

# FISCAL YEAR 2017 EPA BUDGET

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**JOINT HEARING**  
BEFORE THE  
SUBCOMMITTEE ON ENERGY AND POWER  
AND THE  
SUBCOMMITTEE ON ENVIRONMENT AND THE  
ECONOMY  
OF THE  
COMMITTEE ON ENERGY AND  
COMMERCE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTEENTH CONGRESS  
SECOND SESSION

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TUESDAY, MARCH 22, 2016  
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## FISCAL YEAR 2017 EPA BUDGET

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TUESDAY, MARCH 22, 2016

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON ENERGY AND POWER,  
JOINT WITH THE  
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY  
COMMITTEE ON ENERGY AND COMMERCE  
*Washington, DC.*

The subcommittees met, pursuant to call, at 2:00 p.m., in room 2123 Rayburn House Office Building, Hon. Ed Whitfield (chairman of the subcommittee on Energy and Power) presiding.

Members present: Representatives Whitfield, Shimkus, Harper, Olson, Barton, Murphy, Latta, McKinley, Pompeo, Griffith, Johnson, Long, Ellmers, Bucshon, Flores, Mullin, Hudson, Cramer, Upton (ex officio), Tonko, McNerney, Green, DeGette, Capps, Sarbanes, Yarmuth, Loeb sack, Schrader, and Pallone (ex officio).

Staff present: Will Batson, Legislative Clerk, Energy and Power, Environment and the Economy; Mike Bloomquist, Deputy Staff Director; Allison Busbee, Policy Coordinator, Energy and Power; Jerry Couri, Senior Environmental Policy Advisor; Tom Hassenboehler, Chief Counsel, Energy and Power; A.T. Johnston, Senior Policy Advisor; Ben Lieberman, Counsel, Energy and Power; David McCarthy, Chief Counsel, Environment/Economy; Mary Neumayr, Senior Energy Counsel; Annelise Rickert, Legislative Associate; Chris Santini, Policy Coordinator, Oversight and Investigations; Chris Sarley, Policy Coordinator, Environment and Economy; Dan Schneider, Press Secretary; Peter Spencer, Professional Staff Member, Oversight; Dylan Vorbach, Deputy Press Secretary; Christine Brennan, Minority Press Secretary; Jeff Carroll, Minority Staff Director; Timia Crisp, Minority AAAS Fellow; Jean Fruci, Minority Energy and Environment Policy Advisor; Caitlin Haberman, Minority Professional Staff Member; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; Josh Lewis, Minority EPA Detailee; John Marshall, Minority Policy Coordinator; Dan Miller, Minority Staff Assistant; Alexander Ratner, Minority Policy Analyst; Matt Schumacher, Minority Press Assistant; Andrew Souvall, Minority Director of Communications, Outreach and Member Services; and Tuley Wright, Minority Energy and Environment Policy Advisor.

**OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY**

Mr. WHITFIELD [presiding]. I would like to call this hearing to order.

This is a joint hearing of the Energy and Power Subcommittee with the Environment and the Economy Subcommittee. Of course, the subject of today's hearing is the FY 2017 budget for EPA.

I would like to recognize myself for 5 minutes.

We, of course, welcome Administrator McCarthy. I went down before the hearing started. I know she has been testifying before the appropriators, and now, she is going to be testifying before us. I suggested that after she finished with us, that she go on to another committee and testify there.

[Laughter.]

But there is no secret that there is a really serious division in the country over some of the programs at EPA, certainly the Clean Energy Plan. The administration, we recognize, views climate change as the Number 1 issue facing mankind, and they have moved forward aggressively to address it in the U.S. with the Clean Energy Plan. From my personal view, I think it is being done because of international commitments that the President has made as a result of his Georgetown speech and his other commitments internationally to be a leader in addressing climate change.

But I think that it has really come to a head in this country over the controversy of the Clean Energy Plan with the lawsuits filed by—is it 26 states or 27 states? Twenty-seven states filed a lawsuit. I think that shows quite clearly that there is real angst over the extreme process that EPA is utilizing to adopt this Clean Energy Plan.

I might say once again that even Larry Tribe, who is a respected constitutional lawyer, said in some ways it was like tearing up the Constitution. So, many people do feel like that you can address climate change, but you ought to at least follow the law. Other people say, well, the ends justify the means.

But the Supreme Court did stay the Clean Energy Plan by a vote of 5-to-4. Even under the Utility MACT, the Supreme Court ruled that cost should have been considered. We all recognize that, by the time they made their decision, the regulated bodies had already implemented the plan. So, it had been done, even though the Court said there were some problems with it. And even under the Tailoring Rule, the Supreme Court issued a decision that called that into question as well.

So, one of the reasons many of us on my side of the aisle are upset is that we feel like the EPA is being too aggressive and that they have adopted a plan to be aggressive, recognizing that when you have a divided government, the only way that a party can contest it is go to court. If you go to court, and if you don't get a stay, then, frequently, by the time the decision is made and all the court procedures have been exhausted, it is too late.

So, that is why we are going to do everything we can do to do serious oversight to make sure that the stay issued by the Supreme Court is followed, recognizing that even on that there is probably different legal opinions about what can and cannot be done.

But we know that the EPA's proposed budget is \$8.267 billion, which is \$127 million increased over the enacted level for FY 2016 and certainly higher than the FY 2009 enacted level of \$7.6 billion.

All of us want to have a lot of questions for you, Ms. McCarthy. As I say, we disagree with you on many things. We respect you as a person and we recognize that you are a talented person with very strong views. And we have very strong views.

Unfortunately, we are going to have a vote during this process, but it won't take long. I think we are only going to have about 30-minute votes.

So, with that, I would like to yield back the balance of my time and recognize the gentleman from New York for his 5-minute opening statement.

[The prepared statement of Mr. Whitfield follows:]

#### PREPARED STATEMENT OF HON. ED WHITFIELD

Today is our final EPA budget hearing for the Obama administration, and as always I welcome Administrator McCarthy and look forward to her comments on the agency's budget and its priorities.

EPA's proposed budget is \$8.267 billion dollars for FY 2017, a \$127 million increase over the enacted level for FY 2016 and still higher than the FY 2009 enacted level of \$7.6 billion. Of course, with EPA the issue is not so much the funding it gets but what it does with the money. As we've seen over the last 7 years, for every dollar allocated to the agency each year, we may end up with several dollars in new regulatory costs that hurt consumers, businesses and jobs without commensurate environmental benefits. In fact, the President's Clean Power Plan alone is estimated by the agency to impose billions of dollars in annual compliance costs, eventually reaching levels comparable to the agency's current budget and outside estimates are even higher. We see \$280 million in this budget going toward addressing climate change, an increase of \$85.6 million.

The costs of climate regulations are having real effects on people and family budgets. According to a NERA study, electricity prices could increase by an average of 11% to 14% nationwide under the Clean Power Plan. Thousands of jobs are being lost throughout coal country in large part due to EPA regulations, with many more yet to come as several of the agency's rules targeting coal have not yet fully taken effect.

The Supreme Court's recent stay of the Clean Power Plan is unprecedented and highlights the importance of protecting states from economic harm as the rule is reviewed by the courts. Yet, this agency is taking actions to move forward under the rule before courts can review the legal challenges. It is clear that EPA has no authority to implement or enforce the rule pending the judicial review process. I have a great deal of concern with recent comments by the EPA indicating that the agency is continuing to work and spend taxpayer dollars "to assist states that voluntarily decide to move forward." on the Clean Power Plan.

The impacts of this climate agenda go beyond the lost jobs and consumer pain. This EPA has made global warming its overriding concern even though there is no Congressional authority directing it to do so. At the same time, the agency has taken its eye off the ball with regard to many of the agency's most important duties that are clearly delegated to it by statute.

While EPA has been issuing an ever expanding set of climate regulations, the agency has repeatedly failed to meet its critical deadlines under the Renewable Fuel Standard program. The Clean Air Act specifies that the agency must finalize its annual rule setting out the required volumes of ethanol and other biofuels by November 30th of the prior year, so that regulated entities know ahead of time what the requirements are. Similarly, the agency faces numerous lawsuits for failure to meet other statutory deadlines. The agency diverts resources to the President's climate agenda yet it neglects statutory responsibilities and issues of direct consequence to people's health.

Perhaps most concerning of all is what the agency plans to do now that time is running out on it. The pace of costly new regulations has been extreme throughout this administration, and I anticipate it may accelerate further as the Obama administration tries to get as much out the door in its final months.

We have philosophical areas of disagreement when it comes to the President's extreme climate agenda. As the Committee with jurisdiction over the EPA, we will continue our extensive oversight of this agency and its proposed budget during the President's final year in office.

**OPENING STATEMENT OF HON. PAUL TONKO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. TONKO. Thank you. Thank you, Mr. Chair. And, Chair Whitfield and Chair Shimkus, for holding this hearing I say thank you. It is important for us to focus on the Environmental Protection Agency's budget request for fiscal year 2017.

Might I welcome, also, our Administrator McCarthy? Thank you for being here to share your thoughts and provide information, and thank you for your sound leadership and your stewardship of many of the programs that make for better results with the environment.

Public health and a clean environment are intricately linked, and I strongly believe that these principles support economic growth. Whether it is reducing air pollution, financing drinking and clean water infrastructure, or helping support the cleanup of brownfields for reuse, the EPA plays an essential role in keeping Americans and our environment healthy.

I know there are many members who believe that cutting the EPA budget will block the agency from issuing regulations and enforcing environmental laws, but, in reality, much of the budget supports state and local governments, either through grants and loans or with information and technical assistance. Cuts to the EPA budget cause additional burdens on state and local governments.

The EPA has and will continue to play a critical role in our nation's response to reducing greenhouse gas emissions and addressing the threat of climate change. Despite what some may believe, climate change is happening and needs actions. The Clean Power Plan is essential to this response.

I also want to point out that this committee still has not held a single hearing to examine the poor and deteriorating state of drinking water infrastructure around the country. This is an area of jurisdiction that we have neglected, and I find that very troubling.

EPA has estimated the 20-year capital needs for this infrastructure at some \$384 billion. The American Society of Civil Engineers has graded our drinking water infrastructure a "D". Federal support for drinking water systems is primarily done through the Drinking Water State Revolving Fund, or the SRF, which was created and last authorized in 1996. Through the SRF, we provide grants to states to administer this funding, giving them plenty of flexibility to address the greatest concerns that they have in the individual states.

Since 2003, we have made little to no effort to reassess whether the federal government is doing its fair share. The hundreds of thousands of water main breaks every year, trillion gallons of water lost through leaks, millions of lead service lines, and prevalence of century-old pipes suggest that we are not.

USA Today recently reported that nearly 2,000 water systems across all 50 states have exceeded the EPA's lead action level within the past 4 years. That is unacceptable.

The federal commitment is simple, not good enough, and we must step up to help states and local communities finance these projects. A majority of the Democrats on this committee have co-sponsored the Assistance, Quality, and Affordability, or AQUA Act, which would reauthorize the Drinking Water SRF at Recovery Act levels and beyond, in addition to making some much-needed updates to the Safe Drinking Water Act.

We stand ready and willing to be partners in this effort. For inspiration, we need not look any further than our colleagues on the Transportation and Infrastructure Committee who passed a bipartisan surface transportation bill that included a \$70 billion transfer from the General Fund. We would only need a fraction of that to make major headway in our drinking water infrastructure backlog, that infrastructure which is hidden infrastructure.

But, sadly, without the need for extension after extension of the Drinking Water SRF, we have forgotten the bipartisan nature of this issue in this committee. It is time to get serious about this committee's role in protecting public health and maintaining our drinking water infrastructure. Every job and every life relies on water. It relies on the commitment that we will demand nothing less than safe drinking water. It is time to come together, recognize this, and take action.

With that, Administrator McCarthy, I look forward to your testimony and to working with you to continue our progress in environmental protection. Again, thank you for being here.

With that, I yield back.

Mr. WHITFIELD. The gentleman yields back.

At this time the Chair recognizes the gentleman from Illinois, Mr. Shimkus, who is chairman of the Environment and the Economy Subcommittee, for 5 minutes.

**OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. SHIMKUS. Thank you, Mr. Chairman.

And welcome, Administrator McCarthy.

Hopefully, we can continue to work on coal ash and, as we talked about earlier, getting TSCA over the finish line. We appreciate some of the expertise your office has been able to provide for us to make those decisions.

Madam Secretary, there is real pain in coal country, as you know. Market conditions have some effect, but, also, they just can't keep up with the numerous rules and regulations that they are trying to meet, whether that is Casper or cooling towers, Clean Power Plan, mercury, MATS, stream protection rule, Waters of the U.S. It is just too much that they can handle and have any consistency and planning. That is why the coal regions of our country are in dire straits. When you lose a coal mine, you lose all the periphery jobs. You lose the grocery stores, the gas stations, and the like.

We know that you are here asking at least the appropriators for more money. I am fresh off the campaign trail. I had to tell my folks that you were at 2008 funding levels and at 1989 staff levels. And all my constituents said, well, that is still too much. So, we have an education to do.

I had to remind them there are some things that I think are important that the agency does, too. We have the Superfund responsibilities. We have brownfield reclamation. There are things that we need to do. But the environment out there today makes it difficult for the public to really appreciate the budget request and the job challenges that our nation is facing right now.

But I want to thank you for your service and the professionalism that you have shown. I will have a couple of tougher questions when we get to those, but I know that you are up to it. With that, I appreciate your coming.

And, Mr. Chairman, I yield back.

[The prepared statement of Mr. Shimkus follows:]

#### PREPARED STATEMENT OF HON. JOHN SHIMKUS

This is a budget hearing. So let's talk about the budget.

Since Republicans took the House majority in 2012, we've used our power of the purse to readjust EPA's budget from the outlier levels of 2009 to something more in line with the trend set for 2008 spending levels and to reduce EPA staffing to 1989 levels.

Why? Why did we cut your agency's budget?

It's not because Republicans are anti-environment. We all want to breathe clean air and drink clean and safe water.

And it's not personal or political either.

We appreciate your time here today, Madam Administrator, and I appreciate your willingness to work with Congress on coal ash legislation and to update the Toxic Substances Control Act. But, cooperation should not be the exception to the rule.

The problem, and the reason we've cut your budget, is that your agency, is prioritizing new rules and regulations that Congress never told you to pursue in the first place.

You're not doing a bad job, you're doing the wrong job. And that's a big problem.

It's a problem because the Clean Power Plan you're working on is unconstitutional.

It's a problem because the WOTUS power grab you've attempted ignores clearly worded statutes, and

It's a problem because your cap-and-trade scheme was explicitly rejected by a bipartisan majority in Congress.

This isn't the way our Constitutional Republic is meant to operate. Congress writes the laws, not the executive branch.

So by cutting EPA's budget and reducing its staff levels, our intent is that you'll refocus your limited resources toward implementing and enforcing congressionally authorized core missions and policies. We want you to do your job—no more, no less.

Mr. WHITFIELD. The gentleman yields back.

At this time I recognize the gentleman from New Jersey, Mr. Pallone, for 5 minutes.

#### **OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. PALLONE. Thank you, Mr. Chairman, and also Administrator McCarthy, for being here today to discuss the EPA's programs and budget.

EPA's work is critically important to protecting the health of our communities and our environment. The President's fiscal year 2017 budget funds the EPA at \$8.267 billion, a modest increase of \$127 million from the fiscal year 2016 enacted level. And this also deals with the funding level approved as part of the bipartisan budget agreement in October.

I support this increase, but it is important that we all recognize that far more resources are needed to properly address all the environmental issues facing our nation today. A clean environment is essential to public health and to a strong economy.

It is also important to recognize that EPA's budget represents a small portion of the overall federal budget, less than one-quarter of 1 percent. We should also remember that EPA shares over 40 percent of its funding with the states and tribes to help them implement federal environmental laws and achieve national goals. These funds support local economies and communities big and small.

The recent drinking water crisis across the nation demonstrates how important it is to invest in our drinking water systems. I commend the President for increasing the Drinking Water State Revolving Fund, or SRF, by nearly \$160 million. Our drinking water systems need more funding to help provide clean and safe drinking water to communities.

While I am happy to see this funding increase, I must reiterate that so much more is needed. The Drinking Water SRF has been underfunded for years. According to EPA's most recent needs survey, \$385 billion is needed over the next 20 years to modernize and repair our drinking water systems.

We should be working together to make these critical investments to ensure the health of our communities. We have reached a point where essential water and waste infrastructure needs repair and replacement. We simply cannot allow this essential infrastructure to deteriorate further. If we do, we are going to be forced to spend more when a crisis occurs, and the longer we delay, the more expensive it will become to fix.

The President's budget also provides an increase of nearly \$68 million for climate and air-quality-related initiatives, which I support. We should be investing in programs that build climate resiliency and reduce the impacts of extreme weather events. I especially appreciate EPA's plans to help communities integrate climate adaptation policies to help them address our changing climate and plan for the future.

In addition, the President's budget increases funding by nearly \$40 million for the cleanup of Superfund and brownfield sites across the nation. These are vital programs for protecting human environmental health, while also creating jobs and improving the economy. As of March 1st, brownfields programs have created more than 100,000 jobs and in the first 2 months of this year have revitalized over 4500 acres of land.

While I appreciate EPA's efforts, the remaining Superfund and brownfields sites are becoming more complicated to clean up, and with limited resources, the time and cost to complete this work is extended significantly. With so many people living near contaminated sites, we must continue providing robust support for these programs. Cleanup of these sites transforms from liabilities to assets that generate needed revenues and economic opportunity.

Finally, I would like to voice one area of concern: proposed cuts to the BEACH Act Grant Program. As someone elected to represent part of the Jersey shore, I understand the importance of protecting and improving the quality of our beaches and their importance to

local economies. I am disappointed that, once again, the budget eliminates funding for this critical program, and I am troubled by EPA's unwillingness to prioritize funding to fight water-borne pathogens of pollution that affect coastal recreation. This program deserves continued support, and I will work with my colleagues to ensure adequate funding.

But, again, I look forward to the Administrator's testimony.

Thank you, and I yield back.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Thank you, Administrator McCarthy, for being here today to discuss the Environmental Protection Agency's programs and budget. EPA's work is critically important to protecting the health of our communities and our environment.

The President's FY 2017 Budget funds the EPA at \$8.627 billion- a modest increase of \$127 million from the FY 2016 enacted level. This also adheres to the funding level approved as part of the bipartisan budget agreement in October. I support this increase, but it is important that we all recognize that far more resources are needed to properly address all of the environmental issues facing our nation today. A clean environment is essential to public health and to a strong economy.

It's also important to recognize that EPA's budget represents a small portion of the overall federal budget—less than one quarter of one percent. We should also remember that EPA shares over 40 percent of its funding with the states and tribes to help them implement federal environmental laws and achieve national goals. These funds support local economies and communities big and small.

The recent drinking water crises across the nation demonstrate how important it is to invest in our drinking water systems. I commend the President for increasing the Drinking Water State Revolving Fund (SRF) by nearly \$160 million. Our drinking water systems need more funding to help provide clean and safe drinking water to communities. While I am happy to see this funding increase, I must re-iterate that so much more is needed. The Drinking Water SRF has been underfunded for years. According to EPA's most recent Needs Survey, \$385 billion is needed over the next 20 years to modernize and repair our drinking water systems. We should be working together to make these critical investments to ensure the health of our communities. We have reached a point where essential water and waste infrastructure needs repair and replacement. We simply cannot allow this essential infrastructure to deteriorate further. If we do, we are going to be forced to spend more when a crisis occurs. The longer we delay, the more expensive it will become to fix.

The President's Budget also provides an increase of nearly \$68 million for climate and air quality-related initiatives, which I support. We should be investing in programs that build climate resiliency and reduce the impacts of extreme weather events. I especially appreciate EPA's plans to help communities integrate climate adaptation policies to help them address our changing climate and plan for the future.

In addition, the President's Budget increases funding by nearly \$40 million for the clean-up of Superfund and Brownfield sites across the country. These are vital programs for protecting human and environmental health, while also creating jobs and improving the economy. As of March 1, the Brownfields program has created more than 100,000 jobs, and, in the first two months of this year, has revitalized over 4,500 acres of land.

While I appreciate EPA's efforts, the remaining Superfund and Brownfield sites are becoming more complicated to clean-up and with limited resources, the time and cost to complete this work is extended significantly. With so many people living near contaminated sites, we must continue providing robust support for these programs. Cleanup of these sites transforms them from liabilities to assets that generate needed revenues and economic opportunity.

Finally, I'd like to voice one area of concern-proposed cuts to the BEACH Act Grant Program. As someone elected to represent part of the Jersey Shore, I understand the importance of protecting and improving the quality of our beaches and their importance to local economies. I am disappointed that, once again, your budget eliminates funding for this critical program, and I'm troubled by EPA's apparent lack of concern over potential for waterborne pathogens or pollution affecting coastal recreation and public health. This program deserves continued support, and I will work with my colleagues to ensure adequate funding.

I look forward to hearing your testimony, Administrator McCarthy. Thank you.

Mr. WHITFIELD. The gentleman yields back.

At this time the Chair recognizes the chairman of the full committee, Mr. Upton, for 5 minutes.

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

Mr. UPTON. Administrator McCarthy, welcome back. We look forward to our discussion on EPA's proposed 2017 budget.

I know that the agency has an ambitious agenda that it would like to put in place before the President's tenure in the White House is completed, but the EPA should focus, I believe, its efforts less on finalizing a wave of new regs and more on getting back to the basic functions for which the agency was created.

Improving public health by ensuring the quality of the air we breathe and the safety of our drinking water supply, that is the reason Republicans and Democrats came together in 1970 and created the EPA. It was also the reason Congress passed many bipartisan public health bills, like the Clean Air Act and the Safe Drinking Water Act, for the agency to administer.

However, the heartbreaking events unfolding in Flint are a sign that perhaps the EPA has strayed from its core mission. Make no mistake, the system failed at all levels that resulted in the lead contamination problems with Flint's water supply. It is clear to me that EPA's poor performance of its duties under the Safe Drinking Water Act were, in fact, part of the problem.

I hope that, in the same bipartisan spirit that launched EPA in 1970, that we can rededicate ourselves to the basic public health protections that are the reasons that this agency was brought into existence, the most recent example being our bipartisan work to strengthen the public disclosure requirements in the Safe Drinking Water Act. Not only was it a step in the right direction, more importantly, I hope that it provides the reset needed at the agency to focus it on doing the tasks assigned to it under the Safe Drinking Water Act, including compliance and verification activities.

What we are doing now will not prevent damage in Flint, but we owe it to the people of Flint, as well as other communities across the country that may face lead-contaminated water supplies, to sharpen EPA's oversight role in protecting public health.

I know many people in D.C. are eager to lay blame on one political party or another when disasters like Toledo, Gold King Mine, Flint threaten a community's drinking water. Regardless of who is responsible, we need to address the crises that those people face.

I am interested in being part of the solution, and I know that you, also, want to be part of the solution. It is going to take creative solutions, and surely there will be challenges. I know that we can put our heads together and put a greater emphasis on problem-solving and doing right by the American people, rather than playing the blame game. And that is certainly my perspective.

While we are talking about places where we can and should be working together, I want to follow up on what John Shimkus indicated with our committee's reform efforts for the Toxic Substances Control Act, or TSCA. As you know, we worked very hard to put

together a bipartisan bill that addresses legal shortcomings in the law. I know that your agency would like to see reform occur in this Congress. I look forward to your support in helping it get to the President's desk. We look forward to working constructively with you.

And I yield back the balance of my time.  
[The prepared statement of Mr. Upton follows:]

#### PREPARED STATEMENT OF HON. FRED UPTON

I know that the agency has an ambitious agenda it would like to put in place before President Obama's tenure in the White House is completed. But the EPA should focus its efforts less on finalizing a wave of new regulations and more on getting back to the basic functions for which the agency was created.

Improving public health by ensuring the quality of the air we breathe and the safety of our drinking water supply—that's the reason Republicans and Democrats came together in 1970 and created the Environmental Protection Agency. It was also the reason Congress passed many bipartisan public health bills like the Clean Air Act and Safe Drinking Water Act for the agency to administer.

However, the heartbreaking events unfolding in Flint, Michigan, are a sign that EPA has strayed from its core mission. Make no mistake, the system failed at all levels that resulted in the lead contamination problems with Flint's water supply, but it is clear that EPA's poor performance of its duties under the Safe Drinking Water Act was a part of the problem.

I hope that in the same bipartisan spirit that launched EPA in 1970 that we can rededicate ourselves to the basic public health protections that are the reasons this agency was brought into existence. The most recent example being our bipartisan work to strengthen the public disclosure requirements in the Safe Drinking Water Act. This was not only a step in the right direction, but perhaps more importantly, I hope it will provide the reset needed at the agency to focus it on doing the tasks assigned to it under the Safe Drinking Water Act, including compliance verification activities. What we are doing now will not prevent damage in Flint, but we owe it to the people of Flint, as well as other communities that may face lead contaminated water supplies, to sharpen EPA's oversight role in protecting public health.

I know many people in Washington are eager to lay blame on one political party or the other when disasters like Toledo, Gold King Mine, or Flint threaten a community's drinking water. Regardless of who is responsible, we need to address the crises those people face. I am interested in being part of the solution and want you to know, Administrator McCarthy, that you should look to us as a partner in providing better drinking water to Americans. It is going to take creative solutions and there will surely be challenges, and I hope we can put our heads together and put a greater emphasis on problem solving and doing right by the American people rather than playing the blame game.

While we are talking about places where we can, and should, be working together, I also want to mention our committee's reform efforts for the Toxic Substances Control Act. As you know, the House has worked very hard to put together a bill that addresses the legal shortcomings in the law. I know the agency would like to see reform occur this Congress, I look forward to your support in helping us get it to the president's desk.

This committee looks forward to working constructively with EPA, and I hope that this final year for the administration is one that offers many such opportunities.

Mr. WHITFIELD. The Chair recognizes the gentleman from California, Mr. McNerney, for 5 minutes.

#### **OPENING STATEMENT OF HON. JERRY MCNERNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. MCNERNEY. Well, thank you, Mr. Chair.

The EPA plays an important role in our society in protecting our citizens and our environment. Safe and clean drinking water has recently risen to the headlines because of the discovery of pipes corroded by using contaminated water in Flint, Michigan. This water

has permanently harmed their children and shaken people's trust in our public services. This type of occurrence will become more common if we fail to invest in our failing infrastructure or if we fail to invest in the means to monitor our safe drinking water. Clean and safe drinking water should be a guarantee for every American. It is not only irresponsible, but criminal to withhold funds and resources to protect lives.

The EPA also has a significant responsibility to fight climate change. Climate change is considered a contributing factor to crop failures and droughts in the Middle East and the African Sahel. Climate change is causing weather patterns to bring super-storms such as Sandy and Katrina. The evidence for climate change is dramatic and growing.

The EPA has the experience and science to help us push back on climate change, and they are working on lowering carbon emissions and developing clean energy sources. We need reliable and resilient grid that we can depend upon. And I am going to take this opportunity to recommend to my coal state colleagues to embrace carbon sequestration before the coal industry collapses entirely.

Climate change is also affecting people's health across the globe. Unchecked climate change could lead to 6 million to 7.9 million acres of forest being destroyed by wildfires at a cost of \$940 million to \$1.4 billion. It could also lead to the destruction of ecosystems, such as coral reefs that support economic activity, including 35 percent of the coral reefs in Hawaii, at an economic loss of \$1.2 billion.

Both clean water and climate change are huge issues, but ones I am confident the EPA can address and ensure that American lives are protected.

Now I know my colleagues would like to greatly reduce or eliminate the EPA, but what would we have without the EPA? If you have doubts, just visit Beijing or Kolkata, and you will find out.

Thank you, Mr. Chairman. I yield back.

Mr. WHITFIELD. The gentleman yields back.

And that concludes the opening statements. And so, at this time, Ms. McCarthy, I would recognize you for 5 minutes for your opening statement.

Be sure to turn the microphone on and get it real close.

**STATEMENT OF GINA MCCARTHY, ADMINISTRATOR, U.S.  
ENVIRONMENTAL PROTECTION AGENCY**

Ms. MCCARTHY. Thank you so much.

Mr. WHITFIELD. Thank you.

Ms. MCCARTHY. Thank you, Chairman Whitfield, Chairman Shimkus, Chairman Upton, Ranking Member Tonko, Ranking Member Pallone, and all the members of the subcommittee. Thank you for the opportunity to appear before you to discuss EPA's proposed fiscal year 2017 budget. I am joined today by the agency's Deputy Chief Financial Officer, David Bloom.

EPA's budget request of \$8.267 billion for the 2017 fiscal year lays out a strategy to ensure steady progress in addressing environmental issues that affect public health. For 45 years, our investments to protect public health and the environment have consistently paid off many times over. We have cut air pollution by 70

percent and cleaned up half of our nation's polluted waterways. All the while our national economy has tripled.

Effective environmental protection is a joint effort of the EPA, states, and by tribal partners. That is why the largest part of our budget, \$3.28 billion, or almost 40 percent, is provided directly to our state and tribal partners.

In fiscal year 2017, we are requesting an increase of \$77 million in funding for state and tribal assistance categorical grants in support of critical state work in air and water protection, as well as continued support for our tribal partners.

This budget request also reinforces EPA's focus on community support by providing targeted funding and support for regional coordinators to help communities find and determine the best programs to address local environmental priorities.

The budget includes \$90 million in brownfields project grants to local communities. That is an increase of \$10 million, which will help to return contaminated sites to productive reuse.

This budget prioritizes actions to reduce the impacts of climate change and support the President's Climate Action Plan. It includes \$235 million for efforts to cut carbon pollution and other greenhouse gases through common-sense standards, guidelines, and voluntary programs.

The EPA's Clean Power Plan continues to be a top priority for the EPA and for our nation's inevitable transition to a clean energy economy. Though the Supreme Court has temporarily stayed the Clean Power Plan Rule, states are not precluded from voluntarily choosing to continue implementation planning. And EPA will continue to assist states that voluntarily decide to do so.

As part of the President's 21st Century Clean Transportation Plan, the budget also proposes to establish a new mandatory fund for the EPA, providing \$1.65 billion over the course of 10 years to retrofit, replace, or repower diesel equipment and up to \$300 million in fiscal year 2017 to renew and increase funding for the Diesel Emission Reduction Grant Program.

The budget also includes a \$4.2 million increase to enhance vehicle engine and fuel compliance programs, including critical testing capabilities.

We also have to confront the systemic challenge that threatens our country's drinking water and the infrastructure that delivers it.

This budget includes a \$2 billion request for the State Revolving Loan Fund and \$42 million in additional funds to provide technical assistance to small communities, loan financing to promote public/private collaboration, and training to increase the capacity of communities and states to plan and finance drinking water and wastewater infrastructure improvements.

The EPA requests \$20 million to fund the Water Infrastructure Finance and Innovation Act, our WIFIA program, which will provide direct financing for the construction of water and wastewater infrastructure by making loans for large, innovative projects of regional or national significance.

This budget also provides \$22 million in funding to expand the technical, managerial, and financial capabilities of drinking water systems. Included is \$7.1 million for the Water Infrastructure and Resilience Finance Center and the Center for Environmental Fi-

nance that will enable communities across the country to focus on financial planning for upcoming public infrastructure investments, expand work with states to identify financing opportunities, in particular for rural communities, and enhance partnership and collaboration with the U.S. Department of Agriculture.

EPA is also seeking a \$20 million increase to the Superfund Remedial Program, which will accelerate the pace of cleanup, supporting states, local communities, and tribes in their efforts to assess and clean up sites and return them once again to productive reuse.

EPA's fiscal year 2017 budget request will let us continue to make a real and visible difference to communities and public health every day and provide us with a foundation to revitalize the economy and improve infrastructure across the country.

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

[The prepared statement of Ms. McCarthy follows:]

**TESTIMONY OF  
GINA MCCARTHY  
ADMINISTRATOR  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE  
SUBCOMMITTEE ON ENERGY AND POWER AND THE SUBCOMMITTEE ON THE  
ENVIRONMENT AND THE ECONOMY OF THE  
HOUSE COMMITTEE ON ENERGY AND COMMERCE  
TUESDAY MARCH 22, 2016**

Chairman Whitfield, Chairman Shimkus, Ranking Member Rush, Ranking Member Tonko, and members of the Subcommittees, thank you for the opportunity to appear before you to discuss the Environmental Protection Agency's proposed FY 2017 budget. I'm joined by the agency's Deputy Chief Financial Officer, David Bloom.

The EPA is, at its very core, a public health agency. The simple fact is you cannot have healthy people without clean air, clean water, healthy land, and a stable climate. We have worked hard to deliver these and made significant progress over the years for the American people. This budget request of \$8.267 billion [in discretionary funding] for the 2017 fiscal year, starting October 1, 2016, lays out a strategy to ensure that steady progress is made in addressing environmental problems. This strategy includes actions to protect public health and it ensures that the agency and its partners in environmental protection, states and tribes, are positioned to meet the challenges of the future. The request is \$127 million above the agency's enacted level for FY 2016. For 45 years, the EPA's investments to protect public health and the environment have helped make the nation's air, land, and waters cleaner.

However, in many ways we are now at a turning point. As science advances, it improves our ability to measure pollution and provide better and more complete access to environmental information, but we know that the technologies and tools that we have relied on to date cannot be expected to meet all of today's challenges, like climate change and aging infrastructure. This budget supports efforts to leverage investments in technology, and be even more innovative and responsive, while reflecting an understanding that a strong economy depends on a healthy environment. It funds essential work to support our communities, address climate change, protect our waters, protect our land, ensure chemical safety, encourage pollution prevention, advance research and development and promote innovation and modernization to streamline processes.

Supporting our state, local, and tribal partners is a central component of our work to protect public health and the environment. This budget builds on a history of addressing environmental and public health challenges as a shared responsibility. We are doing this while supporting a strong workforce at the EPA and maintaining a forward and adaptive organization with the tools necessary to ensure effective use of the public funds provided to us.

**Making a Visible Difference in Communities Across the Country**

We are committed to continuing our work with our partners to make a visible difference in communities across the country—especially in areas overburdened by pollution—including distressed urban and rural communities.

The EPA has made community support a top priority and this budget reinforces that focus. It includes a multi-faceted effort that builds and strengthens capacity using innovative tools, comprehensive training, technical assistance, and increased access to the most up-to-date scientific data. The EPA is committed to assisting communities in addressing their most pressing environmental concerns and will continue to innovate by taking full advantage of advances in technology to detect air and water pollution.

In FY 2017, the EPA will provide targeted funding and support for regional coordinators to help communities find and determine the best programs to address local environmental priorities. The FY 2017 budget also provides \$17 million for the Alaska Native Villages infrastructure assistance program, and an additional \$2.9 million within the Integrated Environmental Strategies program will support these communities in conducting resiliency planning exercises and capacity-building. This will build upon previous collaborative efforts with FEMA, NOAA and HUD.

Across the budget, activities help communities adopt green infrastructure, provide technical assistance for building resilience and adapting to climate change, and help communities to reduce environmental impacts through advanced monitoring technology and decision making tools. The EPA's budget also includes \$90 million in Brownfields Project grants to local communities, an increase of \$10 million. These funds will help to return contaminated sites to productive reuse by increasing investments in technical assistance and community grants for assessment and cleanup of areas where we work, live and play.

The EPA will continue work to limit public exposure to uncontrolled releases of hazardous substances and make previously contaminated properties available for reuse by communities through a request of approximately \$521 million in the Superfund Remedial program and another \$185 million in the Superfund Emergency Response and Removal program. An increase of \$24 million in Superfund cleanup programs will enable the remedial program to maximize the preparation of "shovel-ready" projects, and provide funding to reduce the backlog of new construction projects that address exposure to contaminated soil and groundwater. It also supports critical resources with the Emergency Response and Removal program giving us the ability to quickly respond to simultaneous emergencies.

**Addressing Climate Change and Improving Air Quality**

The FY 2017 budget request for the agency's work to address climate change and to improve air quality is \$1.132 billion. These resources will help protect those most vulnerable to climate impacts and the harmful health effects of air pollution through commonsense standards, guidelines, and partnership programs.

Climate change remains a threat to public health, our economy, and national security and the U.S. recognizes our role and our responsibility to lead in cutting carbon pollution that is fueling climate change. To do so, our work will position the business community, its entrepreneurs, and its innovators to lead the world in a global effort while at the same time, expanding the economy. States and businesses across the country are working to build renewable energy infrastructure, increase energy efficiency, and cut carbon pollution—creating sustainable, middle class jobs and displaying the kind of innovation that has enabled this country to overcome so many challenges. Over the last decade, the U.S. has cut its total carbon pollution more than any other nation on Earth. And last November, we set a goal of reducing economy-wide greenhouse gas emissions by 26 - 28% by 2025. Even so, we are still ranked just behind China as the second largest emitter of CO<sub>2</sub>, so we need to continue to lead by example as we work to address this global challenge.

The FY 2017 budget prioritizes actions to reduce the impacts of climate change, one of the most significant challenges for this and future generations, and supports the President's Climate Action Plan. The budget includes \$235 million for efforts to cut carbon pollution and other greenhouse gases through common sense standards, guidelines, and voluntary programs. The EPA's Clean Power Plan, which establishes carbon pollution reduction standards for existing power plants, is a top priority for the EPA and will help spur innovation and economic growth while creating a clean energy economy. Although the Supreme Court has stayed the CPP rule, the stay does not preclude all continued work on the CPP and does not limit states that want to proceed with planning efforts or other actions to reduce greenhouse gas emissions from power plants. During the stay, EPA will continue to assist states that voluntarily decide to move forward, helping to pave the way for plans that will involve innovative approaches and flexibility for achieving solutions. The President's Climate Action Plan also calls for greenhouse gas reductions from the transportation sector by increasing fuel economy standards. These standards will represent significant savings at the pump, reduce carbon pollution, and reduce fuel costs for businesses, which is anticipated to lower prices for consumers. The budget includes a \$4.2 million increase to enhance vehicle, engine and fuel compliance programs, including critical testing capabilities, to ensure compliance with emission standards. An additional \$1 million is included in the President's request to share the agency's mobile source expertise and technical assistance internationally with a focus on heavy duty trucks.

As part of the President's 21st Century Clean Transportation Plan, the President's Budget proposes to establish a new mandatory fund at the EPA. The existing fleet of cars, trucks, and buses is aging, contributing to climate change and putting our children's health at risk. To protect the health of the most vulnerable populations and reduce childhood exposure to harmful exhaust, the EPA will provide a total of \$1.65 billion through the Fund over the course of 10 years to retrofit, replace, or repower diesel equipment. The proposed funding, which is separate from the agency's discretionary funding request, will provide up to \$300 million in FY 2017 to renew and increase funding for the Diesel Emissions Reduction Grant Program (DERA), which is set to expire in 2016. This budget also provides \$10 million in discretionary funding to support our existing DERA program to provide national grants and rebates to reduce diesel emissions in priority areas.

#### **Protecting the Nation's Waters**

Protecting the nation's waters remains a top priority for the EPA. In FY 2017, the agency will continue to build upon decades of work to ensure our waterways are clean and our drinking water is safe. There are far reaching effects when rivers, lakes, and oceans become polluted. Polluted waters can make our drinking water unsafe, threaten the waters where we swim and fish, and endanger wildlife. To meet these needs and to protect public health, we need to expand our impact through innovation. The State Revolving Funds (SRF) alone, while important, cannot and should not be relied upon to solve all infrastructure needs. New funds available under the Water Infrastructure Finance and Innovation Act (WIFIA) credit program, as well as technical assistance to help communities plan future investments and better leverage Federal, state, and local resources are necessary to get us there.

We have to confront the systematic challenges that threaten our drinking water; a resource essential to every human being and living thing on Earth. The EPA will continue to partner with states to invest in our nation's water infrastructure. This budget includes a combined \$2 billion request for the Clean Water and Drinking Water State Revolving Funds and \$42 million in additional funds to provide technical assistance to small communities, loan financing to promote public-private collaboration and training to increase the capacity of communities and states to plan and finance drinking water and wastewater infrastructure improvements.

The Water Infrastructure Finance and Innovation Act (WIFIA) established a new financing mechanism for water and wastewater infrastructure projects. In this budget, the EPA requests \$20 million to fund the WIFIA program, which will provide direct financing for the construction of water and wastewater infrastructure by making loans for large innovative projects of regional or national significance. The WIFIA program also will work to support investments in small communities and promote public-private collaboration. \$15 million of the \$20 million increase in the budget will allow EPA to begin making loans for WIFIA projects. The program is designed to highly leverage these funds, translating into a potential loan capacity of nearly \$1 billion to eligible entities for infrastructure projects.

This budget provides \$22 million in funding to expand the technical, managerial, and financial capabilities of drinking water and wastewater systems to provide safe and reliable services to their customers now and into the future. Included is \$7.1 million for the Water Infrastructure and Resiliency Finance Center and the Center for Environmental Finance that will enable communities across the country to focus on financial planning for upcoming public infrastructure investments, expand work with states to identify financing opportunities for rural communities, and enhance partnership and collaboration with the U.S. Department of Agriculture. The Water Infrastructure and Resiliency Finance Center is part of the Build America Investment Initiative, a government-wide effort to increase infrastructure investment and promote economic growth by creating opportunities for state and local governments and the private sector to collaborate on infrastructure development.

**Protecting Our Land**

The EPA strives to protect and restore land to create a safer environment for all Americans by cleaning up hazardous and non-hazardous wastes that can migrate to air, groundwater and surface water, contaminating drinking water supplies, causing acute illnesses and chronic diseases, and threatening healthy ecosystems. We preserve, restore, and protect our land, for both current and future generations by cleaning up contaminated sites and returning them to communities for reuse. Funding will assist communities in using existing infrastructure and planning for more efficient and livable communities, and encouraging the minimization of environmental impacts throughout the full life cycle of materials.

Approximately 53 million people in the U.S. live within 3 miles of a Superfund remedial site, roughly 17% of the U.S. population, including 18% of all children under the age of five. In FY 2017, we will increase the Superfund Remedial program by \$20 million to accelerate the pace of cleanups, supporting states, local communities, and tribes in their efforts to assess and cleanup sites and return them to productive reuse, and encourage renewable energy development on formerly hazardous sites when appropriate. We also will expand the successful Brownfields program's community-driven approach to revitalizing contaminated land, providing grants, and supporting area-wide planning and technical assistance to maximize the benefits to the communities.

**Taking Steps to Improve Chemical Facility Safety**

The EPA is requesting \$23.7 million for the State and Local Prevention and Preparedness program, an increase of \$8.4 million above the FY 2016 enacted level.

In support of the White House Executive Order 13650 on Improving Chemical Facility Safety and Security, the requested increase will allow the EPA to continue to expand upon its outreach and technical assistance to improve the safety and security of chemical facilities and reduce the risks of hazardous chemicals to facility workers and operators, communities, and responders.

These efforts represent a shared commitment among those with a stake in chemical facility safety and security: facility owners and operators; federal, state, local, tribal, and territorial governments; regional entities; nonprofit organizations; facility workers; first responders; environmental justice and local environmental organizations; and communities. The EPA therefore plays a significant and vital role.

In FY 2017, the EPA will develop, initiate and deliver training to aid with expansive outreach and planning for local communities, emergency planners, and responders. This will assist local emergency planners and first responders in using the risk information available to them, educating the public about what to do if an accident occurs. The EPA also will work effectively with facilities to reduce the risks associated with the chemicals that are stored, used, or produced on site to help prevent accidents from occurring.

**Continuing EPA's Commitment to Innovative Research & Development**

In building environmental policy, scientific research continues to be the foundation of EPA's work. Environmental issues in the 21st century are complex because of the interplay between air quality, climate change, water quality, healthy communities, and chemical safety. Today's complex issues require different thinking and different solutions than those used in the past. In FY 2017, we will continue to strengthen the agency's ability to develop solutions by providing \$512 million to evaluate and predict potential environmental and human health impacts for decision makers at all levels of government. Activities in the FY 2017 Budget include providing support tools for community health, investigating the unique properties of emerging materials, such as nanomaterials, and research to support the nation's range of growing water-use and ecological requirements. The Chemical Safety and Sustainability program will continue to place emphasis on computational toxicology (CompTox), which is letting us study chemical risks and exposure exponentially faster and more affordably than ever before. The EPA's ToxCast program has screened nearly 2,000 chemicals and Tox21 has screened over 8,000. In FY 2017 we have an opportunity to further enhance CompTox and broaden its application, adding significant efficiency and effectiveness to agency operations.

**Supporting State and Tribal Partners**

Effective environmental protection is a joint effort of the EPA, states and our tribal partners, and we are setting a high bar for continuing our partnership efforts. That's why the largest part of our budget, \$3.28 billion dollars, or almost 40 percent, is provided directly to our state and tribal partners. In FY 2017, we are requesting an increase of \$77 million in funding for State and Tribal Assistance categorical grants in support of critical state work in air and water protection as well as continued support for our tribal partners.

The EPA is focused on opportunities to continue building closer collaboration and targeted joint planning and governance processes. One example is the E-Enterprise for the Environment approach, a transformative 21st century strategy to modernize the way in which government agencies deliver environmental protection. With our co-regulatory partners, we are working to streamline, reform, and integrate our shared business processes and related systems. These changes, including a shift to electronic reporting, will improve environmental results, reduce burden, and enhance services to the regulated community and the public. State-EPA-Tribal joint governance serves to organize the E-Enterprise partnership to elevate its visibility, boost coordination capacity, and ensure the inclusiveness and effectiveness of shared processes, management improvements, and future coordinated projects.

**Maintaining a Forward Looking and Adaptive EPA**

The EPA has strategically evaluated its workforce and facility needs and will continue the comprehensive effort to modernize its workforce. By implementing creative, flexible, cost-effective, and sustainable strategies to protect public health and safeguard the environment, the EPA will target resources toward development of a workforce and infrastructure that can address current challenges and priorities.

We are requesting funding in this budget to help us fast-track efforts to save taxpayer dollars over the long term by optimizing and renovating critical agency space. That space includes laboratory buildings across the country, where we conduct critical scientific research on behalf of the American public. Since FY 2012, the EPA has released over 250,000 square feet of office space nationwide, resulting in a cumulative annual rent avoidance of nearly \$9.2 million across all appropriations. Additional planned consolidations and moves could release another 336,000 square feet of office space in the next several years.

The agency will continue on-going work to improve processes and advance the E-Enterprise effort – replacing outdated paper processes for regulated companies with electronic submissions. The EPA's goals for process improvements are: leveraging technology, streamlining workflow, and improving data quality, and increasing data sharing and transparency. The agency also is making necessary investments to improve internal IT services to support productivity and address cybersecurity needs.

In FY 2017, the EPA requests \$3.3 million to expand Program Evaluation and Lean efforts as a part of the High Performing Organization Cross-Agency Strategy. We continue to eliminate non-value added activities to focus more directly on all tasks that support its mission of protecting public health and the environment.

The EPA continues to examine its programs to find those that have served their purpose and accomplished their mission. The FY 2017 President's Budget also eliminates some mature programs where state and local governments can provide greater capacity. Those grant programs are the Beaches Protection categorical grants, the Multi-purpose categorical grants, the Radon categorical grants, the Targeted Airshed grants and the Water Quality Research and Support grants, totaling \$85 million.

We are committed to do the work that is necessary to meet our mission and protect public health. The EPA's FY 2017 budget request will let us continue to make a real and visible difference to communities and public health every day. It will give us a foundation to revitalize the economy and improve infrastructure across the country. And it will sustain state, tribal, and federal environmental efforts across all our programs.

Mr. Chairman, I thank you for the opportunity to testify today. While my testimony reflects only some of the highlights of the EPA's FY 2017 budget request, I look forward to answering your questions.

Mr. WHITFIELD. Thank you, Ms. McCarthy. We appreciate that statement.

And I will recognize myself for 5 minutes to get started here.

Soon after the Supreme Court issued the stay on the Clean Energy Plan, I was reading an article and it said that in a letter you said that the rule had been suspended and has no legal force, the rule being the Clean Energy Plan. I was curious, who did you write that letter to? Was that letter sent to all the states or was this a letter that just was an interagency letter to members that work at EPA and colleagues?

Ms. MCCARTHY. I don't know which letter you are referring to.

Mr. WHITFIELD. It says, "While Administrator McCarthy has suggested that her agency will continue to provide tools and outreach to states, none of these efforts by EPA should be perceived as requiring states to act. The rule has been suspended and has no legal force," the letter stated.

So, did you send the letter to the states saying that the rule has been suspended and has no legal force?

Ms. MCCARTHY. That would be an accurate statement, sir, and I assume that I did notice people, but I don't know which particular letter. I just don't recall.

Mr. WHITFIELD. So, you don't recall? You don't recall sending out a letter? You don't recall sending a letter to the states?

Ms. MCCARTHY. I certainly have said that in person and in letters to a number of individuals explaining that there is a stay in place and EPA won't be implementing or enforcing the law, and that it has to work through the courts, but we would certainly continue to work voluntarily with states that voluntarily want to continue—

Mr. WHITFIELD. But you don't recollect yourself sending a letter to the states saying that?

Ms. MCCARTHY. I actually believe that I did, sir, but reading a portion of it doesn't give me complete enough recollection to be able to confirm it positively.

Mr. WHITFIELD. Well, did you send a letter to every—

Ms. MCCARTHY. I did send a letter to states letting them know what happened, yes, sir.

Mr. WHITFIELD. OK. OK. Now, prior to the Supreme Court stay, each state was expected, by September of this year, to submit a State Implementation Plan to EPA, is that correct?

Ms. MCCARTHY. That is correct, yes.

Mr. WHITFIELD. And have they been notified that that State Implementation Plan is no longer expected by September?

Ms. MCCARTHY. I believe everybody is aware of that, yes, sir.

Mr. WHITFIELD. OK. And now, Ms. McCabe has talked a lot about, and you have also, saying you are working with states that want to proceed. How many states would that be?

Ms. MCCARTHY. Well, we are certainly working with many states. Every day that changes. I know that 25 or so states have indicated publicly that they are doing some portion of planning and continuing to think about it. But many states understand that there is a transition in the energy world right now and that the Clean Power Plan is on hold, but it is going to be looked at on its merits, and they are continuing to think about—

Mr. WHITFIELD. But they can do the transition without the Clean Energy Plan, correct?

Ms. MCCARTHY. Well, the energy transition is happening regardless of that, yes.

Mr. WHITFIELD. Yes, I mean, it is all about pricing primarily.

Ms. MCCARTHY. Right.

Mr. WHITFIELD. But two component parts that Ms. McCabe keeps stressing is the Clean Energy Incentive Program and the Model Rules. Those are an integral part of the Clean Energy Plan. Without those, the Clean Energy Plan would not be very effective. Would you agree with that?

Ms. MCCARTHY. No, sir. The Clean Power Plan actually is a rule that is moving forward on its own through the courts. The Model Rule was something that the states suggested that we do for them, and part of the Model Rule is how the states might handle the CEIP. So, both of those are related, and those are efforts that the states have asked us to do separate, and also related, but on its own separate.

Mr. WHITFIELD. Well, she refers to those as two key pieces, the Clean Energy Incentive Program and the Model Rules, key pieces. But she says it will be done consistent with the Court ruling.

Ms. MCCARTHY. Yes.

Mr. WHITFIELD. How do you determine that it is consistent with the Court ruling?

Ms. MCCARTHY. Well, the Clean Energy Incentive Plan is part of the Clean Power Plan as it stands that the Court is going to look at. Separate from that, there is a question of how states might look at the Model Rule and how that might be also an opportunity to take comment on it and look more specifically at how states might look at their Clean Energy Incentive Program.

So, those are being done for the benefit of the states' understanding, and it is being done at the request of states that voluntarily want to think about how they might comply and think about the planning process.

Mr. WHITFIELD. Might comply with what?

Ms. MCCARTHY. Might think about complying consistent with the Clean Power Plan, but it is not an underlying rule of the plan. It is all voluntary and it is the states asking us to help them as they are doing their voluntary planning moving forward.

Mr. WHITFIELD. My time has expired.

At this time I recognize the gentleman from New York, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair.

And thank you again, Administrator McCarthy, for being here today.

The fiscal year 2016 Omnibus included \$863 million for the Drinking Water SRF, which was a \$44 million decrease from fiscal year 2015. So, I was grateful that the administration has recognized a critical need to invest in our drinking water systems by increasing its request by \$158 million for this year. But can you please explain the relationship between the Clean and Drinking Water SRFs?

Ms. MCCARTHY. Yes. I mean, both of those are SRF programs. One manages our wastewater system, the other our drinking water

system. We tend to look at them together, but we also tend to look at what the outstanding needs are in both. Clearly, both of them are necessary for clean drinking water, let's make that clear, and rivers and streams that are clean.

But, when we looked back at what the demand was for each over a period of time, looking out to 2030, we realized that drinking water at this point is in dire need of additional assistance, and we balanced that in terms of how we are looking at both in this budget.

Mr. TONKO. So, you acknowledge, then, that there is this flexibility to shift funds between the two SRFs in order to address their specific needs, is that right?

Ms. MCCARTHY. They have that opportunity to be able to shift as well. There is quite a bit of flexibility in terms of the use of both funds.

Mr. TONKO. Yes, and it is why I am disappointed to see the \$1 billion request for drinking water was at the expense of over a \$400 million decrease in clean water. The combined total is some \$250 million less than last year's enacted level, and even worse when compared to the last budget request.

So, can you explain the decision to offset the drinking water increase with the clean water? I know you are concerned for, obviously, having to grow the one account, but, overall, it appears as though there is a dire need to have very robust funding.

Ms. MCCARTHY. Yes. I think there needs to be a very serious and larger conversation about this, as I am sure you would agree, overall. Our challenge was to meet the funding levels that were in the bipartisan Budget Act of 2015. So, we didn't have an opportunity to look for significant new funding.

Every time those numbers are increased, it is at the expense of EPA's operating budget. Frankly, with a budget that is only looking for a 2-percent bump-up, it will be very hard for the agency to continue operating at an efficient and successful level if we have to continue to look at significant more investment within our budget for those activities.

Mr. TONKO. Right, which speaks to the role of Congress here, as we control the purse strings. It appears as though we have to do a much more robust effort for our water issues.

While I understand the budgets are tight, robbing Peter to pay Paul doesn't seem to be the appropriate solution. I am sure you would agree that both drinking and wastewater systems, as you are indicating, need additional federal support. And so, we must ensure that both are adequately funded.

As I mentioned earlier, the EPA estimates that there is this 20-year capital needs level of some \$384 billion. This estimate has increased in each report since 1995, and I would guess the next estimate will follow that trend. So, we have spent 20 years funding the SRF between \$800 million and \$1 billion. This request appears to be much of the same.

I have heard from the mayors in my district, from town supervisors in my district, that cash-strapped local government simply cannot come up with the financing on their own. And I have had tremendous glaring examples of painful consequences of underfunding.

The Administrator of the EPA does a lot of work with state and local governments. In your experience, will we make significant progress in closing this \$384 billion gap by maintaining the current federal funding levels?

Ms. MCCARTHY. No, it doesn't even come close or consider the fact that we are looking at new, emerging contaminants that simply won't be resolved through the technologies we have in hand.

Mr. TONKO. And do you believe that a more lucrative, a more robust, sustained commitment is needed to reduce the infrastructure project backlog that exists?

Ms. MCCARTHY. I think there needs to be a much larger conversation about how you can start investing in a way that is commensurate with the challenge and the core needs of our communities and families.

Mr. TONKO. I thank you for that.

Earlier I had mentioned the AQUA Act that I have introduced. It is driven by the Recovery Act funding levels. And so, that defines our first-year commitment in that legislation of \$3.1 billion and, then, ramping up to \$5.5 billion. Again, we would call for tremendously-focused attention to the water infrastructure in this country.

I thank you, Administrator McCarthy, for, again, responding in a way that I think is deeply rooted in commitment to helping our state and local governments.

Mr. Chair, I hope this is an issue that we can continue to investigate to ensure communities across this nation are getting support to meet their public health, public safety, and infrastructure needs, all very important. I think some of the flare-ups we have seen across this nation in all geographic regions remind us that our work is far from done.

So, with that, I will yield back.

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

At this time I recognize the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman.

So, again, welcome, Administrator.

The good news is we got your letter today in response to statements for the record from Acting Assistant Administrator McCabe, who testified before us in October. The bad news is they create some more questions. And so, I want to read the story, and maybe you can help get this clarified for us.

The basis of my questions in the statement for the record was to ask about the Regulatory Impact Analysis that was used to promulgate the CO<sub>2</sub> regulations. So, throughout the transcript, I continue to kind of push McCabe on give us how you calculated how many power plants would be operating, because if you are going to do a Regulatory Impact Analysis and the cost, basic Economics 101 says supply and demand. There is a 31-gigawatt difference between the Energy Information Agency and what this Regulatory Impact Analysis says from your agency.

So, we were hoping that, for the record, we would get back what was the formula that the EPA used to calculate the amount of power plants that were going to be decommissioned. What we got was a statement. The EPA discussed the assumptions underlying

each of these projections in the Regulatory Impact Analysis accompanying the final Clean Power Plant.

So, the questions I asked to be clarified using the Regulatory Impact Analysis were responded by a letter that says refer to the Regulatory Impact Analysis. If you could help us get the real data and a better answer, I would appreciate that.

Ms. MCCARTHY. Mr. Chairman, I will do the very best I can to answer your questions today or to provide you followup on it.

Mr. SHIMKUS. Yes. I mean, it is just the bottom line is, if you have lost 70 power plants, that does have an effect on—

Ms. MCCARTHY. Yes.

Mr. SHIMKUS. And we just want to find out how you all figured that out versus the Energy Information Agency. And so, we are glad you got that letter to us punctually. Otherwise, I would have had to send another letter. So, thank you.

Since we have talked about TSCA a little bit, as you know, we are hoping to get something to the President. There are three questions. Do you have any idea what it might cost you to assess 10 chemicals in a given year? This is what we need. So, 10 or 20. And then, really, the third question is, did you consider what would be a budget baseline for operating a reformed TSCA program and if fees were capped at \$18 million per year? We are trying to get an idea of, if there are fees, what are your costs? Are they in the ballpark and stuff?

Ms. MCCARTHY. Well, that is well within the range of the technical information that both you and Congressman Pallone have been asking for. I am more than happy to support, to provide you with whatever information I can.

Mr. SHIMKUS. Thank you. Thank you very much.

And I am glad you mentioned Ranking Member Pallone. He has been very, very helpful on movement of this, and we are hopeful we will get to some agreement in the future.

My last question, because I have a minute-and-a-half left, is I did mention in my opening statement Superfund cleanup, CERCLA. Has the ratio of administrative cost to cleanup cost changed over the last few years and, if so, how?

My big concern is always we have the Superfund. A lot of it goes for the administration and the litigation cost. What is the ratio between that portion of the fund and actual cleanup cost?

Ms. MCCARTHY. Yes.

Mr. SHIMKUS. And do you know if there has been any significant change in that? I want money to go to cleanup more than bureaucracy.

Ms. MCCARTHY. I don't know the answer, but we will certainly follow up.

Mr. SHIMKUS. OK. Thank you.

Since I have 45 seconds left, I will yield back my time and thank the chairman.

Mr. WHITFIELD. The gentleman yields back.

At this time the Chair recognizes the gentleman, Mr. McNerney of California, for 5 minutes.

Mr. MCNERNEY. Thanks for indulging and confusing, Mr. Chairman.

[Laughter.]

Administrator McCarthy, I know the EPA is working to deal with drought issues.

Ms. MCCARTHY. Yes.

Mr. MCNERNEY. Of course, I am from California. We know about drought.

Can you explain some of the ways that EPA is working to address drought through technology and innovation?

Ms. MCCARTHY. Yes, sir. We are working pretty hard through our National Resilience effort. We are working with other agencies to develop tools that communities can use to identify both what the drought challenge is and a variety of tools in which they can design systems more effectively. Those are everything from stormwater to their drinking water systems, looking at potential impacts, keeping our communities safe, making sure that our water and wastewater facilities are operating correctly. And so, we have a variety of tools that we work with.

We also have people that go to the communities. We have regional folks that go to communities and work with them and try to help design solutions, so they can manage the kind of adaptive behavior that they need to have in a changing climate.

Mr. MCNERNEY. Do you believe that California can become regionally self-sufficient? In other words, different parts of California can become water self-sufficient ultimately?

Ms. MCCARTHY. There are smarter people in California than I that know the answer to that question. But I know that we are available to work with anyone in California that wants to roll up their sleeves and look at this issue.

Mr. MCNERNEY. Thank you.

I have been a proponent of water use efficiency, and it is important, especially considering threats to our water supply, for us to protect our water sources and to conserve our water supply. One program that aims to help communities conserve water and promote long-term sustainable infrastructure is the WaterSense Program. Can you please describe some of the successes of the WaterSense Program?

Ms. MCCARTHY. Well, I am more than happy to supply you with a lot.

But WaterSense is beginning to be seen, and it has been used in California, as a really good opportunity. Basically, it does the boring work of water conservation. It allows you to take a look at where your water is going, how much it costs, where it is leaking, and how do you take advantage of that, everything from how you can conserve in a household to how you can look at it from a systems approach, from a community or a region. So, we have some really dedicated people that are doing great work at all levels on WaterSense.

Mr. MCNERNEY. Well, moving on, the gas leak in California has raised the public awareness of how gas is leaking into the environment. I know it is not exactly related, but do you believe there is sufficient data related to loss and accountable gas, so that we understand how much gas is actually leaking into the environment across the country?

Ms. MCCARTHY. Actually, we have been learning recently, most recently, through our last Greenhouse Gas Inventory how little we

actually have known about the methane leaks in our oil and gas sector in our pipelines. We are getting educated. It is more than we ever thought before, but there clearly needs to be a continued effort to gather information. We fully intend to do that.

Mr. MCNERNEY. So, what do we have to do to get a hold of this and to stop the leakage or to reduce the leakage?

Ms. MCCARTHY. Well, we have announced that we are actually going to put out an information collection request to the industry to get information from the oil and gas sector, in particular. And then, the challenge will be what are the cost-effective and available technologies that can reduce those leaks, look at the operating practices that need to be done differently to maintain those.

But the good news about methane, in particular, and natural gas is that it is a product that is leaking, not a byproduct. And so, the more you can capture it, the more it is a very cost-effective way to do business.

Mr. MCNERNEY. There is an economic driver, in other words?

Ms. MCCARTHY. Yes, that's right.

Mr. MCNERNEY. Very good.

So, what is the current state of carbon sequestration?

Ms. MCCARTHY. Carbon sequestration is available. It continues to be something that we are going to be relying on more and more. The Department of Energy has a robust program that is looking at carbon sequestration as well as use in sequestration. It is being utilized in a number of facilities in the U.S. We would like it to be more used. We would like the cost to go down considerably as it is being used, so that it becomes more and more available. It is most cost-effective when it is joined with enhanced oil recovery. That is when you have a good system or when it is used to actually produce chemicals.

Mr. MCNERNEY. So, can we save the coal industry with carbon sequestration?

Ms. MCCARTHY. I actually think that carbon sequestration is going to be important, not just domestically, but, clearly, internationally. Coal is going to be around, whether it is in the U.S. or it is in other countries. And it is important for us to have technologies that can allow coal to continue to be part of the energy system.

Mr. MCNERNEY. Thank you.

Mr. Chairman, I yield back.

Mr. WHITFIELD. The gentleman yields back.

We do have a series of four votes on the floor. But, before we go, I am going to get Mr. Upton and Mr. Pallone. And then, once they complete, we will try to come back here at 3:30 to give everyone else an opportunity to ask questions.

Ms. MCCARTHY. Yes, sir.

Mr. WHITFIELD. Mr. Upton, you are recognized for 5 minutes.

Mr. UPTON. Great. And thank you, Mr. Chairman.

Again, Ms. McCarthy, we are glad that you are here today.

I want to thank you just real quickly for your support of the bill that we passed. Every member of this committee supported it on the House floor, H.R. 4470, which did pass 416-to-2, to try to clear up the confusion and close the gaps when communities like Flint

are known. We are hoping that that gets to the President's desk in some form when it comes back from the Senate.

A couple of questions. We are going to have a hearing in two of our subcommittees together next month that really looks to the future on this issue, not pointing fingers. It is my understanding that we are working with your Assistant Administrator for Office of Water, Joel Beauvais—

Ms. MCCARTHY. Yes.

Mr. UPTON [continuing]. To be our EPA person who is going to come testify.

A question that I had for you, a couple of questions as it relates to the future, I know in the Protecting America's Waters book, I will read you briefly, it says, "In FY 2017, the EPA will begin to fund WIFIA projects. EPA expects that entities with large-scale, complex water and wastewater projects will be attracted to WIFIA through the EPA....will work to provide assistance through a diverse set of projects."

How many communities do you think may apply for funds once that program is out?

Ms. MCCARTHY. Yes, we are requesting \$20 million—

Mr. UPTON. Right.

Ms. MCCARTHY [continuing]. Fifteen of which would be used for leveraging opportunities. It is not clear to me how many that would—

Mr. UPTON. Fifty communities? Thirty? Twenty?

Ms. MCCARTHY. It depends upon the size.

Mr. UPTON. Any idea? Will there be some accommodation for rural areas, I mean some setaside for rural communities that are under 100,000 population?

Ms. MCCARTHY. Yes, we haven't yet determined that, sir. I'm sorry.

Mr. UPTON. OK.

Ms. MCCARTHY. But I am happy to take your comments or concerns about that, if you would like me to.

Mr. UPTON. Yes. I know that you are working on a new Copper and Lead Rule. What is your expectation as to when that will be ready to be put out for comment?

Ms. MCCARTHY. We would like it to be done as soon as possible, but I think the tragedy in Flint has made it very clear to us that we have to tackle this in a substantive way. So, our goal is to get a rule both proposed and finalized next fiscal year.

Mr. UPTON. As you look at the entire country, how many communities—I know Flint is in terrible distress over what happened. I would hope that there are no other communities in that same position. But how many communities do you think or how many states have communities like that that are in need of resources that could replace some of their lead lines to their residents? How widespread of a problem is that? We have seen stories in different publications. USA Today has had some good ones in the last number of days in terms of communities. What would your estimate be?

Ms. MCCARTHY. Let me give you a sense of this. I want to make sure I answer your question. There are about 68,000 public water systems that have to report to us under the Lead and Copper Rule.

About 96 percent of those have had no exceedances of the action level over the past three years.

So, what I am trying to do is, I think Flint is unique, but I think there are challenges in communities. One of the things that I did was to write to every governor and to write to every what we call the primacy agency, the agency that is responsible for that at the state level, to ask them to do a few things; to get back to us to make sure that they are following and implementing the current statute; to ask them to identify where their lead lines are publicly and put it on the web; to start publishing their results—

Mr. UPTON. And that is a little bit of a requirement that we had in our bill, right, H.R. 4470, if you found a problem, right? You would do that?

Ms. MCCARTHY. That is exactly right. That is exactly the same thing. Because one of the things we realize is, with Flint happening, you are right, it is a failure of government—

Mr. UPTON. Knowing that my time is expiring, and I want to let Mr. Pallone have the balance before these votes, do you think that it is possible that, when we convene again next month, when we have this hearing on looking to the future, do you think you will have some of that information available that you can provide to us prior to the hearing?

Ms. MCCARTHY. We will. We know there is about 10 million lead lines, but the challenge is to treat water so that it is not corrosive, to systemically get rid of the lead lines, and then, to address the lead that is actually in people's plumbing fixtures. So, it is a multifaceted challenge, and it is one we have to tackle.

Mr. UPTON. Thank you.

Yield back.

Mr. WHITFIELD. The gentleman yields back.

At this time the Chair recognizes the gentleman from New Jersey, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you.

We have got to be quick because we are going to go vote, and I have to cover both Superfund and beaches in one fell swoop here.

Ms. MCCARTHY. Yes.

Mr. PALLONE. So, on the Superfunds, cleaning up toxic Superfund sites not only reduces health risk, it helps create jobs during the cleanup and through newly-uncontaminated and productive land ready for redevelopment, as you know.

Unfortunately, Congress has failed to reinstate the Superfund tax, leading to fewer resources for the program. In fact, the resources have essentially been cut in half over the last two decades. Without those revenues, important Superfund cleanups have been delayed. The backlog of sites has grown and, of course, that shifts it to the taxpayers.

So, let me ask you first, would you say that the success of the Superfund program depends directly on the funding it receives?

Ms. MCCARTHY. Yes.

Mr. PALLONE. And would more funding, then, mean more cleanups?

Ms. MCCARTHY. Absolutely. We are requesting an additional \$20 million, which would get us three to five more started, but we certainly have a significant backlog.

Mr. PALLONE. I appreciate that. I think that it is clear that the Superfund and brownfields programs show that creating jobs and cleaning up the environment are not mutually-exclusive.

Now let me get to my beaches questions. Representing a coastal district, it has always been one of my top priorities to ensure that water at our nation's beaches is not contaminated and dangerous for those who visit them to swim, surf, and fish. And that is why, as you know, I was disappointed to see that the BEACH Act Grant Program has been zeroed-out again in the President's budget. States utilize these funds to monitor water quality and notify the public when our coastal waters are not safe for swimming.

So, my question is, do you believe EPA's BEACH Grants have been successful over the years in expanding the number of beaches tested nationwide and keeping swimmers out of contaminated waters?

Ms. MCCARTHY. Yes, I believe that it has been a good program. I think where we have challenges is that it was supposed to start up to make sure that communities and states have the ability to monitor and do this effectively. We believe that that ability is now there, which is why we think in a tight budget it is one of the areas in which we can be a little bit tighter in terms of—

Mr. PALLONE. Well, you know I disagree because I think that a lot of these towns don't have the resources.

Ms. MCCARTHY. Right. I know.

Mr. PALLONE. So, I am going to try to work with you and my colleagues, as we did last year, to restore this funding—

Ms. MCCARTHY. Yes.

Mr. PALLONE [continuing]. that helps address these health risks.

The other issue related is another successful method is spotting spilled oil in commercial areas like the New York-New Jersey Harbor and collecting it before it damages the environment. It was the helicopter. You know that in 2014 EPA cancelled the Helicopter Monitoring Program in EPA Region 2, but operated it in the summer to monitor the waters in the Harbor and to identify debris, oil slicks, and algae blooms. Since the Helicopter Monitoring Program was cancelled, how is EPA engaging and participating in the Floatables Action Plan in the New York and New Jersey Region.

Ms. MCCARTHY. We are certainly monitoring the activities that both of the states have taken to have boots on the ground there, to make sure they see the oil as it occurs and are able to address it. And we have a task force that, I think you know, we pulled together to make sure that we understand what the implications of having disinvested in that helicopter might be, if any. So, we want to continue to work with it with you, sir, on this issue because I know it is important to you.

Mr. PALLONE. When we spoke about this last year, you said that there would be, basically, a web of protection in place to guarantee no gaps in coverage with respect to monitoring the New Jersey coast. Has the EPA taken some specific actions to fill the gaps left by the cancellation of the helicopter?

Ms. MCCARTHY. Well, I think we felt that the helicopter at this point, because of the actions that the states have taken, was not as necessary as it was before. We didn't feel like we would be put-

ting the water at risk by not continuing to fund it. And so, we do feel that there is a robust system in place.

Mr. PALLONE. See, the problem that I have with both the BEACHES Act and the helicopter is that, using New Jersey as an example, but I am sure New York is the same, the state and the towns and the counties all complain that they have less money and that they can't fill the gap. And so, that is why, if there was any way, obviously, to get the BEACHES Grants back in place or to get the helicopter back in place, and to pay for it federally, it would make a big difference. Because I know you believe that the states and the localities can make up the difference, but I really don't think that is the case.

Ms. MCCARTHY. I appreciate that, sir. Thank you.

Mr. PALLONE. Thank you, Mr. Chairman.

Mr. WHITFIELD. The gentleman yields back.

Ms. McCarthy, once again, I apologize for this interlude, but I want you to know we have one of the best subway sandwich stores in the basement.

[Laughter.]

We will be back at 3:30, hopefully.

Ms. MCCARTHY. Thank you so much.

Mr. WHITFIELD. We will recess until 3:30.

[Recess.]

Mr. WHITFIELD. We will reconvene the meeting and the hearing.

Thank you for your patience, Ms. McCarthy.

At this time I would like to recognize for 5 minutes the gentleman from Texas, the vice chairman of the Energy and Power Subcommittee, Mr. Olson.

Mr. OLSON. I thank the Chair.

And welcome, Ms. McCarthy.

We have had our disagreements. Some are pretty strong. But there are some things we agree upon, like the Houston Astros going to Yankee Stadium and kicking the tar out the New York Yankees 3-to-zip last September.

[Laughter.]

Ms. MCCARTHY. Totally agree on that one.

Mr. OLSON. There we go.

And I appreciate the positive steps you have taken on exceptional events in that new rule. Thank you for that.

That being said, though, I have heard recently that EPA has a proposal to change the rules on how locals work with you all on transportation issues, projects, highway projects. I am told that the changes to transportation and air modeling could add months' delay and hundreds of thousands of dollars to highway projects.

States are saying that this new "AERMOD Model" is more complex and less accurate than current models. Apparently, the Federal Highway Administration's concerns may have fallen on deaf ears with EPA.

So, my question is, did EPA know of FHA's concerns? If so, were they ignored, and why are they ignored, if so, as well?

Ms. MCCARTHY. I am sorry, I am afraid that I am going to have to get back to you on that. I am not familiar with any recent changes to the AERMOD Model. But, certainly, our goal in any

model change is to get more accurate as well as more simple in terms of how you can ensure compliance and work can continue.

Mr. OLSON. I like accurate and simple. That sounds good, yes, ma'am. Let's work together to make this stuff work. Work with me to get some information and make sure there is no problem here.

Ms. MCCARTHY. That would be great.

Mr. OLSON. Great. Thank you.

Question No. 2 is, last week I introduced a bipartisan new bill on the National Ambient Air Quality Standards, H.R. 4775. It has almost a dozen revisions that would make the implementation of the ozone standards and other NAAQS practical and cost-effective. I don't know if you have had a chance to look at that bill yet. Have you seen that yet, ma'am? Or it is probably too quick?

Ms. MCCARTHY. I have not studied it, sir, no.

Mr. OLSON. Can I get you to promise to work with me to get that bill at least discussed, where we can come to work together to get some commonsense, if that is the right term for it, but something that guys could achieve out there? Because I am concerned about right now many counties are in non-containment with the current standards. And going lower, let them get full attainment, and then, let them go lower. So, let's work on that together. Can we do that, please?

Ms. MCCARTHY. Well, sir, I will be happy to continue to talk to you on it. I do know, is this ozone that we are talking about?

Mr. OLSON. It is ozone, yes, ma'am, mostly, yes.

Ms. MCCARTHY. Yes. OK.

Mr. OLSON. And Question Number 3, as states struggle to implement EPA's Ambient Air Quality Standards, they send SIPs, State Implementation Plans, to you, EPA. You approve these plans, so that states can go about their business of having cleaner air. Your budget documents indicate that at the end of 2015, FY 2015, EPA had 557 backlogged SIPs.

Ms. MCCARTHY. Yes.

Mr. OLSON. And while the Clean Power Plan is in limbo now because of the courts, the Supreme Court, can you shift that money to get rid of this backlog of these SIPs? Can you take it from the Clean Power Plan and make it address these backlogs of SIPs? Is it money you need or what do you need to get this backlog fixed?

Ms. MCCARTHY. Actually, the challenge for us—and we do have a plan that we have worked on with the states that is racheting down the backlogs in the system.

You mentioned the exceptional events.

Mr. OLSON. Yes.

Ms. MCCARTHY. What we found was our failure to address exceptional events well and to make that a streamlined opportunity for states to talk about when they have an anomaly that they want credit for, we found that in California the minute we did an exceptional event policy for high-wind events, they could release 200 State Implementation Plans.

Mr. OLSON. Yes, yes, yes.

Ms. MCCARTHY. So, it is more than money. It is really looking at what the substantive issues are and making sure we are doing our job to speak to the policy itself, so that the regions are com-

fortable in going through the approval process and getting that done.

Mr. OLSON. Great. And one final invitation, olive branch per se. Mr. McNerney from California talked about carbon capture sequestration.

Ms. MCCARTHY. He did.

Mr. OLSON. You mentioned that EPA has some projects that are viable for enhanced oil recovery. That is right there in my district. It is called the Paris Power Plant, the Petra Nova Project.

Ms. MCCARTHY. Yes.

Mr. OLSON. Come on down and see it. They have got four coal generators and four natural gas. They are capturing coal out of one generator, putting it in a pipeline. There is an oil field about 65 miles to the south. Getting that in there, pressure, more oil; it pays for itself. Come down and see it personally.

Ms. MCCARTHY. Thank you, sir. I appreciate the invitation.

Mr. OLSON. You are welcome.

Thank you.

Mr. WHITFIELD. The gentleman yields back.

At this time the Chair recognizes the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

Administrator McCarthy, thank you for being here today. It is always a pleasure to have you before the committee. And I thank you for coming to Houston last month for the CERAWEEK, and I am glad they treated you well there at that energy conference.

Ms. MCCARTHY. They did. Thanks.

Mr. GREEN. One of my questions—and we talked about it when you were in Houston—families in our district in eastern Harris County, they are very concerned about the Dioxin and the pollutants found in the San Jacinto River waste pits. Now the waste pits were declared a Superfund site 8 years ago, and to date, no final decision has been made.

Ms. McCarthy, when will EPA make a final decision on remediating the San Jacinto River waste pits?

Ms. MCCARTHY. Sir, I will have to get back to you when the final decision is. I know that the concern is to make sure that we address the interim measures that we need to keep the opportunity to have that safe and go through the process to define the final remedy.

Mr. GREEN. OK. Local stakeholders in our district are concerned that EPA will decide to keep the Dioxin in the river underneath a temporary armored cap that was put in place a few years ago. Our communities fear that the armored cap would fail, as it did recently either during a major flood/hurricane or the damage by the barge which happened recently.

CERCLA requires and prefers remedies that will permanently and significantly reduce the volume, toxicity, and movement of the hazardous substances for the protection of human health and the environment. And I join the local stakeholders in calling that for removal.

The concern I have, Ms. McCarthy, is leaving Dioxin in the flood plain in an aquatic environment is not an appropriate permanent solution. What would prevent the EPA from adopting the most pre-

ventative remedy possible for the Superfund site, like building a container wall and, then, removing that Dioxin facility?

Ms. MCCARTHY. Generally, what we do, sir, is when we put out for comment a proposed remedy, when you look at a proposed plan, we will put a range of options out, and we look at that from how protective they are, how certain we are that they are going to remain protective, as well as look at the costs associated with that. So, I am sure you will see that we will put out a full range of options for folks to comment on, and I appreciate the fact that you have communicated with me strongly about the interests of your constituents here.

Mr. GREEN. And I appreciate EPA having a hearing in Channelview, Texas—

Ms. MCCARTHY. Yes.

Mr. GREEN [continuing]. Six weeks ago or so, and I was glad to be there.

I also notice, is it true that EPA requested \$1.13 billion for Superfund for the next fiscal year, the lowest request in 14 years? Is it \$1.13 billion, the budget request?

Ms. MCCARTHY. I am not aware of how low it is compared to other years. I know that it is an increase over what we had requested last year of \$20 million.

Mr. GREEN. And is it true that EPA completed work on only eight Superfund sites in fiscal year 2014, the lowest number of construction completions since 1997?

Ms. MCCARTHY. I can get back to you on that as well, sir.

Mr. GREEN. OK. Given the low number of sites, which includes the San Jacinto River, I would hope our budget proposal would be much higher than what the EPA requested.

Last month in your visit to Houston we discussed our quality and monitoring. We are challenged in Houston, and I want to work with you and improve our situation as rapidly as possible. Can you give me a quick overview of EPA's budget on air monitoring and improvement?

Ms. MCCARTHY. Yes, sir. We have a robust monitoring network, but we are requesting an additional \$40 million for monitoring technology for the states. As you know, we have requested an increase in state and tribal categorical grants of about \$77 million.

So, we do think we have good monitors out there. We need more ability to be able to support state efforts. One other thing that I think is important to remember is that in your area I think that your community is working very hard, the communities in that area are. There are significant challenges in port areas.

Mr. GREEN. Yes.

Ms. MCCARTHY. And that really is something that our DERA Program has supported. We are looking for \$10 million again this year, but the President has also proposed a climate infrastructure fund that could really ramp up our ability to be able to support reductions in pollution in the port areas. That could have appreciable difference in the quality of air in Houston.

Mr. GREEN. Well, thank you. Having the Port of Houston, an industrial port, it is important, particularly with our industries on the side.

Ms. MCCARTHY. And they do a good job. I have actually been there to give them some awards before. They are doing a great job.

Mr. GREEN. Well, we are trying. In fact, I know we have one refinery who has problems, and I suggested to EPA that that refinery ought to be able to monitor their own fence line. Because, again, in our area we have literally fence line-to-fence line of industry, and we want to know who the bad actors are or the ones who need help. That fence line monitoring by the industry would be helpful.

Ms. MCCARTHY. And the technology is there. In fact, our most recent changes to the refinery rule are going to start requiring that. So, we are interested in the same thing, sir.

Mr. GREEN. Mr. Chairman, I thank you for your patience.

I would like to submit a question on methane emissions to the Administrator, and appreciate you responding.

Mr. WHITFIELD. Without objection.

At this time the Chair recognizes the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. LATTA. Thank you, Mr. Chairman.

And, Administrator, thanks so much for being with us today.

Last October the EPA revised its 2008 Ozone Standards. Is that correct?

Ms. MCCARTHY. Yes. Yes, sir.

Mr. LATTA. How many counties does EPA expect will be designated to be in non-attainment with the 2015 standards?

Ms. MCCARTHY. Actually, to the best of my recollection—and I can get back to you on that—it is going to amount to, we estimated about a dozen areas potentially, in addition to some areas in the State of California which face particularly unusual challenges because of the geology.

Mr. LATTA. But do you know how many counties, just not the states?

Ms. MCCARTHY. That is how many areas that we are looking at.

Mr. LATTA. Because looking with the Congressional Research Service, based on their most recent data, they are looking at probably 241 counties in 33 states. Does that sound correct?

Ms. MCCARTHY. I think that may be an overestimate on the basis of what we believe our current on-the-books rules will do in terms of reducing NO<sub>x</sub> and VOC emissions.

We have taken a lot of steps, as you know, to reduce air pollution, and we think they will have an appreciable difference in terms of the years. We are not looking at what is out of attainment now because attainment isn't until 2017. So, we are looking at data from 2014, 2015, and 2016 to make a judgment on what is in non-attainment. We don't think that is going to amount to a significant amount of designated areas.

Mr. LATTA. OK. But, just out of curiosity, then, why did CRS come up with 241? Weren't they looking at the data?

Ms. MCCARTHY. I would be happy to go back and take a look at that and, also, to verify the number of areas we are talking about. I apologize, but—

Mr. LATTA. Yes, if you can do that, I would appreciate if you would get back to the committee on that.

Ms. MCCARTHY. I am happy to do that.

Mr. LATTI. OK. Then, also, going right along with that, because, again, in my district I have 60,000 manufacturing jobs in north-west plus central Ohio. Has the EPA done any analysis of the impacts of either the 2008 or the 2015 standards on manufacturing in areas designated as being in non-attainment?

Ms. MCCARTHY. We certainly have done an impact assessment. Our understanding of this is that we are focused more on what the impacts are and what it means for individual states and in counties. I don't recall a specific impact on industries in those areas. I know there will be challenges, but I don't think we have understood them to be appreciable.

Mr. LATTI. Let me ask this, could you define, when you say you have done impact assessment, how would you define that impact assessment, especially if you say you haven't really been looking on the manufacturing side? But, again, there is just massive thrust in Ohio. Also, when we look at what happened in the last several years, we are at least about 74-75 percent coal-fired power plants in Ohio, and it is down in the 70 percent now. But how would you define, then, the term "impact assessment"?

Ms. MCCARTHY. I am sorry, can we reclarify again, sir, what you are talking about?

Mr. LATTI. Well, right. You said that you had been working on some impact assessments.

Ms. MCCARTHY. Which rule are we talking about, sir?

Mr. LATTI. Pardon me?

Ms. MCCARTHY. Which rule?

Mr. LATTI. OK. This would be the 2008 and, also, 2015, when we look at the non-attainment.

Ms. MCCARTHY. OK. Right.

Mr. LATTI. Right.

Ms. MCCARTHY. Well, we have done some analysis, sir, to look at the impact of designation on industries and whether or not they can continue. I think you know that it does put a burden when you are in non-attainment in order to not make the unhealthy air more unhealthy as industries grow. So, there are opportunities to look at offsets that can continue to expand industries. We just have not identified that those are insurmountable in any area. They are more challenging in California than anywhere else. But, usually, when you are looking in other states, you find opportunities for offsets at reasonable cost that can allow even new industries to locate in non-attainment areas.

Mr. LATTI. OK. Just to follow up on that again, because I am not sure I caught what you just said a little bit earlier, you said whether they can continue. Are you talking about the manufacturing or the power, or both?

Ms. MCCARTHY. I was talking about manufacturing. At the levels they are manufacturing and even with new facilities coming in, you need to account for the emissions that you may add into the area, but you can do that using offsets, which means you can look at your permitting process and identify the least-expensive way to get NO<sub>x</sub> reductions and utilize that for new facilities coming in, which is what I understood to be the major issue.

Mr. LATTI. OK. Mr. Chairman, if I could ask, also, if maybe we could follow up on that question and, then, also, maybe the earlier question to the Administrator and get back to the committee?

Mr. WHITFIELD. Absolutely. Without objection, so ordered.

At this time the Chair would recognize the gentleman from Iowa, Mr. Loeb sack, for 5 minutes.

Mr. LOEB SACK. Thank you, Mr. Chair.

Good to see you, Madam Administrator, as always.

Ms. MCCARTHY. You, too.

Mr. LOEB SACK. I appreciate the work you are doing.

A couple of questions. The first one, as you know, the Department of Energy states, using ethanol as a vehicle fuel has measurable CHG emissions benefits compared with using gasoline. Carbon dioxide released when ethanol is used in vehicles is, in fact, offset by the CO<sub>2</sub> captured when crops used to make ethanol are grown.

Now, given the role of renewable fuels, given the role that renewable fuels play in cutting down greenhouse gases, shouldn't the recent RFS Renewable Volume Obligations, RVOs, be increased to achieve this goal?

Ms. MCCARTHY. We certainly are looking to be as aggressive as we can, knowing that the U.S. is a leader in biofuels.

Mr. LOEB SACK. Right.

Ms. MCCARTHY. In looking at the aggressive nature of the renewable fuels standard, we are looking for every opportunity to both make it aggressive, but also recognize that it has to be achievable at the same time.

Mr. LOEB SACK. Right. Because you are working on 2017, I assume, is that correct?

Ms. MCCARTHY. Yes, that is correct.

Mr. LOEB SACK. Yes.

Ms. MCCARTHY. Yes.

Mr. LOEB SACK. And you will be hearing from a lot of us, no doubt—

Ms. MCCARTHY. Yes.

Mr. LOEB SACK [continuing]. As you did in the past when it came to the past renewable fuel standard. I know it is controversial. Not everybody is onboard with it on either side of the aisle, for that matter, as well.

Ms. MCCARTHY. But, sir, you have spoken to me from Congress. I am implementing the law as it is, and that is what I do.

Mr. LOEB SACK. Yes, and I look forward to continuing to have that conversation. In fact, I have some corn growers here in the audience. I just happened to meet with them prior to this meeting. And so, that is something that is clearly important to them and to the whole State of Iowa, for that matter, but not just Iowa, many other places around this country as well.

The second one has to do with the Waters of the U.S.

Ms. MCCARTHY. Yes.

Mr. LOEB SACK. I am sure all my colleagues are in agreement that providing clean water is critical for all of us. Folks in the agricultural community recognize as well that we have got to have clean water.

One program, in particular, of course, the Waters of the U.S., has had a bit of an uphill battle over the years, as we have seen. It

is in the courts as we speak. But I think everybody can agree that we have to have clarity on the rules before anything else. That is the one thing I hear from folks in the agricultural community in Iowa more than anything else.

I have been taken out to ditches, and folks there are frightened, to be quite honest, that without necessary clarity, that all kinds of lawsuits and all kinds of actions could be taken against them. And I have to say I understand their concerns. I want to have clean water. I want to make sure we do the right thing, but so do those folks in rural areas.

But we have got to have the clarity when it comes to things like not just streams and rivers, but ditches and ponds, and what have you. There is real concern in farm country that there still isn't that kind of clarity with respect to WOTUS. Can you speak to that?

Ms. MCCARTHY. Well, I think that we tried to actually provide greater clarity. That is what the Clean Water Rule was intended to do. I actually think we accomplished that in many ways, and we need to have a really good conversation about that, knowing that it is in the courts at this point.

But let me give you an example on ditches. Believe me, I never created the word "ditch". It is in the statute, which is why we had to deal with it. But we made it really clear that ditches exclude intermittent and ephemeral ditches. It is only when a ditch has been constructed in an existing stream or wetland that it becomes significant enough to warrant protection.

Mr. LOEBSACK. Can you tell me what "intermittent" means? Sorry to interrupt. What does "intermittent" mean?

Ms. MCCARTHY. Basically, you are talking seasonal or just when it rains. I mean, that is what we are talking about.

So, we have tried to make it clear that these intermittent, these only have water in them every once in a while, do not constitute a jurisdictional water.

Mr. LOEBSACK. Well, I have heard the stories like, what if there is 7 inches of rain and it is not intermittent?

Ms. MCCARTHY. Yes.

Mr. LOEBSACK. But that creates an environmental problem as such. And a DNR person comes out and checks it out, and all of a sudden the farmer is in trouble because it happened to rain 7 inches that night.

Ms. MCCARTHY. Well, that is why what we did here is make it much clearer than the existing rule actually does. We made it clear that that does not constitute a jurisdictional water. Only if it was a stream to begin with and you have channeled it. So, we tried to get clearer.

We have also gotten clearer on erosional features, to make the case that, if it rains hard, it looks like there are streams everywhere.

Mr. LOEBSACK. Right.

Ms. MCCARTHY. Those don't count.

Mr. LOEBSACK. Right.

Ms. MCCARTHY. It only has to be something that is constructed or natural that really can impact the downstream water—

Mr. LOEBSACK. Well, my time is almost up.

Ms. MCCARTHY. Otherwise, there is no connection.

Mr. LOEBSACK. And I do appreciate this conversation. I hope we continue to have this conversation. I know you came to the Iowa State Fair a few years ago.

Ms. MCCARTHY. I did.

Mr. LOEBSACK. I will personally invite you out there if you are willing to come.

Ms. MCCARTHY. Well, thank you.

Mr. LOEBSACK. And I can guarantee you we can get some folks in the agricultural community together and have a conversation.

Ms. MCCARTHY. I will take every opportunity I can. Thank you very much.

Mr. LOEBSACK. Thank you.

And thank you, Mr. Chair, for letting me go over. Thank you. I yield back.

Mr. WHITFIELD. The gentleman yields back.

At this time the Chair recognizes the gentleman from West Virginia, Mr. McKinley, for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman.

And thank you again, Ms. McCarthy, for coming.

I am curious, you have given us kind of a smorgasbord of things to go after here a little bit this morning. If I could just touch base on one, I want to get it clarified. You said that there was more than one facility using carbon capture. You didn't mean coal-fired power plants, did you? Because there is only one coal-fired power plant using carbon capture, is that not correct, in America?

Ms. MCCARTHY. I would have to go back and check, sir. I haven't looked recently.

Mr. MCKINLEY. That is what you said to me 2 years ago and last year. So, I hope you do get back to us on that. But Kemper is the only one. You know that. It is the only one.

Ms. MCCARTHY. I do know. I know Kemper, yes.

Mr. MCKINLEY. So, my other question, have you ever visited the West Virginia coal fields or been in a West Virginia coal-powered plant?

Ms. MCCARTHY. Not that I am aware of, sir.

Mr. MCKINLEY. Have you ever been to one in Kentucky or Wyoming?

Ms. MCCARTHY. No, sir.

Mr. MCKINLEY. That is what I was afraid of. So, I am just curious, you are part of this bureaucracy that is passing all of these legislative fiats and regulations, but never really touching base with the people that you are affecting their lives.

When he was here the other day, the Secretary said he wants to come to West Virginia and he wants to see because he had heard about the Longview Power Plant. Do you know anything about the Longview Power Plant?

Ms. MCCARTHY. No, sir, I don't.

Mr. MCKINLEY. That is one of the most efficient, if not the most efficient, power plant in America, and it doesn't use carbon capture.

So, I would extend the invitation to you again and again. I have done that. And whatever your schedule is, it has never permitted you to come West Virginia. So, I think we had better take this seriously, the impact we are having on people's lives.

In the last couple of weeks, some of the candidates have been saying that we need to move away from coal and other fossil fuels in their campaigns. One of them said we are going to put a lot of coal miners out of work. Do you agree with that? Is that good for the economy, to put our coal miners out of work?

Ms. MCCARTHY. Well, it is certainly not good for anybody to be out of work in an economy.

Mr. MCKINLEY. So, you would disagree? You would disagree with that premise that someone said we ought to put them out of work?

Ms. MCCARTHY. Personally, I do not agree that anyone in the United States of America should go without a job who wants to work.

Mr. MCKINLEY. Thank you. OK.

So, if I could go back to part of your testimony, also, you talked about a stable climate.

Ms. MCCARTHY. Yes.

Mr. MCKINLEY. And you want to maintain a stable climate, but, unfortunately, the rest of the world doesn't seem to be following in those footsteps in that stable climate. We have got a chart someplace they are going to put up here in a minute that shows—my clock is ticking.

Ms. MCCARTHY. Technology is always tricky.

Mr. MCKINLEY. Yes, it is always. Well, thank you. Unfortunately, Mr. Chairman, I was told that chart would be up.

It shows that China is going to increase its production or use of coal by 460 gigawatts of power and India another 360 gigawatts of power. I don't know what it is going to take. The world is not following our leadership.

So, I am curious, 2 or 3 years ago, I raised the same question to you. You were going to get back to me and I never heard back from you again. That was that, according to the IPCC with the United Nations, it said that, if we terminated all coal-fired power plants in America, so that we didn't burn one ton of coal in America, the total reduction to CO<sub>2</sub> on the globe would only be two-tenths of 1 percent. Do you think that is a measurable impact on the climate of the world, especially given that the other nations aren't going to follow? So, if we terminate two-tenths, but, yet, the other nations of China and India are going to way more than make up for that loss, that it is worth it to our economy to put all our people and our coal companies out of work for something that is not measurable?

Ms. MCCARTHY. Sir, I am not looking at making any choices on the kinds of energy that are generated. I am really trying to keep my eye on my job, which is to try to reduce pollution in ways that are reasonable.

Mr. MCKINLEY. Someplace along the line, it was not yours, but others. The Interior just put 33 percent of our coal reserves in the western coal on federal land, they put it on the shelf and said we don't have access to it to generate power. Forty percent of America's power comes from coal from federal lands, and 33 percent of our reserve comes from federal lands. And they just put 33 percent on the shelf. We can't access it.

So, it may not be your Department, but you are part of that administration that has this war on coal that is saying we are not

going to use coal. And even your successors are talking the same language. I don't understand. If it doesn't have an impact on climate change around the world, why are we subjecting our hard-working taxpayers and men and women in the coal fields to something that has no benefit?

Ms. MCCARTHY. I think, sir, we see it as having had enormous benefit in showing sort of domestic leadership as well as garnering support around the country for the agreement we reached in Paris.

Mr. MCKINLEY. But even though no one is following this? China has doubled. Since that Paris accord, China has already announced that they are going to put up 360. India has announced that they are going to double their use of coal since the Paris accord.

I am afraid my time is over.

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

We will ask the staff to get that chart and we will include it in the record.

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

Mr. WHITFIELD. At this time I recognize the gentleman from Oregon, Mr. Schrader, for 5 minutes.

Mr. SCHRADER. Thank you very much, Mr. Chairman. I appreciate it.

And I appreciate the Secretary for being here. It is always a good time, very interesting comments so far. I learn a lot at these types of hearings about my friends and colleagues around the country.

We have a big issue out in Oregon, and I think we saw it nationally, with our forest burning up during this last summer, unprecedented wildfires, unprecedented carbon pollution into the atmosphere, exactly the opposite I think of what we are trying to do with all these programs at EPA.

Ms. MCCARTHY. Yes.

Mr. SCHRADER. In that regard, we are trying to use and work our forests in a much more sustainable manner. There is an opportunity for more active timber management, I think, that would take that carbon fuel, if you will, out of the forests and make it healthier. The devil is always in the details, just to say.

One thing I would ask you to look at in your Department, and in trying to encourage use of a carbon-neutral life-cycle resource like wood and like our forests, is look at some of the standards that you have. In September the agency put out some standards regarding government procurement—

Ms. MCCARTHY. Yes, we did.

Mr. SCHRADER [continuing]. Dealing with different third-party verification processes. I am very concerned that it, inadvertently I hope, discriminates against a large part of our land mass, particularly in the West, where there is alternate ways to look at certification of these forests for sustainable practices or FSC. Out where we are, it is a lot of SFI. I won't bore the committee with all the acronym evaluations here, but you understand where I am going with that.

Ms. MCCARTHY. Yes.

Mr. SCHRADER. I would urge you to take a look at that. My evaluation on your Web site is that they all meet the criteria you have put out there. I have gone through an appendix from your agency that talks about the different pieces or evaluations that each goes

through. It looks almost exactly the same when it comes to species, monitoring, control, and response to disease and disturbances, these sorts of things, reforestation. There is a difference maybe in the acreage size. That is the only thing I can see there.

Frankly, rural Oregon is not doing well. Rural America isn't doing well. They have not recovered from the Great Recession. I see that Portland is doing great. But I am interested in how the rest of the country is doing.

What has happened, because of these artificial standards that I think are misapplied and could stand some revision—these forests could be put back to sustainable use. Decrease our carbon footprint and, hopefully, employ lots of people in this country, folks in my state.

I will give you a quick example. In Oregon there is over 4.3 million acres that are certified by the three big programs that are out there. EPA's current recommendation, current interim rule, would exclude over 4.1 million of those 4.3 million acres. That just doesn't seem right, Madam Secretary.

We all want to be in the same place, I think, on this. I think you would get broader support for some of the rules and some of the work you are trying to do at EPA if you opened up a little bit to some of these other certification programs that are just as valid, very well certified by third-party people. If you could do that, I would really appreciate it. But maybe get back to myself and maybe members of the committee on how you are going to be looking at that.

Ms. MCCARTHY. Well, sir, I really appreciate your comments. We did hear that we were too narrow in the interim. We went with the standard that the Department of Energy was using, which is why it seemed like a reasonable first step.

Mr. SCHRADER. Sure.

Ms. MCCARTHY. But in no way was it the only step that we are taking. So, we are taking a look already at all the other standard-setting opportunities that we have to see if they are comparable, equally aggressive, how we would take account of those. And we recognize that there is work to be done, and we are starting that work now.

Mr. SCHRADER. All right. Well, very good, because there is a lot of lives, jobs, and community sustainability at stake here—

Ms. MCCARTHY. I agree.

Mr. SCHRADER [continuing]. As well as our forests.

Ms. MCCARTHY. Thank you.

Mr. SCHRADER. Thank you.

With that, I will yield back, Mr. Chairman.

Mr. WHITFIELD. The gentleman yields back.

At this time the Chair recognizes the gentleman from Virginia, Mr. Griffith, for 5 minutes.

Mr. GRIFFITH. Thank you, Mr. Chairman. I appreciate it.

Mr. McKinley was talking earlier and raised concerns about the fact that coal on U.S. federal lands are off-limits. Many, many jobs have been lost. You acknowledge that it is always bad for folks to be unemployed. Large numbers of people in Mr. McKinley's district and in my district are now unemployed as a result of policies of this administration, including your agency itself.

And you indicated—and correct me if I got it wrong—you indicated that you were just doing your job, trying to set examples. But I would submit that, because of the concerns that Mr. McKinley raised with China increasing, even after the Paris accord was reached by the President, and India, according to Mr. McKinley, is going to be doubling their use of coal. Of course, they want to be energy-independent, as many nations want to, and they have some coal.

I am just concerned that we are actually doing more harm to the world's environment, particularly in relationship to the air, because when we take our previously-reasonable regulations and we ratchet it up and we throw folks out of work, we raise the cost of energy in our country and we put our manufacturers at a disadvantage. And then, they decide that it is easier in some cases, in some not, but in some cases they decide it is easier to go places where they don't have those regulations, whether it be Mexico or China or India, or some other nation, but where they don't have the regulations that we have. So, we are actually creating a net increase in air pollution.

I am just wondering, have you all not looked at that? Now I understand your job is just the United States. But when you are putting my folks out of work and Mr. McKinley's folks out of work, and I think that there is a good likelihood that there is a net increase, I am just wondering, have you all looked at the possibility that you may be inadvertently creating—and we can disagree about what is and isn't a pollutant—but are you inadvertently creating a net increase in the Northern Hemisphere for the air that we all breathe, whether it is in China or India or in Salem, Virginia?

Ms. MCCARTHY. Well, if you are looking at greenhouse gases, sir, it doesn't matter where it is emitted. I think it matters to all of us.

I will say that we have been working with a lot of businesses, a lot of international businesses, that are actually expressing serious concern that we do take notice of climate change and take action on it.

But I will also say that the administration, I think, is very cognizant that the coal communities, the communities that rely on coal are facing significant challenges. We are interested in really moving forward with the President's POWER Plus proposal to see how we can build an economy that will be more sustainable and lasting.

Mr. GRIFFITH. Look, I don't disagree with that. That is an area where I think we have got to put some resources there—

Ms. MCCARTHY. Yes.

Mr. GRIFFITH [continuing]. To try to help these communities. But that being said, what do you do in a community where we had a dispute over a piece of land because in Dickenson County in my district there were two pieces of flat land in the entire county that could be built on, and they needed a new high school. So, they had to use eminent domain to take one of the two pieces.

How are we going to reinvent the economy? They have mountains, they have water, and they have trees.

Ms. MCCARTHY. Yes.

Mr. GRIFFITH. We don't have flat land. In Buchanan County, the largest chunk of our flat land is formerly a surface mine that leveled things out, but folks think that is bad. So, it really puts us in a dilemma.

And then, I have another dilemma that I think I have to bring up. That is many of my constituents don't understand an EPA that has eight buildings in the Washington, D.C., area. It has got 12 different zip codes. It has got so many employees floating around up here. And they say to me, "Why don't you defund the EPA completely?" And I have always defended by saying, "Well, let's look at our clean water programs. There are other things that the EPA does that I think are good."

And then, we have the Flint, Michigan problem.

Ms. MCCARTHY. Yes.

Mr. GRIFFITH. I don't know how I am going to tell those folks now where we have got these programs like clean water, when, clearly—and I know that there was some dispute in another committee earlier this week—but, clearly, the EPA dropped the ball.

It looks like to me—I was in on one of those hearings in O&I, in our Government Reform Committee—it looks clearly to me like one of your employees was doing a coverup, told Ms. Walters of Flint, Michigan that they had handled Del Toral. The employee of the EPA who it appears was punished for blowing the whistle on the lead out there, I think that is a problem.

Then, a former employee now, Ms. Hedman, comes in and says that she didn't think she did anything wrong. My constituent, Mark Edwards, a Virginia Tech professor—and, look, I don't know his politics, but Blacksburg is not a conservative area. It is one of the most liberal areas of Virginia and one of the most liberal areas in my district. But he says, if you are part of a government agency, it means you don't have to say you are sorry, and said that she was "willfully blind, unremorseful, and completely unrepentant, and unable to learn from her mistakes".

How do I defend an EPA that that is the condemnation coming out of my district from the professor, Dr. Edwards? That is the thing I have always pointed to as being one of the good things.

My time is up. I don't know if the chairman will allow you to answer that or not. I apologize, Mr. Chairman. I yield back.

Mr. WHITFIELD. Did you want to respond or not?

Ms. MCCARTHY. I am sure it is not an easy answer, sir. But, you know, I have asked the office of our Inspector General to take a look at this.

I think the distinction I was trying to make is Flint is, no doubt, a tragedy. I know how it came about. Why I don't know, but I know how it came about.

The question for EPA is, did we respond quickly enough when we found out that there was a problem? Did everybody raise it as quickly as they could, so that we could address it? That is a significant issue of accountability that we need to face, and we will face that.

The individual in the region did resign, knowing it was on her watch. But we will see what the Office of the Inspector General says.

Mr. GRIFFITH. I don't think it is just the Inspector General, Madam. I believe it is also you. You are the boss.

Ms. MCCARTHY. Yes, yes.

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

At this time the Chair recognizes the gentlelady from California, Ms. Capps, for 5 minutes.

Mrs. CAPPS. Thank you, Mr. Chairman, Ranking Members. Thank you for holding this hearing.

Thank you, Administrator McCarthy, for being here today.

Clean drinking water, wastewater treatment, stormwater management systems, these are critical to our nation's basic functioning. Accessible water for agriculture is paramount to our economy and food security.

But, unfortunately, and as has been discussed, our nation's water infrastructure is aging and deteriorating, and the impacts of this deterioration are significant and they are costly.

We also know that climate change is directly threatening our ability to guarantee the delivery of safe and reliable drinking water, and at the same time it exacerbates the inadequacies of our nation's water infrastructure. So, it is kind of a perfect storm.

One effect of climate change that has been particularly devastating to my home State of California is drought, a word we hadn't talked about it for a little while, but it is always there. While parts of California have had a little rain recently as a result of some kind of ongoing El Nino, this relief has not been equally felt across the State and we are by no means out of the woods.

For example, in my district is a lake called Lake Cachuma. It is the source of our drinking water for over 220,000 residents in and around Santa Barbara. This vitally-important reservoir has less than 15 percent of the water it can hold. Given the impacts of climate change, drought will, unfortunately, continue to be a pervasive issue, not only in California, but in other states as well.

We have to act now to minimize the impacts of the changes and ensure that we are prepared. We have to do everything at once, juggle a lot of balls for the challenges that are ahead.

I know EPA is working to address these issues. And just yesterday the President announced the establishment of the National Drought Resilience Partnership, NDRP—they always get an acronym right away—as part of his Climate Action Plan. NDRP will help to coordinate drought-related efforts, which is good, communities to mitigate the effects of the drought and build resilience. Those are the keywords, mitigation and resilience against future droughts. Everything has to be done at the same time. The NDRP will help coordinate it, do all of this, and I applaud the President for these efforts, as it clearly needs to be a priority for us all.

I have a few questions for you, if we can kind of zip through them. I wanted you to just briefly describe EPA's role in the NDRP.

Ms. MCCARTHY. Well, EPA is part of the project.

Mrs. CAPPS. Yes.

Ms. MCCARTHY. EPA brings to it a level of expertise in how communities can work through these issues. We provide tools.

Mrs. CAPPS. So, you are at the table?

Ms. MCCARTHY. Oh, absolutely, yes.

Mrs. CAPPS. OK. So, are there some existing programs that you have already that will help to implement this initiative?

Ms. MCCARTHY. Yes. We have been leading really a federal effort to look at resiliency issues and to develop tools that communities can use to understand opportunities for capturing water, keeping it local, and preserving it and conserving it.

Mrs. CAPPS. And can I go home and talk about how the EPA's drought-related efforts will assist communities like ours right on the central coast—

Ms. MCCARTHY. Yes, you can.

Mrs. CAPPS [continuing]. Because they are waiting for some good news?

Ms. MCCARTHY. Yes.

Mrs. CAPPS. OK. They look to the sky and the rain doesn't come enough. And now, they are going to look to you, Administrator McCarthy.

As part of the NDRP, what kind of outreach and education strategies will be utilized? A lot of this is in how we present ourselves in the community. You know, are we here to work with existing partnerships? And there are many of them on the ground.

Ms. MCCARTHY. Well, we certainly, as part of our proposal, are looking for some more additional money to look at making sure we have basically what we call circuit riders, which is individuals with expertise in this area, so that they can be available full time to go work with communities on this issue.

Mrs. CAPPS. Can you describe that? There is another minute left on my time. It goes fast.

Ms. MCCARTHY. Yes.

Mrs. CAPPS. I would like to hear more about these circuit riders? That is kind of a western term.

Ms. MCCARTHY. Well, circuit riders mean that you can't build expertise everywhere and afford to get everybody up to a certain level. So, you basically have people in each region whose job it will be to work with communities, identify opportunities for tools that are available to us. We actually have a whole local community package on our web page of tools that they can look at and make available to themselves. Hopefully, it will help them jumpstart. Then, we share best practices. We look at what communities like yours that we could marry with and make progress moving forward.

Mrs. CAPPS. Thank you.

I am going to suggest what you are saying. Hopefully, there is a way I can do that with some of my district folks.

What has happened now with this word drought that is looming large over us is that this suddenly has everybody's attention. We have got all these constituencies all needing water. And so, reclaiming, recycling, we are building a desal plant, we have to look to you as a partner at the table.

Ms. MCCARTHY. One of the issues we need to look at is how that is connected with infrastructure and investments like drinking water, stormwater. You need to keep water local. Drinking water systems like the one in Flint loses 30 to 40 percent of its water in leaks alone. We simply can't afford that.

Mrs. CAPPS. No, we can't afford that. We need that water that is leaking in Flint in my district.

Ms. MCCARTHY. Yes.

Mrs. CAPPS. Thank you.

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

At this time the Chair recognizes the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

And, Administrator McCarthy, thanks for being with us today.

Ms. MCCARTHY. Thank you for having me.

Mr. JOHNSON. As you know, America's brick and tile industry is struggling in our current economy. It is made up largely of small family-owned businesses that have been in business for generations and for the most part or in many cases are the only source of employment in the communities in which they reside, where they provide jobs and a tax base for their communities.

The House recently passed bipartisan legislation that would impose a legislative stay of the Brick MACT Rule, pending judicial review. Administrator McCarthy, is the EPA willing to provide an administrative stay to protect these small businesses, especially given what happened to this industry before the rule was vacated in 2007, after they had already come into full compliance with a previous rule in 2003?

Ms. MCCARTHY. We actually think that, when we met with small businesses, we did a good job at listening to the flexibility they needed in the rule itself. We provided very flexible options for smaller businesses, so they could comply. We actually gave maximum time as well for compliance.

So, we believe that the rule as written should continue to move through the courts. Hopefully, we will have that on the books because it yields significant reductions in toxic pollutants in a way that we think small businesses can manage—

Mr. JOHNSON. Yes, I am going to get to that aspect of it in a moment. But here's the problem: the industry doesn't see it the way that you just described it.

Ms. MCCARTHY. Yes.

Mr. JOHNSON. They spent hundreds of millions of dollars to comply with the 2003 rule, only to have it set aside by the courts in 2007. Then, when the EPA started formulating this new Brick MACT, they started with a baseline of where the 2007 rule that was set aside ended off—

Ms. MCCARTHY. Yes.

Mr. JOHNSON [continuing]. Giving the industry very little credit for the accomplishments of the reductions that they had achieved with the hundreds of millions of dollars that they had invested for control technology between 2003 and 2007.

So, here they are again under stress. I mean, there are only about 7,000 jobs in America attributed to the brick industry. The industry is telling us that many of these small businesses will close down. And here is the real crux of the issue: we don't import brick in America. We have got a brick and tile industry that makes our construction materials. We don't import it from anybody else.

Ms. MCCARTHY. No.

Mr. JOHNSON. Unless we want to start making buildings and homes out of sticks and straw, we had better figure this out because these companies cannot continue to stand up under this duress. And we are not suggesting that we not move forward with the rule. We are just suggesting that we delay the rule, an administrative stay, work with your Department to do that, until the judicial reviews are completed. If the courts say, fine, go ahead, then we have something else to talk about. But that seems to be the prudent thing to do, rather than put this industry through another round of egregious compliance that the courts could come back and set aside, but then the damage will have been done again and we may lose a lot of our brick manufacturing capability.

Ms. MCCARTHY. Well, sir, I think the administration has already submitted a SAP indicating that we really don't want to give up what amounts to 30 tons of reduction of toxic emissions.

Mr. JOHNSON. So, they are willing to give up bricks and our ability to build buildings and homes for that?

Ms. MCCARTHY. No, sir. We think that small businesses have been given enough flexibility in the rule as it has been designed. But I certainly understand your concern.

Mr. JOHNSON. We disagree.

Ms. MCCARTHY. If we have the Congress and the President move forward, we will certainly abide by it.

Mr. JOHNSON. Well, we disagree strongly.

Your agency has recently proposed an update to the Cross-State Air Pollution Rule. Many states and stakeholders have raised concerns about the feasibility of implementing EPA's proposal, especially within a short period of time. It has got a proposed implementation of this summer or the summer of 2017.

So, has your Department, your agency, done a specific analysis of this latest proposal on the reliability of the electricity grid and, if not, why not?

Ms. MCCARTHY. I certainly know that we have done a regulatory impact assessment on this rule. This rule, it used to be called the Cross-State Air Pollution Rule. I think we still do call it that. But this is an actually very sophisticated and should be very successful trading program. So, it does provide lots of flexibilities to get these reductions, and it is a rule that we just proposed. We are in the comment period. We certainly want to take cognizance of the comments that come in and anticipate any adjustments that are necessary before the rule might be finalized.

Mr. JOHNSON. I know I am over my time, Mr. Chairman.

But would the EPA consider reproposing this rule, given the concerns that have been raised about the likely unworkability of the proposal?

Ms. MCCARTHY. Well, we just proposed it, sir. It is going to be important for us to see what the comments look like when they come in.

Mr. JOHNSON. Mr. Chairman, I yield back.

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

At this time the Chair recognizes the gentlelady from Colorado, Ms. DeGette, for 5 minutes.

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

Thanks, Administrator McCarthy, for coming over today.

In 2005, when Congress passed the Energy Act, they exempted hydraulic fracturing from the Safe Drinking Water Act, as you know. In 2009, our former colleague Maurice Hinchey and I, we secured funding for the EPA to study the effects of hydraulic fracturing on drinking water. Up to that date, the research on fracking was very limited and it mostly consisted of reviews of similarly-limited literature.

So, especially being from Colorado, where we have a lot of fracking going on, I thought it was important that we understood the impacts of hydraulic fracturing on drinking water. So, last June the agency issued a draft version of the assessment, and it found that there were mechanisms by which hydraulic fracturing activities could impact drinking water resources.

But, then, at the same time, the press release and the executive summary that came out also prominently stated that hydraulic fracturing has not led to “wide systematic impacts” to the drinking water of the United States.

I was, frankly, surprised in this press release that it would say that because the study that we authorized was designed to develop the understanding of specific ways that contamination could occur with hydraulic fracturing. Frankly, I am glad that we haven’t had wide systematic impacts, but it doesn’t matter whether we have had it, if it could occur.

And so, what we were trying to do is to say figure out the preliminary research that could characterize the currently little understood or unknown pathways to contaminating of drinking water from hydraulic fracturing, not in broad proclamations.

And then, in the draft version of the study the EPA said, “The limited amount of data collected before and during hydraulic fracturing activities reduces the ability to determine whether hydraulic fracturing affected drinking water resources in cases of alleged contamination.”

And then, the Scientific Advisory Board charged with reviewing the study agreed that the broad declarations in the summary and press materials “are presented ambiguously and are inconsistent with the observations, data, and levels of uncertainty presented in the report”. So, basically, this preliminary version that was released last June, it just created even more confusion, which is what we have had since 2005.

And so, what I am worried about is that the EPA doesn’t know still, and cannot estimate still, what the potential impacts of drinking water contamination are. The assessment identifies several mechanisms by which a spill, leak, or migration of hydraulic fracturing fluids could potentially contaminate drinking water, but the scope of the study didn’t have the EPA evaluate how those events would affect human health.

So, pretty soon here, I am hoping in the next few months, the EPA will release the final report. I am hoping what it will do is more clearly emphasize the risk, the real scientific risk, to drinking water resources and what we can do, how we can get that data to ensure that our drinking water is safe.

Anyway, you might want to comment on that in one minute and four seconds.

[Laughter.]

Ms. MCCARTHY. OK. My only comment is I think that it was clearly a necessary study for us to do. I think very often, when we put out a science study, people will pick and choose—

Ms. DEGETTE. Right.

Ms. MCCARTHY [continuing]. Sentences in it. Basically, we said we didn't have evidence of widespread systemic impacts to drinking water, but we clearly did identify that there are potential mechanisms in the water system where impacts could occur, but there were also opportunities for offsetting those by taking the right preventive measures—

Ms. DEGETTE. Right.

Ms. MCCARTHY [continuing]. Like looking at how you construct a well, understanding your groundwater flow and pattern before you even consider inserting hydro-frack fluid into the groundwater—

Ms. DEGETTE. Right.

Ms. MCCARTHY [continuing]. Or below the groundwater.

So, there are challenges here, but we did suffer from having little real data, significant amounts of data, to more effectively be able to speak with certainty about what was going on.

Ms. DEGETTE. Well, I am just hoping that, when you all issue the final results of the study, that you can clearly say where the gaps still are. Because that is exactly why we need the study, to be able to say how you can do fracking in a safe way that protects our drinking water, which I think it can happen, but we need to get that data to know how.

Ms. MCCARTHY. In many ways, we are relying on states like Colorado.

Ms. DEGETTE. Thank you. OK. Thank you.

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

At this time the Chair recognizes the gentleman from North Carolina, Mr. Hudson, for 5 minutes.

Mr. HUDSON. Thank you, Mr. Chairman.

And thank you, Administrator McCarthy, for joining us today.

Ms. MCCARTHY. Yes.

Mr. HUDSON. Administrator, I am sure you are familiar with EPA's proposed rule released last July that proposed new greenhouse gas standards for medium and heavy-duty trucks.

Ms. MCCARTHY. Yes, sir.

Mr. HUDSON. Are you aware that in the middle of that proposed rule there is a proposal by EPA to make it illegal to modify vehicles used solely for competition?

Ms. MCCARTHY. No, sir, I don't believe that that is what it says, but I certainly understand the section that you are talking about.

Mr. HUDSON. Well, I can read the language to you. It says, "Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become non-road vehicles or engines."

It seems pretty clear to me. In your opinion, are owners of vehicles that have been modified so they can be used for competition now abolished in the law?

Ms. MCCARTHY. Sir, there is a clear exemption in the statute that addresses NASCAR and other professional raceways and why

we do not regulate those vehicles. I think we were very directly trying to make sure that we are doing no more than what we have done before in terms of either compliance or enforcement. And we are trying to recognize that exemption and that rule.

Now I fully recognize that this has raised a lot of confusion and we need to address this confusion moving forward, because there is no way—NASCAR has been a great partner of EPA. They do great work on biofuels. The last thing I want to do is alienate them. That is for sure.

Mr. HUDSON. I appreciate that, but NASCAR is one facet.

Ms. MCCARTHY. Yes.

Mr. HUDSON. But what about the man or woman who likes to take a car in their backyard and fix it up and take it down to the local drag strip and race it? I mean, that kind of modification it appears very clearly is now ruled out.

Ms. MCCARTHY. Well, we have never ever enforced on an individual of that nature. What we are trying to do is get at manufacturers of these devices, that they sell and make sure that they sell them only for competitive dedicated vehicles. Because it is really challenging to us to make sure that the certified vehicles remain in compliance with air regulations.

Mr. HUDSON. Well, I appreciate what you are saying, but it says here emission fuel devices must remain a certified configuration, even if they are used solely for competition. I mean, it sounds different; the rule sounds different from what you are explaining.

Ms. MCCARTHY. We will do the very best we can. We have had substantial amounts of discussion. Whatever we can do to clarify this, we are going to be able to take those steps.

Mr. HUDSON. Well, I think taking the words “solely used for competition” out—

Ms. MCCARTHY. I will have to see it in its entirety, and I am not a lawyer. I appreciate the need to use common-sense language. I know that what I have told you is what our intent was. We will make sure that the language matches that.

Mr. HUDSON. OK. Well, I certainly appreciate that because not only is this an important way of life for a lot of Americans who enjoy taking cars and modifying them, so they can race, but it is a billion-dollar industry of aftermarket folks who make parts for people to use in competition.

I remember, back in February, you testified before the committee and you made the point that not one EPA regulation has ever cost one job. I am telling you this is a billion-dollar industry that would be wiped out if we can't clarify this and make sure the intent you have expressed is reflected in the regulation.

Ms. MCCARTHY. Thank you, sir.

Mr. HUDSON. Thank you.

With that, Mr. Chairman, I yield back.

Mr. WHITFIELD. The gentleman yields back.

At this time the Chair recognizes the gentleman from North Dakota, Mr. Cramer, for 5 minutes.

Mr. CRAMER. Thank you, Mr. Chairman.

Thank you, Ms. McCarthy, for being with us.

Ms. McCarthy, I have a couple of questions, maybe a statement and a request. Are you familiar or how familiar are you with a se-

ries of enforcement actions that your agency is working with the DOJ on using Section 114 to basically find consent, I guess, or a consent decree with a number of North Dakota oil companies? How familiar are you with that action?

Ms. MCCARTHY. I am somewhat familiar with it, sir.

Mr. CRAMER. Yes. Does it seem like it makes sense to use a consent decree or to bully, if you will—my term, bully, and many companies' term, by the way—bully companies into some sort of agreement apart from a transparent process?

Ms. MCCARTHY. Well, actually, sir, settlement agreements are reached in order to get compliance and make it easier for both the industry as well as—

Mr. CRAMER. Let me ask, are you familiar with a memo from Cynthia Giles from your office, the enforcement shop, to Regional Directors where she discusses the EPA's plan of, quote, "innovative enforcement" to force upon companies the compliance tools that go well beyond the regulations and laws as they currently exist? Are you familiar with that memo?

Ms. MCCARTHY. I am not sure what—

Mr. CRAMER. Are you familiar with the term "innovative enforcement"?

Ms. MCCARTHY. Well, we actually are using a lot of innovation to make sure that we can use our resources wisely, take advantage of new technologies that are out there.

Mr. CRAMER. OK. Technologies such as perhaps FLIR cameras? Are you familiar with the use of FLIR cameras to capture images of—

Ms. MCCARTHY. Yes.

Mr. CRAMER [continuing]. Methane gas escaping?

Ms. MCCARTHY. Yes.

Mr. CRAMER. Do you know that FLIR cameras do not measure the amount of methane that is being leaked from a—

Ms. MCCARTHY. Yes, sir.

Mr. CRAMER. OK. So, how do you, then, justify going to a company and saying, "You are not in compliance" based on this FLIR camera which does not measure the amount of the emission and then, I guess, threaten them with a fine of several thousand dollars per days since the construction? Are you familiar with threats of fines of millions, tens of millions, hundreds of millions, even multiple billions of dollars against companies?

Ms. MCCARTHY. I am aware that we have reached settlements using that as a—

Mr. CRAMER. You have not reached any settlement in North Dakota with an oil company yet. You have with Mobil, a gas company, very different than oil—

Ms. MCCARTHY. Yes.

Mr. CRAMER [continuing]. In Colorado; Colorado, a non-attainment state, and North Dakota, an attainment state.

My point is this: by attainment—you seem confused—that means attaining, meeting the compliance, compliant with your Ambient Air Quality Standards. North Dakota does that.

My point is this: this is a State Health Department issue, in my view, not an EPA issue. North Dakota is a compliant state, not a non-compliant state. Our industry, in response to early notices

from the EPA, well over a year ago, nearly 2 years ago now, our State Health Department, our Oil and Gas Division which operates under the North Dakota Industrial Commission, which is three elected officials, the governor, attorney general, and the commissioner, working with industry, came up with a comprehensive plan, a global plan to deal with 100 percent of the emissions.

Your agency, ignoring that, rather than participating in that, has picked one company at a time—there are now somewhere around half a dozen to a dozen companies—to try to find consent, in other words, admission of guilt to something that I don't believe they are guilty of, by using this innovative enforcement activity. I find it, frankly, reprehensible. Frankly, I find it illegal.

But, when companies are forced, especially with \$40-a-barrel oil to less, forced to either pay millions of dollars in attorneys' fees to fight this or comply or consent, sometimes it is cheaper to consent. I don't think that is an appropriate regulatory regime, quite honestly.

I would rather see, here is what I would in the last minute. I want to ask you this closing question, and I am looking for a really good answer. Will you commit today to, instead of using these 114, this bullying tactic—again, my term—extortion tactics, would you, instead, work with our State and work with our Health Department, work with our Industrial Commission, our Oil and Gas Division, and our industry who want to comply 100 percent—they all want to comply—work with them on a global solution that actually reaches attainment rather than a fine or a penalty? How about we do that? You agree to that today and we will have a great industry.

Ms. MCCARTHY. I will say 114 is an information collection request.

Mr. CRAMER. Yes, it is.

Ms. MCCARTHY. And the tool that you are talking about is a screening mechanism that asks the question whether or not we think there may be significant violations of emissions of volatile organic compounds. And that is why you ask for the information from the companies. I wouldn't characterize it as a bullying tactic.

Mr. CRAMER. Well, except I think an issue is used to try to extort huge fines—

Ms. MCCARTHY. It is used to see whether or not they are in compliance, and that has nothing to do with non-attainment. That has to do—

Mr. CRAMER. Explain that to the DOJ attorneys.

My time has expired.

Mr. WHITFIELD. Well, I appreciate your raising that issue because all of us have heard about that issue, and I am glad that he brought it to your attention.

Ms. MCCARTHY. Could I just mention, and we are certainly happy to—we are in discussions with the State of North Dakota on this, and we would love to be able—

Mr. CRAMER. Well, we could save a lot of your budget money if you would just let the State handle it.

[Laughter.]

Mr. WHITFIELD. At this time the Chair recognizes the gentlelady from North Carolina, Ms. Ellmers, for 5 minutes.

Mrs. ELLMERS. Thank you, Mr. Chairman.

And thank you, Ms. McCarthy and Mr. Bloom, for being here today for this subcommittee hearing.

Administrator McCarthy, the 2015 ozone standards immediately apply to preconstruction permits that businesses need to grow and create jobs. That means businesses will have to immediately show their projects meet the 2015 Ozone Standard, something that may be hard to demonstrate in an area that it is or may be going into non-attainment status.

What preconstruction permitting relief will EPA provide for areas in this situation?

Ms. MCCARTHY. I am sorry, what preconstruction—what did you say?

Mrs. ELLMERS. What preconstruction permitting relief will the EPA provide for areas in this situation? What are the options for a non-attainment status area for preconstruction permitting?

Ms. MCCARTHY. Right. The non-attainment designation isn't even going to be made until 2017. So, we are working with states to make sure that they understand what their attainment status might look like, but there is a fairly-lengthy process. We work back and forth with the governor of each state to identify non-attainment areas.

Mrs. ELLMERS. OK. So, that does not go into effect until 2017?

Ms. MCCARTHY. We haven't even finished collecting that data that would go into determining non-attainment yet. That is through 2016.

Mrs. ELLMERS. OK. So, the Obama administration pledged the United States would reduce greenhouse gas emissions by 26 to 28 percent below 2005 levels by 2025. Were you consulted? Was the EPA consulted on that? I mean, how did the President come up with that number by 2025?

Ms. MCCARTHY. This has to do with reductions of greenhouse gases nationally. That is a determination that is made by the White House in consultation with all of the agencies, including EPA, that look at what existing authority we have, what is planned, what is reasonable, and what is achievable.

Mrs. ELLMERS. So, can you explain that process then? So, you are saying that EPA was involved. Number 1, what other agencies were involved? And describe that process to us of how that became the determining number.

Ms. MCCARTHY. Actually, I wasn't involved in the calculation of that number. EPA's job was to look at our regulatory authority, what we thought was reasonable and achievable under our existing authorities. We provided that information to the White House. Other agencies similarly did that. And that was the commitment, and the accounting was done behind that to submit for our commitment.

Mrs. ELLMERS. Was the public consulted on this beforehand?

Ms. MCCARTHY. I apologize.

Mrs. ELLMERS. No problem. Was the public, was there a comment period for the public on this? Again, I am trying to find out how we came up with that number and was there consideration of public comment.

Ms. MCCARTHY. I am not aware of that process.

Mrs. ELLMERS. OK. Well, I guess what I am asking now is, can you provide for the committee what it was or the sources that the EPA used to—I know you said that this has more to do with jurisdiction, the involvement of regulations and authority. Can you provide for the committee what information you used to come up with the EPA’s authority on that?

Ms. MCCARTHY. I can see what I can make available to you—

Mrs. ELLMERS. OK.

Ms. MCCARTHY [continuing]. And at what level. The reason I am just double-checking is I believe that number was by 2030, not 2025.

Mrs. ELLMERS. Not 2025? OK.

Ms. MCCARTHY. I could be wrong, but I am just having trouble—

Mrs. ELLMERS. OK. Questionable 2030. OK. All right.

I just want in the time I have left—I only have about 40 seconds left—EPA’s budget document states that the Clean Power Plan is “The President’s highest priority for the EPA and the central element of the U.S. domestic climate mitigation agenda.”

Ms. MCCARTHY. Yes.

Mrs. ELLMERS. Is the Obama administration’s pledge to reduce emissions by 26 to 28 percent below 2005 levels contingent on the Clean Power Plan?

Ms. MCCARTHY. Well, the Clean Power Plan was a reflection of what we thought the direction of the energy transition was heading. What we are seeing already is that the energy transition is happening towards the low-carbon sources even more quickly than we had anticipated. So, we fully expect the Clean Power Plan, when it is looked at on its merits, would be found to be legally solid. We don’t think we are going to lose any ground in terms of our ability to make those commitments real.

Mrs. ELLMERS. OK. So, just in closing, because I am actually over time, you don’t believe that there would be a delay further at the court level as far as the Clean Power Plan goes?

Ms. MCCARTHY. I think that the Clean Power Plan will be found to be legally solid and it will move forward, and that we will not be in a position to have lost ground in the end, when it is fully implemented.

Mrs. ELLMERS. Thank you very much, and I yield back.

Mr. WHITFIELD. At this time the Chair recognizes the gentleman from Indiana, Dr. Bucshon, for 5 minutes.

Mr. BUCSHON. Thank you very much.

Sorry.

Ms. MCCARTHY. I am sorry.

Mr. BUCSHON. No, no, no, I just totally paused my time while you had to get some counsel from your staff.

Ms. MCCARTHY. Yes.

Mr. BUCSHON. A couple of things. First of all, earlier in your testimony you mentioned carbon capture and sequestration, facility sites that are working in the United States. Can you give me the name and the address of all of those places that are—

Ms. MCCARTHY. I would be happy to do that.

Mr. BUCSHON. And whether or not they are in continuous operation?

Ms. MCCARTHY. Yes.

Mr. BUCSHON. Because that I am aware of—I mean, maybe I am wrong—but there aren't any. There is a couple of—one in Illinois and one up in Canada. If there are some down in the South, maybe Louisiana that are working—

Ms. MCCARTHY. We definitely want to—

Mr. BUCSHON [continuing]. I would be interested in knowing because you made it sound like this is an ubiquitous thing across the country, that carbon capture is—

Ms. MCCARTHY. I would be happy to do that, sir. I do realize that—

Mr. BUCSHON [continuing]. is working because—

Ms. MCCARTHY. But it is used not just on coal facilities, on generating facilities. It has other applications where it is being used today.

Mr. BUCSHON. OK. So, are there any coal facilities that it is working on right now today?

Ms. MCCARTHY. I believe it is in Kemper here and I believe there is a dam in Canada where it is being fully utilized.

Mr. BUCSHON. Yes, and the one in Canada is going broke, by the way, and the one in Illinois—

Mr. WHITFIELD. And Kemper is not operating.

Mr. BUCSHON. And Kemper is not operating.

Ms. MCCARTHY. OK.

Mr. BUCSHON. So, the idea is that was misleading, I think, to say that carbon capture and sequestration, when we were talking about coal-fired power plants, is commercially viable. In Indiana I have every coal mine in the State. So, to my knowledge, it is not commercially viable or economically viable to implement that in Indiana. If it was, I would be in favor of it being on all of our coal-fired power plants.

Just so you know, I agree the temperature is changing. I agree that, with technology and innovation, we should always be advancing how to use all of our fuels. I agree with that premise. What I don't agree with is federal agencies setting regulations that can't be met with current technology, and that is what this is doing.

With that said, I am going to change course a little bit and talk about athletic fields.

Ms. MCCARTHY. OK.

Mr. BUCSHON. We have noticed that, I think, in recent media reports in the press about alleged potential adverse health effects young people might experience from playing on crumb rubber athletic fields. Almost two months after the committee sent you a letter asking a number of questions about this situation, Dr. Thomas Burke signed a letter stating that, although the EPA was aware of the number of studies that showed no elevated health risks, the studies are limited and did not comprehensively address the concerns about risks to children's health from these exposures.

Ms. MCCARTHY. Yes.

Mr. BUCSHON. EPA then said that, in order to fill in the gaps, it was planning to work with the State of California on a comprehensive evaluation of tire crumb. Ultimately, the EPA decided not to work with California and now is collaborating with the Cen-

ters for Disease Control and Prevention and the Consumer Product Safety Commission on a 1-year study.

So, the question I have is, what changed the EPA's mind about working with California. I mean, I am just generally interested in getting the information, so that all of us can make an assessment of whether this is or is not a problem for kids.

Ms. MCCARTHY. Well, I appreciate that. Part of the challenge that we were facing was that some of the studies, the earlier studies that had been done, really weren't looking at the material that is being used currently in most fields. We are finding that the material themselves, those small balls that are being used, actually have an opportunity for potential exposures that we hadn't really looked at. And the materials themselves are changing. So, we felt that it was prudent, given the concerns, to just take a look at it because the material itself is changing.

Mr. BUCSHON. Sure.

Ms. MCCARTHY. How it is being utilized is different. We thought we should at least close the loop to make sure that there weren't human exposure potentials that we hadn't yet evaluated.

Mr. BUCSHON. OK, and I appreciate it. So, the study, is it 1 year? You are planning on a 1-year study—

Ms. MCCARTHY. Yes.

Mr. BUCSHON [continuing]. That will have the impacts?

Ms. MCCARTHY. We are hoping to have good data by the end of this year.

Mr. BUCSHON. OK. Tell me the kind of description of it because I was a healthcare provider before I was a doctor, and sometimes it takes many, many years to determine the health impacts. If you do a study for a year—

Ms. MCCARTHY. Yes.

Mr. BUCSHON. If you do a study for a year, then you may not know what the health impacts are for 5 or 10 years later. I am just kind of interested in that.

Ms. MCCARTHY. When we got together, we realized that there were studies being done, but people were concerned. And the scientists said the first question to look at is whether there was any potential exposure route. If I can't ingest it, if it can't get in my blood, if it can't get into my system—so, this is really about identifying whether there is an exposure route.

Mr. BUCSHON. That makes total sense. OK. So, it is just the initial study is about exposure, only about exposure, not—

Ms. MCCARTHY. It is not what that exposure results in in terms of health impacts.

Mr. BUCSHON. OK. OK. That clarified it.

Well, this seems to me a developing important issue related to athletic fields not only for children, but other athletes. And so, I appreciate your work.

Thank you for being here.

I yield back.

Ms. MCCARTHY. Mr. Chairman, I apologize. I raised confusion. I think it is 26 to 28 percent by 2025. I had a little brain freeze. So, I just wanted to thaw it out while I had a moment.

Mr. WHITFIELD. Thank you very much for bringing that to our attention.

At this time I recognize the gentleman from Oklahoma, Mr. Mullin, for 5 minutes.

Mr. MULLIN. Thank you, Mr. Chairman.

Administrator, thank you for being here today. I cannot imagine how bad your head must be hurting going through this entire line of questioning, but we do appreciate your time and your effort for being here.

I have a couple of questions. On January 14th of this year, I sent a letter, along with 14 other members who sit on this committee and subcommittees, with three questions about your agency's plan to send U.S. federal employees overseas to help countries meet emission chart targets that were set at the Conference of Paris at the end of last year. We requested the answers by January 29th. It is now March 22nd, and we have yet to hear from anybody. Are you aware of this letter? Have you received this letter?

Ms. MCCARTHY. I am sure the agency has. I will double-check on the response. Is this specific to Paris or is this more broad?

Mr. MULLIN. This is specific to Paris, to a statement that you made while speaking to send federal employees, EPA employees, over to other countries to help them identify emissions. Are you familiar with that?

Ms. MCCARTHY. Not particularly, but I will certainly look at it.

Mr. MULLIN. You gave a speech at the Council of Foreign Relations—

Ms. MCCARTHY. OK.

Mr. MULLIN [continuing]. And you mentioned that the EPA would deploy employees to certain countries to help these countries learn how to identify and measure sources of greenhouse gas emissions.

The letter that we sent to you specifically asked three different questions. Now, one, I do have a letter here with me that I will be happy to give to you, and I would like to submit it, also, for the record. I have a copy for you to have.

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

Mr. MULLIN. It asks three questions. And those three questions, since you are here today, I am going to go ahead and ask you. One, how many U.S. federal employees will be deployed to participate in these countries?

Ms. MCCARTHY. I don't know the answer to that question, sir. I think you are referring to the work we do with the Department of State to do capacity-building in other countries. Very often, that is—

Mr. MULLIN. That may be true, but in your statement you said that the EPA was going to deploy these.

Ms. MCCARTHY. The EPA does do that, but we often resource from the Department of State for those—

Mr. MULLIN. So, how many employees do you plan on sending? I mean, you are here today to talk about your budget, and I am concerned that the EPA is using taxpayer dollars to send employees to other countries to help them with a non-binding agreement that was set in Paris.

Ms. MCCARTHY. Well, the kind of resources that we have in our international unit is actually very small. If we want to utilize more for a purpose like this, which is our capacity-building, related to

the Paris agreement, then it usually is the Department of State provides us those direct resources.

Mr. MULLIN. We have reached out personally from my office. The Oversight Committee has also reached out, to zero response, none.

Ms. MCCARTHY. Yes, sir.

Mr. MULLIN. Your office has yet to respond back to us. We asked for January 29th. And so, once again, I will ask these three questions. If you don't have the answers, I would really appreciate your getting back to us—

Ms. MCCARTHY. OK.

Mr. MULLIN [continuing]. In a timely manner—

Ms. MCCARTHY. Yes.

Mr. MULLIN [continuing]. Which hasn't happened so far.

One was, how many federal employees are going to be deployed? Second, how long will these employees be deployed? And third, what will the cost be to deploy?

Ms. MCCARTHY. OK. So, I will go check on the response and—

Mr. MULLIN. Do you have any answers to that right now?

Ms. MCCARTHY. I do not know the answers to those questions.

Mr. MULLIN. Do you think it is appropriate to send individuals from the EPA that are being paid by taxpayer dollars from the United States to help countries meet a non-binding agreement?

Ms. MCCARTHY. Sir, we do work internationally because pollution knows no boundaries.

Mr. MULLIN. How much do you spend in the EPA working in other countries? Is it EPA? I mean, because we have a hard enough time dealing with you guys in the United States, much less in other countries.

Ms. MCCARTHY. We have very few resources in this regard, but we utilize them in—

Mr. MULLIN. What are the resources you—

Ms. MCCARTHY. We spend a lot of time training trainers in other countries to—

Mr. MULLIN. When you say "very little," what is that number? You are referring to a specific number by saying "very little". How much is that number?

Ms. MCCARTHY. Well, let me tell you.

Mr. MULLIN. I would appreciate that.

Ms. MCCARTHY. This has to do with the total number of grants is less than 1 percent.

Mr. MULLIN. What is that 1 percent? What does that represent in dollar amounts?

Ms. MCCARTHY. One point six million.

Mr. MULLIN. One point six? And that is not including what the State Department helps offset, is that correct?

Ms. MCCARTHY. That would be our resources. The State Department would—

Mr. MULLIN. Can you give me—

Ms. MCCARTHY. Oh, I am sorry. I am sorry. That includes State Department.

Mr. MULLIN. That includes the State Department?

Ms. MCCARTHY. Is that what you said?

Mr. BLOOM. Or come from other federal agencies.

Ms. MCCARTHY. Let me get back to you.

Mr. MULLIN. I would appreciate the total numbers, if you don't mind.

Ms. MCCARTHY. I don't want to be incorrect.

Mr. MULLIN. I am out of time, but I would make sure in a timely manner that you respond back to us, because, once again, this is talking about budget and we are talking about dollars spent here. Thank you.

Mr. WHITFIELD. And also, I mean, that is a very good point. We would like to know the total dollar value of the grants given to other countries by EPA.

Mr. MULLIN. Yes.

Thank you, Mr. Chairman.

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

At this time the Chair will recognize the gentleman from Missouri, Mr. Long, for 5 minutes.

Mr. LONG. Thank you, Mr. Chairman.

And, Ms. McCarthy, I understand that the EPA has set a standard of 70 parts per billion for the 2015 Ozone Standards. Does this mean that counties over 70 parts per billion will be designated as being in non-attainment, I think is the phrase you use, with the 2015 standards?

Ms. MCCARTHY. It means that we are looking at 2014, 2015, and 2016, using a specific formula to identify those that are in non-attainment.

Mr. LONG. But the ones that will be in non-attainment are the ones that are over 70 parts per billion, correct?

Ms. MCCARTHY. Yes.

Mr. LONG. OK.

Ms. MCCARTHY. Using that formula.

Mr. LONG. And will those counties become subject to new planning requirements like State Implementation Plans, and other obligations?

Ms. MCCARTHY. Yes, sir.

Mr. LONG. Counties that are below 70 parts per billion will not be subject to these same planning requirements, is that correct?

Ms. MCCARTHY. They may be subject to earlier requirements, depending upon whether—

Mr. LONG. No, I am not talking about earlier requirements. I am talking about this requirement.

Ms. MCCARTHY. No, sir, they would not be.

Mr. LONG. OK. The EPA has said that most areas will be in compliance with the 2015 standards by 2025 under existing regulations and programs. Once these counties meet the standards in 2025, will the non-attainment designation automatically be lifted or is there a process for that, also?

Ms. MCCARTHY. No, there is a process for that.

Mr. LONG. OK. My understanding is that, once an area is designated to be a non-attainment, it is locked into a complex bureaucratic process to meet these standards, followed by an additional 20 years of the maintenance plan and oversight from the EPA. How is it that the county that is just over 70 parts per billion gets locked in a 20-year-plus process while similar counties just barely under 70 parts per billion do not have to undergo this process? Could you explain—

Ms. MCCARTHY. Yes.

Mr. LONG [continuing]. The wisdom of that to me?

Ms. MCCARTHY. I think that what we try to make sure that we do is, when you are designated as non-attainment, we try to make sure that whatever actions the state took to drive down the pollution that level and to achieve healthy air does not backslide. So, it is just a question of maintaining those actions, so that you can continue moving forward, knowing that you have not only achieved it on a given date, but you don't backslide and start allowing emissions that would, then, drive you into non-attainment again.

Mr. LONG. But the ones that barely got under the 70 billion, do they have to worry about backsliding?

Ms. MCCARTHY. No, they don't because we have determined that that is the level that we are seeking to achieve to provide healthier air, and there is no legal reason why we would want them to do more. We want everybody to stay below that 70 level.

Mr. LONG. Is there any way to reduce the 20-year regulatory burden on counties that are just barely out of the window?

Ms. MCCARTHY. Well, we are talking to the states because I think there is an opportunity to streamline that process, and we are working with states all the time to try to make sure that we do that, to streamline the process of redesignating them as areas of attainment and, also, that we make sure that we don't overburden them with this obligation for anti-backsliding.

We know that states worked hard to get there. They don't want to backslide. We just want to make sure that we have a system in place that maintains that. But if there are ways in which we can streamline it, we certainly want to do it.

Mr. LONG. OK. Thank you, Mr. Chairman. I yield back.

Mr. WHITFIELD. The gentleman yields back.

At this time I recognize the gentleman from Mississippi, Mr. Harper, for 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman.

Administrator McCarthy, I know it has been a long day. We thank you for coming, though, to help us understand some of these issues in a better manner.

The Clean Power Plan includes various compliance deadlines for states ranging from September of this year, when plans would have been due, through 2030. Assuming that the rule is upheld, won't each deadline under the rule be extended by the amount of time for completion of judicial review?

Ms. MCCARTHY. Well, that is not actually what the Supreme Court said, but we assume that the courts will make that judgment over time or leave that to EPA to make their own judgment. It is usually spoken to, but not at this stage.

Mr. HARPER. Well, let me ask you, are you aware that in the filings submitted to the Supreme Court that the Solicitor General explicitly said that the effect of the stay would be toll every sequential step of the rule's implementation?

Ms. MCCARTHY. I think what he was speaking to was that the request for a stay included that in it, but the Supreme Court did not choose to make that determination. They simply said that it would be stayed until it made its way back. And we expect that it will be there in due time and that the courts really will speak to

that or give it to EPA to make that determination. But I don't know what choice they are going to make until they go and make it.

Mr. HARPER. Sure. The Solicitor General also said that granting the stay—and I am quoting what he said, “would toll all of the rule’s deadlines, even those that do not come due until many years after” the case would be resolved, for the period of time between the rule’s publication and the ultimate disposition of this suit. Was the Solicitor General right or wrong when he—

Ms. MCCARTHY. No, he was speaking to the full breadth of what folks were looking for who were seeking a stay. But the Supreme Court didn’t speak to that issue. The only thing they spoke to was the stay of the rule. They didn’t speak to any tolling or what it meant in terms of compliance timelines.

Mr. HARPER. Sure. Are you encouraging states and utilities to continue to work with EPA in the event that the rule is upheld?

Ms. MCCARTHY. We are certainly encouraging states to continue to look at where their energy system is moving forward, and we have made ourselves available to states that voluntarily want to keep looking at their implementation options. And we will keep working with them on that, but we certainly won’t do anything that implements or enforces the rule, consistent with the Supreme Court stay dictates.

Mr. HARPER. The point of the stay was to protect the economic interests of states and stakeholders, regardless of whether the rule is overturned. So, you appear to be signaling the states that they must continue to take action and expend resources, and signaling to utilities that they must respond to the potential rule, which appears to undermine the purpose of the stay. If you can’t respect the purpose of the Supreme Court’s stay, it appears that Congress may have to take steps to come in and prevent you from taking any action that effectively undermines the stay.

Ms. MCCARTHY. Well, as I have said, sir, EPA is not dictating any implementation of this rule or telling any state they have to do anything. We are just offering an ability to support them, as we always do.

Mr. HARPER. So, that is not happening in any conversations with any utilities that you are aware of?

Ms. MCCARTHY. No, not that I am aware of, sir.

Mr. HARPER. In your testimony you state, “Although the Supreme Court has stayed the Clean Power Plan Rule, the stay does not preclude all continued work on the CPP.” Has EPA discontinued any of its previously-planned activities relating to the Clean Power Plan since the stay was issued and, if they have, what activities have been discontinued?

Ms. MCCARTHY. Well, we have been working with the Department of Justice, and it is very clear we have discontinued our implementation and enforcement of the rule. What we have not discontinued is our willingness to work with states that want to voluntarily keep moving forward to look at planning, but we certainly are not indicating to states that we expect to see their preliminary plans come in or that they should be working on those at this point in time.

Mr. HARPER. Has there been any action to encourage the utilities or states to continue to work with you? Any incentives or anything of any nature?

Ms. MCCARTHY. We have not provided any incentive for that, no.

Mr. HARPER. Has EPA reassigned any of its staff to other projects as a result?

Ms. MCCARTHY. I can't answer that specifically. I don't manage the staff at that level.

Mr. HARPER. Yes. I believe my time is close enough. I will yield back.

Mr. WHITFIELD. The gentleman yields back.

At this time the Chair recognizes the gentleman from Texas, Mr. Flores, for 5 minutes.

Mr. FLORES. Thank you, Mr. Chairman.

Administrator McCarthy, thank you for joining us today.

In November of 2014, the EPA proposed a new, more stringent standard for ozone prior to finalizing the implementation standards for the standard set in 2008. In fact, what this did is it forced states to make decisions under a new standard without final implementation rules on the prior standard, all again coming from your agency. And so, not only from an air quality standpoint, but also from an administrative standpoint, does it make sense to permit the 2008 standard to be fully implemented prior to doubling down and creating a new standard?

Ms. MCCARTHY. Actually, that is not the way the law has been worked or has been implemented. The prior standards remain in place. Some states achieved those. In fact, we have had great success in NO<sub>x</sub> reductions or ozone compliance since we first started identifying health-based standards and moving forward.

So, we do not believe you have to—in fact, I don't think the law says that we are supposed to wait until one is done before we do and take a look at whether the health-based standard needs to be adjusted. It is required for us to look at that every 5 years, regardless of attainment status.

Mr. FLORES. Well, but you rolled out a new set of rules at the same time right after you rolled out the implementation standards for the 2008 rules. And so, what you basically created is two sets of standards that states have to follow.

The National Association of Clean Air Agencies testified to EPA that the new ozone standard will have a profound impact on the work of state and local air pollution control agencies, which differs from what you just said. Did the EPA assess the impact that implementing the new ozone standards would have on state and local agencies that were already trying to implement the 2008 standard?

Ms. MCCARTHY. We did look at that impact, sir, and we did a cost/benefit analysis of that. And we determined that the benefits far exceeded the cost, but there is no question that it provides the need for both EPA and states to actually expend more resources. And for that reason, this budget includes both additional resources for EPA for that implementation as well as a request that state resources be also boosted up as a result of this.

Mr. FLORES. Wouldn't it make more sense for these standards to be harmonized, so that you could flow from the 2008 standard to

the 2015 standard, instead of trying to worry about the dual implementation?

Ms. MCCARTHY. Well, sir, we do the best we can to make sure that we are not requiring duplication of the states as they move forward with their implementation planning.

Mr. FLORES. Now the EPA chose to project the cost of its new ozone standard to 2025. In a sense, EPA bases its entire economic analysis on predicted 2025 air quality.

Ms. MCCARTHY. Yes.

Mr. FLORES. Would the agency support extending compliance deadlines under the standards to 2025?

Ms. MCCARTHY. We have not considered that at this point, sir. We are actually following the statutory timelines.

Mr. FLORES. In the budget, EPA has requested funding for implementation of new National Ambient Quality Standards. I have got two parts to this question. One, when will EPA begin the process of implementing the 2015 standards?

Ms. MCCARTHY. We are already in the process of providing guidance to the states on that. We have yet to complete 2016 and see what that data looks like because the actual attainment decisions and non-attainment decisions are based on 2014, 2015, and 2016 data. And then, we have the process of working with governors from that point forward to see where the non-attainment areas they would suggest, and we look at those. So, we are talking about non-attainment designations in 2017. That is when we also make determinations on how difficult the attainment process is, which dictates how quickly attainment needs to be achieved. And then, that is how they do their state implementation plans to coordinate with achieving those reductions in those time—

Mr. FLORES. Right, but when you established the last set of standards in 2008—

Ms. MCCARTHY. Yes.

Mr. FLORES [continuing]. EPA almost immediately began reviewing that standard, but it didn't finalize the implementation for 7 years, until 2015. So, shouldn't we have a system where we prioritize implementation of existing regulations before we expend resources on a new implementation?

Ms. MCCARTHY. Well, I think the way we look at it—and you are right, we should be avoiding duplication as much as possible or any extra work—but it is almost as if we now know what the health-based goal is. And getting there is the challenge. The fact that we get partway there with one decision and further along with another is not shifting direction. It is all moving to the direction of healthy air.

Mr. FLORES. I would submit that you have created a lot of confusion in the real world, and that is something that you and I are going to disagree on.

Ms. MCCARTHY. Yes.

Mr. FLORES. I am going to throw out one last thing. I sent you a letter on May 29th of last year regarding the Regional Haze Plan for Texas. I got a letter from the Region 6 Director about two months later in 2015, and he said he couldn't comment on anything because you were in the rulemaking process. I never did get a followup to that letter. So, I would like, now that you have completed

your rulemaking for the Regional Haze Project, I would like to get a followup letter to answer the six questions I put in my May 29th letter—

Ms. MCCARTHY. Yes, sir.

Mr. FLORES [continuing]. From 2015.

So, Mr. Chairman, I yield back.

Mr. WHITFIELD. The gentleman yields back.

And that concludes the questions today.

Ms. McCarthy, I just want to make a couple of comments, and Mr. Tonko may or may not want to make some summary statements.

First of all, I think anyone who has worked with you likes you because you have a great personality and you are effective in what you do. But I think you also recognize that America really is a divided country today and there really is a red and blue America.

And one of the reasons, certainly not the only reason, but one of the reasons those of us on our side of the aisle, when we go back to our districts, a common theme that we hear is the excess authority and pushiness, for lack of a better word, of the EPA. That comes about for a lot of different reasons, the Clean Power Plan being one of those.

Congress had nothing to do with that. Now I recognize that many on the left side of this dais support it. But that was initiated by the executive branch entering into international agreements, non-binding, and the EPA has been driven because of that.

Twenty-seven states filed lawsuits to try to delay it. I talked in an opening statement about the Brick MACT. You all lost that in the U.S. Court of Appeals, the Utility MACT, the Tailoring Rule, the Clean Energy Plan. So, many people out there in the country say here's EPA going right down the road trying to accomplish their goals set by this administration without a lot of input from the Congress, and many times being overruled by the courts. Now I recognize that a stay is not a decision on the substantive part of a rule, but it is a probability or they would not have issued the stay.

So, I just want to point out that you all have the Clean Air Act, you have the Clean Water Act. All of us want to protect the environment, but I just want you to know personally that there are many people out there who do feel that EPA particularly is being overly-aggressive. And I don't know what the final outcome of that is going to be, but it is something that should concern all of us. Like I said, America is divided. There is no question about that. We know that.

But I want to thank you for spending the entire day testifying before the Appropriations Committee, our committee, about your budget. We appreciate your willingness to work with us, and we will be submitting the individual requests that members have made about additional information they have requested. And we will keep the record open for 10 days here for additional comments.

I now recognize Mr. Tonko for whatever time he might want.

Mr. TONKO. Thank you, Mr. Chair, and thank you for the hearing.

And thank you, Administrator, for joining us and for all of your cooperation and for your leadership.

Rather than focusing on our divided nation, I will talk about a united nation that is united in its need for clean water. It affects every life; it affects every job.

And so, we look forward to working with you and EPA on advancing clean drinking water as an outcome that provides resources to our states and local governments, and will have a strong outcome, I think, for both residential opportunities, families and children, and for businesses alike.

So, thank you again.

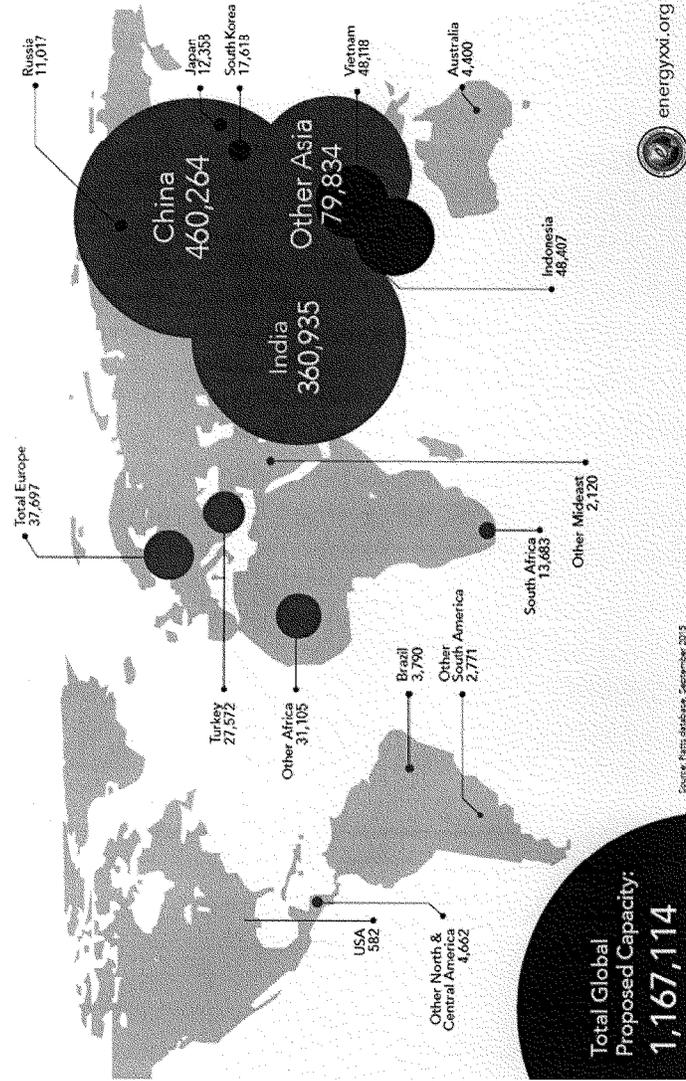
Mr. WHITFIELD. Thank you, Mr. Tonko.

And that concludes today's hearing, and thank you again.

[Whereupon, at 5:17 p.m., the subcommittees were adjourned.]

### Coal-fired Power Plants Planned and Under Construction

Total installed capacity (megawatts)



**Congress of the United States**  
Washington, DC 20515

January 14, 2016

Administrator Gina McCarthy  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Office of the Administrator, 1101 A  
Washington, DC 20460

Dear Administrator McCarthy,

In 1992, national governments around the world, including the United States, agreed to the United Nations Framework Convention on Climate Change (UNFCCC) as the framework for addressing variations in the global climate. Although there have been subsequent global climate treaties since the UNFCCC entered into force, the U.S. Senate has never ratified any treaty that places legally binding greenhouse gas emissions targets on the United States.

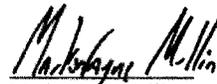
The Paris Protocol was negotiated from November 30 – December 11, 2015, at the 21<sup>st</sup> annual session of the Conference of Parties (COP 21) of the UNFCCC. The results of COP 21 were non-binding emissions reduction and finance commitments from participating governments. The United States cannot be legally bound to any global agreement that sets emissions targets or financial commitments without treaty ratification by the U.S. Senate.

Reports indicate that the U.S. Environmental Protection Agency (EPA) plans to embed U.S. federal employees in UNFCCC participating countries to monitor progress towards the COP 21 commitments. We respectfully request additional information on this plan to deploy U.S. federal employees to UNFCCC participating countries and pose the following three questions:

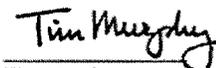
1. How many U.S. federal employees will be deployed to UNFCCC participating countries?
2. How long will these employees be deployed?
3. What will the cost of the deployment be to U.S. taxpayers?

We look forward to receiving your response by January 29, 2016.

Sincerely,



Markwayne Mullin  
Member of Congress



Tim Murphy  
Member of Congress

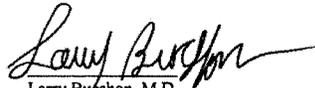
Congress of the United States  
Washington, DC 20515

  
Marsha Blackburn  
Member of Congress

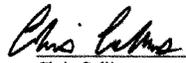
  
John Shimkus  
Member of Congress

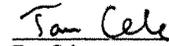
  
Joe Barton  
Member of Congress

  
Jim Bridenstine  
Member of Congress

  
Larry Bucshon, M.D.  
Member of Congress

  
Michael C. Burgess, M.D.  
Member of Congress

  
Chris Collins  
Member of Congress

  
Tom Cole  
Member of Congress

  
Jeff Duncan  
Member of Congress

  
Renee Ellmers  
Member of Congress

  
Bill Flores  
Member of Congress

  
Trent Franks  
Member of Congress

Congress of the United States  
Washington, DC 20515



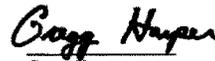
Paul A. Gosar, D.D.S.  
Member of Congress



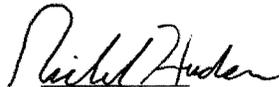
H. Morgan Griffith  
Member of Congress



Brett Guthrie  
Member of Congress



Gregg Harper  
Member of Congress



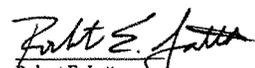
Richard Hudson  
Member of Congress



Bill Huizenga  
Member of Congress



Bill Johnson  
Member of Congress



Robert E. Latta  
Member of Congress



Frank D. Lucas  
Member of Congress



David B. McKinley, P.E.  
Member of Congress



Pete Olson  
Member of Congress

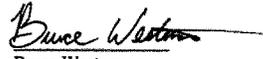


Mike Pompeo  
Member of Congress

**Congress of the United States**  
Washington, DC 20515

  
Steve Russell  
Member of Congress

  
Jason Smith  
Member of Congress

  
Bruce Westerman  
Member of Congress

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CHAIRMAN

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ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641  
April 12, 2016

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator McCarthy:

Thank you for appearing before the Subcommittee on Energy and Power and the Subcommittee on Environment and the Economy on Tuesday, March 22, 2016, to testify at the joint hearing entitled "Fiscal Year 2017 EPA Budget."

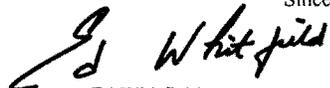
Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on April 26, 2016. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to [Will.Batson@mail.house.gov](mailto:Will.Batson@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittees.

Sincerely,

  
Ed Whitfield  
Chairman  
Subcommittee on Energy and Power

  
John Shimkus  
Chairman  
Subcommittee on Environment  
and the Economy

cc: The Honorable Bobby Rush, Ranking Member, Subcommittee on Energy and Power  
cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

**CERCLA**

**Question:** As you are aware, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) mandates that when a site is added to the National Priorities List (NPL) for Superfund remediation, due diligence must be taken to identify a Potentially Responsible Party (PRP) to help offset the cost of remediation.

On August 5, 2015, the EPA breached the Gold King Mine adit and spilled more than 3 million gallons of acid mine drainage into the Cement Creek which flows into the Animas River that extends into New Mexico and Utah. While the consequences may have been unintended, the fact remains that the EPA is the de facto PRP for the subsequent listing of the Bonita Peak Mining District National Priorities List Site.

Administrator McCarthy, how much money in the EPA's proposed budget is being dedicated for the following activities related to the Gold King Mine blow out?

A. Water monitoring for downstream communities in Colorado and New Mexico, as well as Southern Ute and Navajo tribal lands.

B. Ensuring that the emergency water treatment plant at Gladstone remains in place prior to and during Superfund remediation.

**Answer:**

**A.**

The EPA allocated a combined \$2 million in grant funding in FY 2016 to support the water quality monitoring efforts of Colorado, the Southern Ute Indian Tribe, New Mexico, Navajo Nation, the Ute Mountain Ute tribe, and Utah through Sections 106 and 319 of the Clean Water Act. These grant programs include terms and conditions that require activities be conducted under appropriate quality management plans or quality assurance project plans and that the data quality be documented and submitted to the EPA via the Water Quality Exchange. These funds are in addition to the base program resources these states and tribes received from the EPA to implement their water quality management programs and nonpoint source control programs. The EPA will consider the results of state and tribal monitoring and its own monitoring efforts to determine, as appropriate, supplemental funding levels for state and tribal monitoring in FY 2017.

**B.**

The EPA installed a temporary water treatment plant in November 2015 to treat the accumulated acid mine water containing sediment and heavy metals at the Gold King Mine. The system,

which has an estimated annual operating cost of \$1,000,000, will remain operating as site work resumes this summer. The EPA is assessing the appropriate overall duration of the plant's operations in conjunction with site work, such as a planned remedial investigation and feasibility study associated with the proposed National Priorities List listing.

**CLEAN AIR ACT**

**Question:** Administrator McCarthy, the EPA proposed revised Phase II Ozone Season NO<sub>x</sub> budgets under CSAPR at the very end of last year. From my understanding, this is a significant reduction and represents an over 70% cut in my home state of Pennsylvania a particularly severe revision compared to other states.

Could you explain the EPA's reasoning behind such a dramatic reduction?

1. Administrator McCarthy, are you at all concerned this could jeopardize particular sources of baseload power in Pennsylvania?
2. In your testimony you highlighted the agency's efforts to leverage technology and improve data quality. Could you expand on your work in that area?
3. Are there opportunities for universities or private companies to work with the EPA to achieve these goals?
4. In your testimony you highlight the importance of the Clean Power Plan to the administration, and explain that the EPA will continue to assist states that voluntarily decide to move forward with planning and implementation.

What kind of assistance will the EPA be providing, and are there any limitations as to who could receive such assistance?

**Answer:** The Cross State Air Pollution Rule (CSAPR) Update would reduce air quality impacts of the interstate transport of air pollution on downwind areas' ability to meet the 2008 ozone standard. Starting in 2017, this proposal would reduce summertime emissions of oxides of nitrogen (NO<sub>x</sub>) from power plants in 23 states in the eastern half of the U.S., providing \$1.2 billion in health benefits to millions of Americans.

Analyses for this proposal show that the power sector has a substantial amount of NO<sub>x</sub> reductions that could be achieved quickly and affordably by 2017 by optimizing operation of existing pollution control technology, turning on existing pollution controls that are currently idled, upgrading to state-of-the-art low NO<sub>x</sub> combustion controls, and shifting generation to lower-emitting power plants. Because this proposal uses an existing, familiar, and proven framework, these sources can adapt quickly to achieve cost-effective reductions. The agency is currently reviewing comments received on the proposal as we develop a final rule.

Under a trading program, sources have significant flexibility in deciding how to meet emission reduction requirements. Using the CSAPR allowance trading program allows facility

owner/operators to determine their own compliance path. The proposal does not make any unit-specific requirements except that facilities hold enough allowances to cover their emissions for the ozone season and that emissions are monitored and reported in compliance with 40 CFR Part 75.

The anticipated effects of this proposed rule on employment and retail electricity prices are modest and vary year by year. The EPA analysis shows small employment gains and losses in both the electricity generation and fuels sectors as some companies upgrade and optimize existing NO<sub>x</sub> pollution control equipment to comply with the rule, and some generation is shifted from coal-fired electric generating units (EGUs) to gas-fired units.

**REGIONAL HAZE PROGRAM (TEXAS)**

**Question:** In a May 29, 2015 letter to EPA, I raised several questions regarding the Regional Haze Program and impacts on Texas. On July 13, 2015, EPA Region 6 Administrator Ron Curry responded and declined to answer any of my questions because the rulemaking was pending. The rulemaking has now been finalized. Please respond to the following questions from my letter:

A. Do the averaged 2009 to 2013 results from EPA's IMPROVE monitoring system indicate that visibility at Wichita Mountains currently exceeds the federal plan's 2018 goals?

B. The modeling in EPA's federal plan does not align with real-world data from EPA's IMPROVE monitoring system. What steps is EPA taking to improve that modeling before finalizing the plan?

C. EPA has been told that the federal plan's modeling likely overpredicts visibility impacts by 300%. Why, then, did EPA not conduct a full performance evaluation of the model before relying on the results in the federal plan?

D. Why is EPA mandating that Texas install expensive controls to achieve modeled visibility improvements that the Agency has told other states are "relatively small" and an "unreasonable" basis for regulation?

E. Does EPA believe that it is reasonable to impose \$2 billion of new energy costs on Texas in order to improve modeled visibility by less than half a mile, at a cost of about \$2.8 million per yard?

F. Could the human eye detect the visibility improvements resulting from the controls sought in EPA's federal plan?

**Answer:** The goal of the Regional Haze Program established by congress in the Clean Air Act is to improve visibility at more than 150 Class I areas in the United States (national parks, wilderness areas, national wildlife refuges, etc.) through the control of sources of visibility impairing pollution such as power plants, industrial sources, etc. The affected sources under the Texas - Oklahoma Regional Haze Federal Implementation Plan (FIP) emit thousands of tons of Sulfur Dioxide (SO<sub>2</sub>) (and other visibility impairing pollutants) annually, which are transported over hundreds of kilometers into Oklahoma and other states. As explained in that FIP, due to this transport, pollution from sources in Texas impacts the visibility at the Wichita Mountains National Wildlife Refuge in Oklahoma more than all the pollution sources in Oklahoma.

**E10 BLENDWALL**

**Question:** In the November 30, 2015 RFS final rule, EPA recognized the E10 blendwall as a market constraint and utilized its waiver authority to reduce the volumes obligated parties would have to blend in 2016. EPA also stated, however, that they do not accept the blendwall as a policy constraint and intend to require obligated parties to blend increasing volumes in the coming years.

- A. Does EPA plan to force obligated parties to blend more?
- B. What is EPA proposing to change to overcome the constraints of the market?
- C. How would these impact consumers overall?
- D. What contingency plans does EPA have should the blendwall pose serious problems

**Answer:** The final 2016 standards were designed to develop the use of renewable fuel, requiring 10.1 percent of transportation fuel to be renewable fuels. The recently proposed standards for 2017 would go even further, requiring 10.44 percent of transportation fuels to be renewable. These standards establish ambitious yet achievable requirements for the fuels market, and continue to grow the use of renewable fuels as intended by Congress. While there is no standard for ethanol in the Clean Air Act, the majority of the gasoline pool is blended with ethanol at 10 volume percent (E10). For the use of ethanol to increase, the use of higher-level ethanol blends like E15 and E85 will also need to increase beyond their current use. The final 2016 standards help to incentivize the market place to use greater volumes of renewable fuels, including the increased use of E15 and E85. However, whether ethanol is used in greater volumes and in what form depends on market choices. Obligated parties can also choose to meet their obligations with other renewable fuels, such as biodiesel, biogas, and renewable diesel. If the market chooses to supply more ethanol through higher-level ethanol blends to meet the standards, we expect it may necessitate additional infrastructure investment. The USDA's Biofuels Infrastructure Partnership Program is an example of federal support for this type of infrastructure investment.

**CLEAN WATER ACT SECTION 404 PERMIT**

**Question:** Administrator McCarthy, as you may know the Dallas/Fort Worth Metroplex is a very fast growing area of Texas which is threatened with substantial water supply shortages if we cannot develop additional water supplies soon. One of the regional water providers, the North Texas Municipal Water District, serves over 1.6 million people with water, and its service population is projected to double in the next 20 years. The District has been working on a new reservoir, the Lower Bois d'Arc Creek Reservoir, for well over a decade. That project has been the subject of a Clean Water Act Section 404 permit application and NEPA review before the U.S. Army Corps of Engineers, with EPA involvement, for almost 10 years. Given the potential for over 1.6 million people to have insufficient water supplies in North Texas beginning in 2020, and the public safety issues and economic ramifications of having insufficient water supplies, will EPA commit to taking every action it can take to help ensure that the Final Environmental Impact Statement and Record of Decision for the Lower Bois d'Arc Creek Reservoir are completed timely, so as to allow issuance of the Clean Water Act Section 404 permit for the Reservoir no later than June 1, 2017?

**Answer:** The U.S. Army Corps of Engineers (the Corps) is the lead agency for completing the National Environmental Policy Act (NEPA) review and will be making the final permit decision. The EPA will continue to be a reliable and engaged partner in the review of this project so that the Corps can complete its responsibilities in a timely manner.

**METHANE GAS REDUCTIONS**

**Question:** In April 2012, the EPA released New Source Performance Standards (NSPS) for Volatile Organic Compounds (VOC) from the oil and gas industry.

The rule targeted VOC emission reductions through "green completion" and expected a yield of 95 percent reduction, including an estimated 1.7 million tons of methane.

In August 2015, EPA issued NSPS for new and existing wells.  
EPA estimated the rule would achieve 400,000 metric tons of methane reductions.

1. Administrator McCarthy, are methane reductions from the NSPS above and beyond the 1.7 million achieved through the VOC rule?
2. EPA also estimates that 220,000 metric tons of methane reductions can be achieved by issuing Control Technique Guidelines.

Are these additional reductions beyond the VOC and NSPS rules?

**Answer:** Yes. The methane reductions from the final New Source Performance Standards (NSPS) will build on the agency's 2012 rules to curb Volatile Organic Compounds (VOC) emissions from new, reconstructed and modified sources in the oil and gas industry.

**METHANE GAS REDUCTION RULE**

**Question:** EPA's stated goal is to reduce methane emissions by 40 percent by 2025. According to EPA, a 40 percent reduction from the oil and gas sector would equate to approximately 3.6 million tons. Earlier this month, EPA issued an Information Collection Request for existing sources.

1. Administrator, is it EPA's hope that the existing source rule will yield a reduction of 1.3 million tons?
2. Do you have a sense as to how much these rules will cost in the aggregate?

**Answer:** The EPA is currently developing an Information Collection Request (ICR) that will allow the agency to collect the information that it needs to develop a proposal regarding existing sources of oil and gas methane, so at this time it is premature to estimate the reductions, benefits, or costs that would derive from such a rule.

**CLEAN AIR ACT**

**Question:** The EPA's regulation of carbon dioxide emissions from existing coal-fired power plants under Section 111(d) of the Clean Air Act is illegal in my opinion, for numerous reasons, because they are already regulated under Section 112. Should the Supreme Court disagree, however, EPA's regulation of new coal-fired power plants under Section 111(b) is also subject to legal challenges and has implications for the legality of the 111(d) rule as well.

EPA's final rule under Section 111(b) for new coal-fired power plants sets a standard that is based on use of carbon capture and storage (CCS) technology.

A. Is the 111(b) rule for new and modified power plants the predicate for the "Clean Power Plan"?

B. If the 111(b) rule is struck down, what is the impact on EPA's 111(d) rule for existing power plants?

C. EPA can point only to a single commercial electric generating unit using carbon capture—the Boundary Dam Project in Saskatchewan, Canada—as demonstrating its new source standards, is that correct?

**Answer:** Section 111(d) applies to air pollutants for which the existing source would be regulated if it were a new source. Standards issued for new, modified, and reconstructed power plants to regulate their CO<sub>2</sub> emissions served as the predicate for the section 111(d) emission guidelines. The EPA is confident that the 111(b) rule is on solid legal and technical ground and therefore will be upheld by the Court.

The EPA has received petitions for reconsideration of the final standards of performance, focusing mostly on issues related to the standard of performance for newly constructed steam generating units and, more specifically, on the performance and cost of carbon capture technology. One petition maintains that the post-promulgation performance of carbon capture technology in actual operation at the Canadian SaskPower Boundary Dam Unit 3 facility shows that carbon capture is not yet adequately demonstrated at commercial scale. The EPA is denying reconsideration on this issue because, contrary to the petitioner's contention, the facility's performance, through March 2016, corroborates the EPA's conclusion in the rulemaking that partial Carbon Capture and Storage (CCS) is an adequately demonstrated technology within the meaning of CAA section 111(b). The same petition maintains that the SaskPower Boundary Dam facility uses a different carbon capture process than the one the EPA evaluated at proposal. This

contention is incorrect. The petition further maintains that the EPA has not accounted for cost overruns at that facility. This contention is significantly exaggerated and not borne out by the facts.

On April 29, 2016, the EPA denied five reconsideration petitions, including the one discussed above. The agency discusses each of the five petitions we are denying and the basis for those denials in a separate, docketed memorandum titled "Basis for Denial of Petitions to Reconsider the CAA section 111(b) Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Utility Generating Units."

**CLEAN AIR ACT**

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EPA states in its final rule "The Boundary Dam facility has been operating full CCS successfully at commercial scale since October 2014." (80 Federal Register at 64573 (October 23, 2015))

A. This is the one and only operating project at a power generation facility that EPA can point to, correct?

B. Did EPA, before it issued the new plant rule, verify that the Boundary Dam facility had actually demonstrated that it was meeting EPA's performance standard for new plants?

C. Are you aware of the numerous Canadian press reports since this past fall that this facility has not been operating "successfully"?

D. Are you aware that this facility had been turned on only about 40% of the time during the period EPA was issuing its final standards?

E. Are you concerned EPA may not have done its due diligence when relying about Boundary Dam to make its judgement that CCS was adequately demonstrated in its rulemaking? If not, why not?

**Answer:** Suggestions that the SaskPower Boundary Dam facility experienced operational failures related to its carbon capture technology have largely been misstated or mischaracterized. The carbon dioxide (CO<sub>2</sub>) capture system at SaskPower Boundary Dam is operating successfully, the unit meets the Canadian performance standard for CO<sub>2</sub> emissions (which is more stringent than the U.S. standard), and it is producing more CO<sub>2</sub> for enhanced oil recovery than called for by contract. Operational issues in the first year of operation were related largely to ancillary systems and not to the carbon capture system, and appear to have been successfully resolved.

### CLEAN AIR ACT

**Question:** The EPA's regulation of carbon dioxide emissions from existing coal-fired power plants under Section 111(d) of the Clean Air Act is illegal in my opinion, for numerous reasons, because they are already regulated under Section 112. Should the Supreme Court disagree, however, EPA's regulation of new coal-fired power plants under Section 111(b) is also subject to legal challenges and has implications for the legality of the 111(d) rule as well.

Is it correct that EPA has determined that partial carbon capture technology has been demonstrated in full scale power production, in commercial service?

A. At page 5 of the New Source Performance Standards Rule (80 Fed. Reg. 64510, 64513 (Oct. 23, 2015)), it states that CCS is the "best system of emissions reduction" because it is "technically feasible" and used in industrial applications. But it does not say it has been fully demonstrated in commercial service for power plants, why is that?

B. Why is mere feasibility a basis for setting performance standards in something as vital as power generation?

Would you agree that "feasibility" is different than "demonstrated" and "commercially viable"? Will EPA be applying this "feasibility" standard to other 111 (b) rulemakings?

**Answer:** The Carbon Pollution Standards for new power plants rely on a wide range of data, information and experience well beyond that generated by a particular project. The EPA has determined that CCS is technically feasible for new coal-fired power plants because all of the major components of CCS—the capture, the transport, and the injection and storage—are available, integrated, and proven. The EPA specifically rejected full CCS (greater than 90% capture) as the 'best system of emission reduction' and instead found 'partial CCS' to be the best system for new coal-fired power plants. The final Carbon Pollution Standard can be met by capturing 1623% of a plant's potential CO<sub>2</sub> emissions. There are coal-fired power plants that have demonstrated partial carbon capture and some are capturing carbon pollution today, showing that the technology works in this application, such as AES Warrior Run, Southern Company Plant Barry, Boundary Dam, and others. A full discussion regarding "adequately demonstrated" can be found in the final rule (80 Fed. Reg. 64,537).

On April 29, 2016, the EPA denied five reconsideration petitions. The agency discusses each of the five petitions we are denying and the basis for those denials in a separate, docketed memorandum titled "Basis for Denial of Petitions to Reconsider the CAA section 111(b)

Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Utility Generating Units."

**CLEAN AIR ACT**

**Question:** EPA established new ozone standards in 2008. How many counties have been designated as being in nonattainment with the 2008 standards?

**Answer:** The EPA designated 46 areas as nonattainment for the 8-hour ozone standards finalized in March of 2008. These areas included 192 whole counties and 40 partial counties. Two of the areas have since been redesignated to attainment.

**CLEAN AIR ACT**

**Question:** Last October, the EPA revised the 2008 standards. How many counties does the EPA expect will be in nonattainment with the new standards?

A. Based on 2011-2013 air quality data, four counties in my district will be in nonattainment for the first time under these new standards, has EPA done any analysis of the impacts of either the 2008 or 2015 standards on manufacturing in areas designated as being in nonattainment?

**Answer:** The process for designating areas as attainment or nonattainment for the 2015 standards will take place during 2016 and 2017. The Clean Air Act (CAA) requires these designations to be issued by October 2017. The Clean Air Act requires the EPA to designate an area as nonattainment if it is violating the standards or contributing to a violation in a nearby area. The EPA expects to base the final designation decisions on air quality data from 2014 through 2016. Because air quality data for this entire period are not yet available and technical analyses will need to be conducted to determine nonattainment area boundaries, it is premature to estimate how many counties would be included in designated nonattainment areas.

**CLEAN AIR ACT**

**Question:** I am very concerned about areas, like Rochelle, Illinois, that is doing everything it can to attract new manufacturing and good jobs, but has never had to deal with these regulations before. Is it correct that one designated as "nonattainment" a county remains designated as nonattainment until EPA approves a maintenance plan even if the area's air quality data shows the area meets the standards?

- A. How long can it take for EPA to approve a maintenance plan?
- B. Do counties have to submit multiple maintenance plans?
- C. How long do areas have to be subject to maintenance plans?
- D. What does this mean for areas, like Rochelle, that want to attract new manufacturing?

**Answer:** The EPA coordinates with state co-regulators to provide timely review of state requests to redesignate an area to maintenance. As required by the Clean Air Act, an approved maintenance plan remains effective for 10 years beyond the effective date of an area's redesignation, and allows for new construction within the emissions control guidelines stated in the maintenance plan.

**CLEAN AIR ACT**

**Question:** In response to my question at the March 22nd hearing regarding the number of counties EPA expects will be designated to be in nonattainment with the 2015 standards, you testified that the number would be potentially only a dozen areas outside of California. EPA's website, however, indicates that there are 241 counties in 33 states that would not meet the 2015 ozone standards based on 2012-2014 data. (<https://www.epa.gov/sites/production/files/201603/documents/20151001datatable20122014.pdf>).

You indicated that you would go back and verify the numbers of areas expected to be in nonattainment with the new standards.

A. Could you clarify your response? How many counties does EPA expect will be designated to be in nonattainment with the 2015 standards?

**Answer:** The agency's analyses show the vast majority of U.S. counties will meet the 2015 standards by 2025 just with federal and state rules and programs now in place or underway. These preliminary analyses indicate that only 14 counties (excluding California) are projected to fail to meet the standards in 2025, down from 213 counties with monitors (excluding California) that measure ozone above a level of 70 ppb based on 2012-2014 air quality data.

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**CLEAN POWER PLAN**

**Question:** In the current fiscal year, how much of its budget had EPA planned to spend on implementation of the Clean Power Plan?

- A. Given the stay, how much will your spending go down in the current fiscal year?
- B. Given the stay, how much will it go down in the proposed budget for Fiscal Year 2017?

**Answer:** Addressing carbon pollution is a part of the EPA's obligations under the Clean Air Act. Further, the Clean Air Act directs the EPA to engage with states and other stakeholders and to provide technical and financial assistance on all aspects of air pollution prevention and control. For the states that voluntarily continue work to cut carbon pollution from power plants and seek the agency's guidance and assistance, the EPA will continue to provide tools and support and technical assistance. The EPA also expects to continue to develop electronic systems to support state plan development activities, and other guidance, as appropriate, to support and respond to state needs. Such guidance may include information regarding evaluation, measurement, and verification of energy savings and emissions reductions.

**CLEAN POWER PLAN**

**Question:** EPA's budget request indicates EPA had intended in 2017 to work on "developing federal plans on a state specific basis as needed."

A. Following the Supreme Court's stay of the Clean Power Plan, is EPA continuing any work to develop "federal plans" for potential imposition on states?

B. Does EPA intend to finalize a "federal plan" before judicial review is complete?

**Answer:** On February 9, 2016, the Supreme Court stayed the Clean Power Plan (CPP) pending judicial review before the U.S. Court of Appeals for the D.C. Circuit and any subsequent proceedings in the Supreme Court. The EPA firmly believes the Clean Power Plan will be upheld when the courts address its merits because the Clean Power Plan rests on strong scientific and legal foundations. The stay means that no one has to comply with the Clean Power Plan while the stay is in effect. During the pendency of the stay, states are not required to submit anything to the EPA, and the EPA will not take any action to impose or enforce any such obligations. For example, the agency has clearly communicated to states that they are not required to make initial submittals on September 6, 2016.

Since the stay was issued, many states have said they intend to move forward voluntarily to continue to work to cut carbon pollution from power plants and are seeking the agency's guidance and assistance. The agency will be providing such assistance, which is not precluded by the stay. In particular, they have asked us to move forward with our outreach and to continue providing support and developing tools, including the Clean Energy Incentive Program (CEIP), the proposed model rules, and the proposed evaluation, measurement and verification (EM&V) guidance. For example, on April 28, 2016, a group of 14 state environmental agency officials wrote to the EPA to request that we provide a final model rule or rules, additional information on the Clean Energy Incentive Program, and other information and assistance. The EPA has received significant feedback on the CEIP and comment on the proposed model rules and EM&V guidance. The agency will move forward developing these actions in a way that is consistent with the stay while providing states the tools they have asked for to help address carbon pollution from power plants. For example, on June 16, 2016, the agency issued a proposed rule for public review and comment that includes details about the optional Clean Energy Incentive Program. This will help guide states and tribes that choose to participate in the program when the Clean Power Plan becomes effective.

Addressing carbon pollution is a part of the EPA's obligations under the Clean Air Act. Further, the Clean Air Act directs the EPA to engage with states and other stakeholders and to provide technical and financial assistance on all aspects of air pollution prevention and control.

For the states that voluntarily continue work to cut carbon pollution from power plants and seek the agency's guidance and assistance, the EPA will continue to provide tools and support and technical assistance. The EPA also expects to continue to develop electronic systems to support state plan development activities, and other guidance, as appropriate, to support and respond to state needs. Such guidance may include information regarding evaluation, measurement, and verification of energy savings and emissions reductions.

**CLEAN POWER PLAN**

**Question:** You have said that EPA "will keep moving the Clean Power Plan forward we'll keep moving forward with things like the model rule and [Clean Energy Incentive Program]."

A. Following the Supreme Court's stay of the Clean Power Plan, what work is EPA doing with respect to the "model rule"? Does EPA plan to finalize the "model rule" before judicial review is completed?

B. Following the Supreme Court's stay of the Clean Power Plan, what work is EPA doing with respect to the "Clean Energy Incentive Program"? Does EPA plan to implement this program before judicial review is completed?

How much is EPA requesting to spend on these activities in FY 2017?

**Answer:** As noted in the previous response, on February 9, 2016, the Supreme Court stayed the Clean Power Plan (CPP) pending judicial review before the U.S. Court of Appeals for the D.C. Circuit and any subsequent proceedings in the Supreme Court. The EPA firmly believes the Clean Power Plan will be upheld when the courts address its merits because the Clean Power Plan rests on strong scientific and legal foundations. The stay means that no one has to comply with the Clean Power Plan while the stay is in effect. During the pendency of the stay, states are not required to submit anything to the EPA, and the EPA will not take any action to impose or enforce any such obligations. For example, the agency has clearly communicated to states that they are not required to make initial submittals on September 6, 2016.

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proposed rule for public review and comment that includes details about the optional Clean Energy Incentive Program. This will help guide states and tribes that choose to participate in the program when the Clean Power Plan becomes effective.

Addressing carbon pollution is a part of the EPA's obligations under the Clean Air Act. Further, the Clean Air Act directs the EPA to engage with states and other stakeholders and to provide technical and financial assistance on all aspects of air pollution prevention and control.

For the states that voluntarily continue work to cut carbon pollution from power plants and seek the agency's guidance and assistance, the EPA will continue to provide tools and support and technical assistance. The EPA also expects to continue to develop electronic systems to support state plan development activities, and other guidance, as appropriate, to support and respond to state needs. Such guidance may include information regarding evaluation, measurement, and verification of energy savings and emissions reductions.

**CLEAN POWER PLAN**

**Question:** As you are aware on February 9, 2016 the U.S. Supreme Court granted five separate motions to stay the CPP. One of these granted motions specifically requested the court to extend "all" compliance dates by the number of days between the rule's publication and a final decision by the courts, including the Supreme Court, relating to the rule's validity.

In view of these granted stay motions, does EPA have a different legal opinion regarding the delaying of "all" compliance dates contained in the CPP including the delaying of the emission compliance deadlines by the amount described above? If so please cite legal authorities and relevant case holdings supporting this position.

**Answer:** The ultimate effect of the stay on the Clean Power Plan deadlines will be determined when the stay is lifted. The Court's orders are ambiguous because different applicants requested different relief. The government interpreted the stay applicants' opening briefs as requesting that all CPP deadlines be tolled, and it opposed the stay in part on the grounds that such relief would be extraordinary and unprecedented. In their reply brief, however, the states clarified that they were only seeking a stay that would relieve states of the obligation to comply with CPP deadlines during the litigation and that the stay would not necessarily provide for day-for-day tolling of the deadlines. The Supreme Court's orders granting the stay did not discuss the parties' differing views of whether and how the stay would affect the CPP's compliance deadlines, and they did not expressly resolve that issue. In this context, the question of whether and to what extent tolling is appropriate will need to be resolved once the validity of the Clean Power Plan is finally adjudicated.

## REGULATIONS

**Question:** With the demonstrated link between poverty and increased incidences of chronic illnesses such as cancer, depression and illicit drug use, what consideration, if any, does your agency give to the societal cost of poverty before it issues regulations?

**Answer:** The EPA's regulatory development process ensures that all statutory and administrative requirements for rulemaking are met. These requirements often include assessment of cost and benefits, including effects on children's health, environmental justice considerations, tribal impacts, and impacts on small business. Also, as required by law, in setting the level of the ambient air pollution standards to adequately protect against health effects, the EPA considers at-risk populations, which may include children, older adults, those with health conditions, and those with lower socioeconomic status. In general, regulations that reduce air pollution result in considerable health benefits because many common air pollutants exacerbate serious health problems such as asthma and other respiratory and cardiovascular diseases (see for example: <https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act>).

**CLEAN POWER PLAN**

**Question:** Given the Supreme Court's February decision to stay the Clean Power Plan, does EPA plan to extend all of the rules' compliance deadlines in the event that the regulations are ultimately upheld by the courts?

**Answer:** The ultimate effect of the stay on the Clean Power Plan deadlines will be determined when the stay is lifted. The Court's orders are ambiguous because different applicants requested different relief. The government interpreted the stay applicants' opening briefs as requesting that all CPP deadlines be tolled, and it opposed the stay in part on the grounds that such relief would be extraordinary and unprecedented. In their reply brief, however, the states clarified that they were only seeking a stay that would relieve states of the obligation to comply with CPP deadlines during the litigation and that the stay would not necessarily provide for day-for-day tolling of the deadlines. The Supreme Court's orders granting the stay did not discuss the parties' differing views of whether and how the stay would affect the CPP's compliance deadlines, and they did not expressly resolve that issue. In this context, the question of whether and to what extent tolling is appropriate will need to be resolved once the validity of the Clean Power Plan is finally adjudicated.

**CARBON CAPTURE**

**Question:** At the time of EPA's final rule this past August, there were no commercial scale power-projects that demonstrated carbon capture technology could be integrated successfully into power generation and would be commercially viable, is that correct? If not, what commercial scale power project had successfully demonstrated carbon capture could be successfully integrated into power generation and would be commercially viable?

**Answer:** The final rule is based on the performance of a new, highly-efficient coal-fired power plant implementing *partial* CCS to meet an emission standard of 1,400 lb CO<sub>2</sub>/MWh. This emission standard would require implementation of CCS technology on only a small portion (or slip stream) of the plant's flue gas output. In the final rule, the agency described a variety of facts to support the agency's conclusion that the technical feasibility of partial post-combustion carbon capture (partial CCS) is adequately demonstrated. The agency also specifically noted electric generating units (EGUs) that have previously utilized or are currently utilizing partial post-combustion carbon capture technology in the slip stream configuration. Further, the conclusion was reinforced by a discussion in the final rule of commercial vendors who offer carbon capture technology and provide performance guarantees.

**BOUNDARY DAM CARBON CAPTURE AND STORAGE**

**Question:** The only operational power project deploying Carbon Capture and Storage cited by EPA in its rule was the Boundary Dam project in Canada (SaskPower Boundary Dam 3 unit), which, according to Department of Energy and other analyses is not large enough to be considered demonstration scale. Moreover, as reported recently by the New York Times, the small \$1.1 billion unit has expended tens of millions in new equipment and repairs and "has been plagued by multiple shutdowns, has fallen way short of its emissions targets, and faces an unresolved problem with its core technology." There remain serious questions whether the Canadian government will even pursue the financial investment to develop a full-scale demonstration project as follow-on to the Boundary Dam 3 unit work. Administrator McCarthy, how much money in the EPA's proposed budget is being dedicated for the following activities related to the Gold King Mine blow out?

A. Given this, does EPA continue to maintain that it is reasonable to project that carbon capture technology used by SaskPower can be scaled up and that this technology will be economically feasible for companies in the United States?

B. If so, what is the evidence to support this position? And how has EPA validated this evidence?

**Answer:** Suggestions that the SaskPower Boundary Dam facility experienced operational failures related to its carbon capture technology have largely been misstated or mischaracterized. The carbon dioxide (CO<sub>2</sub>) capture system at SaskPower Boundary Dam is operating successfully, the unit meets the Canadian performance standard for CO<sub>2</sub> emissions (which is more stringent than the U.S. standard), and it is producing more CO<sub>2</sub> for enhanced oil recovery than called for by contract. Operational issues in the first year of operation were related largely to ancillary systems and not to the carbon capture system, and appear to have been successfully resolved.

**CLEAN AIR ACT**

**Question:** This past November the Committee wrote to EPA seeking information related to the Agency's involvement in the codification of the Clean Air Act into a new Title 55 of the United States Code. In its initial November 18 response to the Committee's request, EPA's General Counsel, in attempting to justify why the Agency chose not to provide technical assistance to Congress's independent Office of Law Revision Counsel, seemed to indicate EPA actually has no intention of participating in the positive law codification process. Pursuant to title two, section 285b of the United States Code, the Office of Law Revision Counsel is required to prepare a restatement of all laws passed by Congress; there are no exceptions. Therefore, is it EPA's position that the statutory requirements for positive law codification do not apply to the Clean Air Act and other environmental statutes administered by the Agency?

**Answer:** This past November, the agency was asked for all documents relating to this subject, which goes back several years. We have produced a substantial number of these documents to the Committee and we are continuing to compile and review additional materials.

**FOREIGN EMISSION-US**

**Question:** Has EPA prepared any recent, comprehensive studies on the current and projected contribution of foreign emissions to current and projected ozone levels in the US?

A. If yes, please identify the studies and where copies can be located by the public.

B. If yes, have the studies been subject to peer review?

**Answer:** The EPA has not prepared any recent comprehensive studies on the contributions of foreign emissions on U.S. ozone levels. In February 2016, the EPA held a two-day workshop to advance the collective understanding of technical and policy issues associated with background ozone, including international transport, as part of the agency's ongoing efforts to engage with states and stakeholders on implementation of the 2015 ozone NAAQS. The workshop agenda, attendee lists, presentations used at the workshop, and high-level summary of the workshop are available at <https://www.epa.gov/ozone-pollution/epa-workshop-background-ozone-february-24-and-25-2016>. A non-regulatory docket was also opened for states and other stakeholders to provide additional comments on background ozone issues such as international transport, which is available at [www.regulations.gov](http://www.regulations.gov) (Docket ID. EPA-HQ-OAR-2016-0097). Additionally, the EPA continues to actively participate in the Task Force on Hemispheric Transport of Air Pollution (HTAP). Partial results from the current set of model simulations and data analyses considering intercontinental transport are expected by the end of 2016.

**OZONE STANDARD**

**Question:** In a December 30, 2015 White Paper entitled "Implementation of the 2015 Primary Ozone NAAQS: Issues Associated with Background Ozone," EPA states that "Ambient data analyses have shown that mid-tropospheric [ozone] concentrations in remote areas, within the U.S. and globally, have been increasing over the past two decades at a rate of approximately 0.4 ppb/year within an overall uncertainty range of 0.1 to 0.7 ppb/year." The paper also notes that while "NOx emissions are expected to decline in North America and Europe out to 2030 and then stabilize," that "NOx emissions in East and South Asia are expected to continue to increase." (See White Paper available at <https://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2016-0097-0004>, p. 8).

A. What assumptions did EPA include in its analysis regarding the contribution of ozone from non-U.S. sources in projecting future nonattainment areas in 2025 and in assessing the cost and benefits of the 2015 ozone standard?

B. How many more nonattainment areas could occur in 2025 if the foreign contribution and transport of ozone continue at the same pace as it has done over the past two decades?

C. How many more nonattainment areas could occur in 2025 if the projected mid-tropospheric ozone increases at 0.7ppb/year, the upper end of the uncertainty range?

D. How would this affect the overall costs of meeting the 2015 ozone standard?

E. If EPA did not conduct this analysis prior to finalizing the 2015 ozone standard, why not?

**Answer:** In the Regulatory Impact Analysis (RIA) released with the final 2015 ozone standards, the EPA conducted an illustrative analysis of the costs and benefits of the new NAAQS in 2025. For this exercise, the EPA assumed that the contribution from non-U.S. sources in 2025 would be unchanged from current levels. This assumption was made due to the uncertainty associated with future trends in non-U.S. emissions. As noted in the ozone NAAQS response to comments document, the most recent evidence suggests the increasing trend in free tropospheric ozone has slowed over the most recent period. While future levels of background ozone have the potential to impact future U.S. attainment in some limited locations, the weight of the evidence suggests that the RIA assumption of unchanging background levels was a reasonable one.

**CLEAN AIR ACT - SECTION 179B**

**Question:** EPA's White Paper on ozone background also states that Section 179B of the Clean Air Act provides EPA with the authority to approve an area's attainment plan if the state can show that the plan would achieve attainment by the relevant attainment date "but for" the influence of international emissions.

A. How many Section 179B petitions have been submitted since 1990? How many of these petitions has EPA approved or disapproved?

B. What was the average time period for EPA action on a submitted petition?

**Answer:** The EPA has approved 179B demonstrations for five nonattainment areas. To date, all demonstrations have involved emissions from Mexico. Three of these SIPs addressed PM<sub>10</sub>, one addressed CO, and one addressed ozone.

**EPA'S WHITE PAPER**

**Question:** EPA's White Paper states that EPA "will assist states with conducting the analyses necessary to demonstrate "but for" attainment, including estimating the extent of international contribution on high ozone days.

A. Please specify the extent and nature of this assistance and whether EPA will conduct the required modeling.

B. If not, what type of modeling does EPA expect will be necessary for a state to submit to make the required showing?

C. How will a successful petition under Section 179B affect an area's control obligations as a nonattainment area? Will it still have to meet all other requirements applicable to the area based on its classification?

**Answer:** As part of our efforts to assist states in implementing the new ozone standards, the EPA held a two-day workshop in February 2016 to advance the collective understanding of technical and policy issues associated with background ozone. A non-regulatory docket was opened for states and other stakeholders to provide additional comments on background ozone issues such as international transport. The EPA is currently reviewing the comments received at the workshop and via the docket. As part of this process, the EPA intends to provide a document that will outline any plans for specific policies, guidance, or modeling assistance related to 179B "but for" demonstrations.

Section 179B of Clean Air Act allows the EPA to approve an attainment demonstration for a nonattainment area if: (1) The attainment demonstration meets all other applicable requirements of the CAA; and (2) the submitting state can satisfactorily demonstrate that "but for emissions emanating from outside of the United States," the area would attain and maintain the ozone standard. The EPA has historically evaluated these "but for" demonstrations on a case-by-case basis, based on the individual circumstances, the classification of the area and the data provided by the submitting state. These data have included ambient air quality monitoring data, modeling scenarios, emissions inventory data and meteorological or satellite data. Due to the fact specific nature of section 179B demonstrations, the process and information required will be dependent on the circumstances of the state or locality in question.

Section 179B does not provide for any relaxation of Clean Air Act mandated emissions control measures (including contingency measures) or the prescribed emissions reductions necessary to

achieve periodic emissions reduction progress requirements. In this way, section 179B ensures that states will take actions to mitigate the public health impacts of exposure to ambient levels of pollution that violate the NAAQS by imposing reasonable control measures on the sources that are within the jurisdiction of the state, while also authorizing the EPA to approve such attainment plans and demonstrations even though they may not fully address the public health impacts of international transport.

**WINTERTIME OZONE LEVELS**

**Question:** Has EPA prepared any recent, comprehensive studies regarding the science of wintertime ozone formation, photochemical modeling of wintertime ozone formation, and the ability of western states to cost-effectively reduce wintertime ozone levels? If yes, please identify the studies and where copies can be located by the public.

**Answer:** The EPA has collaborated with the State of Utah, industry representatives, and NOAA in three field studies from 2012 to 2014 in the Uinta Basin in Utah to understand the emissions sources and meteorological conditions and photochemistry that contributes to winter ozone. Final reports describing each of these studies are available on the Utah webpage (<http://www.deq.utah.gov/locations/U/uintahbasin/ozone/overview.htm>). Additionally, the EPA also collaborated with the State of Wyoming in its field studies and modeling studies of winter ozone in the Upper Green River Basin. These reports are available at the Wyoming web page (<http://deq.wyoming.gov/aqd/winter-ozone/resources/winter-ozone-study>).

**REGULATORY IMPACT ANALYSIS-OZONE STANDARDS**

**Question:** EPA's Regulatory Impact Analysis for the 2015 ozone standards states that seven monitoring sites for which design values were influenced by wintertime ozone episodes were not included in the analysis because "modeling tools are not currently sufficient to properly characterize ozone formation during wintertime ozone episodes". In Appendix 2A of the RIA, EPA elaborates on these key modeling uncertainties:

Current modeling tools are not sufficient to properly characterize ozone formation for these winter ozone episodes due to (1) the challenging task of capturing complex local "cold pool" meteorology using a model resolution that is optimized to capture regional and synoptic scale process, (2) uncertainties in quantifying the local emissions from oil and gas operations, and (3) uncertainties in the chemistry that occurs both in the atmosphere and on snow surfaces during these episodes. Therefore, it was not appropriate to project ozone design values at monitors impacted by winter events.

A. Given the inadequacy of existing tools, how does EPA expect areas affected by wintertime ozone to develop appropriate compliance plans?

B. Does EPA expect states to resolve these significant uncertainties on their own, or is EPA planning to study the issue further and hopefully develop appropriate modeling tools that states can use?

C. Does EPA have a plan to resolve these technical uncertainties, and what assistance, if any, does the agency anticipate it will provide states to address these issues?

**Answer:** The current air quality modeling tools are continually being improved. The EPA, states, NOAA and other university researchers have made substantial progress in updating modeling tools for cold pool meteorology and the effects of snow surface of the chemistry of ozone formation and the EPA will continue to work with states. As an example, snow albedo treatment and a new chemical mechanism intended to better replicate wintertime chemistry have recently been added to key air quality models. Further there have been ongoing efforts to improve the characterization of oil and gas emissions in the National Emissions Inventory (NEI).

**OZONE CONTROL STRATEGIES**

**Question:** Has EPA prepared any recent, comprehensive studies regarding the relative contribution of human-made and naturally occurring nitrogen oxides, volatile organic compounds, and other pollutants in ozone formation to ensure air pollution control policies focus on the most cost-effective control strategies to reduce ozone? If yes, please identify the studies and where copies can be located by the public.

**Answer:** Throughout the 2015 ozone NAAQS review, the EPA assessed the contribution of various sources (anthropogenic and natural) to ozone levels. The Integrated Science Assessment (ISA), the Policy Assessment (PA), and the Regulatory Impact Analysis (RIA) (located at [https://www3.epa.gov/ttn/naaqs/standards/ozone/s\\_o3\\_index.html](https://www3.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html)) all have sections devoted to ozone attribution and/or the impacts of ozone precursor reductions on ozone concentrations. Additionally, Table 2 of the white paper on background ozone presents source apportionment modeling results from a 2017 projection that estimates the contributions of own-state anthropogenic emissions and all U.S. anthropogenic emissions at each location where 2012-2014 design values exceeded 70 ppb.

**NATIONAL RESEARCH COUNCIL (NRC)**

**Question:** At a November 18, 2015 meeting of EPA's Clean Air Act Advisory Committee (CAAAC) I understand that the agency received a recommendation to ask the National Research Council (NRC) to update its 1991 study, "Rethinking the Ozone Problem in Urban and Regional Air Pollution." My understanding is that there are new and continuing challenges to further reducing NOx emissions, and it was recommended that the EPA conduct an updated review of the science, considering that the science has evolved since the original determination.

- A. Given that the original study is now 25 years old and that the science has evolved since its publication, does EPA have plans to ask the NRC to update this study?
- B. If the agency has not yet made a decision, when does the agency expect to make a decision?
- C. If EPA has decided to go forward with updating the 1991 NRC study, what is the schedule for when the study will be initiated and completed?
- D. If EPA has decided against an update of the NRC's 1991 study, what is the basis for that decision, especially given the significant cost and technical challenges facing states and areas in complying with the new ozone standards?

**Answer:** As directed by the CAA, reducing pollution to meet any NAAQS, including ozone, always has been a shared task, one involving the federal government, states, tribes and local air agencies. This partnership has proved effective since the EPA first issued O<sub>3</sub> standards more than three decades ago, and is evidenced by significantly lower O<sub>3</sub> levels throughout the country. To inform the development of clean air plans for ozone during this period, the EPA and states have relied on region- and city-specific technical air quality data and analyses (e.g., on-going ambient air monitoring and computer modeling for ozone conducted by state air agencies); updated research on ozone chemistry performed by the EPA's Office of Research and Development and others (e.g., the Electric Power Research Institute); and recommendations from expert groups like the National Research Council (e.g., *Rethinking the Ozone Problem in Urban and Regional Air Pollution*, 1991, and *Air Quality Management in the United States*, 2004) and the North American Research Strategy for Tropospheric Ozone (e.g., *An Assessment of Tropospheric Ozone Pollution, A North American Perspective*, 2000).

To provide a foundation that helps air agencies build successful strategies for attaining O<sub>3</sub> standards, the EPA will continue to move forward with federal regulatory programs, such as the final Tier 3 Motor Vehicle Emissions Standards. To facilitate the development of CAA-

compliant implementation plans and strategies to attain new standards, the EPA intends to issue timely and appropriate implementation guidance and, where appropriate and consistent with the law, new rulemakings to streamline regulatory burdens and provide flexibility in implementation. On October 1, 2015, the EPA issued a memo (*Implementing the 2015 Ozone National Ambient Air Quality Standards*), which highlights many of the issues related to implementation of the new O<sub>3</sub> standard, and renewed the EPA's commitment to work with our state, local, federal and tribal partners to carry out the duties of ozone air quality management in a manner that maximizes common sense, flexibility and cost-effectiveness while achieving improved public health.

**NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS)**

**Question:** Section 109(d) of the Clean Air Act requires the Administrator to review National Ambient Air Quality Standards (NAAQS) at "five-year intervals".

- A. How many NAAQS reviews since 1980 have been completed within five years?
- B. What is the range of time that the agency has taken since 1980 for EPA to conduct a review and promulgate a final decision on an existing standard?
- C. How often has EPA met year the five-year interval deadline, and how often has EPA not met the deadline?

**Answer:** The EPA continually strives to meet its deadlines under the Clean Air Act. On a number of occasions, the review has been completed in the statutorily mandated time, although in some instances it has taken us longer.

**WESTLAKE LANDFILL SUPERFUND**

Administrator McCarthy, I've been hearing quite a bit from my colleagues on both sides of the aisle in the Missouri Delegation about the Westlake Landfill Superfund site near the St. Louis airport in Bridgeton, Missouri. In fact, I've been hearing quite regularly from them along with from residents living near the site, firefighters, environmental activists and many others.

The site, which is contaminated with tons of radioactive waste left over from the Manhattan Project, as well as industrial solid waste and other refuse, was added to the NPL in 1990. Today, more than 25 years later, not only is the site still sitting there, but there is also an underground fire that has been burning there for six years --since 2010!

No one in Congress understands better than I do the strain the Superfund program has been under since the funding authority lapsed in the mid-1990s. But even accounting for that, it is unconscionable that a toxic site of this nature, this close to a residential neighborhood, continues to sit there waiting for cleanup to really begin.

The Missouri Delegation is so frustrated with EPA that it has joined together to push legislation that would take the Westlake site out of the Superfund program and hand it over to the Army Corps of Engineers by moving the site into the Formerly Utilized Sites Remedial Action Program or FUSRAP for cleanup.

Now, I have a number of concerns about that legislation, its drafting, the precedent it sets, and the potential for actually slowing down cleanup of the site. So, I hope that we will soon be having a hearing on that legislation in this Committee because I think we need to get a better understanding of what the bill actually does and whether it comports with what the people living in the area really want.

That said, it is the lack of progress that has brought us to the point where one chamber of Congress has taken the extraordinary step of passing legislation to take control of this cleanup away from the Agency. As I said, it is an unconscionable situation, regardless of the merits of the legislation.

Madam Administrator, your agency has said publicly that it intends to come forward with a new remedy proposal for operable unit one by this fall and a final proposed remedy by December. I understand that you inherited a poor remedy selection and had to revisit that decision.

**Question:** What kind of assurances can you give to the people of Bridgeton that they will see a cleanup occur in short order and that the cleanup will actually be fully protective of public health?

**Answer:** The EPA is working closely with the U.S. Army Corp of Engineers, U.S. Geological Survey and the State of Missouri in all aspects of its West Lake Superfund site work to support the analysis and proposal of a final site remedy. To address contamination at the West Lake Landfill, the potentially responsible parties are performing the necessary investigative work and evaluating additional remedial alternatives pursuant to an enforceable schedule. This work will enable the EPA to propose a final remedy decision for public comment by the end of calendar year 2016.

In the meantime, response actions are currently underway at the site to protect on-site workers and the local community. In December 2015, the EPA issued an order to the potentially responsible parties to place a non-combustible cover over areas where Radiologically Impacted Material (RIM) was located at or near the surface. Installation of this cover began in February 2016 and is anticipated to be complete by early this summer. Also in December, the EPA announced its intention to require the potentially responsible parties to put an isolation barrier system in place to protect the RIM from any subsurface smoldering event at the adjacent Bridgeton Landfill. In April 2016, the EPA issued an order directing Bridgeton Landfill, LLC to install several critical components of the Isolation Barrier System to compliment the State of Missouri's efforts to address the subsurface smoldering event. The EPA and the potentially responsible parties continue to work on the technical and legal details of the remaining portions of the system and will provide these details to the public when they are available.

**Question:** How can you restore the confidence of those people and, frankly, those that would have us pass legislation to take the site away from EPA?

**Answer:** The most important action this agency can take right now to benefit the community is to propose a remedy decision for public comment. As the agency and the potentially responsible parties complete the essential work to select a protective remedy for the Site, the EPA will continue to keep the community informed and engaged in the discussions on progress and updates. An important communication conduit to the community is the EPA's recently established independent Community Dialogue Framework that brings participants from across the community, key stakeholders and the EPA together to share perspectives on the West Lake Landfill Superfund site. The Framework's long-term objective is to offer a forum for communication and understanding of the various activities underway at the West Lake Landfill that will protect the public from the RIM located at the site.

In addition, the EPA continues to support the Community Advisory Group (CAG) through regular communication and participation at CAG Technical Committee meetings and CAG meetings. The EPA also supports the CAG by providing independent technical assistance through the Technical Assistance Services for Communities contract. Finally, the EPA has enlisted the expertise of other agencies such as the U.S. Army Corps of Engineers and the USGS in addressing the West Lake Landfill's complicated remediation issues.

**EMPLOYEES AND CONTRACTORS WORKING FOR EPA**

**Question:** According to EPA's website, the agency had 15,408 employees in FY 2014. According to EPA's website, as of February 23, 2016, the agency also has 601 active contracts with outside entities.

What is the total number of employees working for the agency?

What is the total number of contractors working for the agency?

Please provide a breakdown of the number of employees by program office, and also the number of contractors by program office.

**Answer:** As of April 13, 2016, there were 15,649 employees working for the EPA. This number includes permanent and temporary employees and all work schedules (i.e., full time, part time, intermittent and phased retirement).

There are 4,060 contractors working for the agency.

The chart below breaks down the number of employees and contractors by program and region.

RPIO/ Sub Bureau	Employees	Contractors	Employees + Contractors
Region 1	566	73	639
Region 2	781	115	896
Region 3	787	111	898
Region 4	917	79	996
Region 5	1,088	47	1,135
Region 6	762	70	832
Region 7	488	36	524
Region 8	528	61	589
Region 9	736	151	887
Region 10	521	104	625
OARM	671	1,008	1,679
OAR	1,083	117	1,200
OCFO	322	77	399
OECA	739	44	783
OIG	273	3	276
OITA	78	1	79
OA	814	19	833
OEI	336	769	1,105
OGC	210	0	210
ORD	1,781	876	2,657
OLEM	483	114	597
OCSPP	1,101	108	1,209
OW	584	77	661
<b>EPA Total</b>	<b>15,649</b>	<b>4,060</b>	<b>19,709</b>

The data presented is from the HR data mart which includes intermittent, temporary employees, advisors, etc. This data is different from what the EPA reports to Congress in its Congressional Justification which represents the agency's FY 2016 Enacted Full Time Equivalent (FTE) Ceiling which is an estimate of the number of agency employees and includes ARRA, Sandy Supplement, and reimbursable FTE.

**CLEAN POWER PLAN**

**Question:** The President's budget proposal was developed and released before the Supreme Court issued its stay relating to the Clean Power Plan.

A. What direction have you given your staff regarding the impact of the stay on EPA's activities and spending?

B. Has EPA discontinued any Clean Power Plan related activities or spending following the stay?

**Answer:** On February 9, 2016, the Supreme Court stayed the CPP pending judicial review before the U.S. Court of Appeals for the D.C. Circuit and any subsequent proceedings in the Supreme Court. The EPA firmly believes the Clean Power Plan will be upheld when the courts address its merits because the Clean Power Plan rests on strong scientific and legal foundations. The stay means that no one has to comply with the Clean Power Plan while the stay is in effect. During the pendency of the stay, states are not required to submit anything to EPA, and EPA will not take any action to impose or enforce any such obligations. For example, we have clearly communicated to states that they are not required to make initial submittals on September 6, 2016.

Since the stay was issued, many states have said they intend to move forward voluntarily to continue to work to cut carbon pollution from power plants and are seeking the Agency's guidance and assistance. The Agency will be providing such assistance, which is not precluded by the stay. In particular, they have asked us to move forward with our outreach and to continue providing support and developing tools, including the Clean Energy Incentive Program (CEIP), the proposed model rules, and the proposed evaluation, measurement and verification (EM&V) guidance. The EPA has received significant feedback on the CEIP and comment on the proposed model rules and EM&V guidance. We will move forward developing these actions in a way that is consistent with the stay while providing states the tools they have asked for to help address carbon pollution from power plants. For example, on June 16, 2016, we issued a proposed rule for public review and comment that includes details about the optional Clean Energy Incentive Program. This will help guide states and tribes that choose to participate in the program when the Clean Power Plan becomes effective.

Addressing carbon pollution is a part of the EPA's obligations under the Clean Air Act. Further, the Clean Air Act directs the EPA to engage with states and other stakeholders and to provide technical and financial assistance on all aspects of air pollution prevention and control.

Therefore, the EPA expects to continue to use Agency funds to protect human health and the environment consistent with its authorities under the Act.

**CLEAN POWER PLAN-COMPLIANCE**

**Question:** What direction has EPA given states regarding the effect of the stay on their obligations under the Clean Power Plan?

A. What is EPA advising states regarding compliance dates, including the 2022 compliance date?

**Answer:** The ultimate effect of the stay on CPP deadlines will be determined when the stay is lifted. The Court's orders are ambiguous because different applicants requested different relief. The government interpreted the stay applicants' opening briefs as requesting that all CPP deadlines be tolled, and it opposed the stay in part on the grounds that such relief would be extraordinary and unprecedented. In their reply brief, however, the States clarified that they were only seeking a stay that would relieve States of the obligation to comply with CPP deadlines during the litigation and that the stay would not necessarily provide for day-for-day tolling of the deadlines. The Supreme Court's orders granting the stay did not discuss the parties' differing views of whether and how the stay would affect the CPP's compliance deadlines, and they did not expressly resolve that issue. In this context, the question of whether and to what extent tolling is appropriate will need to be resolved once the validity of the CPP is finally adjudicated. In addition, we have clearly communicated to states that they are not required to make initial submittals on September 6, 2016

**CLEAN POWER PLAN-ASSISTANCE TO STATES**

**Question:** At the budget hearing, you testified that there were 25 states either continuing to work with EPA or that have sent signals that they may keep working.

- A. What is the nature of the assistance that EPA is providing to states following the stay?
- B. Which states are continuing to work with EPA on the Clean Power Plan?
- C. How much is EPA projecting it will spend in FY 2016 to provide this assistance to states?
- D. How much funding is EPA requesting for FY 2017 to provide assistance to states?

**Answer:** Since the stay was issued, many states have said they intend to move forward voluntarily to continue to work to cut carbon pollution from power plants and are seeking the Agency's guidance and assistance. The Agency will be providing such assistance, which is not precluded by the stay. In particular, they have asked us to move forward with our outreach and to continue providing support and developing tools, including the Clean Energy Incentive Program (CEIP), the proposed model rules, and the proposed evaluation, measurement and verification (EM&V) guidance. For example, on April 28, 2016, a group of 14 state environmental agency officials wrote to EPA to request that we provide a final model rule or rules, additional information on the Clean Energy Incentive Program, and other information and assistance. The EPA has received significant feedback on the CEIP and comment on the proposed model rules and EM&V guidance. We will move forward developing these actions in a way that is consistent with the stay while providing states the tools they have asked for to help address carbon pollution from power plants. For example, on June 16, 2016, we issued a proposed rule for public review and comment that includes details about the optional Clean Energy Incentive Program. This will help guide states and tribes that choose to participate in the program when the Clean Power Plan becomes effective.

Addressing carbon pollution is a part of the EPA's obligations under the Clean Air Act. Further, the Clean Air Act directs the EPA to engage with states and other stakeholders and to provide technical and financial assistance on all aspects of air pollution prevention and control.

Similar to this year's request, the FY 2016 President's Budget request provided \$50.5M to support EPA and state work to implement the Clean Power Plan in two distinct parts. (1) \$25M in grants to help states implement their Clean Power Plan strategies. (2) \$25.5M across both headquarters and regions to develop program implementation infrastructure, evaluate state plans,

and ensure consistent application of the emissions guidelines nationwide. Because the FY 2016 President's Budget was not fully funded by Congress, providing full funding for all National Programs was not possible.

For the states that voluntarily continue work to cut carbon pollution from power plants and seek the agency's guidance and assistance, the EPA will continue to provide tools and support and technical assistance in FY2017. The EPA also expects to continue to develop electronic systems to support state plan development activities, and other guidance, as appropriate, to support and respond to state needs. Such guidance may include information regarding evaluation, measurement, and verification of energy savings and emissions reductions.

**CLEAN POWER PLAN - RESOURCES**

**Question:** At the budget hearing, you indicated that notwithstanding the stay of the Clean Power Plan, EPA was continuing to expend resources relating to the Clean Power Plan and that no staff had been reassigned to other matters.

A. How much does EPA project it will spend in FY 2016 relating to the Clean Power Plan?

B. How much funding is EPA requesting for FY 2017 relating to the Clean Power Plan?

**Answer:** Similar to this year's request, the FY 2016 President's Budget request provided \$50.5M to support EPA and state work to implement the Clean Power Plan in two distinct parts. (1) \$25M in grants to help states implement their Clean Power Plan strategies. (2) \$25.5M across both headquarters and regions to develop program implementation infrastructure, evaluate state plans, and ensure consistent application of the emissions guidelines nationwide. Because the FY 2016 President's Budget was not fully funded by Congress, providing full funding for all National Programs was not possible.

For the states that voluntarily continue work to cut carbon pollution from power plants and seek the agency's guidance and assistance, the EPA will continue to provide tools and support and technical assistance in FY2017. The EPA also expects to continue to develop electronic systems to support state plan development activities, and other guidance, as appropriate, to support and respond to state needs. Such guidance may include information regarding evaluation, measurement, and verification of energy savings and emissions reductions.

**CLEAN POWER PLAN - RULEMAKING**

**Question:** EPA's budget lists various rulemakings it planned to work on relating to the Clean Power Plan.

A. Is EPA continuing to work on any Clean Power Plan related rulemakings? If yes, which rulemakings?

B. Does the agency plan to finalize any additional regulations relating to the Clean Power Plan before the end of this Administration? If yes, what regulations?

**Answer:** As noted above, since the stay was issued, many states have said they intend to move forward voluntarily to continue to work to cut carbon pollution from power plants and are seeking the Agency's guidance and assistance. The Agency will be providing such assistance, which is not precluded by the stay. In particular, they have asked us to move forward with our outreach and to continue providing support and developing tools, including the Clean Energy Incentive Program (CEIP), the proposed model rules, and the proposed evaluation, measurement and verification (EM&V) guidance. For example, on April 28, 2016, a group of 14 state environmental agency officials wrote to EPA to request that we provide a final model rule or rules, additional information on the Clean Energy Incentive Program, and other information and assistance. The EPA has received significant feedback on the CEIP and comment on the proposed model rules and EM&V guidance. We will move forward developing these actions in a way that is consistent with the stay while providing states the tools they have asked for to help address carbon pollution from power plants. For example, on June 16, 2016, we issued a proposed rule for public review and comment that includes details about the optional Clean Energy Incentive Program. This will help guide states and tribes that choose to participate in the program when the Clean Power Plan becomes effective. At this time, we have made no decisions about timing for final actions.

**CLEAN POWER PLAN - STATES**

**Question:** Your written testimony relating to the Clean Power Plan also states that "[d]uring the stay, EPA will continue to assist states that voluntarily decide to move forward . . ."

- A. Is EPA in any way reaching out to states or other organizations to encourage states to move forward with "voluntary" actions?
- B. Is EPA in any way coordinating with, assisting, or funding nonprofits or other organizations to encourage states to move forward with "voluntary" compliance?
- C. If a state voluntarily submits a "plan" pursuant to the Clean Power Plan rule, will EPA approve it?

**Answer:** As noted above, since the stay was issued, many states have said they intend to move forward voluntarily to continue to work to cut carbon pollution from power plants and are seeking the Agency's guidance and assistance. The Agency will be providing such assistance, which is not precluded by the stay. In particular, they have asked us to move forward with our outreach and to continue providing support and developing tools, including the Clean Energy Incentive Program (CEIP), the proposed model rules, and the proposed evaluation, measurement and verification (EM&V) guidance. For example, on April 28, 2016, a group of 14 state environmental agency officials wrote to EPA to request that we provide a final model rule or rules, additional information on the Clean Energy Incentive Program, and other information and assistance. The EPA has received significant feedback on the CEIP and comment on the proposed model rules and EM&V guidance. We will move forward developing these actions in a way that is consistent with the stay while providing states the tools they have asked for to help address carbon pollution from power plants. For example, on June 16, 2016, we issued a proposed rule for public review and comment that includes details about the optional Clean Energy Incentive Program. This will help guide states and tribes that choose to participate in the program when the Clean Power Plan becomes effective. The stay means that no one has to comply with the Clean Power Plan while the stay is in effect. During the pendency of the stay, states are not required to submit anything to EPA, and EPA will not take any action to impose or enforce any such obligations. For example, we have clearly communicated to states that they are not required to make initial submittals on September 6, 2016.

**INTENDED NATIONALLY DETERMINED CONTRIBUTION (INDC)**

**Question:** Approximately one year ago, the Administration submitted an "Intended Nationally Determined Contribution" (INDC) to the United Nations setting a 2025 target for reducing domestic greenhouse gas emissions by 26-28 percent below 2005 levels. The EPA's Clean Power Plan was identified by the Administration as a major component of its "INDC," and EPA's more recently issued FY 2017 budget documents expressly refer to the Clean Power Plan as "the President's highest priority for the EPA and is central element of the US domestic climate mitigation agenda.

A. Is the Obama Administration's INDC target contingent on the Clean Power Plan?

B. Will the Administration's INDC target be achievable if the Clean Power Plan is not upheld by federal courts?

**Answer:** The target is economy-wide, accounting for all sectors covered by the Intergovernmental Panel on Climate Change (IPCC) and for all greenhouse gases (GHGs) recorded in the US's 2014 inventory (carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), perfluorocarbons (PFCs), hydrofluorocarbons (HFCs), sulfur hexafluoride (SF<sub>6</sub>), and nitrogen trifluoride (NF<sub>3</sub>)). The CPP is only one component of a broad set of domestic actions this Administration has put in place or is in the process of putting in place to reduce GHG emissions. These include vehicle fuel economy standards, energy efficiency standards, methane regulations, restrictions on HFC uses, climate-friendly land management incentives, and so on. Regardless, EPA firmly believes the Clean Power Plan will be upheld when the merits are considered because the rule rests on strong scientific and legal foundations.

**PARIS CLIMATE AGREEMENT**

**Question:** On December 12, 2015, President Obama referenced the EPA's carbon dioxide power plant standards in his statement regarding the "Paris Climate Agreement."

A. What direction have you or your staff given to State Department officials regarding the impact of the stay on the Administration's INDC or the Paris Climate Agreement?

B. What direction have you or your staff given to foreign countries or other foreign entities, if any, regarding the impact of the stay on the Administration's INDC target or the Paris Climate Agreement?

**Answer:** The EPA has given no direction to either the State Department or foreign countries.

**CLEAN AIR ACT**

**Question:** In the Congressional Justification (CJ at 228), EPA states that "In FY 2017, the EPA will continue work to address [New Source Performance Standards] for sources of air pollutants and as appropriate, GHGs, consistent with the requirements of the CAA."

- A. What sources is EPA currently considering for regulation of greenhouse gases under Section 111(b) or 111(d), or both, of the Clean Air Act? Please provide a list of all such sources.  
B. Are there any additional sources EPA anticipates it may consider in FY 2017 for regulation of greenhouse gases under Section 111(b) or 111(d), or both, of the Clean Air Act? Please provide a list of all such additional sources.

**Answer:** On May 12, 2016, the EPA issued three final rules that together will curb emissions of methane, smog-forming volatile organic compounds (VOCs) and toxic air pollutants such as benzene from new, reconstructed and modified oil and gas sources, while providing greater certainty about Clean Air Act permitting requirements for the industry.

The EPA also took a critical step needed to carry out the Administration's commitment to regulate methane emissions from *existing* oil and gas sources: the agency issued for public comment an Information Collection Request (ICR) that will require companies to provide extensive information instrumental for developing comprehensive regulations to reduce methane emissions from existing oil and gas sources.

The ICR process, which is governed by the Paperwork Reduction Act, provides the public two opportunities to review drafts of the information collection request. The draft ICR was published on June 3, 2016, and the first of two public comment periods will last for 60 days. The agency may revise the first draft as necessary based on comments and then publish a second draft which also will be submitted to the Office of Management and Budget (OMB) for review. If the collection request is approved by OMB – which can include surveys and required emissions monitoring – it will be sent to industry, which is required to respond and attest that the information it provides is accurate. The EPA's goal is to receive the first phase of information later this year.

**CLEAN AIR ACT - PENDING PETITIONS**

**Question:** The agency has a number of petitions pending seeking additional regulation of greenhouse gases under other sections of the CAA, including Sections 108-110, 115, 211, 231, and other sections.

A. What is the status of each of these pending petitions?

B. Is the agency actively involved in settlement discussions relating to any these petitions? If yes, which petitions?

**Answer:** The EPA is currently reviewing a number of pending petitions regarding greenhouse gases. Of them, for a petition regarding regulating GHG emissions from aircraft under CAA Sec. 231, the agency has proposed a finding that such emissions endanger public health as well as released for public comment an Advanced Notice of Proposed Rulemaking. The agency is currently reviewing the comments on both of those to determine appropriate next steps. The agency is not actively engaged in settlement negotiations regarding any such petitions.

**GREENHOUSE GASES - SECTION 108-110**

**Question:** Is EPA considering regulation of greenhouse gases under Sections 108-110 of the CAA? If yes, please explain what potential regulation the agency is considering and for which greenhouse gases such regulation would apply.

**Answer:** The EPA is not currently engaged in developing such regulations.

**GREENHOUSE GASES - SECTION 115**

**Question:** Is EPA considering regulation of greenhouse gases under Section 115 of the CAA? If yes, please explain what potential regulation the agency is considering and for which greenhouse gases such regulation would apply.

**Answer:** The EPA is not currently engaged in developing such regulations.

**STATE IMPLEMENTATION PLAN - BACKLOG**

**Question:** EPA's budget documents indicate that at the end of FY 2015, EPA had 557 backlogged state implementation plans, the agency will have 300-400 at the end of FY 2016, and will still have 100-200 by the end of FY 2017 (see CJ at p. 903).

A. Could staff assigned to the Clean Power Plan be shifted over to work on reducing the SIP backlog? If not, why not?

**Answer:** The EPA has been working with states since 2013 on plans to reduce the SIP backlog and address the states' priority SIPs. This work has resulted in four-year plans developed with states to substantially reduce the historic backlog of SIPs by the end of 2017. Steady and substantial progress has been made over the last several years, through the EPA and the states working together. Work on the Clean Power Plan (CPP) is not expected to negatively impact the EPA's efforts to reduce the SIP backlog.

**NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS)**

**Question:** In its budget documents, EPA states that regional implementation of the National Ambient Air Quality Standards (NAAQS) is becoming "increasingly complex."

A. Does EPA have sufficient staff and expertise to fully implement the 2008 ozone standards, and also implement the 2015 ozone standards at the same time?

B. Does EPA have the resources to timely process all of the new state implementation plans that will have to be submitted by states or counties under these standards?

**Answer:** The EPA and state co-regulators share a long history of managing ozone air quality under the Clean Air Act (CAA), underpinned by a wealth of previously issued EPA rules and guidance. In particular for areas where states are still actively working toward attaining the 2008 ozone NAAQS, the EPA is committed to helping air agencies identify and take advantage of potential planning and emissions control efficiencies that may occur within the horizon for attaining the 2015 standards. Following past precedent, the EPA intends to propose revoking the 2008 standards and provide transition rules intended to help avoid any potential inefficiencies as states begin implementing the Clean Air Act's requirements for the 2015 standards.

**CLEAN AIR SCIENTIFIC ADVISORY COMMITTEE (CASAC)**

**Question:** Under Section 109 of the Clean Air Act, the Clean Air Scientific Advisory Committee is supposed to advise EPA of "any adverse public health, welfare, social, economic or energy effects which may result from various strategies for attainment of national ambient air quality standards." Last May, the Government Accountability Office (GAO) issued a report (see <http://gao.gov/assets/680/670288.pdf>) indicating that CASAC has never provided advice on adverse social, economic or energy effects related to NAAQS because EPA has never requested such advice from CASAC.

A. Please explain why EPA has not requested CASAC to perform its statutory duty and advice on adverse effects relating to implementing NAAQS?

B. What is EPA's estimate of budgetary and personnel resources that would be necessary to support CASAC in this particular work?

**Answer:** CAA section 109 (d)(2)(C)(iv) states that one of the committee's duties is to "advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of [NAAQS]." The provision does not require that CASAC provide this advice as part of the five year review cycle. Moreover, when the Supreme Court in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), held that the EPA could not consider implementation and other costs in setting the NAAQS, the Court further held that any CASAC advice related to costs of implementation under 109 (d)(2)(C)(iv) would not be relevant to the EPA's review of the NAAQS. Therefore, as part of the most recent ozone review we have not provided CASAC with studies or charge questions that examine the adverse social, economic, or energy effects that may result from various strategies for attainment of the NAAQS.

The CAA does provide state and local officials in nonattainment areas the ability to consider several factors, including social, economic, and energy impacts, when designing their state implementation plans to implement the NAAQS. To assist the states, the EPA has received, and will continue to request, advice on health, welfare, and economic effects of strategies to improve air quality from several different science advisory bodies (including the Council on Clean Air Compliance Analysis, the National Research Council, and the Clean Air Act Advisory Committee). In addition, the EPA has provided states with information on air pollution control techniques, including the cost to implement such techniques (e.g., Control Techniques Guidelines and other implementation guidance). With respect to requesting advice from CASAC

related to CAA section 109 (d)(2)(C)(iv), the agency is continuing to examine the issue and is considering how to proceed.

The EPA has not estimated the budgetary or personnel resources that would be necessary to support such work.

**METHANE EMISSIONS**

**Question:** Recently the White House released a Joint Statement between the United States and Canada which indicated EPA "will begin developing regulations for methane emissions from existing oil and gas sources immediately and will move as expeditiously as possible to complete this process."

- A. Given EPA's work on voluntary programs for existing oil and gas sector sources, when did the agency begin discussion of possible mandatory programs for these sources?
- B. Please provide the timeline for development of these regulations, including any information collection requests.
- C. Under what statutory authority does EPA plan to develop these regulations?
- D. What is the status of development of these regulations?
- E. Does EPA plan to propose or finalize regulations before the end of the Administration?
- F. Is EPA considering establishing cap-and-trade standards for methane similar to what the agency has done in the Clean Power Plan for the power sector?
- G. Is EPA considering setting individual state methane targets or budgets similar to what the agency has done in the Clean Power Plan for the power sector?
- H. Does EPA envision that it will be imposing "federal plans" on state oil and gas sectors to impose methane or greenhouse gas emissions trading like the Clean Power Plan?

**Answer:** On May 12, 2016, the EPA issued three final rules that together will curb emissions of methane, smog-forming volatile organic compounds (VOCs) and toxic air pollutants such as benzene from new, reconstructed and modified oil and gas sources, while providing greater certainty about Clean Air Act permitting requirements for the industry.

The EPA also took a critical step needed to carry out the Administration's commitment to regulate methane emissions from *existing* oil and gas sources: the agency issued for public comment an Information Collection Request (ICR) that will require companies to provide extensive information instrumental for developing comprehensive regulations to reduce methane emissions from existing oil and gas sources.

The ICR process, which is governed by the Paperwork Reduction Act, provides the public two opportunities to review drafts of the information collection request. The draft ICR was published on June 3, 2016, and the first of two public comment periods will last for 60 days. The agency may revise the first draft as necessary based on comments and then publish a second draft which will also be submitted to the Office of Management and Budget (OMB) for review. If the collection request is approved by OMB – which can include surveys and required emissions monitoring – it will be sent to industry, who is required to respond and attest that the information is accurate. The EPA's goal is to receive the first phase of information later this year.

**MERCURY AND AIR TOXICS STANDARDS**

**Question:** The EPA's budget documents refer to the agency's defense of the litigation in the U.S. Supreme court relating to the "Mercury and Air Toxics Standards." In that case, the Court held EPA erred in failing to consider costs when deciding it was "necessary and appropriate" to issue the rule. EPA has stated in a proposed supplemental finding in response to the Supreme Court's ruling said that the annual costs of the rule are \$9.6 billion in 2015, \$8.6 billion in 2020, and \$7.4 billion in 2030.

A. EPA provides annual costs for just 3 years over a 15 year period. What is the total cost of that rule over this period?

B. Does EPA agree that, based on the three points in time estimates, the total estimated costs would exceed more than \$100 billion?

**Answer:** The EPA issued a final supplemental finding on April 14, 2016. In that final supplemental finding, the EPA discussed the costs and benefits of the rule on page 24423. The final finding was published in the Federal Register on April 24, 2016 and can be found at <https://www.gpo.gov/fdsys/pkg/FR-2016-04-25/pdf/2016-09429.pdf>.

In the final supplemental finding, the EPA evaluated costs to determine whether compliance with MATS is reasonable for the power sector. The EPA determined that the projected annual cost of MATS is a small fraction when compared to overall sales in the power sector - between just 2.7 and 3.5 percent of annual electricity sales from 2000 to 2011. The EPA also determined that annual compliance capital and operating expenditures to comply with MATS are a small fraction of the industry's capital and operating expenditures in a historical context.

The EPA also presented the results of an extensive cost-benefit analysis that was conducted at the time MATS was issued in 2012. This analysis found that the benefits of MATS are substantial, and for every dollar spent to reduce toxic pollution from power plants, the American public would see up to \$9 in health benefits.

**ENFORCEMENT - PENALTIES AND FINES**

In the Congressional Justification (CJ at 888), EPA states that "The Agency obtained more than \$404 million in combined federal administrative, civil judicial penalties and criminal fines more than double the penalties and fines assessed in FY 2014."

A. Can EPA quantify how much its enforcement actions have actually improved the environment? For example, does more than doubling the penalties equate to more than doubling the environmental benefits?

B. Under EPA's National Enforcement Initiatives, one of those initiatives is "Ensuring Energy Extraction Activities Comply with Environmental Laws." Is obtaining significant monetary fines and penalties from the oil and gas sector an important part of this initiative?

C. Before threatening significant penalties under this initiative and other enforcement actions, does EPA consult with the relevant State authorities with primary jurisdiction over the regulated entities? If not, why not?

D. Does EPA have any protocol it follows with the Department of Justice before threatening significant penalties? If yes, how does the agency ensure the protocol is consistently followed?

**Question:** Can EPA quantify how much its enforcement actions have actually improved the environment? For example, does more than doubling the penalties equate to more than doubling the environmental benefits?

**Answer:** The overarching goal of the EPA's enforcement program is to assure compliance with our nation's environmental laws. A strong and effective enforcement program is essential to realizing the benefits of our laws and regulations, maintaining a level economic playing field, and attaining the public health and environmental protections our federal statutes were created to achieve. The EPA determines the environmental benefits associated with concluded enforcement actions using a set of science-based principles and a standard methodology that ensures national consistency.<sup>1</sup> In FY 2015, the environmental benefits of the EPA's enforcement actions included commitments to treat, minimize, or properly dispose of an estimated 535 million pounds of hazardous waste; to reduce pollution by an estimated 532 million pounds per year; to remediate an estimated 37 million cubic yards of contaminated soil; and to remediate an estimated 29 million cubic yards of contaminated water/aquifers.<sup>2</sup> Our enforcement annual results website includes an interactive map as well as analysis and trends information.

The amount of the pollutant reductions in a given case depend on a myriad of case-specific factors – for example, the overall size of a facility/how much pollution it generates, the extent of the pollution controls needed to comply with applicable requirements, whether mitigation of past environmental harm is needed, and whether a defendant voluntarily undertakes additional pollutant-reduction measures in settlement (i.e., supplemental environmental projects), among other factors. Civil penalties are based on specific factors enumerated in each of the statutes – such as the size of the business, its prior compliance history, the duration and severity of the violation(s), any good faith efforts to comply, and the economic benefit that the defendant may have unfairly obtained (by not installing and/or operating required pollution control equipment) over its competitors who complied with the law, among others. The EPA applies these factors using the applicable enforcement response policy or penalty policy in order to tailor penalties in a way that takes into account the unique circumstances of each individual case and defendant.

**Question:** Under EPA's National Enforcement Initiatives, one of those initiatives is "Ensuring Energy Extraction Activities Comply with Environmental Laws." Is obtaining significant monetary fines and penalties from the oil and gas sector an important part of this initiative?

**Answer:** Penalties are a component of the EPA's enforcement program and while an important tool for fair and effective enforcement, the primary objectives of the initiative for "Ensuring Energy Extraction Activities Comply with Environmental Laws" are addressing the public health and environmental risks in this area, and ensuring compliance with all applicable laws. As the nation continues to develop new forms and sources of energy, there is an urgent need to ensure that we develop energy sources in an environmentally protective manner. Working closely with states, the EPA has settled a number of high-impact cases under this initiative resulting in significant air emissions reductions and will continue to identify the best ways to address pollution through greater use of advanced pollution monitoring and reporting techniques.

**Question:** Before threatening significant penalties under this initiative and other enforcement actions, does EPA consult with the relevant State authorities with primary jurisdiction over the regulated entities? If not, why not?

**Answer:** The EPA is working closely with our state partners on the Energy Extraction initiative including conducting joint inspections and inviting states to be co-plaintiffs in actions where our enforcement authorities are jointly shared. For example, in the Energy Extraction initiative, the EPA and the state of Colorado conducted joint inspections at well sites in the D-J Basin and Colorado was a co-Plaintiff in the recent settlement with Noble Energy, Inc.<sup>3</sup> In addition, West Virginia has been a partner in multiple energy extraction settlements since 2013. Also, as a matter of practice, the EPA notifies the state prior to taking an enforcement action as required by §113(a) of the Clean Air Act.

**Question:** Does EPA have any protocol it follows with the Department of Justice before threatening significant penalties? If yes, how does the agency ensure the protocol is consistently followed?

**Answer:** The EPA follows an established protocol when interacting with the Department of Justice on relief sought, including penalties, in a civil judicial enforcement case. The protocol provides direction to the EPA in the development of referrals to DOJ for civil judicial

enforcement and facilitates the conveyance of useful information and provides an analytical framework for joint EPA-DOJ case decisions. This protocol is applicable to all enforcement matters referred to DOJ for judicial action (except for hazardous waste cleanups under CERCLA or RCRA, or for violations of response orders and cost recovery claims on behalf of the Coast Guard in oil spill cases under Section 311 of the Clean Water Act).

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<sup>1</sup> See <https://www.epa.gov/enforcement/guide-calculating-environmental-benefits-epa-enforcement-cases> for specific benefit calculation methodologies.

<sup>2</sup> More detailed results of our FY 2015 enforcement program can be found at <https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-fy-2015>.

<sup>3</sup> See <https://www.epa.gov/enforcement/noble-energy-inc-settlement>.

**STATE CLEAN AIR REGULATIONS - CIVIL PENALTIES**

**Question:** We understand that EPA may be conducting an enforcement campaign imposing significant civil penalties on oil and natural gas operators based on alleged violations of State clean air regulations.

A. Is this correct?

B. If yes, can you explain? What statutory authority does EPA have to usurp a state's authority to enforce its own state law?

**Answer:** The EPA is conducting an enforcement initiative to assure that domestic onshore natural gas extraction is done in a way that protects the environment. The primary objectives of the initiative for "Ensuring Energy Extraction Activities Comply with Environmental Laws" are addressing public health and environmental risks and ensuring compliance with applicable Federal laws. Importantly, Section 110 of the Clean Air Act requires each State to develop and submit to EPA for approval a State Implementation Plan (SIP) to ensure the achievement of compliance with air quality standards by, among other things, establishing enforceable emission limitations and other measures on air emissions. A particular State's SIP submission usually includes provisions incorporating State laws addressing air pollution, and once those provisions are approved for inclusion in the SIP, they become federally enforceable. Thus, both EPA and a State have the authority to enforce the requirements of these SIPs. Where a SIP includes requirements applicable to oil and gas production whether they are derived from existing State laws or existing Federal laws and a facility is not in compliance with those SIP requirements, Clean Air Act Section 113 authorizes EPA to take action to require the facility to come into compliance with the SIP. In addition, Section 113 of the Clean Air Act requires that EPA notify a State prior to EPA taking an action to enforce a SIP requirement.

**OIL AND GAS SECTOR - BUDGET - ENFORCEMENT INITIATIVE**

**Question:** How much is EPA budgeting for its enforcement initiative focused on the oil and gas sector?

**Answer:** The proposed FY 2017 budget for the civil enforcement program is \$185.6 million. This amount is intended to support all of the EPA's enforcement actions under all media to assure compliance with the nation's environmental laws and regulations in order to protect human health and the environment. Together with the Department of Justice, states, local agencies, and tribal governments, the EPA seeks to ensure consistent and fair enforcement of all environmental laws and regulations to protect public health and the environment. The EPA strives to ensure a level playing field by strengthening partnerships with co-implementers in the states, encouraging regulated entities to rapidly correct their own violations, ensuring that violators do not realize an economic benefit from noncompliance and pursuing enforcement to deter future violations. The FY 2017 budget for the civil enforcement program also supports each of the EPA's National Enforcement Initiatives; in addition to "Ensuring Energy Extraction Activities Comply with Environmental Laws," the new initiatives for FY 2017 – FY 2019 include "Keeping Industrial Pollutants Out of the Nation's Waters," "Cutting Hazardous Air Pollutants" and "Reducing Risks of Accidental Releases at Industrial and Chemical Facilities[1]."

[1] (For more information on the EPA's National Enforcement Initiatives, see <https://www.epa.gov/enforcement/national-enforcement-initiatives>.)

**MONTREAL PROTOCOL**

**Question:** The Administration has been seeking to amend the Montreal Protocol to expand the treaty to cover hydrofluorocarbons or HFCs (a widely used class of chemicals that had been previously approved by EPA as substitutes for the compounds that were banned in the 1990 Clean Air Act because of their contribution to ozone depletion). In addition, EPA has recently finalized a rule restricting the use of HFCs in specific applications, and has stated that it will propose others in the near future.

A. The EPA led the negotiating team with respect to the international discussion last year, correct?

B. If the treaty is amended, it would need ratification by the U.S. Senate, correct?

**Answer:** The Montreal Protocol negotiating team is comprised of representatives from various agencies and departments including the EPA and the Department of State. In 2015, the Administrator was the Head of Delegation for the high level Meeting of the Parties, and the Department of State was Head of Delegation for other Protocol Meetings. Any questions concerning ratification should be directed to the Department of State.

**HYDROFLUOROCARBONS (HFCs)**

**Question:** Are current substitutes for HFCs more expensive and less safe?

- A. What are estimates of the costs to consumers of phasing out HFCs?
- B. One trade association, in a meeting with the White House, pledged to spend \$5 billion dollars to replace HFCs in the years ahead. Isn't this an indication that the task will be very expensive?
- C. What provisions are being made to avoid the premature obsolescence of HFC-using equipment such as refrigerators and air-conditioners so as to reduce the burden on small businesses and consumers?
- D. Is EPA weighing the risks of HFCs against the risks of substitutes, some of which are known to be flammable or pose other dangers?

**Answer:** Under Section 612 of the Clean Air Act (CAA), the EPA's Significant New Alternatives Policy (SNAP) program reviews substitutes within a comparative risk framework across multiple industrial sectors. The SNAP program does not provide a static list of alternatives, but instead evolves the list as the EPA makes decisions that are informed by its overall understanding of the environmental and human health impacts as well as its current knowledge about available substitutes. For over 20 years since the initial SNAP rule was promulgated, the EPA has modified the SNAP list many times. There has been steady progress in developing safer alternatives that are suitable for use with a greater focus on new, not existing, equipment.

The EPA responded to comments on the cost and economic impacts of the proposed rule (79 FR 46126; August 6, 2014) in the comments sections for the end-uses addressed in the final rule, as well as in the section addressing public comments, see section VII.C. (80 FR 42944; July 20, 2015), available at [www.epa.gov/snap/snap-regulations#Rules](http://www.epa.gov/snap/snap-regulations#Rules). The EPA also conducted analyses of potential costs associated with the final and proposed changes, available in the docket at regulations.gov for the July 2015 final rule at EPA-HQ-OAR-2014-0198, and the docket for the April 2016 proposed rule at EPA-HQ-OAR-2015-0663.

In September 2014 and October 2015, the Administration announced new private-sector commitments and executive actions that will reduce the use and emissions of HFCs. To demonstrate U.S. leadership and commitment to innovation, the Air Conditioning, Heating and Refrigeration Institute (AHRI) announced in September 2014 that, combined, its members would

spend \$5 billion in new R&D and capital expenditures to develop and commercialize low-GWP technologies over the next ten years. The White House factsheet from the October 2015 event is available at [www.whitehouse.gov/the-press-office/2015/10/15/fact-sheet-obama-administration-and-private-sector-leaders-announce](http://www.whitehouse.gov/the-press-office/2015/10/15/fact-sheet-obama-administration-and-private-sector-leaders-announce).

Information on the EPA's Small Business Impacts Screening Analysis is included in section VII.B.2 of the final rule (80 FR 42943; July 20, 2015). Servicing of existing equipment is not restricted by the SNAP regulations; thus, the final rule does not result in premature obsolescence of HFC-using equipment. Also, information on the EPA's SNAP guiding principles and criteria for comparative risk assessment is in the final rule sections II.D and II.E, respectively (80 FR 42876; July 20, 2015).

**MONTREAL PROTOCOL - U.S. PROVISIONS**

**Question:** Why is the administration pursuing international provisions under the Montreal Protocol while simultaneously promulgating U.S.-only restrictions on HFCs?

A. Aren't the U.S. only- provisions unnecessary and duplicative, especially since climate change is a global issue?

B. Won't the U.S.-only provisions disproportionately burden American consumers and businesses?

**Answer:** Title VI of the Clean Air Act was enacted to implement the Montreal Protocol and to take complementary domestic actions. Section 612 of the Clean Air Act directs the EPA to list both acceptable and unacceptable alternatives to ozone-depleting substances under the SNAP program. CAA section 612(c) requires the EPA to list a substitute as unacceptable if other available alternatives pose lower risk to human health and the environment. The EPA sees no conflict between the United States' strong support for a global HFC phase-down and this domestic action. The amendment proposal calls for a phase-down of production and consumption of a group of HFCs. It applies phase-down steps to this group of HFCs as a basket and does not assign individual deadlines to specific HFCs or address specific uses.

**GREENHOUSE GASES RULES - HFCS REGULATIONS**

**Question:** EPA's first rule restricting HFCs failed to calculate the expected reduction in temperatures and sea levels as the agency has done for other greenhouse gas rules.

A. Why did EPA not estimate these reductions?

B. Is there some threshold impact on temperatures and sea levels below which EPA will not take action, or is the agency committed to HFC regulations no matter how small the estimated benefits?

**Answer:** The EPA has conducted analyses including estimates of avoided CO<sub>2</sub> equivalent emissions, available in the docket for the July 2015 final rule at docket ID No. EPA-HQ-OAR-2014-0198 and the April 2016 proposed rule available at docket ID No. EPA-HQ-OAR-2015-0663.

Changes in the average temperature of the planet can translate to large and potentially dangerous shifts in climate and weather. Many places have seen changes in rainfall, resulting in more floods, droughts, or intense rain, as well as more frequent and severe heat waves. As these and other changes become more pronounced in the coming decades, they will likely present challenges to our society and our environment. To address the challenge of climate change, the EPA is reducing greenhouse gas emissions through highly successful partnerships and common-sense regulatory initiatives.

**HYDROFLUOROCARBONS - DEPT OF ENERGY**

**Question:** EPA's first rule regulating HFCs conflicted with Department of Energy efficiency standards that apply to some of the same types of equipment. HFCs are very energy efficient but some of their substitutes are not, so EPA restrictions on their use may complicate compliance with DOE efficiency standards.

- A. Will EPA commit to better coordination with DOE on HFC-related rulemakings?
- B. Does EPA plan to take the efficiency of substitutes into account before it bans HFCs in additional equipment?
- C. If EPA plans to restrict HFCs in home appliances such as refrigerators and air-conditioners, will it consider the impacts on consumer costs and on household safety?

**Answer:** The EPA and the Department of Energy continue to collaborate and share information to minimize any potential conflicts between energy conservation standards and SNAP regulations. The agency considers issues such as technical needs for energy efficiency (e.g., to meet DOE conservation standards) in determining whether alternatives are "available". This is discussed in the final rule section VII.E (80 Fr 42946; July 20, 2015).

**HYDROFLUOROCARBONS - CLEAN AIR ACT**

**Question:** Congressional intent seems clear that HFCs cannot be regulated on the basis of the global warming potential. In fact, the Clean Air Act explicitly states that the global warming potential of a compound cannot be used as the basis of any regulation. Furthermore, legislative attempts to amend the Clean Air Act to restrict HFCs have repeatedly failed to become law. What statutory language are you relying upon that leads you to the opposite conclusion?

A. HFCs were previously approved by the agency as safe replacements for the ozone depleting compounds that were being banned under the Clean Air Act. They are now in widespread use as a consequence of EPA's actions. Even assuming EPA can ban chemicals on the basis of their global warming potential, does the agency have the authority to do so to previously-approved compounds?

**Answer:** The EPA discussed these issues in sections II and II.A.3 of the July 2015 final rule (Rule #20), available at [www.epa.gov/snap/snap-regulations#Rules](http://www.epa.gov/snap/snap-regulations#Rules).

**CAFE/GHG STANDARDS**

**Question:** EPA's CAFE/GHG standards for cars and light trucks were issued in 2012 and will get more and more stringent every year through 2025. However, much has changed since 2012, and in particular gasoline prices are much lower today than the EPA had anticipated. As a result, we see that consumer demand for larger vehicles like pickups and SUVs is growing, while sales of hybrids have dropped to levels so low as to call into question whether EPA's stringent targets can be met in the years ahead.

1. EPA is in the beginning stages of conducting its mid-term review of the standards for Model Years 2022 – 2025. In that review, will you look into the possibility that the standards may need to be adjusted downwards to take consumer interests into account?
1. According to one study, the sticker price of new vehicles had been declining through 2008 but has been on the rise since 2009. The average price of a new car has risen to \$32,000. Is the agency considering adjusting the standards to reduce the burden on consumers?

**Answer:** As part of the rulemaking establishing the model year (MY) 2017-2025 light-duty vehicle GHG standards, the EPA made a regulatory commitment to conduct a Midterm Evaluation (MTE) of longer-term standards for MY 2022-2025. The EPA is coordinating with the National Highway Traffic Safety Administration (NHTSA) and the California Air Resources Board (CARB) in conducting the MTE. The MTE is being conducted through a collaborative, data-driven, and transparent process.

Through the MTE, the EPA will decide whether the standards for model years 2022-2025, established in 2012, are still appropriate given the latest available data and information. The Administrator's decision could be that the standards remain appropriate, or that the standards should be changed, either more stringent or less stringent. The EPA is examining a wide range of factors, such as developments in powertrain technology, vehicle electrification, light-weighting and vehicle safety impacts, the penetration of fuel efficient technologies in the marketplace, consumer acceptance of fuel efficient technologies, trends in fuel prices and the vehicle fleet, employment impacts, and many others.

**CAFE/GHG STANDARDS - UPDATES**

**Question:** EPA's CAFE/GHG standards for cars and trucks are now several years old, and some of the assumptions that went into them are no longer valid. This is particularly true about gasoline prices, which have experienced an unexpectedly sharp decline. Has EPA updated its analysis to reflect this change?

A. EPA claimed that car buyers would be net economic winners as a result of these rules because the money saved from reduced fuel use would more than offset the higher sticker price of compliant vehicles. But according to EIA, gas prices are more than a dollar per gallon cheaper than was projected in 2012 when the car rule was finalized. What is EPA's position on the economic benefits to consumers now? Is it possible that some car owners won't earn back the higher sticker price in the form of gasoline savings?

B. EPA's latest rule for heavy duty vehicles was proposed last July and will be finalized this summer. Will EPA's final rule reflect the latest data on gasoline prices, which are considerably lower than the data used in the proposed rule?

**Answer:** As part of the Midterm Evaluation, the EPA is examining a wide range of factors including considering updated projections about future gasoline prices and an assessment of the vehicle market and consumer impacts. The final rule for heavy-duty vehicles also will use the best available information (such as information from the U.S. Energy Information Administration's 2015 Annual Energy Outlook).

**EPA'S STANDARDS - VEHICLE PURCHASES**

**Question:** Due in part to lower gasoline prices, consumer preferences have also changed, leading some to worry about the feasibility of EPA's standards. In fact, sales of hybrids and electric vehicles have been much lower than predicted, and truck sales are now outpacing car sales.

A. Explain how EPA's assumptions about vehicle purchases are in line with actual consumer preferences?

B. Are EPA's rising targets in the years ahead still achievable if gasoline prices do not rise significantly?

**Answer:** The light-duty GHG program is designed to reduce emissions and improve fuel economy proportionally across the entire spectrum of vehicles. It does not require all cars and trucks to meet an identical standard. Each automaker has its own unique fleet wide standard which is determined by the types and numbers of cars and trucks the manufacturer chooses to produce. This approach was adopted in order to achieve emissions reductions and fuel savings while accommodating consumer choice for any particular size or class of vehicle. As part of the Midterm Evaluation, the EPA will update the assessment of technologies available to meet the MY 2022-2025 standards, as well as other factors including the vehicle market, gasoline prices, and consumer impacts.

**HIGHER VEHICLE PRICES**

**Question:** While the estimated fuel savings from these rules may be less than expected, the boost in sticker prices may be much more than expected. EPA's original analysis estimated an increase of nearly \$3,000 per vehicle by 2025, which is significant enough. But other estimates are considerably higher. Does EPA stand by its original analysis?

A. Average car prices were declining through 2008, but starting in 2009 they have been rising and in fact are now \$6,200 higher than if the downward trend had continued. The average price of a new vehicle today has risen to \$32,000. How much of this increase is attributable to the cost of EPA's GHG standards?

B. A recent study by the Heritage Foundation finds that the increase in vehicle prices from EPA's rule is thousands of dollars higher than EPA has estimated. What has EPA done to validate its original cost estimates?

C. According to a study from the National Association of Auto Dealers, up to 14.9 million low income households may not be able to qualify for a car loan by 2025 as a result of the EPA-induced rise in car and truck prices. Has the agency looked at the regressive impacts of higher vehicle prices?

**Answer:** As previously discussed, as part of the Midterm Evaluation the EPA will update its assessment of the vehicle market and impacts on consumers.

**MID-TERM REVIEW OF STANDARDS**

**Question:** EPA will soon embark on its mid-term review of these rules. Will consumer concerns be a part of the evaluation?

A. Will EPA consider relaxing these standards due to lower fuel savings and high sticker shock than was originally predicted?

B. EPA conceded in its final rules that their car and truck standards would have a very minor impact on the climate, estimated at perhaps a few hundredths of a degree C reduction in temperature and a few millimeters in sea level rise by 2100. Have these estimates changed since they were included in the final rules?

**Answer:** As previously discussed, as part of the Midterm Evaluation, the EPA will update its assessment of the vehicle market and impacts on consumers.

**FUEL ECONOMY NHTSA**

**Question:** These CAFE/GHG standards are really two overlapping programs, one from EPA and the other from NHTSA. And regulated automakers are finding that the two programs are not always harmonized. For example, the credits earned by automakers for exceeding the standard are subject to differing rules. For EPA, these credits have duration of up to 10 years, but for NHTSA they only last for 5 years. And while EPA has no limits on the amount of credits that can be transferred between the car and the truck fleet, NHTSA only allows such transfers up to 2 mpg worth of credits. Is EPA working with NHTSA to try to harmonize these rules?

**Answer:** The EPA continues to work with NHTSA to minimize differences between the two programs, recognizing that Congress has given the two agencies different statutes and obligations.

**HD GHG STANDARDS**

**Question:** The July 13, 2015, Notice of Proposed Rulemaking for medium and heavy-duty trucks would, for the first time, also regulate the trailer portion of a tractor-trailer. However, trailers do not come within the statutory definition of a motor vehicle (they are not self-propelled), nor are they an integral part of a motor vehicle (trailers are separately manufactured and completely detachable from the motor vehicles designed to pull them). Also relevant to this proposed rule targeting vehicle emissions is the fact that trailers are not a source of emissions. In light of this, on what basis does EPA claim authority to regulate trailers?

**Answer:** The EPA received comments similar to yours on this aspect of the proposed rule (80 FR 40169-71; July 13, 2015) and is currently considering them as it works to develop a final rule. The final rule will respond to these comments and explain the EPA's conclusion. See document number EPAHQOAR201408271627, "Legal Memorandum Discussing Issues Pertaining to Trailers, Glider Vehicles, and Glider Kits under the Clean Air Act," located in the public docket for the rulemaking at [regulations.gov](http://regulations.gov).