off," said Montana's former governor, Brian

Schweitzer.

The Democrat spent two terms seeking to bolster the state's coal industry before leaving office this month. He predicted it will take up to five years for ports in Washington state and Oregon to come to fruition, and just as long for U.S. coal demand to rebound.

That leaves Cooley and others like him stuck between tomorrow's promise and yesterday's boom, in a region with few comparable employment prospects.

"I've never been laid off. Always had a job, since I was 14," said Cooley, whose family will rely on his wife's income as a grocery store cashier until he finds a new job.

As with other laid-off Decker miners interviewed, Cooley hopes Decker rebounds but is looking beyond coal as he searches for new work. He's got applications in at a zinc mine in Alaska, a gold mine in Nevada and to work as a roustabout for an oil company in North Dakota's Bakken oil patch.

Others already have moved on to such places after finding it impossible to match their former wages in Sheridan, a town of 18,000 a short drive across the Montana line from the Decker mine and where most of its workers live.

Hard times have visited before in this part of Wyoming, where coal was euphemistically dubbed "the black diamond" after a boom early last century.

North of Sheridan along the Tongue River can be seen the ruins of now-defunct company-owned coal mining towns such as Monarch, Kleenburn and Acme. Those communities and their underground mines peaked in the 1920s. Their decline left a gap in the economy that wasn't replaced until Decker and other strip mines came along decades later.

After opening in 1972, Decker quickly ramped up to several hundred workers digging up 10 million tons of coal a year, a volume that it produced for its first two decades "like clockwork," said Hal Kansala, who has been working at the mine since 1979. Coal production this year will be less than a third that amount.

Ambre spokeswoman Liz Fuller said the mine remains viable and the company is seeking buyers for its coal. She would not comment on long-term employment prospects except to say the company would look to rehire laid off workers if mining rebounds.

Regardless of whether the company's export aspirations come to pass, the short-term outlook looks grim.

The five to ten years it could take to surmount environmental opposition to West Coast coal ports is simply too long for miners and their families to wait, Sheridan Mayor Dave Kinskey said.

"It reminds me of that old saw: The first economist says, 'Well, in the long run these things all work themselves out.' And the other economist says, 'In the short term, we're dead.'

Yahoo! recommends upgrading to the new Firefox. Optimized for

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