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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

July 10, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Dear Administrator Jackson:

Thank you for appearing before the Committee on Environment and Public Works on March 22, 2012 at the hearing entitled, "Environmental Protection Agency Fiscal Year 2013 Budget Hearing." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

Enclosed are questions for you that have been submitted by Senators Boxer, Carper, Whitehouse, Inhofe, and Vitter for the hearing record. Please submit your answers to these questions by COB July 24, 2012 to the attention of Mara Stark-Alcalá, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to Mara_Stark-Alcala@epw.senate.gov. To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Grant Cope of the Majority Staff at (202) 224-8832, or Matthew Hite of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,

Barbara Boxer
Chairman

James M. Inhofe
Ranking Member

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Environment and Public Works Committee Hearing
March 22, 2012
Follow-Up Questions for Written Submission

Questions for Jackson

Questions from:

Senator Barbara Boxer

1. EPA's revolving loan programs for drinking and waste water infrastructure help to ensure that the water we drink is safe and that our lakes and rivers are clean.

   Can you describe the factors that EPA weighed when it was considering cuts to the drinking and clean water revolving loan fund programs? How will EPA help meet growing water infrastructure needs going forward?

2. Grants under the BEACH Act have enabled states to monitor more beaches and monitor them more frequently. In fact, EPA has credited BEACH Act grants with tripling the number of beaches monitored nation-wide. However, the Administration has proposed to zero these funds out in FY 2013.

   a. Many states use this funding to support critical beach monitoring programs. What would be the risks to beachgoers if states were not able to sample as many beaches or test water quality as frequently?

   b. Given the program's documented results and the anticipated impacts of eliminating these grants, shouldn't it be given important consideration as Congress develops its funding priorities for the upcoming fiscal year?

3. Since 2008 EPA has provided resources to help fund grants that are designed to improve water quality and restore wetlands habitat in the San Francisco Bay. EPA's budget asks to cut over 15% of the funding for such work.

   I think it is important to fund this program that improves water quality in one of America's largest estuaries. Could you please describe why the Agency decided to cut these important funds? Do you believe EPA has an important role to play in efforts to restore the San Francisco Bay?

4. According to the EPA, the value of the health improvements resulting from the Agency's top 15 clean air enforcement actions last year equaled up to $36 billion, including reductions in toxic soot and smog-forming pollution.

   Can you please describe some of the real world benefits of EPA's enforcement of our nation's landmark public health and environmental laws?

5. The EPA says that it is working to modernize and improve its enforcement program, including by investing in modern monitoring technologies, electronic reporting by facilities, and increased public transparency.

Can you please describe some of the specific activities that EPA will take to achieve these outcomes and the benefits of these actions for families and others who can be harmed by pollution – as well as the benefits for businesses that follow the law?

6. The Office of Children's Health Protection plays a vital role in EPA's mission to protect public health. When we safeguard the health of the most vulnerable in our society, we also help to protect other people in our communities.

   The budget asks for an additional $3.4 million for the Office to enhance EPA's work to protect children's health, including by implementing voluntary school sitting guidelines and developing environmental health guidelines. Could you please describe the status of these actions in a little more detail, including the timelines for completing any work that remains in their implementation?

7. The Office of Children's Health Protection is like the Agency's conscience – it is there to help ensure that all of EPA's actions protect children's health. The budget requests additional funding to help the Office fulfill this important function.

   Can you please describe some of the steps that the Office will take, including in rulemaking processes and the development of risk assessments and guidance, to help ensure that the EPA protects children's health?

8. The budget asks to eliminate all EPA funding ($8M) for state and tribal programs that reduce radon's health threats and funding for EPA's radon reduction work in the regions ($1.7M).

   Radon is a radioactive gas that can seep into homes and other buildings. According to the EPA, indoor radon is the second leading cause of lung cancer. We should invest in safeguards against this dangerous gas.

   Can you please describe the types of protections that could be reduced if the funding cuts are enacted?

9. The budget asks to cut $33 million from Superfund's long-term cleanup program. EPA says that this could reduce the site investigation and cleanup studies started by the Agency, from an estimated 22 in FY 2012, to 11 in FY 2013. EPA also says that 3,200 sites currently need to be assessed for contamination -- but that assessments will drop from an estimated 900 in FY 2012 to 650 in FY 2013.

   How dramatic are the impacts of these proposed cuts on EPA's ability to identify new sites and to move forward on needed long-term cleanups?

10. The budget asks to cut $3.3 million from the Brownfields program, with roughly $1.6 million coming from EPA funds for cleanup agreements and $1.7 million coming from EPA funds to help state and tribal cleanup programs.

    What steps can EPA take to minimize the impact on these important programs and clean up activities?

11. The budget proposes to cut $14 million from the Diesel Emissions Reduction Act (DERA) program, which helps to retrofit or replace old, heavily-polluting diesel engines that create toxic soot and smog-forming pollution.

The Agency says that it will attempt to better target funds by using rebates and revolving loan funds. Can you please describe how these new tools would increase the effectiveness of the DERA program?

12. According the Agency, "Funding to states and tribes in the State and Tribal Assistance Grants (STAG) account continues to be the largest percentage of the EPA's budget request, at 40% in FY 2013… For Categorical Grants [to states], $1.2 billion is provided," with a proposed $65 million increase to state and local air quality officials.

    Can you describe the importance of these funds for protecting the health of families and children, and for helping to make states effective partners in providing such protections?

13. The budget requests funds for EPA to help implement and expand the National Program to reduce greenhouse gas pollution and improve fuel efficiency standards for on- and off-road vehicles.

    a. Can you please describe some of the benefits, including to public health, from this program and the types of activities that EPA will undertake to build on the Program's past success?

    b. The EPA is also currently working to implement standards for cars manufactured between 2017 and 2025. Is the EPA working to choose a mix of technologies to both reduce greenhouse gas emissions and other forms of air pollution, such as toxic soot and smog-pollution, while improving fuel efficiency standards?

14. In 1990, Congress told EPA to reduce hazardous air pollutants that can cause cancer or birth defects.

    This year, EPA published standards to reduce toxic air pollutants, including mercury, lead, chromium, and acid gases from coal- and oil-fired power plants.

    Can you please describe the benefits of this rule for protecting human health and also for creating jobs?

15. Before Congress enacted landmark, bipartisan environmental legislation to protect public health, we lived in a far different country. Rivers caught on fire, and in 1966, air pollution was so bad that during Thanksgiving, smog blanketed the Eastern U.S. -- researchers concluded that it killed 24 people a day from November 24 to the 30th.

    Can you please describe some of the benefits to public health and the nation's economy from EPA's implementation of health and environmental safeguards?

16. The Agency has requested additional funds to support research into the development of sustainable molecular designs for materials, which EPA anticipates will help manufacturers, including of producers of nanotechnology materials, create safer chemicals and products.

    Could you please describe how the Agency will spend these resources, the particular types of products and processes that EPA will focus such funding on, and the anticipated health and economic benefits of this program?

17. The Agency has requested funds to continue its work on reducing greenhouse gas pollution from refineries.

    Could you please describe the potential for these efforts to increase efficiencies and reduce operating costs, while also reducing pollution?

18. The EPA is working with states to develop and enhance Clean Air Act permitting programs to reduce dangerous air pollution, including greenhouse gas emissions.

    Could you please describe how the Agency's activities augment state efforts to address pollution, including specific examples of where federal resources provide benefits to state programs and public health protections?

19. Please describe the current status of EPA's decision-making process on creating a drinking water standard for perchlorate? In your response, please include an anticipated timeline for the Agency to complete its decision-making and the dates that EPA will complete key interim steps in its decision-making process. If the Agency anticipates that a drinking water standard for perchlorate may take more than two years from now, will the Agency commit to finalize the interim health advisory on perchlorate in the next year?

20. Please describe the steps that EPA has taken to assess and address potential threats to public health from hexavalent chromium (chrome 6) in drinking water? In your answer, include the Agency's timeline for the completion of any risk assessment and the use of such information in a determination of whether to create a drinking water standard or health advisory for hexavalent chromium in drinking water?

Senator Tom Carper

1. Before our Committee last year you agreed that there remains tremendous opportunities to provide for diesel emissions reductions under the Diesel Emissions Reduction Act or DERA, do you still believe that is true?

2. Do you believe the DERA grant program – which provides grants to all 50 states for clean diesel projects– has been a successful tool for the EPA to accelerate the replacement or retrofit of old diesel engines? Has the EPA had any difficulties distributing funds through the grant program? Are state and private dollars leveraged with these clean diesel grants – making the grants stretch farther?

3. It is my understanding that in the President's budget there is a $15 million reduction in DERA funds from fiscal year 2012 and an elimination of the grant program – allowing the EPA to only distribute money through loans or rebates. Is that your understanding? Has the EPA ever used rebates to distribute DERA funding?

4. Last year, the Environmental Protection Agency expects to award a total of $9.9 million in grants to 35 eligible states and territories. This year, the President's budget includes zero for the BEACH Act grant program. Delaware's beaches attract more than 7 million visitors each year, and beach tourism generates more than 800 million dollars in direct sales and supports 15,000 jobs in local communities.

   Given the enormous environmental, public health and economic benefits the BEACH Act grant program brings not only to Delaware residents but also to residents all across our country, I am concerned why these funds have been eliminated.

   It is our understanding the EPA believes that state and local agencies now have the ability to implement water quality monitoring and notification programs on their own and that is why the Administration has proposed eliminating the BEACH Act grant program in the FY 2013 budget. Can you please list the states your agency has confirmed has the ability to implement water quality monitoring and notification on their own and do not need BEACH Act grant assistance?

Senator Sheldon Whitehouse

1. EPA's proposed budget would increase Section 105 grants to state and local air quality agencies by $65 million.

   OMB has directed EPA to move funds for monitoring fine particulate matter (soot) from the Section 103 program to Section 105, which would trigger a state match requirement. State agencies will be expected to pay a larger share of monitoring costs.

   Is part of the $65 million increase proposed for the Section 105 grant program, funds that used to go to the Section 103 program? Which means, they do not reflect an increase in funding to states?

2. RI DEM faces severe budget shortfalls as it is. In 3 years, the Air Resources Office of the RI Department of Environmental Management has reduced its staff from 30 to 24. That's a 20% reduction in staff in the past four years. (This number had dropped to 20; however, federal funds enabled DEM to fund four more positions.) I am very concerned about additional cost burdens on this skeleton crew.

   On behalf of Director Coit and the entire Air Resources Office at RI DEM, will you work with us to keep air quality monitoring funds in Section 103?

3. EPA is proposing to implement a new state funding formula, which could result in a 27% drop in relative funding to the New England states. We appreciate that EPA would phase the formula in, so that no Region would lose more than 5% of the relative share of funding in the first year.

   This might be fair if EPA's proposed level of funding for Section 105 grants is retained throughout the budget process. However, if Section 105 grants are reduced, will you agree to delay implementation of the new formula, so that Rhode Island doesn't see a real reduction to its already low Section 105 funding?

Senator James Inhofe

1. Following the vacation of the "migratory bird rule" in *SWANCC*, EPA and the corps new guidance adhered to guidance that established jurisdiction though hydrological connection. In his *Rapanos* concurrent opinion, Chief Justice Roberts commented on EPA and the Corps lack of ability to complete rulemaking following *SWANCC* and stated the agencies had continued to adhere to an "essentially boundless view of the scope of its power. The upshot today is another defeat for the agency." How does the Administration's policy, as articulated in the new guidance, differ from the "essentially boundless view of the scope of its power" that was overturned by the Supreme Court?

2. Will EPA interpret future Supreme Court plurality decisions in the same fashion as *Rapanos* – using both the plurality and concurrent opinion equally?

3. On May 12, 2011, at a briefing with my staff, EPA staff promised that they would provide responses to the comments received on the then proposed guidance document "Draft Guidance on Identifying Waters Protected by the Clean Water Act." In a December 12, 2011 letter from the US Army Corps of Engineers stated that it was "clearly stated in the notice on May 2, 2011, that the guidance would not go into effect until final guidance was issued after making changes in response to substantive comments." A letter from EPA on December 8, 2011 stated that EPA had received over 230,000 comments. On February 22, 2012, EPA sent the guidance to OMB for final review. Please describe, in detail, what changes were made to the February 22, 2012 document in response to substantive comments. Please cite the changes in the guidance and the docket number or numbers of the substantive comments.

4. Does EPA plan to issue responses to the comments received on the guidance as was promised to my staff at the May 12, 2011 meeting?

5. Since EPA has committed to working on a rulemaking to address the same issues addressed in the guidance. Why, then, is the guidance necessary?

6. Is EPA still committed to working on rulemaking?

7. When thinking about jurisdiction, does EPA see a difference between scientific connectivity of waters and legal limits under the CWA? Please explain.

<u>Nutrients</u>

8. On December 8, 2011, the state of Florida sent EPA a letter announcing that the Environmental Regulation Commission had approved numeric nutrient criteria for lakes, spring vents, streams and certain estuaries. When does EPA expect to make a determination on the rule and does EPA intend to accept the rule in full?

9. Ms. Jackson, last year, you testified that EPA's position was that States are in the best position to address phosphorus and nitrogen pollution in waters and EPA was not planning to do a TDML specifically for the Gulf of Mexico and Mississippi watershed. Is it still the position of EPA to continue working with States to address nutrient pollution and instead set federal numeric nutrient criteria for the Gulf of Mexico and Mississippi watershed?

10. In July 2008, several environmental groups petitioned the EPA to set extensive numeric nutrient water quality criteria and nutrient TMDLs throughout the Mississippi River Basin and the

northern reaches of the Gulf of Mexico. In July 2011, your agency denied that petition, reasoning that the best way to address nutrient issues in the watershed is for EPA to develop collaborative solutions with the states, other federal agencies like USDA, and stakeholders at the regional and community levels. In February 2012, several environmental groups sued EPA in federal court in the Eastern District of Louisiana claiming that EPA wrongly denied their petition. I have to say that I agreed with your agency's decision to not accept that petition and instead collaborate with states like Louisiana in managing the quality of their rivers and streams. I know you can't comment on the particulars of this lawsuit, but I would appreciate knowing more about EPA's cooperative efforts with the Mississippi Basin states and the basis upon which your agency denied the petition last year. Will you provide a list of ongoing activities in the Mississippi Basin that EPA is either aware of or coordinating to address these matters?

11. In trying to make sure that nutrient regulations are based on sound science, how is EPA going to distinguish which scientific evidence is of sufficient quality to be used in making decisions?

12. The ways in which nutrients have ecosystem effects are very dependent on a number of other key variables, including but not limited to flow conditions, temperature, light, and how algae that grows in response to nutrients is removed from the system. How are you going to make sure that any standards for nutrient concentrations reflect the related key variables and site specific conditions in a way that is protective of the waterways, but not unnecessarily stringent?

13. How are you going to assess and verify the likelihood of any nutrient standards actually achieving measurable and cost effective benefits?

14. What are the legal barriers that EPA sees to allowing NPDES holders, like POTWs, to meet nutrient reduction requirements through a credit trading system?

NPDES Permits and Conflict of Interest

15. Section 304 of the Clean Water Act directed USEPA to develop regulations to prevent an individual that receives "significant" income from a permittee or permit applicant from sitting on a water quality authority that reviews and issues NPDES permits. USEPA has defined significant to be income in excess of 10% of an individual's annual income. This test applies to immediate family members also. Please explain the basis of the decision that led to the determination that a 10% income threshold was the appropriate way to protect against conflicts.

16. The current use of income restrictions to define conflict of interests in the Clean Water Act program implementation appears novel. Do other USEPA programs rely on a similar income test? If not, what is the basis to avoid conflicts of interest from arising?

17. It has come to the committee's attention that USEPA Office of Water is considering ways in which it might revise the income restriction rule to better reflect the realities and complexities of implementing the NPDES permit program, the reach of which has greatly expanded over the years since passage of the Clean Water Act. Please explain how the agency envisions developing alternatives that would ensure that qualified individuals can be appointed to water quality authorities using a true conflict of interest test.

Hexavalent Chromium

18. EPA needs an occurrence database to identify the levels of hexavalent chromium in drinking water and including hexavalent chromium in the final unregulated contaminants monitoring rule

will provide EPA with these data. We are also told that EPA, in collaboration with laboratories and utilities, has just released an analytical method that can detect hexavalent chromium at levels lower than 1 part per billion. Now that you have that method, we are told it takes about 3 years for EPA to build the occurrence database. Is that correct? When will the occurrence data gathering begin?

19. We are aware that water utilities have been working for quite some time to identify water treatment technologies to remove hexavalent chromium from drinking water. We also know that a final report of this work is about to be released and that the water utilities are working to identify the costs for the identified technologies so that they can provide input to EPA as it works to identify the treatment options. Thus, EPA is depending on the work of the water utility industry for input into the standard setting process. Am I correct that EPA needs to have data on treatment technologies and that this data will be helpful as EPA establishes a drinking water standard?

20. In previous testimony, Dr. Anastas outlined how EPA is working to respond to criticisms from GAO, National Academy of Sciences, and others about quality and timeliness in the IRIS assessment process. Dr. Anastas outlined a series of activities that EPA is taking to improve IRIS assessments. I want to thank EPA for responding to calls for improving the overall IRIS process. I assume that among the reasons that EPA is restarting the oral assessment for hexavalent chromium is to ensure that:

    - EPA has the time to apply these improvements to the hexavalent chromium assessment;
    - EPA gets a chance to respond to the many critical comments from EPA's expert peer review panel on the draft;
    - Your staff gets an opportunity to review and include the most recent studies that will supplement the science database on hexavalent chromium with information relevant to humans and current drinking water levels.

    In previous hearings before this Committee, we have asked that as head of EPA you ensure that decisions made on contaminants in water are made based upon the best information and most current science. Will your next assessment of hexavalent chromium address all of my points?

21. Administrator Jackson, your agency has the ability to prepare a limited number of chemical assessments per year. In the past to augment this process, EPA has asked industry to undertake voluntary efforts to develop and present chemical assessments to EPA. Such programs have included the VCEEP, High Production Volume Chemicals and the now obsolete ChAMP. In Europe, the basic underpinning for REACH depends upon industry prepared assessments. Nonetheless, some demonize the work of industry creating confusion - we want industry to step up and develop materials and assessments that are reviewed by governmental agencies and undergo research because of the limited governmental resources, yet when they do, they are villainized for their efforts. It seems to me that science and scientific assessments should be judged on the basis of their quality, and objectivity, and whether they were conducted in accordance with standard practices and subjected to a quality review. Science should not be judged based upon who funded or who conducted it. Do you agree that quality science can be funded from multiple sources - including industry, and what steps is EPA taking to ensure that science is judged on its quality and not its funding source?

<u>Perchlorate</u>

22. The Safe Drinking Water Act mandates that the EPA ensure that the "best available science" be applied in setting MCLs. On February 2, 2011, U.S. EPA issued a Final Regulatory determination

on Perchlorate, announcing the agency's intent to set an MCL for that contaminant. What specific steps are being taken by the agency to obtain the best possible scientific information in this rulemaking?

23. What peer-reviewed studies, if any, has the agency received, in the time since the regulatory determination, that it considers relevant in establishing the "best available science"?

24. Given the notably large number of peer-reviewed studies available on health effects of perchlorate—and a National Academy of Science panel report—how will the agency involve scientists outside the agency to achieve the statutory standard, the "best available science"?

25. The term "best available science" also includes the notion of what is feasible and achievable. Would you please furnish the subcommittee with your schedule milestones for obtaining outside input on economics and cost, pursuant to the Health Risk Reduction and Cost Analysis (HRRCA) provisions of the Safe Drinking Water Act?

Fuel Quality

26. EPA and the Administration have sent mixed messages regarding Tier 3 gasoline regulations, which some have estimated could add up to $.09 per gallon to the cost of gasoline. Last July EPA stated they would propose the rule in December 2011 and then recently postponed it to March. On February 29, you went on to tell Rep. Lummis that it would be "at least a year" before Tier was finalized. Can you clarify your timeline for proposing and finalizing Tier 3 gas regulations? Are you planning on waiting until after the election to push through this expensive rule that will raise gas prices for consumers?

27. I understand that in response to a question by Congressman Upton, you said that the final Tier 3 rule would not include octane and RVP. Might EPA be considering reducing RVP under a separate rule?

28. Last July EPA stated that the antibacksliding study, which is long overdue to Congress, will be published in December 2011as part of the Tier 3 proposed rule. Did EPA complete the antibacksliding study? When will EPA publish the study? Might EPA be considering reducing RVP as a result of the antibacksliding study?

29. What fuel does EPA require for manufacturer new vehicle emissions and MPG test certification? My understanding is that this fuel doesn't contain any ethanol. When does EPA plan to change its test fuel to more accurately reflect the fuel in the marketplace? What will that fuel be in terms of ethanol concentration?

Renewable Fuel Standard Program (RFS2)

30. Recently, there has been quite a bit of discussion about the ethanol blendwall, the time when the RFS2 ethanol mandate exceeds 10% of the gasoline demand in the United States.

    a. When does EPA anticipate the blendwall?

    b. How does EPA compute this timing?

    c. How would the E10 blendwall impact fuel supplies in the U.S.?

    d. What steps does EPA plan to take to address the E10 blendwall?

31. I've been encouraged by the fact that EPA has utilized its discretion to waive down requirements for cellulosic-based fuels. For example this year RFS2 required 500 million gallons of cellulosic biofuel which EPA adjusted to a lower number. Next year cellulosic requirement increases to 1 billion gallons and the RFS2 volumes continue to increase annually to year 2022.However, to-date EPA has never reduced the advanced and total renewable biofuel mandate in proportion to the cellulosic waiver. Will EPA continue to utilize its discretion to lower the cellulosic requirement? Starting with the 2013 RFS2 standards, will EPA reduce the advanced and total renewable volumes in proportion to the cellulosic reductions, especially in light of the increasing cellulosic mandates? If no, why not?

32. Cellulosic biofuels, per EPA EMTS data, are not commercially available. Yet obligated parties were required in 2011 to buy cellulosic biofuel credits at $1.13 per gallon for a fuel that does not exist. This annual cost of course would be passed on to consumers in the form of higher prices at the pump. EPA has the authority to eliminate this financial burden when the actual cellulosic production is nill or lower than projections. What are EPA's plans to address this issue?

33. When EPA developed RFS2 regulations it structured the program so that liability would fall on the shoulders of the Obligated Parties. This has led to absurd results such as having to buy fuel that doesn't exist and being liable, despite good faith efforts to comply, for fraudulent RINs generated by biofuel producers that EPA helped to facilitate. In fact, EPA listed these producers as "registered" and "accepted" on their website even after the NOVs were sent to companies. What is EPA doing to ensure a more equitable distribution of responsibility for RFS2 compliance?

E15 Waiver

34. EPA approved the use of E15 in MY2001 and newer vehicles based on a catalyst durability test program conducted by DOE. Preliminary results from the Coordinating Research Council (CRC) testing have indicated emissions problems associated with higher ethanol blends (e.g., 5 out of 8 models failed the engine durability test on E20; problems with fuel level sensors have also been also seen with E20). These and other data, as well as planned follow-ups, were communicated to the Agency and were placed in the EPA E15 rulemaking docket before the October 2010 waiver decision. Why did EPA choose to ignore the CRC scientific evidence in its waiver decision? If upon completion of the CRC testing and data analysis E15 is found to cause emissions problems, will EPA reconsider its E15 waiver decision?

35. The EPA E15 waiver allows use of E15 in MY 2001 and newer vehicles. Virtually all vehicle owners' manuals up to 2011 MY vehicles specify E10 and do not authorize the use of higher ethanol blends including E15.

    a. How does EPA interpret the auto manufacturers concerns given that E15 is not recommended and warranty coverage is not extended for non-flex fuel vehicles?

    b. Can automakers deny warranty coverage based solely on use of E15?

    c. Will EPA require automakers to change their manuals for 2012+ MY vehicles to allow for E15?

    d. Does EPA have an estimate of the number of 2001 through 2004 MY vehicles that are Tier 1 technology, and thus not represented in the DOE catalyst testing that EPA relied upon to grant the E15 waiver?

    e. What is EPA's estimate of the potential cost to consumers for engine repairs and other potential environmental damage associated with these Tier1 MY 2001 to 2004 vehicles?

36. In the 1970s and '80s there were significant rates of leaded gasoline misfueling even though leaded pump nozzles did not fit in unleaded-only vehicles. This misfueling occurred primarily for two reasons: 1) leaded gasoline was less expensive to purchase and 2) some motorists preferred leaded gasoline. EPA has decided that different sized pump nozzles will not be necessary and is instead relying on a warning label to prevent misfueling.

    a. Aren't these same reasons for leaded gasoline misfueling likely to exist when E15 is marketed?

    b. Has EPA estimated the potential costs in damaged vehicles and engines, including both the cost to consumers for repairs and in damage to the environment, that would result from the misfueling of vehicles and engines not covered by the E15 partial waiver?

37. EPA has provided draft E15 materials compatibility guidelines for the underground storage tank system (UST); these refer to three approval processes, including Underwriters Laboratories (UL) certification.

    a. What are EPA's risk assessments for ethanol release in each of these three approval processes?

    b. Is E15 compatible with existing underground leak detection equipment?

    c. Will gasoline retailers be required to replace their existing underground storage tanks with UL certified tanks before marketing E15?

38. EPA states that its UST regulations and compatibility guidelines are intended to protect groundwater and detect and prevent releases of petroleum from UST systems. Yet, after stating that "very little data exists pertaining to the compatibility of UST equipment with ethanol blends" and acknowledging UL literature suggesting that "mid-level ethanol blends [e.g., E15] may have the most degrading effect on some UST system materials" and that "most UST systems currently in use are likely to contain components that were not designed to store ethanol blends beyond 10%" and "may not be certified by UL or another independent testing laboratory for use with these blends," EPA has proposed formally recognizing two alternatives to the current industry practice of relying on UL certification to demonstrate compatibility. These alternatives are: (1) manufacturer approval and (2) "another method determined by the implementing agency to sufficiently protect human health and the environment."

    a. Given the lack of compatibility testing and date recognized by EPA, what is the basis for EPA's proposal to accept "manufacturer approvals" to demonstrate compatibility? Is the manufacturer required to perform any tests or to reference any studies or to otherwise substantiate a reasonable basis for such approval?

    b. Will EPA require the state implementing agencies to substantiate their determination that another method will "sufficiently protect human health and the environment" before such can be relied upon to demonstrate compliance with EPA's compatibility requirements?

39. Tests published in November 2010 by NREL/DOE reveal materials compatibility issues with dispensing equipment. EPA has not provided E15 materials compatibility guidelines for dispensing equipment. How does EPA plan to address this issue?

40. What is the anticipated cost to gasoline retailers, most of whom are small business owners, to comply with the EPA required materials compatibility specifications for E15 for underground storage tanks systems, including piping, seals, fittings, and fuel dispensers?

    a. What is the basis for EPA's estimates?

b. Does EPA foresee these anticipated costs to ultimately be reflected in the price of motor fuels at the retail pump?

41. What additional legal and technical barriers exist that will prevent the marketing of E15? What is the anticipated timing for removal of these barriers?

42. Is EPA concerned about potential liability associated with the commercialization of E15?

    a. Who does EPA assume would bear the liability burden should infrastructure, vehicle and/or engine problems arise from the use of E15?

    b. What liability protection can those parties receive?

CAFÉ

43. There's speculation that automakers agreed to your GHG tailpipe proposal in exchange for EPA pushing through discretionary Tier 3 gasoline regulations, which are unpopular and are being slow rolled. A recent Auto Alliance quote in the *WSJ* adds to this speculation: "If now is not the right time for fuels, then it may well not be the right time for autos." Did your agency have an agreement with automakers to support Tier 3, the burden of which falls on the refining sector, in exchange for the automakers cooperation with fuel economy standards?

Air

44. There has been a great deal of concern that the MACT standards for new electric generating facilities are so strict that no new coal-fired generating stations can be built. Information in the rulemaking docket indicates that the new-unit MACT standard for acid gases was set using performance data from the Logan and Chambers Units. But EPA posted a chart in the docket showing six separate test results for Logan, with Logan failing the standard five out of six times. Similarly, the Chambers units failed five out of six tests.

    You have told the public that the new-unit MACT standards will not prevent new units from being built, yet EPA's own data seems to shows that the very units you used to set the standard would fail compliance tests five out of six times.
    What can you do to assure the public that, in fact, these standards do not result in a de facto ban on new coal units?

45. In December 2000, EPA listed Electric Utilities as sources to be regulated under the Clean Air Act's MACT provisions due to concerns about hazardous air pollutants, particularly mercury.

    This is interesting because the entire justification for the rule – and by that I mean over 99 percent of benefits the Agency claims – are from the "co-benefit" of reducing fine particulate matter (PM).

    In fact, when one looks at the direct benefits of the rule the Agency can claim only between $500 thousand to $6 Million in benefits from reducing mercury. This is very little direct benefit for a rule the Agency estimates will cost $9.6 Billion annually. In fact, the costs exceed the benefits by a 1,600 to 1.

It also seems to be an extremely inefficient way to reduce PM, given the fact that PM is regulated through multiple Clean Air Act programs that are much more flexible than MACT.
In fact, PM is regulated through the National Ambient Air Quality Standards program. But EPA's analysis in the Utility MACT rule shows health benefits coming from reducing fine particles all the way down to natural, background levels. Is EPA considering resetting the fine particle NAAQS to background levels? Why not, given that EPA's health benefits estimates for the MATS rule are based almost entirely on fine particle levels that are below the level of the NAAQS?

Superfund and Brownfields

46. EPA's proposed FY 2013 budget increases brownfields administrative costs while decreasing the 128 and the104(k) grants. Why is EPA paying itself more for doing less work?

47. I previously requested during EPW's hearing that on the Brownfileds program that EPA look into saving the taxpayers money for the cost of the Brownfields Conference that EPA funds. Since this conference is a worthwhile and successful event, what steps has EPA taken to evaluate privatizing these costs?

48. When does EPA plan to release its proposed rule on financial assurance under CERCLA 108 (b)?

49. EPA proposed that it has $1.8 billion in total in unobligated balances for all special accounts as of the end of FY2011. Previously EPA had showed how much of these funds are committed or uncommitted on a per site basis in its public CERCLIS database. Why is EPA not providing this information on its website and to allow for even basic transparency?

50. There is a reduction in funding for federal facility oversight for federal facility cleanups. This will provide greater independence to federal facilities for managing their cleanups. How would the protectiveness of the cleanup be insured? Would this shift more of the burden to the states who also have stretched budget?

Electronic Waste

51. Tell me why the President's inter agency task force on electronic waste recommended two standards?

52. Does EPA endorse e-Stewards and the R2 standard?

53. Please explain to me how each standard works?

54. Is the federal government going to be recycling it's overseas computers or will they be recycled abroad?

55. Would not a third party international standard, that is backed up by third party certification, be the model for international organizations?

Mining

56. In order for the Committee to provide effective oversight please provide us with a list of 404 Clean Water Act permits that are under review or have been under review from May 11, 2009 to

present time? Please limit the permits to Kentucky, West Virginia, Ohio, Pennsylvania, Tennessee, Alabama, Louisiana, Indiana, Illinois, Wyoming, Montana, and Virginia.

57. Please provide us with the total current up to date cost figure for EPA's watershed assessment for the proposed pebble mine?

58. Is it possible that EPA will use its authorities under CWA 404(q) to designate the proposed pebble mine area as an aquatic resource of national importance?

59. What is the estimated completion date for EPA's watershed assessment of the proposed pebble mine?

Hydraulic Fracturing

60. There are serious concerns about how EPA is conducting studies related to hydraulic fracturing, including concerns about a study currently underway to "better understand any potential impacts of hydraulic fracturing on drinking water and ground water." EPA has also requested $14 million in FY 2013 for hydraulic fracturing research, more than doubling the FY 2012 request for areas the Agency has very little authority to regulate. EPA has issued press releases and findings on studies that have not been peer reviewed and needed further information and testing. EPA has also interjected themselves in areas where states – who are the rightful regulators of hydraulic fracturing – were doing studies and taking appropriate action. Finally, documents obtained by members of Congress from the interagency review of EPA's Utility MACT rule over a year ago show EPA's refusal to recognize more abundant use of natural gas reserves due to predetermined concerns with the "environmental impacts of hydraulic fracturing."

    a. EPA's recent announcements with regards to the Agency's hydraulic fracturing investigations – the dismissal of the "emergency" order in Parker County, TX, EPA actions in Dimock, PA prior to findings of no concern, and EPA's non-peer reviewed conclusion in Pavillion, WY which has led the Agency to further rounds of testing with the state – have cast serious doubt on the agency's credibility and impartiality in conducting valid scientific studies of hydraulic fracturing. In all of these cases, EPA prematurely linked hydraulic fracturing to serious environmental and human health concerns where it appears the links, and in some instances the concerns themselves, were nonexistent. Given EPA's recent track record in its hydraulic fracturing investigations, how can you assure Congress and the public that, going forward, any preliminary or final conclusions as a result of the agency's studies – including the broad water study underway and the new studies to be funded by the President's latest budget request – are based on transparent and thorough sound science that include state regulators and industry and not preconceived political exercises as some of the Agency's prior investigations appear to be?

    b. Is EPA concerned that the retrospective sites which have been selected within the study do not have the sufficient baseline information necessary to give the Agency a clear picture of the sites prior to energy development or any known accidents which may have occurred? How is EPA planning to address issues that arrive from a lack of baseline?

    c. How were these sites selected and are there any sites where EPA was not aware of some report of an accident or water contamination?

61. In Parker County, TX, Dimock, PA, and Pavillion, WY, EPA is studying and in some cases issuing orders or conducting actions related to private drinking water wells. Please list all regulatory authority, and the circumstances that would spur the use of that authority, for EPA to intervene over a State in the regulation, investigation or care of private drinking water wells.

62. In your February 29 testimony before the House Appropriations Committee's Interior and Environment Panel, you stated that while the Pavillion, Wyoming investigation will not be "classified" as a HISA, it will be "treated" as one and added that EPA "will use the [OMB] guidelines for a highly influential scientific assessment." What is the distinction between "classifying" something as a HISA and "treating" it as one and do you commit today to following ***all*** of the OMB guidelines for a HISA with regards to the agencies ongoing work in Pavillion?

63. The Pavillion study was not peer reviewed prior to its release, and even though it was in draft form, there was a press release accompanying it with findings which scared the public. The larger study is expected to have a draft report released later this fall, and again EPA has indicated that it will not be peer reviewed or reviewed by other scientists prior to its release. What can be done to ensure that this study is carefully reviewed prior to its release? Will preliminary findings be highly publicized as they were in the Pavillion draft?

64. Documents obtained by members of Congress from the interagency review of EPA's Utility MACT rule show EPA's refusal to recognize more abundant use of natural gas reserves due to concerns with the "environmental impacts of hydraulic fracturing." Many comments made throughout this administration – including by yourself and EPA – have touted the importance of natural gas while internal documents coupled with the Agency's actions seem to paint a starkly different picture. Is it the position of EPA that due to "environmental impacts of hydraulic fracturing" the Agency does not believe it will be a suitable tool abundantly used in the future to access the country's vast supplies of oil and gas from shale?

65. In testimony before Congress last year with regards to hydraulic fracturing, you stated that "EPA will use its authorities to protect local residents if a driller endangers water supplies and the state and local authorities have not acted." This in no way aligns with EPA's actions across the country where the Agency has interjected itself: in Parker County, Texas, Pavillion, Wyoming, and Dimock, Pennsylvania – all areas where state and local authorities were taking actions. Could you please comment on specific deficiencies in the actions of the aforementioned states which lead to EPA intervention in each of those instances?

<u>Risk Management</u>

66. Administrator Jackson: Late last year, the Office of Solid Waste and Emergency Response announced that EPA intended to change its long standing policy of providing secure access to information from Risk Management Plans to posting all such information on the Internet instead, with no form of control. Even a FOIA request for the information would not be needed. The affected portions of the RMPs contain security-sensitive material, and the current administrative controls for access were put in place for reasons of national security Being that the information is indeed available, whether under the RMP program, Community Right to Know Laws, or FOIA, to all who request it – including citizens – it is unclear why EPA is taking actions to weaken the protection of security-sensitive information. Why is EPA proposing to release sensitive information that will undermine the efforts of industry to protect facilities, employees and communities?

<u>TSCA Reform</u>

67. Has the Obama Administration developed an official position on S. 847?

68. Has EPA developed an estimate of the FTE requirements necessary to implement S. 847? How does that estimate compare to OCSPP/OPPT current human resources?

69. Has EPA assessed what skill sets will be necessary to implement S. 847? How do those needs line up against current staff expertise in OCSPP/OPPT? Has EPA assessed whether it will be able to attract and hire the necessary expertise to fully implement S. 847?

70. EPA relies on contractors to assist in implementing the current requirements of TSCA. What is EPA's budget for implementing the current program, and how does that compare with EPA's assessment of anticipated budget requirements for S. 847?

71. What resources would EPA need to review minimum data set submissions on all existing and new chemicals under this legislation?

72. EPA has proposed a significant change in policy to prohibit claims for confidential treatment of chemical identity, even in health and safety studies where the claim might be appropriately justified and an alternative approach to identification is necessary. This proposal appears to be based on a legal interpretation of TSCA Section 14 that suggests the Agency has no discretionary authority regarding CBI claims, and is subject only to the two statutory prohibitions on disclosure contained in that section. How does this practice compare to other environmental statutes administered by EPA? How does EPA justify the difference in approach in this area? Has the Agency assessed the impact of this proposal on innovation, and the impact of the proposal on incentives to conduct health and safety studies?

Senator David Vitter

1. I would like to note in your new Scientific Integrity Policy you suggest "scientific research and results" should be "presented openly, and with integrity, accuracy and timeliness". On the issue of timeliness can you explain why it took you a month and a half to share with my office the PWG report on the Ramazzini Institute, and in particular why it took so long if it had been completed in November? In addition, can you also share what actions are being taken on all chemical assessments that integrated Ramazzini's work?

2. What is EPA doing to ensure the quality of the research EPA utilizes meets sufficient standards for "sound science" so we don't run into a Ramazzini type situation again in the future?

3. Again, to the issue of timeliness, can you tell me when I can expect a response on the letter I sent last June, roughly 10 months ago, along with Senator Inhofe asking numerous scientific questions about the proposed ozone standards?

4. I know that following the National Academy of Sciences' review of formaldehyde, your agency received bipartisan concerns related to other chemical assessment work IRIS was completing. Those concerns led to 2012 appropriations providing funding for additional NAS reviews. Can you provide a status update on where negotiations are with the NAS on those reviews and what chemicals you anticipate NAS reviewing?

5. On the issue of hydraulic fracturing, I would assume you are familiar with Range Resources and their work in Texas, as well as the pending litigation. Does EPA plan on dismissing your order against Range Resources in light of the Texas Railroad Commission finding that the gas was not from Range Resources' well? As well, are you aware that the judge has dismissed the plaintiff's complaint that their water well had been contaminated by Range Resources, but is allowing Range Resources' counterclaim to proceed against the couple for producing a deceptive video that attempted to show their water would catch on fire due to fracking?

    a. As a follow-up are you aware the judge wrote: "This demonstration was not done for scientific study, but to provide local and national news media a deceptive video, calculated to alarm the public into believing the water was burning"?

    b. Range Resources has indicated an intention to conduct discovery to determine the extent to which the conduct influenced the EPA. Do you have a course of action for informing the public if EPA's staff failed to meet standards set forth in your new policy for scientific integrity?

6. I would assume you are familiar with the case *Sackett v. EPA*, which was decided yesterday by the Supreme Court? And if you are have you had a chance to read the unanimous decision of the court?

    a. The court decision was pretty damning in terms of EPA policies and procedures under the Clean Water Act. Let me cite Justice Alito: "The position taken in this case by the Federal Government—a position that the Court now squarely rejects—would have put the property rights of ordinary Americans entirely at the mercy of EPA employees". In light of this unanimous decision by our Supreme Court Justices, can I get a commitment from you that you will not move forward with the Clean Water Act guidance document and will seek to address these challenges rather than expand EPA's jurisdiction?

7. Late last year, the Office of Solid Waste and Emergency Response announced that EPA intended to change its long standing policy of providing for secure access to information from Risk Management Plans to posting all such information on the Internet instead, with no form or control. Even a FOIA request for the information would not be needed. The affected portion of the Plans contain security sensitive material and the current administrative controls for access were put in place for reasons of national security. Being that the information is indeed available under FOIA to all who request it – citizen, first responder, or government official – it is unclear why EPA is taking actions to weaken the protection of security-sensitive information. Why is EPA proposing to release sensitive security information that will undermine the efforts of industry to protect facilities, employees and communities?

8. What steps is EPA taking to implement its prioritization strategy in a science based way? I see that your budget states that the agency is "committed to . . .achieving transparency in agency decision-making as an integral part of achieving" your mission. And yet, EPA has undertaken a prioritization process to date without making the criteria applied in that process transparent. Will EPA make its criteria and processes for prioritizing chemicals transparent? Will EPA apply its prioritization approach to all chemicals in commerce today, or only those which have already gained attention within EPA and other chemical regulatory bodies around the world? In other words, will EPA take a comprehensive, long term approach to prioritization. Please Explain. Finally, when does EPA expect to release its chemical priorities for 2012, in line with its proposed prioritization approach?

9. Between 1998 and now, chemical manufacturers provided screening level data and information on 2,200 high production volume (HPV) chemicals, representing more than 95% of all chemicals in commerce today, by volume. How has the Agency made use of the HPV data and information to date? Will the Agency make better use of this data and information to prioritize chemicals for further evaluation and assessment?

10. That EPA- European agreement required further development and elaboration, which has not happened, has it? What is the agency doing about formalizing that agreement to make full use of the information on HPVs and other substances so as not to waste resources by requiring duplicative information from industry?

11. Has EPA budgeted additional dollars for its "Action Plans" in 2013? Please explain what is the intention of the agency regarding action plans? Are they continuing, abandoned for something different? Please explain. Will EPA issue any new action plans in 2013? Please explain.

12. Can you please comment on EPA's more recent interpretation of TSCA's CBI provisions and why the Agency now thinks TSCA treats confidential chemical identity differently than it is treated under the other five federal environmental statutes? TSCA requires the agency to consider the social and economic impacts of its implementation of environmental laws, does it not? How is EPA going to implement this new policy in a manner that balances the public's access to information while still protecting industry's legitimate competitive interests?

13. Do you believe that the regulated community has a firm understanding of the new Chemical Data Reporting (CDR) requirements and adequate time to fully comply with this rule? In the CDR final rule, with its expanded reporting requirement, EPA shortened the timeframe in which industry must prepare the reports for 2011 by three months. EPA has provided companies only up to six months to prepare reports for the 2011 CDR collection year, as contrasted with the 2016 CDR and subsequent CDR reporting periods, in which companies will have six to nine months to prepare the reports.

14. Would the Agency consider extending the reporting submission period to September 30, 2012 to be consistent with future CDR reporting periods and allow submitters adequate time to fully comply with the new requirements?

15. Can you comment on the current and proposed budgets and human resources for TSCA implementation today and compare it to the resources that would be needed to implement either the House bill from 2010 or S. 847?

16. We understand that the NAS has offered to convene this workshop. In this regard, would your agency be amenable to working with NAS on convening this workshop?

17. Given that the EDSP screening costs can be more than 1/2 a million dollars per substance, and that the results of the first round of screening from EPA's issuance of 67 test orders in 2009 and early 2010 will be completed by August or September, do you plan to follow the SAB recommendation in early FY 2013 before issuing additional endocrine screening test orders? If not, why not?

18. Can EPA provide the public with its sector prioritization; explain how it has prioritized sectors; and explain how this prioritization does or does not reflect actual Agency rulemaking?

19. Can EPA provide evidence that the multi-pollutant, sector based approach results in the significant benefits beyond what the Clean Air Act already provides? Would taking this approach for the host of rulemakings, on which EPA already expects to fall behind (p. 219), put EPA even further behind in its fundamental rulemaking responsibilities?

20. Can EPA explain why after so many years the NEI database and the processes used to update it are not as robust as the Agency, and stakeholders, would like them to be?

21. Can EPA provide the public with clear information on its discretionary programs and rationale for these programs and associated resources? Have these programs sometimes taken resources that could have been used to stay on schedule with air toxics rulemakings?

22. The press release for EPA's funding request stated it would, "sustain the agency's successes in managing the potential risks of new chemicals coming into the market and accelerating the progress to help ensure the safety of chemicals on the market that have not been tested for adverse human health and environmental impacts." In light of that statement can you provide some more detail regarding the progress the Agency has made since TSCA was passed? Specifically:

    a. How many PMN's have been submitted to the agency for approval since the program began? How many PMNs were submitted in each of the years 2006 to 2011 inclusive, and for each year, how many substances were subsequently added to the TSCA inventory?

    b. How many were denied and/or withdrawn?

    c. With regard to PMN's, how has EPA exercised its authority to require manufacturers to conduct additional testing, labeling, or other limitations? Specifically, how many chemicals have been subject to each of these authorities?

d. How many times has EPA issued a Significant New Use Rule (SNUR)? Of that number, how many times has EPA prevented or limited the use of chemical?

e. What is EPA's annual budget expenditure on TSCA? How many FTEs does EPA employ on TSCA? How many of those FTEs are tasked with chemical assessment responsibilities?

23. Congress recently passed legislation directing EPA to make improvements to the Integrated Risk Information System (IRIS). How much funding has EPA designated to fully implement the recommendations outlined by the NAS in chapter 7 of the formaldehyde report?

24. How does the new Chemical Data Rule change the way the Agency collects use and production information from manufacturers under TSCA? Can you explain how EPA will make use of this information to assess chemicals?

25. Does the EPA believe it's important to prioritize chemicals for assessment under TSCA? What is EPA doing right now to make sure it's focusing its efforts on priority chemicals? What are EPA's -longer term plans to prioritize chemicals? Does EPA intend to conduct a screening-level prioritization review for all chemicals in U.S. commerce?

26. I continue to remain concerned about the ongoing non-cancer methanol IRIS assessment that EPA is conducting. As you know, EPA's own External Peer Review panel criticized the Agency's non-cancer draft assessment for being poorly written and requiring significant revisions, and for proposing reference concentration levels that are overly stringent. Based on the comments EPA will have to make significant changes to the draft assessment and its proposed reference levels. Under EPA's current process, EPA can ignore some or all of the peer review comments, and after interagency review publish its final determinations. In keeping with the spirit of an open and transparent scientific process, will you commit to allowing the public to comment on the draft assessment after the Agency incorporates the External Peer Review panel's comments? If not, is there any legal or regulatory provision that is prohibiting you from complying with this request?